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2004 ELECTION AND THE IMPLEMENTATION OF THE HELP AMERICA VOTE ACT

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

HEARING HELD IN COLUMBUS, OH, MARCH 21, 2005

Printed for the Use of the Committee on House Administration

U.S. GOVERNMENT PRINTING OFFICE

20–790 WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

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HEARING ON THE 2004 ELECTION AND THE IMPLEMENTATION OF THE HELP AMERICA VOTE ACT

MONDAY, MARCH 21, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 10 a.m., in the Finance Hearing Room, Senate Office Building, Columbus, Ohio, Bob Ney (chairman) presiding.

Members present: Representatives Ney, Millender-McDonald and Tubbs-Jones.

Mr. CHAIRMAN. I want to thank everyone for coming. Also I want to thank you for your indulgence. We had a vote last night and I did my best to get here. Three airplanes later, due to mechanical problems, I am here. I apologize for something out of my control; it is a pleasure to be here. Again, I want to say how much I appreciate the Clerk of the Senate Matt Schuler and all the staff of the Senate making the use of this room possible. This used to be my office over to my left when I was Chairman of the Senate Finance Committee so this is old home week. This was the temporary floor of the Senate. It is always a pleasure to be back here in the legislature where I got my start before I left for the U.S. House.

The Committee will officially come to order. We are meeting here today, in Columbus, to take a look back at how the 2004 election was conducted in Ohio, and to hear about how the Help America Vote Act, known as HAVA, is being implemented in this state.

We have already had hearings in Washington, D.C., and will have hearings throughout the different parts of the country. During the course of this hearing we hope to learn more about what went well during the most recent election and what needs improvement. By gaining greater understanding about what happened in the past election, we hope we will be able to assure the effective administration and successful operation of Ohio elections in the future.

On November 2nd of 2004 our nation conducted the first federal general election governed by the requirements and instructions set forth in the Help America Vote Act of 2002. The Help America Vote Act was a landmark legislation reform law that established new election administration standards that each state must meet. It also provides crucial federal dollars for the first time in the nation's history, to assist states and localities in updating and improving their voting systems.

The Help America Vote Act specifically grants states and localities broad latitude to interpret and implement its provisions in ways that take into account unique local circumstances in each community. I am proud to have been the author of this important piece of legislation, along with Congressman Steny Hoyer, who is also the Democrat whip of the U.S. House, and Senators Chris Dodd, Mitch McConnell, and Kit Bond. I believe that the Help America Vote Act will greatly enhance the health of our democracy. HAVA had a great bipartisan vote, and a lot of members involved in putting the bill together.

As Election Day 2004 approached, election officials across the country faced numerous logistical challenges. Nowhere were those challenges more apparent than here in our own state of Ohio.

First of all, Ohio was the target of aggressive voter registration drives, many of which were conducted by outside groups that paid their employees per person that they registered. These drives resulted in election officials having to process and handle a greater than usual number of voter registration forms, a substantial percentage of which were submitted at or just before the prescribed deadlines, and several of which were defectively or fraudulently thrown out.

This placed an administrative burden on Ohio's election officials. In addition, election officials confronted the highest rates of voter turnout since 1968. The Committee for the Study of the American Elector estimates that roughly 120 million citizens cast ballots in the most recent federal election—nearly 15 million more voters than in 2000.

In Ohio alone, the turnout rate was over 10 percent higher than the rate during the previous presidential election cycle, which translated into almost one million more Ohioans voting in 2004 than in 2000.

Finally, during the past election cycle Ohio had an extensive debate about the security of direct recording electronic devices, known as DREs, voting systems and ultimately passed a law requiring DREs to produce a voter verified paper audit trail, or VVPAT.

Without getting into the merits or demerits of the new law, it is safe to say that the paper trail debate and the new VVPAT requirement removed the possibility that Ohio could replace its punch card systems with more reliable voting equipment in time for the 2004 election.

In the weeks and months leading up to election day, we heard scores of gloomy predictions about an impending electoral meltdown in our state. We were told that voting equipment malfunctions would be widespread, delaying the reporting of election returns, and potentially losing thousands upon thousands of votes.

There were also allegations that a mass voter intimidation and suppression effort would disenfranchise many voters. Some forecasted that all these factors would combine and create a perfect storm that would paralyze the country's election systems.

Thankfully these gloomy predictions did not come true as the Associated Press reported. The big surprise of the 2004 election was that, for the most part, the voting went smoothly. By the close of the polls across the country, despite heavy voter turnout, there

were only scattered reports of equipment trouble and human error at the voting stations, and none were major.

This assessment was confirmed on election night by Joe Lockhart. Normally I don't quote Joe but I will today, the Kerry campaign spokesman and strategist who said, "We think the system has worked today. There were thousands of lawyers deployed to make sure that no one tried to take advantage or unfair advantage and by in large it has worked. I have seen very few reports of irregularities and even the ones we have seen after a little investigation you will find there is not much going on."

Thus, to paraphrase Mark Twain, the rumors of the demise of the American electoral system in general, and the Ohio system in particular, are greatly exaggerated.

For this, we must give enormous credit to the state and local election officials in Ohio, on both sides of the isle, for their hard work and extensive planning in preparation for this year's election. We must also express tremendous gratitude to the thousands of volunteer poll workers and election judges, without whom the election process could not function. The accomplishment of those involved in the administration of this year's elections are especially impressive in light of the intense scrutiny under which they were operating.

All of this is not to suggest, however, that no problems whatsoever were evident in Ohio during the 2004 election. There were some difficulties. As in any undertaking involving millions of people taking place on a single day in a large state such as ours, there are bound to be some mistakes. It is important that we learn from those mistakes so that they aren't repeated.

However, contrary to the overheated assertions of some, the voting problems that occurred in the state, I feel, did not disproportionately impact the voters of one party nor the other, but rather affected voters through all political parties, Democrats, Republicans, and Independents alike.

Again, we want increased voter registration. In terms of the Help America Vote Act, it directly affected a lot of issues but it did not particularly impact the exact particulars of how the state of Ohio, for example, would register people to vote and still follow state laws.

I think that with HAVA's voting system standard set to go into effect in just over eight months, I am especially interested today to hear from a good panel of legislators in discussing how Ohio will meet the compliance deadline. As I mentioned earlier, the paper trail to date the new VVPAT law has significantly delayed Ohio's acquisition to voting equipment as well as its ability to come into compliance with HAVA's voting systems.

Consequently, there is an urgent need for Ohio state and local election officials and leaders in the state legislature, to sit down and with colleagues and figure out how to resolve the situation.

We are fortunate to have a number of distinguished witnesses with us today, many of whom were at ground zero of the most recent election. Our witnesses include a fellow member of the Ohio Congressional Delegation, Congresswoman Stephanie Tubbs Jones, who we serve with in our nation's Capital, our distinguished Secretary of State, members of the Ohio legislature who will be intro-

duced, local election officials from across the state, and scholars on issues relating to Ohio's election.

Before yielding to our Ranking Member, I want to thank Senate President Bill Harris for making this room available again for today's hearing. It is a little bit of deja vu for me because of the years that I served here in the legislature.

Before yielding to our Ranking Member, I want to thank Congresswoman Millender-McDonald from California, who is our Ranking Member of the House Administration Committee. It is the smallest committee of the U.S. House, with six Republicans and three Democrats.

We are directly appointed by the Speaker of the House Denny Hastert, and our Ranking Member and her colleagues are directly appointed by Leader Nancy Pelosi of California. We represent the two leaders of the U.S. House. We oversee the Library of Congress, the Smithsonian and parking spaces, which is a big deal in Washington, D.C. We are trying to diminish that.

I have enjoyed working with my colleague Juanita Millender-McDonald on the serious matter of election law, as she has been a real supporter of the institution of the House. She is our new Ranking Member. I really appreciate her time in traveling all the way here to Ohio.

Gentlelady.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman, and thank you for convening this field hearing in your home state of Ohio, as well as the Congresswoman who is before us. I would like to also thank the Ohio officials and state staff for their generosity in allowing us to be here today.

I hope to continue the dialogue and review of how the Help America Vote Act was implemented and how the first post-HAVA election was conducted. We must take our hearings wherever necessary to help the American people regain their confidence in our electoral process.

Ohio was at the epicyte of the 2004 election. It was on the news virtually every day for weeks, both before and after the election ultimately giving President Bush the victory for a second term by less than 120,000 votes. While the margin of victory was outside the parameters of litigation, it does not mean that we should ignore the problems that were reported.

As a former educator, I hope that the nation and Congress will learn from this past election and the lessons from Ohio. In the 107th Congress this Committee was the driving force in passing legislation to ensure that the problems brought to bear during the 2000 presidential election were not repeated. After that election we heard reports of a wide range of voting frustrations and irregularities.

Most common were punch cards with hanging or pregnant chads and voters were turned away from the polls without being given the opportunity to cast a vote. With the passage of HAVA 3.9 billion dollars were authorized to the states to improve the voting process marking for the first time in our nation's history that the Federal Government paid for the administration of federal elections.

Additionally, states have shown that the entire burden of cost, sometimes having to decide among funding and maintenance of roads and infrastructure, the construction of schools or the management of elections. The Federal Government has provided three sources to alleviate these very important concerns.

Ohio ranks fourth among all states and territories in total money received from HAVA. However, HAVA is not a blank check. States will only receive money if they can demonstrate compliance with HAVA's strict requirements. Yet, despite the HAVA intent, some of the same problems brought to light in 2000 occurred again in 2004. These problems were not unique to Ohio.

According to the Election Reform Information Project a nonpartisan/nonadequacy organization providing news and analysis on election reform, the problems range from long lines at polling stations to a shortage of machines to misinformed poll workers.

The Committee worked tirelessly to enact HAVA as a solution to these and other election concerns. The Help America Vote Act set standards so voters were not turned away from the polls without casting a vote. Also, that voters not listed as registered must be given a provisional ballot to be verified later and counted. Unfortunately, these were reported that eligible voters were being turned away from the polls without casting a provisional ballot.

Further, many overseas and military voters reported that they did not receive their ballots in time to vote. Some did not receive their ballots at all. We can, and we must, do better. Especially for our men and women fighting for democracy in Iraq, Afghanistan, and around the world. My staff had the opportunity to speak with many numbers of Americans living abroad and listened to their voting experiences.

Although the 2004 elections have passed into history, many questions are still unanswered and electoral issues need to be discussed. The electoral process is not perfect. Improvements to the electoral process still need to be made. Fortunately, the Help America Vote Act of 2002 is a solid foundation upon which we can institute further electoral improvements.

I would like to stop to thank this Chairman and the Ranking Member then, Congressman Steny Hoyer, for their leadership on bringing such an important piece of legislation as HAVA to the country because it has made a difference in many states and we are hoping that it continues to make a difference.

HAVA was to make it easier for voters to cast a vote and harder for people to knowingly commit fraud. It has eased the financial burden of state space in preparing for and administering federal elections. In addition to providing the $3.9 billion to the states, HAVA requires that state election officials accomplish two landmark goals by the beginning of next year.

First, every voting precinct in the United States must have at least one voting machine or system that is accessible to individuals with disabilities. This mandate will allow many disabled voters to cast secret ballots for the first time. Second, by the start of 2006 every state must implement a uniform centralized computerized statewide voter registration list.

Beyond my continued support of HAVA I wish to make it clear that I will continue to fight for additional funding to the Election

Assistance Commission, EAC. The EAC has started a valuable service to our nation as a clearinghouse for all matters relating to federal elections. Among other accomplishments the EAC has partnered with the National Institute of Standards and Technology to develop voting system guidelines, issue best practice procedures to the states, and distribute billions of dollars to improve the election process.

I would like to also acknowledge the work of all of the county and local elected officials who will be represented by the witnesses here today. They are the ones who carry out the day-to-day operations of administering the elections. I look forward to the hearing today, Mr. Chairman, from these experienced people who have implemented this landmark legislation.

Before I do that, I would like to read just an excerpt from the Christian Science Monitor that was stated by President Lyndon Johnson 40 years ago. "At times history and fate must meet in a single place to shape a turning point in man's unending search for freedom and justice."

We have come today because this is the turning point of this last election. We must restore voters' trust. We must mitigate the voters' cynicism that has arisen among voters regarding voter irregularities. We must continue to move forward so that the threat of litigation and voter outrage does not continue in place.

Access is what the Voting Rights Act of 1965 presented to us. It was supposed to do just that. Forty years today we are still seeing that people do not have access to voting and the proper machines for voting. I maintain that voter confidence and encouraging greater voter turnout is what this Committee is all about. We feel compelled to have hearings across this country to hear from your neighbors, your families, local and state-elected officials regarding this last election.

I would like to again thank my Chairman, the Chairman of the Committee on House Administration, for convening this hearing and I look forward to the witnesses, Mr. Chairman. Thank you.

Mr. CHAIRMAN. Thank you, gentlelady, our Ranking Member, for your thoughtful statements and, again, your time here in Columbus, Ohio.

We will go on to our colleague Congresswoman Stephanie Tubbs-Jones.

STATEMENT OF CONGRESSWOMAN STEPHANIE TUBBS-JONES

Ms. TUBBS-JONES. Thank you. I would like to thank the Chairman, Bob Ney, and the ranking member representative Juanita Millender-McDonald for giving me this opportunity to be heard. I am so pleased and I thank both of you for being persons of your word by saying that you would host hearings in Ohio and so doing.

I am proud to be a representative of the 11th Congressional District of Ohio and proud to be here this afternoon. Though my conduct has been labeled disgraceful, foolish, nasty, and disingenuous, I sit here very proud to have stood before the United States of America and the world on January 6th objecting to the electoral votes of Ohio at that time.

I was very proud and pleased that I have an opportunity as the first African-American woman to serve in the House of Representa-

tives from Ohio to stand on behalf of voters across this country to get the Congress just to stop for a moment and say that we need to pay attention to what happened in the election of November 2004 and let the many young men and women across this country who registered to vote for the first time and for some reason their vote was not counted to say, "Someone is thinking about you. We want you to register again. We want you to come out and vote."

All that is being said, Mr. Chairman, and Madam Ranking Member, I am going to move to something which I believe as important is a piece of legislation that I introduced this year with my colleagues from the Senate, Senator Hillary Rodham Clinton, Senator Barbara Boxer, Senator Frank Lautenberg, Senator John Kerry.

The legislation is called Count Every Vote Act of 2005. The legislation in my mind, and along with my colleagues, we believe it addresses many of the issues that were raised in the election in November of 2004 not only in Ohio but across this country.

Let me reiterate that many of the activities that occurred in Ohio happened in other states and there were other people who wanted to stand up and talk about what happened in their election and didn't have the opportunity. I have to for the record say thank you to Senator Barbara Boxer for giving me that opportunity.

Ms. MILLENDER-MCDONALD. From the state of California no less.

Ms. TUBBS-JONES. From the state of California. Correct. Let me put that on the record.

I also would ask for the record that my statements from that day on January 6, 2005, be considered as part of this record. That way I don't have to go through those statements again.

Mr. CHAIRMAN. Without objection they will be made part of the record.

Ms. TUBBS-JONES. Thank you, Mr. Chairman. Title I of the Count Every Vote Act speaks to individual voter verification for all and requires all voting systems to produce a voter verified paper record for use in manual recounts. It requires that at least one machine per precinct must provide for paper, audio, and pictorial verification and must be accessible to language minorities. It provides for a mandatory recount, a vote of verified paper records in two percent of all polling places or precincts in each state.

It goes on to provide for improved security measures for electronic voting machines. It goes to reduce voting errors in voting machines and requires that all voting systems meet what is called a residual vote benchmark to be established by the Election Assistance Commission.

Title II provides for provisional balance and I think that is an area that we in Ohio know was very controversial. It requires provisional ballots to be counted statewide, allows ballots that are cast in the wrong precinct or the wrong county to be counted for all eligible races so long as the voter is registered in the same state.

All of the issues that happened in the Ohio election and that occurred across Ohio is the fact that in one voting location there can be more than one precinct. Conceptually I could be in the right church but in the wrong pew and not have my vote counted. That is one of the reasons we wanted to make sure that provisional balloting was addressed in the legislation.

Title III provides for an amendment to the HAVA Act preventing long lines at the polls by mandating that the states meet minimum standards established by the EAC for required number of voting systems and poll workers for each precinct.

I know it has been argued that there were plenty of machines and people didn't have any problem but poll workers were vested with the opportunity to set up as many machines as they chose to. If they chose not to set up all the machines that were available in the voting place, it ended up requiring long lines.

It provides no excuse absentee voting meaning that you don't have to give a reason to ask for an absentee ballot which will reduce the number of people voting on election day. It provides for improvement of public records and partial election observers, election day registration such that people coming to the ballot box can register on election day.

Another provision which will address the whole issue of having too many people in lines is early voting. It requires early voting in every state. It requires fair and uniform voter registration and identification and partial election administrators. It specifically makes it unlawful for the chief state election officials or those who own or serve as the CEO, COO, CFO, or president of an entity that designs or manufactures a voting system to take part in certain prohibited campaign activities with respect to any election for federal office.

Appearance is one of the issues that we always have to pay attention to. In fact, it may not be a problem but the appearance of impropriety is always something we want to take a look at. It provides for civic participation by ex-offenders. Ohio is way above the curve. We allow ex-offenders to vote but many states do not. Finally, it provides for a holiday for voting such that people who want to have the opportunity to have a holiday.

I am out of time. I know that there are witnesses that have traveled a long way and I have an opportunity to put information in the record. I just want to say on behalf of all the people of Ohio and people across this country, Chairman Ney, Ranking Member Millender-McDonald, thank you for coming to Ohio. Thank you for allowing people across the state to be able to come and testify about what happened because many things occurred in Ohio and you can't recount what was never counted. Thank you very much for the opportunity to be heard.

Ms. MILLENDER-MCDONALD. Mr. Chairman, with unanimous consent, may be allow Congresswoman Stephanie Tubbs-Jones to join us here on the dias.

Mr. CHAIRMAN. I have no objection.

Ms. TUBBS-JONES. Thank you very, very much. I appreciate it.

Mr. CHAIRMAN. Thank you for your testimony. I would defer questions. We have a panel of legislators and we will get to you. I thank you for your testimony. We have a lot of bills that have been introduced. Come up here and take a look at the legislation.

We will move on to the second panel. We have Senator Randy Gardner, Senator Jeff Jacobson, and Representative Kevin DeWine. We appreciate the service you do for the people of Ohio. I think Senator Gardner has a time problem. Correct, Senator?

Mr. GARDNER. Half hour. I don't know if you would expect me to be here for longer than that anyway.

Mr. CHAIRMAN. That is my problem. Well, the airline. We will begin with Senator Gardner.

STATEMENTS OF SENATOR RANDY GARDNER, OHIO SENATE; SENATOR JEFF JACOBSON, OHIO SENATE; REPRESENTATIVE KEVIN DeWINE, OHIO HOUSE OF REPRESENTATIVES

STATEMENT OF SENATOR RANDY GARDNER

Mr. GARDNER. Thank you, Mr. Chairman, members of the Committee, thank you for coming to Ohio and returning, of course, to Ohio, Mr. Chairman. I served eight years with Senator Ney in the 1980s and 1990s. It is good to be with you again.

I have submitted per the Committee's request some documents that actually were 2004 documents, some recommendations that I had made as Chairman of the Joint Ballot Security that actually met in this very room and had 22 hours of hearings and many witnesses, dozens of witnesses over eight hearings, and made recommendations to the general assembly. I will touch on that in my prepared remarks.

An article that I submitted to Secretary of State Ken Blackwell's publication last summer that highlighted some of my key positions on the matter of the voter paper trail and we will discuss that briefly. As well, I don't know if I submitted this or not but pay attention to the March 3, 2004 letter that was signed by Congressman Ney and Congressman Hoyer, Senator McConnell, and Senator Dodd, some of the principal authors of the HAVA act and outline some of the concerns with respect to the debate we had in Ohio over the voter verified paper audit trail.

With that, Mr. Chairman, I would like to utilize these documents and say first of all that Ohio has a long and proud and strong tradition of bipartisanship when it comes to administering elections. We have 176 Republican board members and 176 Democrat board members throughout the state who took their responsibilities in the last election in this state very seriously and conducted a very fair and very honorable election that we are proud of in this state.

As I am reminded, Congressman Casey used to always say, "This is earth and there is nothing on earth that is perfect." I appreciate the fact that you have come to this state today and that we are here today to talk about ways that we can make what will always be an imperfect system that much better for the people that we serve.

I would specifically, Mr. Chairman, like to point out that when I chaired the Joint Committee on Ballot Security I had announced to the public that my philosophy is to not have the Chairman dictate the outcome of any committee hearing or any committee process. The ultimate vote on whether we should require in Ohio a voter verified paper audit trail was seven to one and the Chairman was the lone dissent on that issue.

At least I adhere to my principles, Mr. Chairman. We did implement a mandate that I believe was not the best public policy in this state in legislation in 2004. I believe we should revisit that mandate. We should, in fact, either repeal it or ask Congress to con-

sider an extension of some of the HAVA guidelines and rules so that Ohio can most appropriately move forward in the future.

I would also like to point out that the issue of the verified paper audit trail is interesting in that those who have concerns about the electronic voting system, or DREs, seem not to have any concern to add more complexity to an already complicated system which I think makes that new system if it were to be established even more unreliable than some of the concerns in the first place.

I think the final thing I would like to say, Mr. Chairman, is concerns on both sides to become sometimes extreme. The one thing that I asked you for, and I think sometimes people are too cynical about politics and they think money is at the root of every decision that gets made, the question I would have for those who attempted to portray some of the concerns and protests in Ohio in the last year with respect to electronic voting machines and DREs, the Ruckus Society from Oakland, California, came to Ohio as part of a protest.

I asked the question before and I think it is relevant for those that ask why we make decisions and whether money influences us is to who paid for the Ruckus Society to come to Ohio and protest against the Ohio voting system? Was that voting machine companies that might benefit from a different system? Was it members of the Democratic party or the officials or the party operatives who paid for those visits? I think those are fair questions to ask and then hopefully we can come together as Republicans and Democrats to provide the best system possible for this state. I am honored to be a part of the panel discussion today and I look forward to answering questions after my colleagues have made their presentations. Thank you, Mr. Chairman.

Mr. CHAIRMAN. Thank you, Senator. Thank you for your time today.

Senator JACOBSON.

[The statement of Mr. Gardner follows:]

TO: **MEMBERS**
JOINT COMMITTEE ON BALLOT SECURITY

FROM: **Randy Gardner**
Chairman

DATE: **April 5, 2004**

RE: **CHAIRMAN'S POSITION**

In an effort to move forward toward recommendations for consideration by the Joint Committee on Ballot Security, I wanted to make available today my positions on key issues facing the committee and our state:

COUNTY BOARD OF ELECTIONS: First, I am impressed with the knowledge and research efforts exhibited by our county election officials. While their views are varied, many have shown a strong grasp of the key issues facing voters and policy-makers. Based on what I have learned, I believe that:

1) Counties should have the freedom to move forward in 2004 with new voting systems of their choice if that remains their preference, fully utilizing federal HAVA funds.

2) Counties that were scheduled to implement a new voting system in 2004 **should be able to reconsider their decision and defer implementation** if that is the majority decision of county's board of elections.

3) New mandates or changes in equipment or elections procedures **should be paid by available federal HAVA funds or, if necessary, state appropriations.**

DISABLED OHIOANS: If counties are provided the opportunity to implement the federal HAVA law as scheduled, more disabled Ohioans will vote in 2004 with greater independence and privacy.

VOTER INTENTIONS: Based on what the committee learned and knows from other state's experiences, if counties are provided the opportunity to implement in 2004 more Ohioans will have their intended vote accurately counted. Electronic voting machines reduce the number of over-votes and under-votes.

MANDATED VOTER-VERIFIED PAPER AUDIT TRAILS: I am not aware of any state that has purchased and deployed VVPAT's in their election systems. In addition, appropriate concerns have been raised by committee members about VVPAT's that are "receipts" handled by voters. It is my opinion that to legislatively mandate a voter verified paper audit trail with such limited experience and vendor options is not good public policy. The bipartisan letter jointly signed on March 3, 2004, by Congressman Bob Ney (R-Ohio), Congressman Steny Hoyer (D-Maryland), Sen. Mitch McConnell (R-Kentucky) and Sen. Chris Dodd (D-Connecticut) summarized concerns with mandating VVPAT's.

MANDATED PAPER AUDITS: I do believe that appropriate security concerns can arise if a mandated paper audit capability is not included in any new voting system to be deployed in Ohio under HAVA. A printed copy of each individual voter's ballot and intentions must be able to be produced to help assure reliability of the count and utilized in the event of a recount. I believe we should require all voting systems in Ohio to have this important capability.

As I write this memo, I have received only two brief recommendations from committee members for consideration on Wednesday. I am available to discuss these issues tonight (Monday night) at 419-352-1984 and again most of the day on Tuesday by contacting my Senate office at 614-466-8060.

I look forward to working with you in the days ahead as we strive to reach consensus on a secure voting system for all of Ohio.

Publication of J.Kenneth Blackwell, Secretary of State of Ohio

Spirit

By
Sen. Randy Gardner,
Ohio Senator

On the Pub
Voter-Verified P

Waiting for Paper Trail Leaves Voters Wondering

"A Voter-Verified Paper Trail requirement undermines voting access for people with disabilities or limited English proficiency, raises costs, fails to guarantee security, unnecessarily complicates the voting process, undermines federal certification standards, and slows the replacement of outdated voting machines."

The preceding statement by the National League of Women Voters summarizes the organ-ization's strong opposition to a voter-verified paper trail (VVPT) and serves as a concise litany of problems brought on by the aggressive and untimely push for requirements above and beyond the replacement of antiquated voting devices, such as lever machines.

The League of Women Voters is not alone in expressing concerns about the VVPTs. The Association of Americans with Disabilities and the National Council of La Raza have publicly raised serious questions about VVPTs and the impact they might have on voter confidence and turnout.

These statements are critical because some politicians and academics have already placed into question the validity of the 2004 election. They have flatly condemned electronic voting machines (without VVPTs) already in place in numerous states and in some Ohio counties. Indeed, Franklin County has utilized such voting machines for 12 years, and some 50 million voters will be using electronic systems in 2004 without a VVPT.

While I will not attempt to outline in detail the technological merits of VVPTs versus current Direct Recording Electronic voting machines, the question remains: Why would people who distrust current electronic voting machines want to force even more technology and complexity on what they view to be an already unreliable process? In addition, if an electronic voting machine can be manipulated through programming mischief to record an incorrect vote, can't it also be programmed to print out a misleading confirmation on a paper receipt? The answer is obvious.

One state legislator told me she was concerned that electronic voting machines were not safe because criminals could break into a town hall or library the night before the election and tamper with the stored voting machine. A VVPT system, she insists, would protect against such behavior changing the outcome of an election. How can anyone concerned with such potential crimes have confidence in any election procedure? Isn't that same legislator concerned about improper administration, programming or tampering of a VVPT system?

To be sure, the most ardent supporters of VVPTs have succeeded in slowing down the implementation of HAVA in Ohio. In doing so, we know that some voters in November will not have their intended vote counted accurately as our older systems (primarily punch cards) result in higher under-votes and over-votes than electronic voting machines. In addition, many disabled Ohioans will not be able to vote independently and privately in 2004 because some counties will wait to implement HAVA in compliance with Ohio's 2006 VVPT mandate.

It is also disturbing that, in their anxiousness to mandate VVPTs, some elected officials have caused public anxiety and doubt that may be difficult to resolve, with or without paper receipts. Ohio's chief elections official, Secretary of State Blackwell, said these officials have "fanned the flames of fear" and further that their actions and rhetoric have had a "corrosive effect on voter confidence."

While some will suggest that the move toward VVPTs is bipartisan, the race to a VVPT system has drawn significant bipartisan opposition as well. The congressional sponsors of the Help America Vote Act include Rep. Robert Ney (R-Ohio), Rep. Steny Hoyer (D-Md.), Sen. Mitch McConnell (R-Ky.), and Sen. Christopher Dodd (D-Conn.).

All four of them signed a letter in March in which they said, "The proposals mandating a voter-verified paper record would essentially take the most advanced generations of election technologies and systems available and reduce them to little more than ballot printers." They further warned that VVPTs "would do nothing to ensure greater trust in vote tabulations but would be guaranteed to impose steep costs on states and localities and introduce new complications into the voting process."

Mine is not an unalterable position of opposition to eventually working toward a voter-verified paper audit trail system. In fact, my recommendation as chairman of the Joint Legislative Committee on Ballot Security was to establish a task force to continue to research and consider utilization of a VVPT system in Ohio. Some day VVPT technology may be ready for the prime time of the election process. But today, most certainly, it is not.

These opinions do not necessarily reflect th

STATEMENT OF SENATOR JEFF JACOBSON

Mr. JACOBSON. Thank you very much, Chairman Ney, and members of the Committee. I appreciate your interest in Ohio. Like so many other Ohioans I spent a lot of time talking to the air, to my television, or the Internet wanting to tell you all what we think of some of the things or answer some of the questions you may have. Rarely do we have the opportunity to do so so I appreciate that.

My first question in looking at the 2004 election was why Ohio? What exactly made Ohio the poster child for questions about the election? Clearly there was attention on Ohio because Ohio was in the news before the election day. If you look at the outcome of the election, certainly the state of Wisconsin, which had it gone the other direction would have been sufficient to decide the race without Ohio.

Wisconsin had more severe issues that were directly connected as the Minneapolis Star Tribune's investigation has shown with the election day registration and the inability to verify or even come up with any plausible way that many of the people who registered, thousands of them, in fact, would actually have had a legitimate address and could in any way have been determined to be a legitimate voter.

Of course, it went the other way and finding extra votes was not on the media's mind nor on the activists minds. The issue was how to take away votes. But the Count Every Vote Act that was described to us earlier I believe would make that problem even worse and extend it beyond Wisconsin to the rest of the nation.

Washington State where time and again their election workers of a partisan administration discovered multiple caches of uncounted votes. That would never have happened in Ohio. It is impossible for what happened in Florida four years ago or what happened in Wisconsin or Washington State to have happened here.

The main reason is because we have bipartisan, local, independent Board of Elections. While the Secretary of State picks the members of the boards, he does so based on the recommendations of the local parties. If he removes someone, he replaces them again with someone recommended by the local parties.

I know this well as a former county chairman, and a former member of the local Board of Elections of Montgomery County. I was particularly disappointed in some of what happened in Congress in attacking the Ohio outcome because it involved people who were from Ohio who knew exactly how our boards of elections operate, I wish I could have defended them on the basis that it is true that Democrats watch what Republicans do, Republicans watch what Democrats do, and because of that, the opportunity for one side or another to change the outcome of an election is impossible.

The fact that there was litigation brought exactly on that fact is, to me, one of the most disgraceful things that occurred in the 2004 election and ranks right up there, in my opinion, with the decision by then Vice President Al Gore to try to manufacture a change in the Florida election in 2000. Both together, I think, have contributed to a situation where people of good will now have to find themselves wondering whether we can again have an election for which all people will accept the outcome.

I was a member of Senator Gardner's election committee here on ballot security and I do wish to state that I don't like DREs. I don't like them because they are not transparent unlike punch cards. You can hold a punch card to the light and see how someone voted or, as they did in Florida, see how someone might have intended in Florida had they really did what I wanted them to. Where you have optical scan ballots, you can look at those ballots and determine how someone voted. With DREs you have to hope that the machine accurately recorded it.

I do a lot with computers. I understand how they work and that is why I so strongly supported having paper trails to bring transparency to what otherwise would not be transparent. However, DREs take a long time to use and the direct consequence would be longer lines no matter how you look at it. The money that was given to Ohio has not been sufficient to do all that you wish.

I thank you for the opportunity to testify and look forward to working with you again in the future.

Mr. CHAIRMAN. Thank you very much, Senator, for your testimony.

Representative DeWine.

[The statement of Mr. Jacobson follows:]

JEFF JACOBSON
President Pro Tempore
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OHIO SENATE
6th District

Committees:
Education
Energy & Public Utilities
Health, Human Services & Aging
Rules, *Vice Chairman*
Reference

Testimony to the United States
Committee on House Administration
Submitted March 18, 2005

Chairman Ney, Representative Millender-McDonald and members of the Committee on House Administration, thank you for inviting me to testify today regarding the issues that surfaced in Ohio during the last General Election and Ohio's implementation of the Help America Vote Act (HAVA).

I am currently serving my thirteenth year in the Ohio General Assembly. Since the enactment of HAVA, I have been closely involved with both legislative and non-legislative actions to implement HAVA in Ohio. I served on the Election System Study Committee in the fall of 2001, and more recently, I was a member of the Legislature's Joint Committee on Ballot Security last spring. As I have listened to numerous hours of testimony on Ohio's elections system and have experienced, first-hand, as a member of the Montgomery County Board of Elections and former chairman of the Montgomery County Republican Party, I am encouraged by the relative success we have enjoyed in the conduct of our elections. This success is largely due to the overall structure of Ohio's election system.

Ohio relies heavily upon its decentralized election system and the bipartisan makeup of its county-based elections boards. The Secretary of State is entrusted to enforce state and federal election laws and to ensure that these laws are uniformly applied. Each county's board of elections actually conducts every election. The county boards are responsible for selecting voting systems, printing/developing ballots, hiring and training poll workers, counting votes, etc. The kinds of problems that plagued Florida during the 2000 General Election, and Washington in the previous election, are mitigated in Ohio because of the bipartisan structure of the county boards. Everything from the makeup of the actual county boards, the boards' employees, down to its poll workers is bipartisan. During every step of the elections process, members of both major political parities are present to serve as a check against the other. This was made apparent in the last General Election by the absence of local Democratic Party leadership in the challenges to the 2004 presidential election results.

Ohio's elections system was subject to unprecedented scrutiny as the media and

both major political parties considered Ohio a critical battleground state for the presidential election. The Buckeye state was flooded with third-party "527" organizations that, through voter registration drives, placed tremendous pressure on our local boards of election. While it is imperative that we make every attempt to register our citizens to vote, these organizations dumped thousands of voter registrations on county boards in the final days before the registration deadline. This last minute activity created an administrative nightmare for the boards' staff as they had little time to investigate registrations that contained unconfirmed addresses. Additional steps must be taken to ensure that this type of activity will not open administrative loopholes and allow last minute fraudulent registrations. This activity also makes it difficult to ensure that valid voters are accurately registered and notified of their voting precinct's location. This accuracy is critical in order to lower the number of voters that are forced to cast provisional ballots. Provisional voting serves as a "fail-safe" opportunity for citizens to cast their vote. In light of all the scrutiny placed on Ohio, we were encouraged that our provisional balloting procedures that have been in place for a number of years functioned as we intended. As a "fail-safe" system, our provisional procedures require citizens to cast their ballot in the precinct where they live. This crucial requirement strikes a balance between one's ability to cast his or her vote and the public's interest in mitigating fraudulent activities. This requirement was upheld by the 6th District United States Court of Appeals[1] in the days leading up to this year's General Election.

The aforementioned case demonstrates third-parties' reliance on judicial activism to manipulate the system to their advantage, no matter what laws we legislate or how long they have been on the books. I am concerned that the timing of judicial decisions prevents jurisprudence. Appellate courts have very little time, if any, to address appeals of these decisions. My concerns were only reinforced when on October 20, 2004, in *Sandusky County Democratic Party v. Blackwell*, Judge James G. Carr of the United States District Court for the Northern District of Ohio claimed that Secretary Blackwell "apparently seeks to accomplish the same result in Ohio in 2004 that occurred in Florida in 2000." For a politician to link the 2004 election to the insidious urban legend of the 2000 Florida election would be reprehensible enough. I cannot conceive any explanation for a member of the impartial judiciary to do so. It is difficult to foresee how we can stabilize or improve our elections in the weeks and days before, or even the day of, the election. These decisions are nothing but a hindrance on our ability to successfully administer an election.

Furthermore, I believe this election demonstrated that punch cards are not irredeemably flawed; however I recognize that we must abide by HAVA. As a state with a majority of its counties still utilizing punch cards, we are currently transitioning our voting systems in order to make them HAVA compliant. During this transition, the legislature mandated that all electronic voting machines must have a voter verified paper audit trail. We feel it necessary to enact this

[1] *Sandusky County Democratic Party v. Blackwell* 387f.3d 565 (October 26, 2004)

mandate after studying electronic voting machine experiences in other states and in some of our counties. I, as well as many of my colleagues, are primarily concerned with human and machine error. Throughout the elections process, something must exist to allow corrections to human error or machine failures, as was evidenced in North Carolina's General Election last year.

As we look ahead to future Ohio elections, we hope to update our election laws this General Assembly by curbing fraudulent abuses and clarifying elections procedures. To this extent we are considering whether to require voters to present identification at the polls, curb third-party funded voter registration abuses, tighten our provisional voting standards, and clarify our recount procedures.

I appreciate the opportunity to speak today. I look forward to answering your questions.

Respectfully submitted,

Jeff Jacobson
President Pro Tempore

STATEMENT OF REPRESENTATIVE KEVIN DeWINE

Mr. DEWINE. Good afternoon, Mr. Chairman. Thank you for the opportunity to testify before the Committee on House Administration. I appreciate the leadership efforts of the Chairman, the Ranking Member Millender-McDonald, and members of this Committee and congressional leaders to improve the election's process in our country and to ensure the United States remains a model for democracy.

I would also like to thank the Committee for coming to Ohio. The state has a solid history of well-run elections as well as an energized and active electorate which I believe makes it a compelling study for Congress.

The November election was undoubtedly one of the most scrutinized in recent history, particularly here in Ohio. However, as has already been mentioned, with the leadership and professionalism of our bipartisan election officials, Ohio's system withstood the pressure of a major election and we were able to avoid the chaos which ensued elsewhere in the nation during the 2000 election.

As mentioned by others, our system is not without its faults. With minor changes, however, I believe we can minimize risk. Most of us heard concerns during last year's elections from voters, boards of elections and poll workers. As such, the general assembly is seizing the opportunity to update and strengthen our system of elections. These efforts are found in part in House Bill 3 which I introduced in an effort to modernize Ohio's election laws.

House Bill 3 makes important clarifications to Ohio's election laws and brings the state into alignment with HAVA. House Bill 3 codifies rules for casting a provisional ballot to align Ohio's provisional system with HAVA. The HAVA procedure allows a citizen whose eligibility is challenged or whose name does not appear in the poll books to cast a provisional ballot. This system differs from the current Ohio procedure which only allows those citizens who have moved and have failed to submit a change of address form to vote provisionally.

House Bill 3 seeks to codify the HAVA requirements for voter identification which requires first-time voters who registered by mail to provide a form of identification when they cast their ballot or at the time they registered. Additionally, in an effort to further curb voter fraud, the general assembly is also considering whether to require a voter to provide identification at each and every election.

Finally, House Bill 3 compels the Secretary of State to develop a computerized statewide voter registration database as required by HAVA. Procedures for managing this database must be established in order to remove ineligible voters in a nonpartisan fashion while giving the voter proper notice and an opportunity to provide accurate registration information.

Outside of the scope of HAVA compliance discussions have been underway to address a number of broader election issues. Ohio's election calendar is in desperate need of an update. Concerns have been raised about the very short time frame in which pre-election voter registrations must be received and resolved.

The current system begins on the 11th day before the election. This clearly does not allow enough time for proper notice and hear-

ings. We are looking into further ways in which we may improve the timing of the election process to ensure that voters have ample time for ballot access and boards of elections have ample time to process all the information and ensure its accuracy.

As I mentioned earlier in my testimony, House Bill 3 aligns Ohio election with HAVA in terms of who is eligible to vote by provisional ballot. Beyond that, the general assembly is working to codify the uniform standards and procedures necessary to clear a provisional ballot including jurisdiction, how and when to count a provisional vote, the form in which the provisional is submitted, and the instructions to the poll worker and the voter.

The general assembly is working to revise the laws and procedures that relate to election day activities and conduct in and around the polling location. Above all else each of us should strive to preserve the rights of voters who come to the polls. Unfortunately, each and every one of us have reports of voter harassment and intimidation that occurred on election day, as well as inappropriate behavior inside the 100-foot line and even inside the polling location.

That kind of behavior is unacceptable and will be further addressed in this legislation. We are also clarifying the statute to allow for witnesses and challengers to be present at the precinct, the Board of Elections on election day, and during the count or recount of all ballots.

In my opinion much of the wrangling generated during last year's election was in part the result of directives from the Secretary of State's office. I don't believe that the content of these directives created as much of a problem as did the timing of these directives. Many directives were issued very close to or on election day.

I will tell you it doesn't matter which party controls the Secretary of State's office. Last-minute directives will automatically result in a hostile reaction by the party that is not in charge. That reaction borne out of natural suspicion of the other party will likely result in litigation. House Bill 3 will bring the needed specificity to Ohio election laws while still providing the Secretary of State's office the needed flexibility to deal with pressing election matters in real time.

I cannot reiterate enough how important it is that all Ohioans have confidence in the election system. It is incumbent upon Government officials, federal, state, and local to make the process more seamless, accessible, and transparent to all voters.

Once again, Mr. Chairman, I thank you for the opportunity to testify before you today and look forward to the Committee's questions.

[The statement of Mr. DeWine follows:]

Testimony to the United States Congress
Committee on House Administration

Congressman Robert Ney, Chairman

Submitted by

State Representative Kevin DeWine
70th House District
Ohio House of Representatives

March 21, 2005

Columbus, Ohio

Thank you for the opportunity to testify before the Committee on House Administration, as well as other interested parties today. I appreciate the leadership efforts of Chairman Ney, members of this committee and Congressional leaders to improve the election process in our country and ensure the United States remains a model for participatory democracy.

I would also like to thank the Committee for coming to Ohio today to examine election issues further. This state has a solid history of successful elections, as well as an energized and active electorate, which I believe makes it a compelling study for Congress.

The November election was undoubtedly one of the most scrutinized elections in recent history, especially in Ohio. However, with the leadership and professionalism of bipartisan county boards of elections, Ohio was able to avoid the chaos which ensued elsewhere in the nation during the 2000 election.

Having received reports of election-related incidents during the fall election from voters, boards of elections and poll workers, the General Assembly is seizing the opportunity to evaluate our elections process and make improvements. As such, I introduced House Bill 3 in an effort to modernize Ohio's election laws.

House Bill 3 makes necessary clarifications to Ohio's election laws and brings the state into alignment with the federal Help America Vote Act (HAVA).

House Bill 3 codifies rules for casting a provisional ballot to align Ohio's provisional system to comport with HAVA. The HAVA procedure allows a citizen whose voter eligibility is challenged by an elections official, or whose name does not appear in the registered voters' log, to cast a provisional ballot. This differs from the current procedure which only allows those citizens who have moved into a new area and have failed to submit a change of address form to vote provisionally.

Also in accordance with HAVA, each state must establish a computerized statewide voter registration database. This legislation clarifies that the Secretary of State's database is the official statewide database as required by HAVA.

Finally, House Bill 3 seeks to codify the HAVA requirements for voter identification. HAVA requires first-time voters who registered by mail to provide a form of identification when they cast their ballot or at the time they register.

Outside of the scope of HAVA compliance, discussions have been underway to address a number of broader election concerns via legislation.

House Bill 3 as introduced updates antiquated laws outlining how non-mandatory recounts are financed. Following the November election, Ohio taxpayers were forced to absorb the cost of an expensive non-mandatory recount requested by candidates who received less than 1 percent of the vote. The proper method for financing non-mandatory recounts is still being discussed. There are a number of proposals on the table, and the General Assembly is actively reviewing them all.

Another point of conversation has been modifying Ohio's election calendar. For instance, concerns have been raised about the short timeframe in which pre-election challenges must be received and resolved. We are looking into ways in which we may improve the timing of the elections process to ensure voters have ample time for ballot access and boards of elections have ample time to process all information and ensure its accuracy.

As I mentioned earlier in my testimony, House Bill 3 attempts to align Ohio election law with HAVA in terms of provisional balloting procedures. Beyond that, the General Assembly is also working to develop the procedures necessary to clear a provisional ballot including how and when to count a provisional vote, the form in which the provisional is submitted, and instructions to the poll workers and the voter.

The General Assembly is working to revise the laws and procedures that relate to Election Day activities at polling locations. Voter harassment and intimidation is unacceptable and will be addressed in this legislation. Finally, we are also reviewing the process and the need of placing challengers at polling locations.

I am confident that we will have the opportunity to address and discuss changes to other components of Ohio's election laws through the course of additional public hearings. I look forward to continuing discussion on additional measures to enhance the election process.

I cannot reiterate enough how important it is that all Ohioans have the ability to have confidence in the election process. I believe it is incumbent upon government officials – both state and federal – to take measures to make the process more seamless and accessible to all voters.

Once again, thank you for the opportunity to testify before the committee today.

Mr. CHAIRMAN. Thank you for your testimony and for your perspectives on HAVA. One thing that I just wanted to clarify is that as we drafted the Help America Vote Act, Carson, Hoyer and I personally talked to committee groups, Secretary of State, election officials, and civil rights advocacy groups. This was the first time we enacted such legislation in the nation's history. We had a commission, led by Jimmy Carter and Gerald Ford who called this voting rights act one of the greatest civil rights measures that Congress could have passed.

I do believe we had to federally pass provisional voting. People were disenfranchised. I think there were things, for example, like the mandate for the person with a disability, that we improved. For the first time in the nation's history and the first time in people's lives, the blind have been able to vote in secret.

I think there were things we had to do federally or it would not have been done. Now, we have tried not to overdue it in the sense that we all agreed, Democrats and Republicans. We agreed we would not have an election commission that would make daily rules and regulations, but that we would prompt change, at the state level.

We asked these groups how much money they wanted, but there's more to it than money. Money is important, but it is not the entire legislation by any stretch of the imagination. It went beyond punch cards. When we asked them, they agreed that if we funded $3.9 billion, then this would not be an unfunded mandate.

We also talked to MCSL. Carson, Hoyer, and I were former members of the legislature, as a lot of bar members that voted on this were. The bottom line is we were told $3.9 billion. As of today we have got $3 billion out there in the pipeline. $900 million is yet to be achieved, and I believe we will achieve it this year. We want to get to that $3.9 billion. I believe if the Help America Vote Act never occurred, states still would have modernized as a result of the controversy of the punch cards.

Katherine Harris was Secretary of State and they moved immediately afterwards. Florida did, Georgia did. I can name states that were moving on their own without the Help America Vote Act. I believe that eventually the states would have to put some money in, so we put some money in. Again, I just want to make it clear that we never said we would pay for every single machine.

Now, Ohio added a paper trail. I don't want to debate all day the paper trail, but Ohio added the paper trail, because you have to have that paper trail. Ohio then added another additional requirement. Was there any thought to adding more money because the paper trail requirement was added. The Help America Vote Act never required each state to have a paper trail. Now, if you want to have one, it didn't forbid it. I am just saying that it is a significant issue because if you are going to add that, you will add another layer of cost.

Mr. JACOBSON. Thank you. As one of the most vocal proponents and early proponents of it, I will tell you that one of the problems that we had was trying to estimate, first of all, how many machines were appropriate. That was a problem from the beginning. With DREs you deal with the fact that not every voter knows how to operate a computer, though we are used to it more with ATMs.

We were concerned at the ratio that was suggested, 200 to 1 would be insufficient to start with. Since then we had a lot more voter registrations because of the 2004 General Election. We have a lot higher turnout from those new registrations than has ever been experienced before in terms of turnout.

I think that has a lot to do with why there were long lines because no one could anticipate the double effects when they were deploying machines, etc., making decisions at the local level. I think what happened is that the Secretary of State when the time elapsed for the election said 1 to 200 is no longer good enough to prevent long lines. I agree with that. Furthermore, we have to have more machines because we have more voters. Those two things coupled together, more than the extra cost associated with the paper trail, is what makes the money insufficient. I think there is a way to do it and I think we can do this without necessarily resorting to DREs.

We can do it with, as has been proposed in Ohio, optical scan. There may be a way to use DREs to help create optical scan ballots but then let them be counted not inside a computer where the process cannot be accurately verified but where there is a paper record and the paper record itself is the ballot and gets counted.

Mr. CHAIRMAN. If you do optical scanning, you still have to have one machine to equip the persons that have a disability. There is today no approved standard because, as I said, Carson, Hoyer, and I did not make the EAC a rulemaking body; but neither did we strip it of its ability. If you optical scan, it has to approve procedures and standards; today there are no standards for optical scanners.

If the state of Ohio does move towards satisfying the mandate in HAVA, the real pure mandate beyond provisional balloting, a machine equip, you still would have to have a DRE per precinct or you would fall out of violation with HAVA. If you have optical scan and no type of device equipped for the blind, then you will be out of compliance, and must still have to have a DRE. That means you have to throw one other thing out there.

If you have one DRE per precinct, and that one machine breaks on election day, you don't have a second machine backing it up. If you have all DREs, it wouldn't matter. You would still have five other machines. Technically you would have to have DREs even if you have optical scan.

Mr. JACOBSON. I guess I would just briefly say optical scan is much cheaper than DREs with or without paper trails. We do have a lot of money left over within the HAVA budget to deploy whatever systems would be necessary to allow the disabled to vote. We do recognize that we have the responsibility of providing them with something of a format like a DRE.

The question is whether or not that has to generate within it the record or spit out a ballot that then can be counted in the same fashion. We are working our way through but we recognize we will have to have more. We do believe we have the funding for it.

Mr. GARDNER. Mr. Chairman, if I could, you have touched on a very key component of HAVA with respect to allowing those with disabilities to vote more independently and privately. That is one

of the key reasons why I oppose provisions to mandate a voter verified paper audit trail.

Let me just read briefly from just one paragraph from what I wrote last June 4th. "To be sure, the most ardent supporters of VVPATs have succeeded in slowing down the implementation of HAVA in Ohio. In doing so we know that some voters in November will not have their intended vote counted accurately as our older systems, primarily punch cards, result in higher under votes and over votes than in electronic voting machines. In addition, many disabled Ohioans will not be able to vote independently and privately in 2004 because some counties will waive to implement HAVA in compliance with Ohio's 2006 VVPAT mandate."

My additional concern in stating that is not to restate the record of the past but as we look forward, I think we need to look at the independent private voting abilities of the disabled even if we do have an optical scanner, as you pointed out, which would be necessary to comply with HAVA.

I think that is just something we can't escape and we shouldn't escape. Not only is there a cost issue here, I think there is a voting rights issue here, Mr. Chairman. I believe that the legislature will take that into consideration in the weeks ahead.

The CHAIRMAN. Thank you. To Representative DeWine, I don't pretend to know every product but, from what I know, it brings greater clarity and consistency to Ohio's election process, which is what we hope all states will do if there are some things that aren't clear. I think your efforts will significantly enhance HAVA implementation in the state.

One thing that I am trying to take away from today's hearing is the areas in which HAVA did and did not work. A lot of the implementation was left up to the local states. Provisional voting was one of the most critical components. We didn't tell the states how to count the vote, but we said you have to accept the vote. In that area, with provisional voting, how do you think it went? I am just curious how provisional voting went from the perspective of the states.

Mr. DEWINE. Mr. Chairman, if I might on the paper trail piece. I stand directly in between the two of these gentlemen when it comes to a position on paper trails. You can't find two more polar opposites on what to do with paper trail, and many other issues as you well know, Mr. Chairman.

My one point on the paper trail. We struggled trying to balance to get a federal deadline in 2006 and balance that against the security of the vote. If you carry nothing else with you today, the one message that I have for you is we would like an extension of the deadline.

We would like an extension of the deadline from 2006 to 2008 so that we can work out the issues, we can balance the security of the vote with the requirements that HAVA has put on. If you walk away with one thing, please walk away understanding that I am asking this committee and Congress to grant us an extension until 2008 for the expenditure of the HAVA dollars.

I think when you look at the election, Mr. Chairman, especially as it relates to provisional voting, Ohio had a pretty darn good history prior to the election in 2004 and with the implementation of

the HAVA requirements for provisional balloting in 2004 we went far beyond that and actually led the class in terms of the number of voters who voted provisionally and the percentage of those provisional votes that were actually counted so I think the system here in Ohio worked the way it was supposed to.

The CHAIRMAN. I just want to note a couple of things. I had spoken earlier of the backup machines. HAVA requires one machine per precinct. I don't want to rewrite the HAVA law today. I am also asking, if one breaks down, what do you do?

Also people would argue that the state delayed this whole thing. If that was the case, why should the Federal Government waive Ohio, and what would happen in the central database in 2006? These are some of the arguments you hear in Washington.

Mr. DEWINE. Mr. Chairman, to that point, I am not requesting that you delay any of the time lines for any compliance with anything other than the voting machine. I believe the Secretary's office is up to speed on the centralized database. I think we are 80 percent of the way there. Any of the other requirements I think the Secretary's office is up to speed. I am talking specifically about voting machines, Mr. Chairman.

The CHAIRMAN. Thank you. I am going to move on.

Mr. GARDNER. Mr. Chairman, the only thing I would say is I would echo the representative's comments. I know that there will be some local board members, members of the Board of Elections, that will be testifying today or representatives of that association. I would hope that you will listen carefully to them.

Quite frankly, I listened to them very intently when I became chairman of the joint committee and they guided a lot of my decisions because I knew they had spent two years in working with you and working with members of Congress and working with the Secretary of State in putting together a process that I think would work best for Ohio. We took many of those decisions out of their hands. I hope you will listen to them today as to how they think we can best implement HAVA, whether it is 2006 or 2008.

The CHAIRMAN. I want to clarify one other thing because I hear this from Democrats and Republicans alike in my Holmes County or Ross County calling and asking our office, "Do you and HAVA require every county to have the same machine?" The answer is no. The Federal Government does not require it.

In other words, Ross County had already bought some machines. It would be up to the legislature and the Secretary of State and the Governor. I know how systems work here but I just wanted to mention that it doesn't require you have to have the machine.

Mr. JACOBSON. Thank you. Our concern about 2004 was two-fold. First of all, to require deployment in an election with so many new voters and so many questions about how to run the existing procedures let alone how to run new machines could have been disastrous. The lines would have been worse, for example.

You only need look at what happened in North Carolina where an entire statewide election is being rerun, if not already has been rerun, since 2004 because of human error in dealing with the computers they had, the DREs that they had. I think it was not inappropriate for us to be concerned. Imagine what would have happened if we had to run Ohio's presidential election over again be-

cause our poll workers or because the machines themselves did not function well.

Our concern, by the way, with uniformity, I think, stems from not HAVA but from Bush v. Gore and the U.S. Supreme Court decision and the effect that might have on any set of litigation about what happens in the state.

The CHAIRMAN. The gentlelady from California.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. I would like to thank all of you for coming today to present your thoughts on this last election.

Representative DeWine, I appreciate your candor because you are absolutely right. Last-minute directives were those very things that turn heads to the attention of Ohio.

Mr. Jacobson, when you asked why is it that we have shown such great attention to Ohio and not to Wisconsin. The Secretary of State of Wisconsin did not make those last-minute directives which then geared us from looking at Ohio. I will say to you that with reference to your question, Representative DeWine, on extending the deadline to 2008, in my statement I did say that HAVA has required that state election officials meet two goals by next year, and that was that at least one voting machine or system that is successful to individuals with disabilities. The second was that we have a uniform centralized database so that is to be really carried out by next year.

Your president of your National Association of Secretaries of State, the New Mexico Secretary of State, Ms. Vigil-Giron, said that every state had met the HAVA 2004 deadline. Several states even completed reforms that could have been postponed to 2006. At least nine states were ready with statewide voter registration data and the Americans with disabilities independent system.

I just wanted to let you know that the president of the National Secretaries of State, Association of Secretaries of State, did indicate that a majority of these states, if not all of them, are now in compliance and will be by next year.

Mr. Jacobson, when you asked why is it that we come to Ohio or why the media was so prone to turn lights into Ohio, outside of the last-minute directives that really kind of set up the red flag, when you have your Secretary of State indicating that forms on 800-pound papers not be accepted also brings up red flags. When you have someone who is not inside of his or her precinct should not fill out a provisional ballot, that brings up red flags.

When the Voting Rights Act prohibits anyone, any individual that would be intimidated, and there were many factors involved here that even some of your elected officials, your local folks, who were on this commission stated that you have elections on Wednesday, November 3rd, as opposed to November 2nd, those are the things that really brings up a red flag.

Now, we are duly responsible for making sure that people have access in this country and that is access to voting. When these types of things come as interferences, then by all means Ohio will be a targeted state and we review and that we will come back to look at. Do you have any thoughts on all of those that I have delineated as to those directives and/or concerns that were raised by your Secretary of State and why we are here today?

Mr. JACOBSON. Thank you very much. The first thing I would say is I do not believe the apocryphal stories about phone calls were being given to people to say come vote on Wednesday. I've heard them on both sides of the issue and my sense of those kind of things is that if one person pulls a prank, they usually cover it up by claiming that they got the call or their friends got the calls.

I do not believe in any way, shape, or form that those kind of comments can be substantiated in order to claim them as anything other than apocryphal legends about the 2004 election in the same way there were so many about Florida in 2000 that to this date have never been sustained or substantiated.

I do understand what you were saying about the Secretary of State's directives. That is a different issue. First I was talking about the claims that have been made——

Ms. MILLENDER-MCDONALD. But is it not directly the reasons why one should raise red flags here and why Ohio is being looked at? Ohio is not the only state that is going to be looked at but you were one of those who were because you were the deciding factor on the presidential election. Make no bones about it, no one, no one was trying to overthrow this election. No one.

Mr. JACOBSON. Am I still responding?

The CHAIRMAN. Yes.

Mr. JACOBSON. Thank you. I guess I would say, first of all, as far as the 2004 election, I appreciate the fact that you are here in Ohio. My question was rhetorical mainly directed at proving why or suggesting why Ohio's system is better because of having the bipartisan independent Board of Elections unlike other states.

Perhaps you took my rhetorical question as implying we didn't have anything for people to come and look at. That was not my suggestion. My suggestion was that Wisconsin had it gone the other way, would have also been the deciding factor.

Ms. MILLENDER-MCDONALD. And we would have been in Wisconsin today as opposed to Ohio.

Mr. JACOBSON. But what I am suggesting is we aren't in Wisconsin because it voted for the losing candidate. Had they voted for the winning candidate, perhaps we would have been there. As to the directives of the Secretary of State, which I think was the part of your question that I had not answered, I do believe that some of the directives raise concerns. I am glad to state that the one that you mentioned about the 80-pound paper was withdrawn almost as soon as it was promulgated.

Ms. MILLENDER-MCDONALD. Nevertheless, it was done, sir, and those are the things that we carefully look at because, as Representative DeWine said, these things have become partisan. Images are so critical, especially when the stakes are high and stakes are high in presidential elections. When you have those types of things, of course, folks will go right to the jugular on that. This is why we have turned our attention to Ohio and did turn the attention to Ohio because of that. We would have turned those attentions to California or any other state had it been those types of overtures.

Mr. JACOBSON. The last point I would make is that Ohio had a difficult burden because of the involvement of groups that came from outside the state, groups that submitted large blocks of reg-

istrations, many of which were forged and falsified, all of which put a strain on the local board's ability to deal with things in an appropriate time frame. There were many things that combined in the fall to produce confusion, confusion that the Secretary of State attempted in a disappointing way at times to clarify. This was the heat of dealing with all kinds of outside interference. I think when he is here——

Ms. MILLENDER-MCDONALD. It happens in all states.

Mr. JACOBSON. Not to this level. I would suggest that he could better answer his motivations in dealing with the directives.

Ms. MILLENDER-MCDONALD. I understand but we will always have, no matter what state it is, interferences. You will have groups coming in just like someone said about some group that came all the way from Oakland or whatever. You are going to have groups coming from all over irrespective. That is the American way. You can't stop that. When we talk about 800-pound papers that will not be accepted, when we talk about people who cannot, those are not any incidents that are totally dedicated to people who are coming from out of state. That is your elected official.

I am talking to you, sir, please.

Mr. JACOBSON. Sorry.

Ms. MILLENDER-MCDONALD. That is directly from your person who has the ultimate oversight of elections in your state so this is what we are talking about, not necessarily all of the confusion of these people who come in. They come in to the people's house. They come from all over. They come from every place and that is their right to do that but it still does not circumvent those last-minute directives that caused contingent.

Mr. JACOBSON. I would just say that fraudulent registrations are not a part of the American way and groups that are paid to come in and end up registering Mickey Mouse and some of the other people that were registered in return for crack cocaine, the millions of dollars that poured in in an attempt to influence Ohio I think is not normal and I would just state that it did make all of our jobs quite a bit more difficult.

Ms. MILLENDER-MCDONALD. Mr. Jacobson, I would hate for you to characterize voters as crack cocaine. Please do not characterize those who are doing registration of people——

Mr. JACOBSON. You may not be aware of what specifically happened. A gentleman was arrested and I think pled guilty that he was paid in crack cocaine for submitting registration cards and the registration cards that he submitted included Donald Duck, Mickey Mouse, Mary Poppins, and all kinds of others.

Ms. MILLENDER-MCDONALD. Of course we have heard that, but is that not one incident of the many? We have to be very careful that we do not show any resemblance of arrogance on the parts of those who wish to vote and let their vote be counted. There are many minorities in this state and in every state who have been at the throws of not letting their votes be counted.

Those long lines of 10 hours that Mr. Jacobson just spoke about, those are some of the problems, too, that tend to have disenfranchised voters because folks have to leave to go pick up their children. Folks have to go and take medicine that they did

not bring because they thought they would be finished. These are the reasons why this committee is in Ohio.

We just want it to be known that we did not just come to Ohio. I would love to have been with my family and not flown here but it was important. It is my responsibility as the Ranking Member on this Committee to find the facts. Thank you, Mr. Chairman.

The CHAIRMAN. Let me note something off the bat here. Under the way the House committees proceed, there is not to be booing or clapping or emotion on either side, so we would ask you to adhere to the rule of the House.

I would note before we move on to my colleague, as far as what the senator is referring to, I publicly spoke out against this. I am hoping this Committee addresses it. When they did the "campaign finance reform" they took union members and average people that are working in corporations and said, "You can't participate in the system, but we will create a nine-headed monster called the 527 and empower a very wealthy, in this case, Democrat billionaire, to try to put as much money in the system." And let me be fair about this. There is probably going to be a billionaire Republican that is going to come to the forefront——

Ms. MILLENDER-MCDONALD. Already, Mr. Chairman.

The CHAIRMAN. The Republicans hope so. Therefore, I am hoping our Committee will restore the voice of the average union member and the average corporate person to participate in the political system and the energetic give and take of public debates. I am more than willing to correct that little monster that was created, not by the IDC, but by a couple people that didn't write the law tight enough in Washington.

Ms. MILLENDER-MCDONALD. I couldn't agree with you more, Mr. Chairman. If we are going to do away with 527s, let those 527s be done away with across the board. It was not only those on the Democratic side so don't let me start talking about the issues of the House, please.

The CHAIRMAN. As we move on, you have seen the Millender-McDonald and Ney piece of legislation for next week.

Ms. TUBBS-JONES. Thank you, Mr. Chairman. The light comes on. I am assuming this is on.

Let me begin with Senator Gardner. Senator Gardner, are you opposed to early voting, sir?

Mr. GARDNER. Am I opposed to early voting?

Ms. TUBBS-JONES. Yes.

Mr. GARDNER. I think it depends a little bit how it is constructed. Generally speaking I believe we have widespread access to voting in this state. We have, again, as the Chairman——

Ms. TUBBS-JONES. Let me state I only have five minutes. I am not a ranking member or chairperson. My question is real simple. Are you opposed to early voting, sir?

Mr. GARDNER. I don't think I have taken a public position yet. I have concerns about early voting.

Ms. TUBBS-JONES. What about a voting holiday, sir?

Mr. GARDNER. I am not in favor of a voting holiday.

Ms. TUBBS-JONES. What about no-excuse absentee registration, sir?

Mr. GARDNER. I am open to hearing the debate in Ohio on that but I am not in favor of that at this time.

Ms. TUBBS-JONES. Do you understand that all of these concepts, sir, are proposed to permit easy access to voting such that voting lines would not be as long as they have been in the past?

Mr. GARDNER. I do, ma'am.

Ms. TUBBS-JONES. Thank you. What about you, Senator Jacobson? Are you opposed to early voting?

Mr. JACOBSON. I am opposed to early voting or no-fault absentee.

Ms. TUBBS-JONES. Are you opposed to a voting holiday?

Mr. JACOBSON. I am opposed to early voting and no-fault absentee because voters do not have all the information about all candidates on the ballot in the weeks leading up to the election.

Ms. TUBBS-JONES. Excuse me.

Mr. JACOBSON. They only learn about it——

Ms. TUBBS-JONES. Mr. Jacobson.

Mr. JACOBSON [continuing]. In time for election day.

Ms. TUBBS-JONES. Mr. Jacobson.

Mr. JACOBSON. They may know the president but nothing else.

Ms. TUBBS-JONES. Sir, I understand but I would ask for just a little bit of respect. I am asking you a question. Briefly answer my question. I only have five minutes. My question to you, sir, are you saying that somebody who registers to vote 30 days before an election versus someone who registers to vote on the day of election has more information?

Mr. JACOBSON. No, I am not taking about registration in that case. I am saying that when people wait until election day to vote, there is the opportunity to learn about all the candidates and the issues. Early voting when it happens means that some voters have a lot less information 30 days out or 20 days out than they would have——

Ms. TUBBS-JONES. You understand, sir, that many, many states have early voting and——

Mr. JACOBSON. I believe it is a mistake. It reduces lines and it helps incumbents because people know the incumbents. They don't know challengers.

Ms. TUBBS-JONES. Twenty days out of an election that is how you get to know a challenger. Is that what you are saying to me?

Mr. JACOBSON. No. I am saying that most campaigns are conducted in this country by TV and they are conducted working backwards from election day. If it takes place before candidates have reached their base——

Ms. TUBBS-JONES. What about——

Mr. JACOBSON [continuing]. The incumbent is well-known for months and years.

Ms. TUBBS-JONES. What about the young people who are in Iraq and Afghanistan and they vote 30, 60 days out in order to get their absentee in? Are you saying to them that they are uneducated about their decision on who they vote for, sir?

Mr. JACOBSON. I am saying that when someone chooses to vote early, they are choosing to vote with less knowledge than they would have otherwise.

Ms. TUBBS-JONES. Because in the last 30 days you get everything you need to know about any candidate?

Mr. JACOBSON. That is the way campaigns work in America. Maybe it shouldn't be. The incumbents are known for years. They send out newsletters. They are on TV. Challengers barely get a chance to be known at all——

Ms. TUBBS-JONES. Let me ask you this.

Mr. JACOBSON [continuing]. Working backwards from election day.

Ms. TUBBS-JONES. Mr. Jacobson, please. If you would stay with me, sir.

Mr. JACOBSON. Sure.

Ms. TUBBS-JONES. You said there was money left over from HAVA. Is any of that money going directly to local boards to administer information to the voters, sir, if you know?

Mr. JACOBSON. I guess some of the money is being used in that way. What I was speaking of is when we decided not to go with DREs and instead——

Ms. TUBBS-JONES. How much money—Mr. Jacobson, do not talk on top of me, sir. My question is did money go to local boards to give them opportunities to implement HAVA?

Mr. JACOBSON. I don't believe I can answer the gentlelady's question because——

Ms. TUBBS-JONES. Thank you very much.

Mr. JACOBSON. I would like to—I can answer it if you would let me explain the answer.

Ms. TUBBS-JONES. Answer my question.

Mr. JACOBSON. Thank you. The reason we have money left over is because when we decided not to do DREs for everybody and instead to do optical scanning——

Ms. TUBBS-JONES. Okay. I am with you on why you have money left over. I am asking you did any money go to local boards for them to implement or give information to their voters about what was going on?

Mr. JACOBSON. I do believe there was money we appropriated that was supposed to be used for educating poll workers as well as the money that was used to educate voters directly.

Ms. TUBBS-JONES. But you don't know whether any of that money went to the local boards or not?

Mr. JACOBSON. I do believe it was supposed to but I am not in charge of spending the money. We make appropriations.

Ms. TUBBS-JONES. Lastly, sir, are you aware that, in fact, the Secretary of State has the ability to dismiss members of boards of elections?

Mr. DEWINE. Yes, I am.

Ms. TUBBS-JONES. And so the argument that it is a bipartisan system, you have one partisan who is capable of dismissing members of the Board of Elections as Kenneth Blackwell threatened to do in this past election, HAVA gives way to the real bipartisan nature of the boards. Does it not, sir?

Mr. DEWINE. Mr. Chairman, to the representative, I believe that he can only remove those board members for cause and would have to replace them with a person of the same party.

Ms. TUBBS-JONES. I understand but I am saying to you that he has the ability to dismiss members of the board. In fact, he threatened to do that in this election. Did he not, sir?

Mr. DEWINE. I believe I heard that, yes.

Ms. TUBBS-JONES. He did, in fact. You didn't just hear it. It was, in fact, all over the newspaper and television that he, in fact, did that. Correct?

Mr. DEWINE. Correct.

Ms. TUBBS-JONES. Thank you, Mr. Chairman.

Ms. MILLENDER-MCDONALD. Mr. Chairman.

The CHAIRMAN. Gentlelady.

Ms. MILLENDER-MCDONALD. Let me just for the record outline the amount of money that the state of Ohio has received so far. You are the third leading state to have received HAVA money with $135,704,000. You are the third state to receive the largest amount. I just wanted to make that for the record, Mr. Chairman, outside of Florida with $159,711,000. Of course, my state has over 35 million people and received $181,580,000.

Mr. Chairman, I would like to just ask these gentlemen to give us what they feel would be an improvement for elections if you can say that with two or three sentences. I would like to get that before we leave. Improve upon your elections.

The CHAIRMAN. I think we can actually combine the last question that I would have, which is why we are here today. What can be done to improve upon elections? My other question is, in general, how do you believe HAVA worked? That is what I am here today to find out, how HAVA worked.

Also, I would be remiss if I didn't say as the author of HAVA, I am proud that my state got the lion's share of the money. Although it was equally distributed across the country, I wouldn't be doing my job if my state didn't do that. California didn't do bad either. If you would like to, you can combine the two questions.

Mr. DEWINE. Mr. Chairman, members of the Committee, as you have pointed out, as the sponsor of the bill I believe that HAVA worked very well in the election of 2004. As far as my suggestion for what one or two things—to the Ranking Member one or two things that we need to be doing here in Ohio, I think we are working on those in House Bill 3 which I have sponsored.

I think probably one of the most important things that we can do is codify as many of the directives that the Secretary of State has put out as possible. Put them into code, put them into law, put them in the books so that they are not left to discussion and debate, left to partisan nitpicking, days, weeks, hours, minutes before an election or even on election day. I believe if we are able to achieve that sometime this year, we will have made significant strides in ensuring safe, transparent, and fair elections in the state of Ohio. Thank you.

Ms. MILLENDER-MCDONALD. Thank you so much.

Mr. JACOBSON. Thank you. First of all, I think HAVA was helpful because it ended what could have been an interminable debate over what is the best way to take lessons from the 2000 election and it gave us a standard that we would all work to emulate and to achieve.

Secondly, I think what we can do better and should do better, we should ensure that we have confidence in our elections by requiring every voter to show ID, by requiring that those who want to influence what goes on on election day have better, clearer guidelines

as to what they can do and what they cannot do so that we do not have some of the confusion.

Thirdly, I think we need to make sure that we have well-crafted our voting machine deployment and standards so that we do not again face the questions that we have this year about whether or not the problem was the systems or their deployment, whether or not they were. There are so many issues that could combine to create long lines. We need to know what everyone will do so that we in the future will be able to prevent that from happening.

Ms. MILLENDER-MCDONALD. Thank you.

Mr. GARDNER. Thank you, Mr. Chairman. I, No. 1, wish we could have more fully implemented HAVA in the 2004 election but would like to congratulate early and look forward to legislation sponsored by Representative DeWine and in the Senate by Senator Kevin Coughlin of Cuyahoga Falls, as to improvements that will be made. There is no question in my mind that we will have good legislation in the weeks ahead.

I think, again, to reiterate that I hope that this committee will listen to and respect the views and concerns expressed by local boards of election members or their association represented here today that we should not attempt to mandate an unproven technology so I am hopeful that we can at least relax or repeal or change some of which is already Ohio law and not necessarily speaking to the federal HAVA act.

The final thing I think I would say is I understand the Secretary is going to be appearing before you today at some point and that Ohio does have—I served on a Board of Elections. I didn't detect any partisanship on our board that interfered with our ability to conduct elections so I hope that is maintained in this date and I am not aware of any—I became a member of a Board of Elections when Tony Celebrezze was the Secretary of State. Actually, a fine Secretary of State in Ohio.

I don't believe any Secretary of State ever has abused his ability and his authority to appoint or remove members of a board of election. We might want to consider looking at that but I think, quite frankly, members of the Committee, not much to look at with respect to our strong bipartisan tradition in the state in carrying out important election duties.

Ms. MILLENDER-MCDONALD. And we are not saying unwillingly abused. We are simply saying that these are things to place. Mr. DeWine does give an appearance of abuse or we would not say that seriously. We want to make sure. Mr. DeWine, your legislation does it speak to same-day voting or holiday voting or what?

Mr. DEWINE. Correct.

Ms. MILLENDER-MCDONALD. Does it speak to any variations of voting for the voters here in this state?

Mr. DEWINE. Mr. Chairman, to the Ranking Member, it does not yet. We have had a series of robust hearings in the House Committee. There is a separate piece of legislation introduced by my colleague from Toledo that introduces the idea of no-fault absentee with the State of Ohio. That issue under House Bill 3 is getting lots of heavy discussion and debate. It will remain to be seen whether it fits in as a piece of this legislation.

Ms. MILLENDER-MCDONALD. We will be following your legislation. Thank you all so much.

The CHAIRMAN. I want to thank all the members of the legislature. I appreciate the tough job you have. I appreciate the tenacity with which you do your job and the thoughts that you have.

Ms. MILLENDER-MCDONALD. Thank you for coming.

The CHAIRMAN. This is helpful to us today. We will continue to appreciate, any insight you have on HAVA, as it goes through its other phases. Also I want to assure you that our door is always open.

Ms. MILLENDER-MCDONALD. My door is open to you, Mr. Chairman.

The CHAIRMAN. Here in the state we talk to Democrats and Republican board of election members, not only for the 18th District, but from around the state. We are willing to listen. Our Ranking Member is Carson; Stephanie Tubbs Jones and members of the delegation are always open. With that, thank you for your time.

We'll move on to Keith Cunningham, President of the Ohio Association of Election Officials and Director of the Allen County Board of Elections; Michael Sciortino, the Director of the Mahoning County Board of Elections and prior President of the United Association of Election Officials; Michael Vu, Director of the Cuyahoga County Board of Elections; and William Anthony, Chairman of the Franklin County Board of Elections. I want to thank the gentlemen for being here today. We will begin with Mr. Cunningham.

STATEMENTS OF KEITH CUNNINGHAM, PRESIDENT OF THE OHIO ASSOCIATION OF ELECTION OFFICIALS AND DIRECTOR OF THE ALLEN COUNTY BOARD OF ELECTIONS; MICHAEL SCIORTINO, DIRECTOR OF THE MAHONING COUNTY BOARD OF ELECTIONS; MICHAEL VU, DIRECTOR OF THE CUYAHOGA COUNTY BOARD OF ELECTIONS; AND WILLIAM ANTHONY, CHAIRMAN OF THE FRANKLIN COUNTY BOARD OF ELECTIONS

STATEMENT OF MR. KEITH CUNNINGHAM

Mr. CUNNINGHAM. Chairman Ney and members of the Committee on House Administration, my name is Keith Cunningham. I am the Director of the Allen County Board of Elections and the current president of the Ohio Association of Election Officials. Thank you for the opportunity to speak with you today.

Let me begin by saying that despite the rhetoric and sometimes hysterical mania, the 2004 Presidential Election in Ohio was fairly administered and absent of fraud. That is not to say there were not some problems. However, those problems were isolated, not wide spread, and at worst, were the result of innocent and unintentional human error or circumstances that were simply not anticipated or were beyond the control of election administrators.

Ohio election officials processed over three quarters of a million new registrations in 2004 resulting in a 12 percent increase in statewide voter registration. We successfully voted nearly 5.8 million people, the largest turnout in the history of our state. The acceptance rate of provisional ballots in Ohio was one of the highest in the nation at 77.9 percent. Let me state to you unequivocally;

Ohio election officials performed their duties in exemplary fashion on November 2, 2004.

Following your lead with the Help America Vote Act, I would like to share some of the items the O.A.E.O. are currently advancing in our State Legislature to help us better serve the voters of our state.

We believe Ohio should adopt no excuse absentee voting. We are not suggesting that no excuse absentee voting is a panacea. We are suggesting that it is a cost effective and easy to achieve measure that will provide an immediate albeit partial solution to long lines.

We believe the right for anyone other than an election official to challenge a voter's registration should be cut off at 20 days prior to election day. We do understand the role for challengers; however, we firmly believe that the rights of challengers must be fairly balanced with the rights of voters. Last minute challenges and lack of clear procedural guidelines under Ohio law proved most disruptive to many of Ohio's voters in 2004.

We believe that individuals and advocacy groups engaged in the registration of voters should be required to deliver those registrations to the appropriate Board of Elections or the Secretary of State within a pre-determined amount of time. Ideally no more than 10 days. This will prevent thousands of registrations from being turned in at the last minute and, thus, increasing the risk that some voter's names will be mistakenly entered or even possibly omitted from the registration rolls due to severe time constraints.

We believe that individuals and advocacy groups soliciting registrations should be required to turn in all registrations they gather not just those they believe advance their cause or position. This is probably even more consequential than my previous point. In this scenario the person completing the registration form believes that they are being registered to vote, only to find on election day that they are not. In this instance, even a provisional ballot cannot help enfranchise this voter.

We are in complete support of Chairman Ney's efforts calling for the immediate and full funding of HAVA. Quite frankly, we must question Congress's true depth of commitment to the principals set forth in HAVA if they are not willing to fully commit the funds promised and needed to implement these mandated provisions.

We believe that the deadlines for HAVA compliance, along Mr. DeWine's lines referring to voting machines, should be immediately adjusted to reflect the late start realized by the EAC and the Federal Government. We have only one chance to get this right and the risk that millions of federal dollars will go to waste is simply too great. The cost-benefit analysis demands that these deadlines be extended in order to best serve voters.

On a personal note, I would like to express my extreme disappointment in the harsh behavior of a few members of the United States Congress during the certification of the Ohio presidential vote. In particular, I am deeply offended by Representative John Conyers' call for an FBI investigation of Ohio's election officials. The FBI is our country's highest investigative agency for criminal matters. This affront to the integrity of my Ohio colleagues in the absence of any compelling criminal evidence should be considered an embarrassment by the other members of Congress.

Finally, as has been discussed here today, Ohio does have a bipartisan management structure within our election system. I believe it is a model for others to consider. Ohio's election officials, Republican and Democrat, have demonstrated to this nation that even while partisan, we can commit ourselves to the higher ideal of fair and honest democratic elections.

Again, thank you for the opportunity to present these remarks here today.

[The statement of Mr. Cunningham follows:]

Testimony of
Keith A. Cunningham
before the United States House of Representatives
Committee on House Administration
Columbus, Ohio March 21, 2005

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Again, thank you for the opportunity to present these remarks here today.

STATEMENT OF MICHAEL SCIORTINO

Mr. SCIORTINO. Chairman Ney, members of the United States Congress House of Representatives Committee on House Administration, my name is Michael Sciortino and I am Director of the Mahoning County Board of Elections located in Youngstown, Ohio. Let me first say that it is truly an honor to be before you today presenting testimony regarding the Ohio 2004 election experience and The Help America Vote Act (HAVA) Implementation in Ohio.

I will begin my testimony by sharing with you some of my experiences in administering the November 2, 2004 Presidential Election in Mahoning County. Next, I want to talk about Mahoning County's journey in converting from an optical scan election system to a Direct Recording Election (DRE) system. I will then conclude my testimony by highlighting some of the work I have been engaged in with the United States Election Assistance Commission (EAC) as a member of the Standards Board and current Chair of the Standards Board Executive Committee.

To begin with, the Mahoning County Board of Elections ran a solid election on November 2, 2004. The success we encountered on election day was due in no small part to the tireless work of our 1,300 poll workers and talented and hard working board of election staff. In the months and days leading up to the election, we were keenly aware that the eyes of the world were truly watching. Ohio was THE Swing State.

I can personally attest to the constant warnings of this notion by both the Kerry lawyers and Bush lawyers, whom I got to know very well weeks before the election.

In administering the election, our approach in Mahoning County was to make our operation as transparent and open as possible; to ensure the candidates, lawyers, and most important, the voters, that our system was fair, accurate and accountable. Our message was simple. We had nothing to hide. I know the lawyers and candidates appreciated this message and quite candidly, the media did as well.

In the months leading up to November, I watched our new voter registration numbers soar to record levels. In the 2000 presidential election year 8,500 new registrations were filed. In 2004 we had nearly 18,000. I also watched our absentee ballot requests sky rocketed from 12,000 in the 2000 election to 17,537 last year, a 61 percent increase. Boards of Elections across the state encountered similar experiences.

In 2004 I had the pleasure of serving as President of the Ohio Association of Election Officials. My goal as President was to improve and provide Ohio Boards of Elections with as much communication on pending election administration issues as possible. With the help of Ohio Secretary of State Ken Blackwell and his staff, my goal was accomplished.

Two and a half weeks before the election, Secretary Blackwell committed to providing daily telephone conference calls between the Secretary of State's election administration staff and Ohio Boards of Election. Chairman Ney and members of the Committee, this unprecedented practice proved to be invaluable as we were able to improve communications and work through critical election issues. Questions regarding voter registrations, absentee voting,

provisional voting, election day challengers were answered in a timely and thorough manner. Moreover, these daily telephone conferences continued well into December addressing official canvassing issues and state-wide recount procedures.

As an election official in Ohio who heard all of the allegations of poor election management surrounding the past election, I submit that these allegations were groundless. Ohio faced many hurdles in 2004 but we proved that in Ohio we have good election laws administered by good people who want nothing more than to administer the "perfect election." We all know that a perfect election does not exist, but in my mind it doesn't hurt to strive for perfection.

I want to switch gears now and talk a little bit about voting systems. A critical facet of HAVA rests with improving the way votes are cast. In Mahoning County, we began our search for a new voting system back in 1998 as our optical scan system was reaching the end of its useful life. We spent the next two years meeting with vendors and conducting test elections.

In 2001, as HAVA became a reality, we were careful to select a system that would meet the impending federal requirements. We secured $3,000,000 from the taxpayers of Mahoning County for a new election system and began the conversion process. We completed the installation in 2002, and have now conducted 6 good elections using DRE. Mahoning County was a pioneer county in Ohio leading they way for improved election day balloting.

Unfortunately, our success with DRE changed with the passage of House Bill 262 but, fortunately, Ohio Senate Bill 77 has been introduced that would permit HAVA-compliant machines to be grandfathered from the voter verified paper trail at least until the VVPAT becomes feasible.

Ballot security and reliable elections will always be more than "what type of voting machines do you have." Instead, good elections are a function of the systems, procedures and people that make elections happen, as well as the voting equipment. In Ohio we are fortunate to have a particularly strong system of checks and balances with equal numbers of Democrats and Republicans watching each other throughout the process.

I want to conclude my testimony now by examining the Election Assistance Commission. HAVA established the U.S. Election Assistance Commission. Central to its role, the Commission serves as a national clearinghouse and resource for information and review of procedures with respect to the administration of Federal elections.

HAVA calls for establishment of two boards to advise the EAC: the EAC Standards Board and the EAC Board of Advisors. The EAC Standards Board is composed of 110 members drawn from State and local election officials.

I am please to report that I am Ohio's local election official serving on the EAC Standards Board. At the Standards Board winter meeting in January, I had the distinct pleasure of being elected by our membership to serve as one of nine Standards Board members to serve on its Executive Board. Most recently I was nominated by the Board to become the committee's chair.

I stand ready to serve Ohio as Chair of this Board and I am committed to helping the EAC implement HAVA in a consistent and

timely manner. I am fortunate to share Ohio's experiences with the Standards Board and EAC as we work through important issues like drafting voluntary election system standards and administering Statewide Voter Registration Lists.

I know that implementing HAVA across our 50 states and territories is challenging and the EAC truly has a tough job. But I want to assure this Committee the lessons I learned and experiences I have gained by administering Election 2004 in Mahoning County have trained me well for playing a key role in assisting the EAC to implement HAVA. Thank you.

[The statement of Mr. Sciortino follows:]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON HOUSE ADMINISTRATION

COLUMBUS, OHIO MARCH 21, 2005

TESTIMONY
ELECTION 2004 & HAVA IMPLEMENTATION
PRESENTED BY
MICHAEL V. SCIORTINO

Chairman Ney, members of the United States Congress House of Representatives Committee on House Administration, distinguished guests, members of the media and public, my name is Michael Sciortino and I am Director of the Mahoning County Board of Elections located in Youngstown, Ohio. Let me first say that it is truly an honor to be before you today presenting testimony regarding the Ohio 2004 election experience and The Help America Vote Act (HAVA) Implementation in Ohio.

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In administering the election, our approach in Mahoning County was to make our operation as transparent and open as possible; to ensure the candidates, lawyers, and most important, the voters, that our system was fair, accurate and accountable. We strived for professionalism in every sense of the word, and I think it worked. Our message was simple – we had nothing to hide. I know the lawyers and candidates appreciated this message and quite candidly, the media did as well.

In the months leading up to November, I watched our new voter registration numbers soar to record levels. In the 2000 presidential election year, we had around 8500 new registrations filed. In 2004, this number was already surpassed by June. When it was all said and done, nearly 18,000 new registrations were filed and processed totaling 193,000 registered voters in Mahoning County.

In September and October, I watched our absentee ballot requests sky rocket! In 2000 we had 12,300 absentee ballots. In 2004, 15,000 absentee ballots had already been requested and processed by the second week in October. In total, 17,537 absentee ballots were counted on election night, a 61% increase from 2000.

In addition to massive numbers of new registrations and absentee ballot requests, we faced legal hurdles as well. Issues like provisional voting procedures and election day challengers at the polling place consumed the courts and challenged Ohio boards of elections to persevere through tough times. I submit to this committee that Ohio's 88 bi-partisan boards of elections persevered and did a great job on November 2, 2004.

In 2004, I had the pleasure of serving as President of the Ohio Association of Election Officials (OAEO). My goal as President was to help facilitate and provide Ohio's election boards with as much communication on pending election administration issues as possible. With the help of Ohio Secretary of State Ken Blackwell and his staff, my goal was accomplished.

Two and a half weeks before the election, Secretary Blackwell committed to providing daily telephone conference calls between the Secretary of State's election administration staff and Ohio Boards of Election. Chairman Ney and members of the Committee, this unprecedented practice proved to be invaluable as we were able to improve communications and work through critical election issues. Questions regarding voter registrations, absentee voting, provisional voting, election day challengers and many other issues were answered in a timely and thorough manner. Moreover, these daily telephone conferences continued well into December addressing official canvassing issues and state-wide recount procedures. As an election official in Ohio who heard all of the allegations of poor election management surrounding the past election, I submit that these allegations were groundless. Ohio faced many hurdles in election 2004. But we

proved that in Ohio we have good election laws administered by good people who want nothing more than to administer the "perfect election." We all know that a perfect election does not exist, but in my mind it doesn't hurt to strive for perfection.

I want to switch gears now and talk a little bit about voting systems. A critical facet of implementing the Help America Vote Act (HAVA) rests with improving the way votes are cast on election day. In Mahoning County, we began our search for a new voting system back in 1998 as our optical scan system was reaching the end of its useful life. We spent the next two years meeting with vendors and conducting test elections. In 2001, as HAVA became a reality, we were careful to select a system that would meet the impending federal requirements. We secured $3,000,000 from the taxpayers of Mahoning County for a new election system and began the conversion process. We completed the installation in 2002, and have now conducted 6 good elections using DRE, or Direct Recording Election, voting machines.

Mahoning was a pioneer county in Ohio leading they way for improved election day balloting. DRE or electronic voting dramatically reduced under-voting and allows for two opportunities in the voting booth for the voter to verify ballot choices before pushing the VOTE button. In spite of our success with DRE voting, the rules changed in 2004. The Ohio legislature passed HB 262, which required DRE machines to produce a Voter Verified Paper Audit Trail (VVPAT) by 2006. As you know VVPAT is not mandated by HAVA. HB 262 has now effectively outlawed our voting system, a system that is virtually brand new, meets the federal requirements of HAVA, and is a system that our

voters like. There is no expectation that our vendor can retrofit our machines to meet the VVPAT requirements imposed by HB 262.

VVPAT supporters suggest that a paper trail will make machines more tamper proof. Electronic machines are already secure without VVPAT. The Ohio Secretary of State has conducted a comprehensive security audit of these machines and has required vendors to add even more security features. These audits have confirmed our confidence in our system. I submit to this Committee, that there are better ways to improve election security without requiring a paper trail. Improved logic and accuracy testing and random audits of machines are two possible examples.

Fortunately, Ohio SB 77 has been introduced that would permit HAVA compliant machines to be grandfathered from VVPAT, at least until they become feasible. If we do not get relief, counties like Mahoning and Lake will be forced to scrap systems that are already HAVA compliant, and force Ohio to spend millions of dollars to replace perfectly good voting systems.

Ballot security and reliable elections will always be more than "what type of voting machines do you have?" Instead, good elections are a function of the systems, procedures and people that make elections happen, as well as the voting equipment. In Ohio we are fortunate to have a particularly strong system of checks and balances with equal numbers of Democrats and Republicans watching each other throughout the process.

I want to conclude my testimony now by examining the Election Assistance Commission. The U.S. Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA). Central to its role, the Commission serves as a national clearinghouse and resource for information and review of procedures with respect to the administration of Federal elections. Further, HAVA calls for establishment of two boards to advise the Election Assistance Commission (EAC): the EAC Standards Board and the EAC Board of Advisors. The EAC Standards Board is composed of 110 members drawn from State and local election officials.

I am please to report that I am Ohio's local election official serving on the EAC Standards Board. At the Standards Board winter meeting in January, I had the distinct pleasure of being elected by our membership to serve as one of nine Standards Board members to serve on its Executive Board. Most recently, during the Executive Board's organizational meeting I was nominated and became Chairman of the Executive Board.

I stand ready to serve Ohio as Chair of this Board and I am committed to helping the EAC implement HAVA in a consistent and timely manner. I am fortunate to share Ohio's experiences with the Standards Board and EAC as we work through important issues like drafting voluntary election system standards and administering Statewide Voter Registration Lists. I know that implementing HAVA across our 50 states and territories is challenging and the EAC truly has a tough job. But I want to assure this Committee, the lessons I learned and experiences I have gained by administering Election 2004 in

Mahoning County, Ohio have trained me well for playing a key role in assisting the EAC to implement HAVA.

STATEMENT OF MICHAEL VU

Mr. VU. Thank you, Chairman Ney, Ranking Member Millender-McDonald, members of the Committee on House Administration, and our Cuyahoga County Congresswoman from Cuyahoga County, Stephanie Tubbs-Jones, and for inviting me to speak on the topic of the 2004 General Election and the Help America Vote Act.

This past year was amazing and could be categorized as the Olympics of Presidential Elections for Cuyahoga County. In fact, when the November general election was certified, it became the largest election Cuyahoga County citizens experienced with 687,255 citizens going to the polls and casting a ballot. We had a 68 percent turnout which may seem small, however, if we were to take away the inactive registered voters [per the National Voter Registration Act], Cuyahoga County had nearly a 90 percent turnout, a wonderful sign of a much anticipated election.

Like in every election, separate and unique problems generally present themselves. This past election was no different. Considering the massive scrutiny and challenges that faced the Cuyahoga County Board of Elections, it is my belief the election was conducted in the most professional manner possible.

There were incidences of long lines and power outages on election day, however, with the collaboration of many agencies, the Board of Elections responded and resolved each issue as quickly and effectively as possible. Although, the Board of Elections believes we conducted a good election, there are many areas of improvement and the 2004 Election, surely, was one to use as a guiding light to continue our efforts in election reform.

Considering the enormity of the election, preparation for the 2004 General Election began in 2003. The Board of Elections created a strategic plan in anticipation of the 2004 General Election. Public education initiatives; a countywide mailer; a Road Map to the 2004 Election Forum; an analysis of residual votes in the county; coordination with county and state agencies and our 59 cities and villages; a complete review of departmental procedures and collaboration with local companies were all made in an effort to mitigate major issues that could possibly arise.

Many of these action steps were a result of the 2000 Presidential Election, including the need to educate voters to check for "chads" and to have poll workers use a demonstration ballot on every device before any official ballots were cast on any voting devices.

There were election related issues that Cuyahoga County had to navigate through before the election. We had capacity issues in three main areas: registration forms, absentee ballot requests, and phone calls.

With regard to registration forms, the Board of Elections saw interested organizations converging on Cuyahoga County from Washington State to Washington D.C. interacting with the public and registering them to vote. By the end of the deadline on October 4, 2004, the Board of Elections processed 356,598 registration forms of which 162,020 were newly registered voters. This was 3 and 5 times, respectively, more than what was experienced in the 2000 Presidential Election.

We had nearly 100,000 people request an absentee ballot which was 30 percent more than the 2000 Presidential Election. The

numbers of phone calls generated were considerably higher. In fact, we faced an equal amount of phone calls on the day of the registration deadline as we did for voting day in 2000.

Another area of concern which Cuyahoga County experienced was the handling of incomplete registration cards. Currently, there is no statute or directive on how to handle incomplete registration cards. At issue is when a registration card is submitted prior to the deadline, but determined to be missing some vital piece of information, could the Board of Elections accept it as timely and allow the voter to cure their record after the deadline. Although we did not receive direction in this manner, we erred on the side of the voter and allowed them to cure their voter registration form. This is an item for state legislative action and should be remedied as quickly as possible.

Local and national voter registration organizations were also a contributing factor that affected voters. On several occasions, we experienced a number of registration organizations holding on to completed voter registration cards for months or the cards were turned in after the registration deadline. In fact, in two days during the month of August the Board received 16,000 registration cards from one organization.

In some cases, these cards were dated back in February and March of 2004. In order to prevent this from occurring in the future, we met with all local and national voter registration groups and asked them to submit, as a courtesy, the registration forms every five days. In another instance, we received over 3,000 voter registration cards one week after the October 4th deadline. In this case, we were unable to accept the registration cards.

The timeliness of state directives also impacted our performance. The most conspicuous of these directives was the issuing of provisional ballots. The outcome was the 6th District Court of Appeals reversal of the lower court's decision and instituting an additional provisional affirmation statement to be filled out by the voter.

This consequently impacted the election day and post-election activities, where poll workers experienced last minute changes on administrative matters they had never experienced before. Also, the Board of Elections had to contend with the complex process of verifying and validating these provisional ballots.

On the day of the election, we had polling location coordinators in nearly all 584 polling locations armed with cell phones to contact the Board of Elections in case of any issues or simply if a voter had a question that the poll workers did not have an answer. We purchased 654 additional punch card voting units for a total of 9,645 for the county to disperse to "hot spots" as a result of the surge in new registrants in the County.

Six zone stations were strategically placed throughout the county to respond. We maximized our capability to have additional computers and phone lines and we created phone banks in two separate county government buildings.

Turn out was the largest issue that we had to contend with on election day. However, this only occurred in a handful of voting precincts out of 1,436. From different reports the longest line reported was two and a half hours coming from a suburban and

urban voting precinct. This is unacceptable and we are investigating why individuals had to wait as long as they did.

Part of the lengthy lines can be attributed not to the lack of equipment, but as a result of voters waiting to be processed to receive a ballot. Also, we are attempting to comprehend how voters' behavior and poll worker training issues play a part in creating the long lines.

After election day there was one notable concern that we were aware of and had to address, provisional ballots. The direct result of ill-timed directives, litigation and court decisions brought concerns over how to consistently and uniformly verify and validate provisional ballots.

In Cuyahoga County 25,309 provisional ballots were cast of which 16,757 were deemed valid and 8,552 were considered invalid, a 66.3 percent acceptance rate. In comparison to the 2000 Presidential Election the number of voters going to the polls in 2004 increased by nearly 100,000 voters, yet the percentage of individuals having to cast a provisional ballot proportionately decreased.

I believe our public education efforts contributed to that decrease in percentages. However, the number of valid and invalid provisional ballots may indicate the confusion poll workers had on issuing the ballots and confirm the negative impact last minute changes had on poll workers and voters during the days leading up to and on the election.

The passage of the Help America Vote Act was necessary for the country to bring accountability and awareness to elections in light of the controversy and division born out of the 2000 Presidential Election. The Help America Vote Act instituted many new changes and coupled with the National Voter Registration Act overhauled many components of election administration.

It was a wonderful beginning to renew our efforts to create a more secure foundation for democracy. For many states, the principles laid out in the Help America Vote Act were instituted for the first time in the 2004 Election. Across the United States, HAVA requirements were implemented in order to raise the standards of our electoral process.

The Help America Vote Act has indeed, made a positive impact on election administration. Voters have a safety net across all 50 states, voters will have an opportunity to remedy any selections through second chance voting and the public can be assured the voter registration rolls will be more accurate as a result of the statewide voter registration system than in the past.

The Help America Vote Act for its purely altruistic intentions contains three looming issues that deserve attention. I consider these the "penumbra" or gray areas that require specific definition. These include a definition of a permanent paper record; jurisdiction; and a single, uniform, official, centralized, interactive computerized statewide voter registration list.

The Election Assistance Commission has been very helpful in establishing "best practice" guidelines and they should be thanked for their hard work and their proactive role in moving the Help America Vote Act along. However, there is no single body to give us a standard of acceptability and a definitive direction to comply with the Help America Vote Act.

Next year, 2006, will be the true test for the Help America Vote Act, when all of the requirements will converge. This will be the true test of whether all fifty states and territories are able to comply with the spirit of election reform.

Thank you, again, for this opportunity to give testimony, and I would be more than happy to answer questions the committee members may have.

The CHAIRMAN. Thank you, Mr. Vu.

Mr. ANTHONY.

[The statement of Mr. Vu follows:]

TESTIMONY OF L. MICHAEL VU
BEFORE THE
COMMITTEE ON HOUSE ADMINISTRATION
U.S. HOUSE OF REPRESENTATIVES
HEARING ON THE
2004 GENERAL ELECTION AND THE HELP AMERICA VOTE ACT OF 2002
March 21, 2005
Columbus, OH

Millender-McDonald

Thank you Chairman Ney, Ranking Member ~~Larson~~, and members of the Committee on House Administration for holding today's hearing, and for inviting me to speak on the topic of the 2004 General Election and the Help America Vote Act.

My name is Michael Vu, Director of the Cuyahoga County Board of Elections. I have been serving in my capacity with the Board of Elections since August of 2003 and prior to this, I worked in Salt Lake County, Utah as a local election official for seven years. During this time I have conducted three Presidential Elections and all of them have been equally as exciting. However, this past year was amazing and could be categorized as the Olympics of Presidential Elections for Cuyahoga County. In fact, when the November General Election was certified it became the largest election Cuyahoga County citizens experienced with 687,255 citizens going to the polls and casting a ballot. We had a 68% turnout which may seem small, however, if we were to take away the inactive registered voters [per the National Voter Registration Act], Cuyahoga County had nearly a 90% turnout – a wonderful sign of a much anticipated election.

Overall, we believe the election in Cuyahoga County was well handled. Like in every election, separate and unique problems generally present themselves. This past election was no different. Considering the massive scrutiny and challenges that faced the Cuyahoga County Board of Elections, it is my belief the election was conducted in the most professional manner possible. There were incidences of long lines and power outages on Election Day, however, with the collaboration of many agencies, the Board of Elections responded and resolved each issue as quickly and effectively as possible. Although, the Board of Elections believes we conducted a good election, there are many areas of improvement and the 2004 Election, surely, was one to use as a guiding light to continue our efforts in election reform. Please allow me the opportunity to describe the election in three specific phases: pre-election day, election day, and post-election day.

PRE-ELECTION ACTIVITIES - 2004 PREPARATION

Considering the enormity of the election, preparation for the 2004 General Election began in 2003. The Board of Elections created a strategic plan in anticipation of the 2004 General Election, knowing the spotlight would be pointed in Cuyahoga County's

direction (I have enclosed the statistics of absentee ballots requested, registration forms processed and provisional ballots cast, in last year's election). Public education initiatives; a countywide mailer; a Road Map to the 2004 Election Forum; an analysis of residual votes in the county; coordination with county and state agencies and our 59 cities and villages; a complete review of departmental procedures and collaboration with local companies were all made in an effort to mitigate major issues that could possibly arise. Many of these action steps were a result of the 2000 Presidential Election, including the need to educate voters to check for "chads" and to have poll workers use a demonstration ballot on every device before any official ballots were cast on any voting devices.

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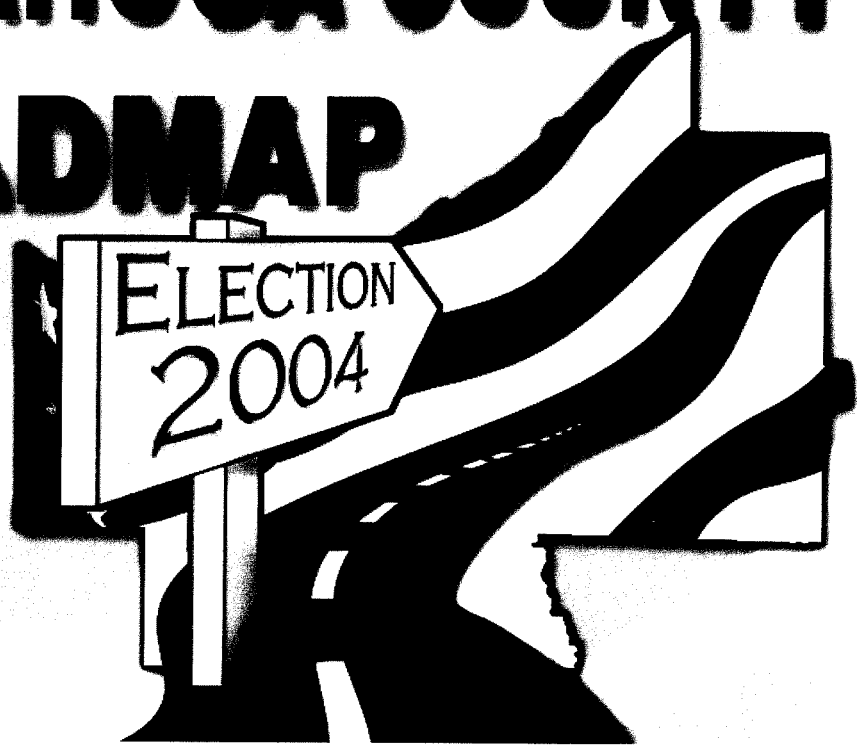
CUYAHOGA COUNTY ROADMAP



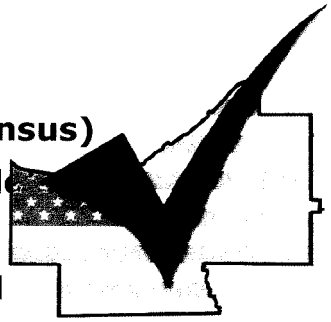
COUNTY OF CUYAHOGA
BOARD OF ELECTIONS

THE VOTING HEALTH OF OUR COMMUNITY

CUYAHOGA COUNTY BOARD OF ELECTIONS

CUYAHOGA COUNTY 2004 ELECTION INFORMATION

- 1,436 Voting Precincts
- 584 Polling Locations
- 1,011,089 Registered Voters (11/02)
- 1,045,988 Adult Population (2000 Census)
- 101 Candidates on the November Ballot
- 119 Issues on the November Ballot
- 2,000,000 Registration Forms Printed
- Punch Card System
- No Electronic Voting Devices



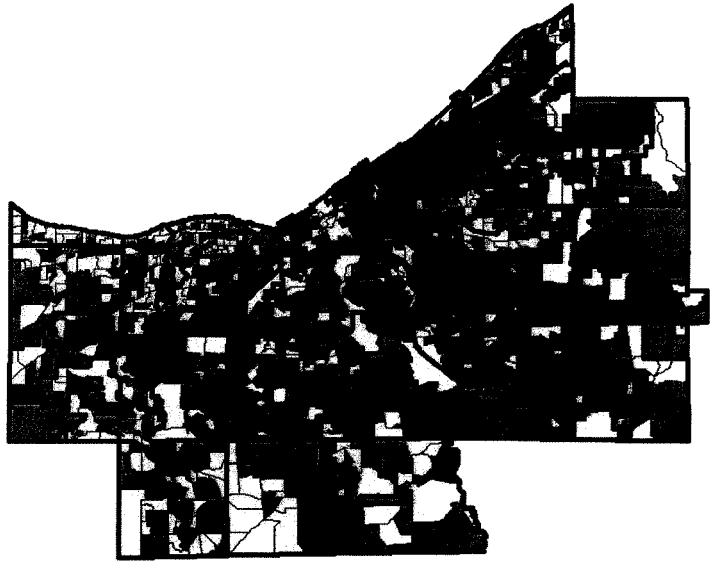
* Information based on November, 2004 General Election

THE VOTING HEALTH OF OUR COMMUNITY

CUYAHOGA COUNTY BOARD OF ELECTIONS

RESIDUAL VOTES

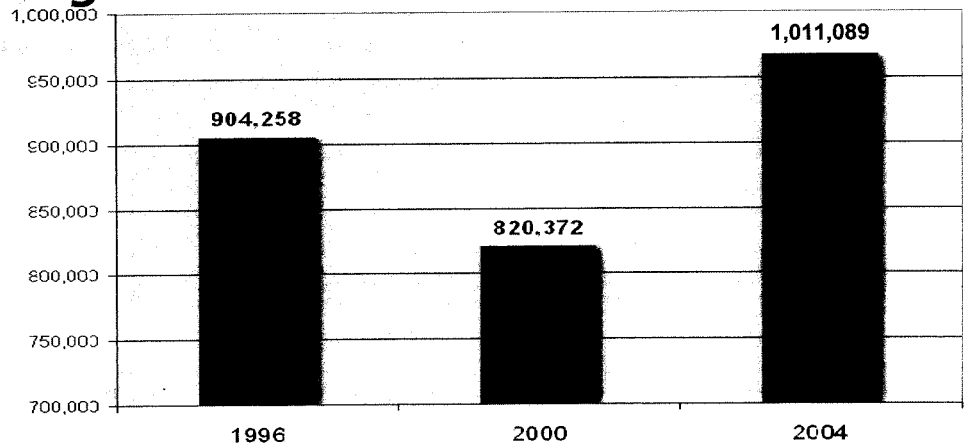
- **Gubernatorial 2002 Over-vote Analysis**



BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

Registered Voters



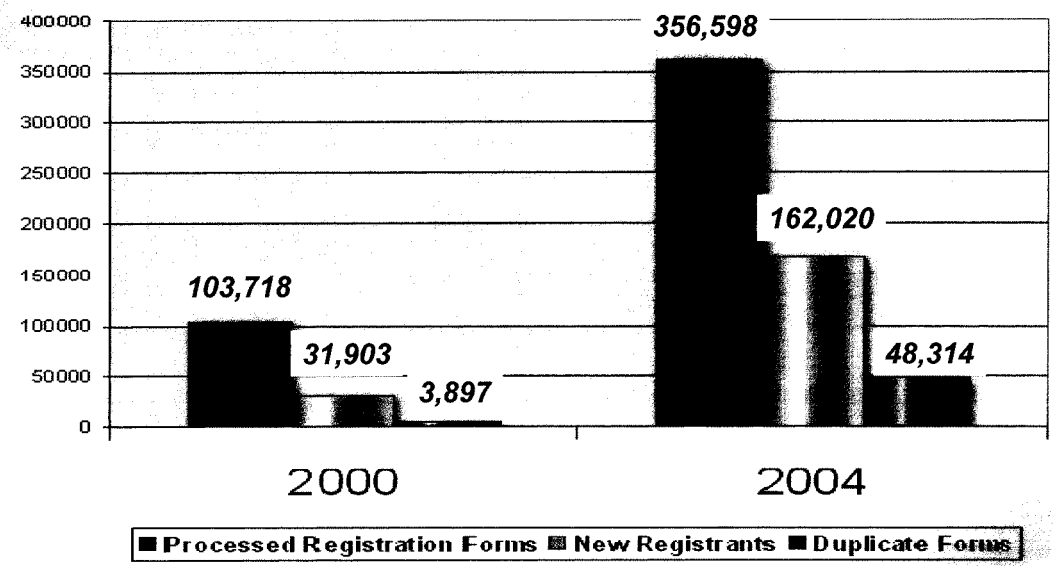
- **Turn Out Rate:**

1996	64.1%
2000	71.9%
2004	67.9

BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

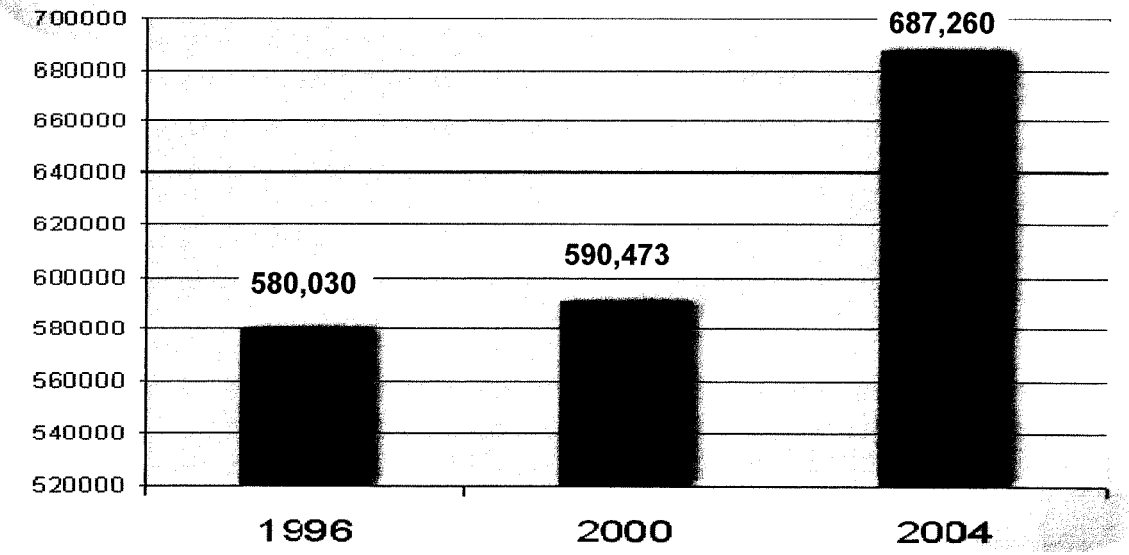
Registration Status of 2000 and 2004



BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

- Ballots Cast in 1996 and 2000



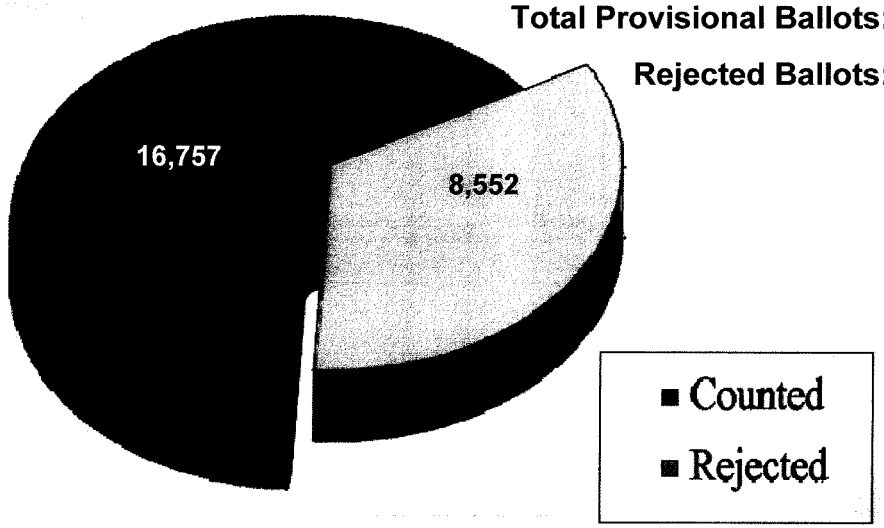
BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

- **Provisional Ballots 2004:**

Total Provisional Ballots: 25,309

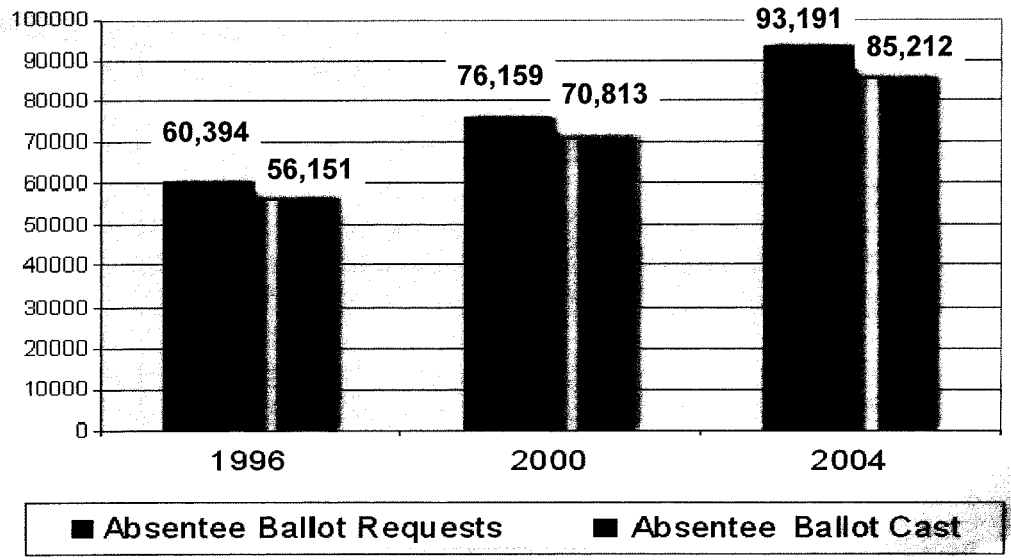
Rejected Ballots: 8,552



BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

Absentee Ballot Requests and Cast

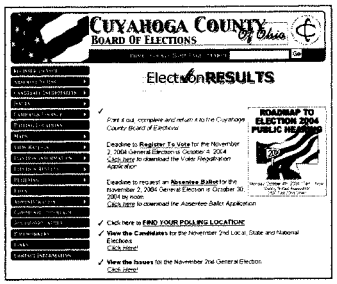


WHAT'S NEW

CUYAHOGA COUNTY BOARD OF ELECTIONS

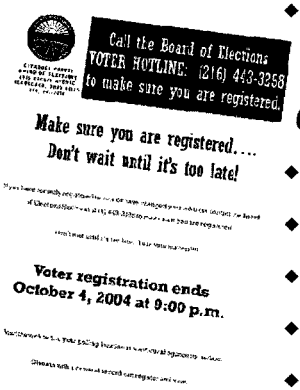
REVAMPED WEBSITE

- **www.cuyahogacounty.us/boe**



IMPROVED BALLOT DESIGN

- **End Instruction Page**
- **Simplified Instructions**



COUNTYWIDE MAILER

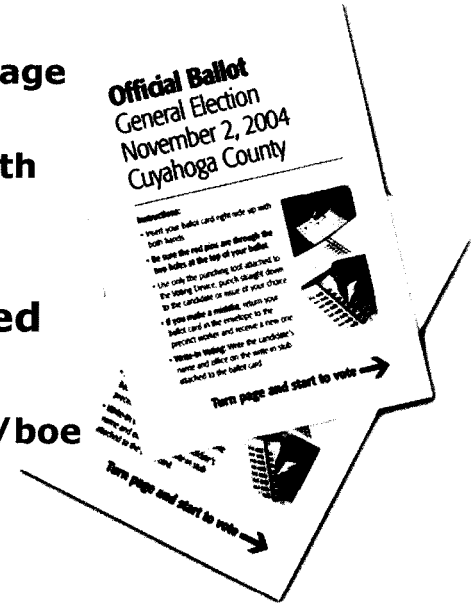
- **Voting Location and Voting Precinct**
- **Provisional Voting**
- **I.D. Issues**
- **How to Vote**
- **Absentee Voting Information**

BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

BALLOT DEPARTMENT

- **Ballot easier to read**
  - **Added voter instruction page**
  - **Block letters**
  - **Simplified instructions with graphics**



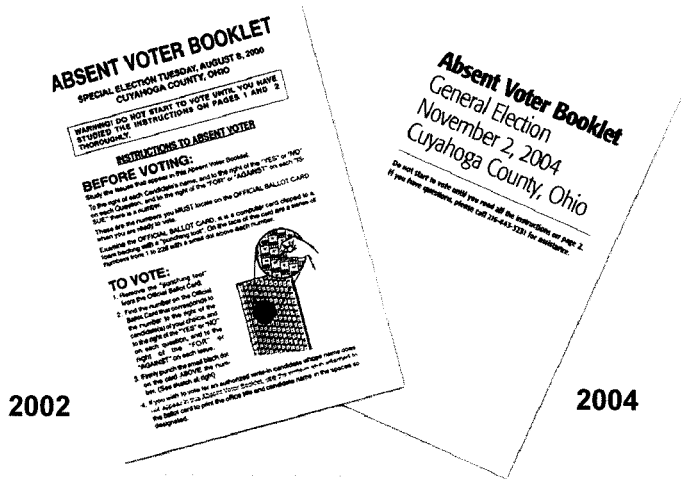
- **Election results displayed on county website**
  - **www.cuyahogacounty.us/boe**

BOARD OF ELECTION STATUS

CUYAHOGA COUNTY BOARD OF ELECTIONS

ABSENTEE VOTING/CANDIDATE SERVICES

- **Absentee Ballot**
  - **Absent voter booklet redesigned**
  - **Absentee booklet include municipal issues**



2002

2004

WHAT'S NEW

CUYAHOGA COUNTY BOARD OF ELECTIONS

PREVENTION OF FRAUD

- Referred to County Prosecutor's Office
- Fraud and Disenfranchisement
  - Data analysis of names
  - Number of individuals at a household
  - Statewide voter registration system

SECURITY PLANS

- Additional officers
- Installed metal detector

CHAIN OF CUSTODY

- Security of the ballots and vote
- Logic and accuracy test the Monday before election

STATEMENT OF WILLIAM ANTHONY

Mr. ANTHONY. Good Afternoon Mr. Chairman and honorable members of the Committee. I am pleased to represent the bi-partisan members and administration of the Franklin County Board of Elections today in my capacity as Chairman. I am also Chairman of the Franklin County Democratic Party, and I am a staff representative for the Ohio Civil Service Employees Association, Local 11.

Mr. Chairman, there are five areas that I will address today: voter registration, provisional voting, voter information, voting machine allocation, and the misreported unofficial election results from Gahanna 1B.

As the Committee is well aware, there were enumerable political organizations spending tens of millions of dollars on voter registration drives. In Franklin County alone, we processed more than a quarter of a million voter registration forms between January 1, 2004 and the close of registration in early October. This was twice the registration activity as compared to the same period in 2000.

Knowing that these registration drives were taking place, but also knowing that the Board had no authority to actually regulate them, we engaged each organization privately to ensure that each understood the policies and procedures of the Franklin County Board of Elections, the requirements of federal and state law, including HAVA, and encouraged them to submit their registration forms each week.

As organizations submitted completed registration forms, Staff reviewed the forms and provided each entity with feedback as to recurring problems. By engaging in this proactive monitoring process, the Board protected those registering to vote and reduced possible occurrences of fraud.

Second, Mr. Chairman is provisional voting. Ohio has been permitting the use of provisional voting since the early 1990's. However, nowhere in Ohio's laws will one find the words "Provisional Ballot." Over time, individual county Boards of Elections developed their own rules and regulations governing these important decisions.

Concerned about equal protection accusations, the Franklin County Board of Elections in a formal resolution requested on August 10, 2004, that the Ohio Secretary of State provide guidance on this important issue. No response was received until the issuance of Directive 2004–33 on September 16, 2004.

While a federal appeals court ultimately upheld the letter of the Secretary's interpretation, the resulting confusion, particularly in the thirty days immediately preceding the Election, was a detriment to the voters, our poll workers, and the electoral system.

To help limit confusion within Franklin County, our Staff developed a nearly 400-page Street and Road Guide that was provided to each precinct that listed the assigned polling place for every address in the County. This allowed poll workers to assist provisional and other voters in finding the correct precinct in which their ballot would count.

Additionally, since all of our poll workers had received training prior to the final Court decision, the Board mailed to each of its nearly 5,000 poll workers a detailed four-page letter outlining how

to administer provisional voting based upon the appeals court ruling. Because Franklin County took this and other positive actions, 4 percent of our nearly 15,000 provisional ballots had to be disqualified for being cast out of precinct.

The third category, Mr. Chairman, is voter information known in political circles as get out the vote, GOTV. Because of intentional or unintentional activities of others, voters in Franklin County received misinformation about election day activity.

Approximately three weeks before the Election, the Board determined that so much misinformation had been disseminated that we responded by mailing a post card to every one of the 847,000 registered voters in the county notifying them of their correct precinct and voting location at a cost of more than $250,000 to the County.

As I wrap-up my testimony, Mr. Chairman, I would like to address two situations in Franklin County that have been taken up by the conspiracy-theorists and internet-bloggers alike as evidence of fraud and their reason why Franklin County's and Ohio's election results cannot be trusted. These two situations are, of course, the long lines at voting locations allegedly due to the intentional misallocation of voting machines and the misreported, unofficial election night results from one of our county's precincts.

Yes, Mr. Chairman, and members of the Committee, there were long lines to vote in Franklin County, in all of Franklin County. Some have alleged that precincts in predominantly African-American or Democrat precincts were deliberately targeted for a reduction in voting machines thus creating the only lines in the county.

I can assure you Mr. Chairman, and members of the Committee, both as a leader in the black community, Chairman of the local Democratic Party and a labor leader, and as Chairman of the Board of Elections that not one of these accusations are true.

On election day, I spent several hours driving around the county in the rain and observed long lines in every part of the county: Urban and suburban neighborhoods, black and white communities, Democrat and Republican precincts. Long lines on election day were the result of three things and these three things only.

First, nearly one hundred thousand more people voted on Election Day 2004 than during 2000. This is almost a 25 percent increase over the previous presidential election. Which brings me to the second reason. Despite the fact that we had a dramatic and historic increase in the number of voters compared to previous elections, the resources available to the Franklin County Board of Elections remained static.

In 2000, the Board of Elections owned an inventory of 2,904 voting machines for 680,000 registered voters in 759 precincts. Four years later, in 2004, the Board of Elections owned an inventory of 2,904 voting machines, the exact same number of voting machines as in 2000, a static resource that had to be spread even thinner to meet the increased demand of voting machines for 847,000 registered voters in 788 precincts.

Knowing this, why didn't we purchase more voting machines? Because of the passage of HAVA by Congress and Ohio's House Bill 262 requiring a Voter Verifiable Paper Audit Trail, all previously discussed plans to purchase additional machines for implementation in 2004 were canceled.

Third, and finally, the 2004 General Election ballot was exceptionally lengthy. In the city of Columbus alone the situation was particularly difficult as the ballot included eight long bond issue questions and a referendum in addition to State Issue One, school levies, and local options.

The final situation, Mr. Chairman and members of the Committee, has been used by some in an effort to undermine to the credibility of the election results specifically and the benefit of electronic voting generally. On election night, as a part of the unofficial results, the Franklin County Board of Elections reported that candidate George W. Bush had received 4,258 votes in a precinct where only 638 voters had voted.

Once the mis-reported result was discovered, full-time staff reviewed the election night report printed for the poll workers from each machine in the Gahanna 1–B precinct. The error was narrowed down to one machine, machine number 013717. Staff then generated a machine memory report directly from the 3 memory tables in the machine in question. Staff did the same for the cartridge used in that machine. The results from these two reports were then compared to the election night results tape generated by the machine for the poll workers and the actual recorded results were consistent across all three reports. The voting machine had functioned precisely as it was supposed to have and properly recorded 115 votes for Bush. Copies of these tapes are being submitted today for your review and inclusion in the official record.

Mr. Chairman, Franklin County was the battleground county of the battleground state. Many people, whether they wished us well or ill, predicted a train wreck in Franklin County and Ohio. Because of the proactive attitude of our professional staff, their hard work and dedication, and that of our nearly 5,000 poll workers, Franklin County was not a train wreck.

Do we have room to improve? Absolutely. To that end the Board conducted a thorough self-review and communicated this finding in our 2004 Report to the Community which I have submitted today for your review and for inclusion into the record. I am pleased to report to you, Mr. Chairman and honorable members of this Committee, that Franklin County rose to the challenge in Election 2004, met its critics head on, and successfully administered an election that was fair, accessible, and accurate. Thank you very much, Mr. Chairman, and member of the Committee.

The CHAIRMAN. Thank you.

[The statement of Mr. Anthony follows:]

Congress of the United States of America
House of Representatives
Committee on House Administration
The Honorable Robert W. Ney, Chairman

Testimony of William A. Anthony, Jr.
Chairman, Franklin County Board of Elections
Monday, March 21, 2005

Good Afternoon Mr. Chairman and honorable members of the Committee. I am pleased to represent the bi-partisan members and administration of the Franklin County Board of Elections today in my capacity as its Chairman. This is not to be confused with my separate leadership role as Chairman of the Franklin County Democratic Party, a fact that has been widely publicized, and mentioned again today, by Ohio's sitting Secretary of State. Before I begin today, I would like to recognize my colleague and the senior member of the Franklin County Board of Elections who is here today, Mrs. Carolyn Petree, and also the Board's Director and Deputy Director, respectively, Matthew Damschroder and Mike Hackett.

Mr. Chairman, there are five areas that I will address today: Voter Registration, Provisional Voting, Voter Information, Voting Machine Allocation, and the misreported, unofficial election night results from Gahanna 1-B.

As the Committee is well aware, there were innumerable political organizations spending tens of millions of dollars on voter registration drives. In Franklin County alone, we processed more than a quarter of a million voter

registration forms between January 1, 2004 and the close of registration. This was twice the registration activity as compared to the same period in 2000. Knowing that registration drives were taking place, but also knowing that the Board had no authority to actually regulate them, we engaged each organization privately to ensure that each understood the policies and procedures of the Franklin County Board of Elections, the requirements of federal and state law, including HAVA, and encouraged them to submit their registration forms each week. As organizations submitted completed registration forms, Staff reviewed them and provided each entity with feedback as to recurring problems. By engaging in this proactive monitoring process, the Board protected those registering to vote and reduced possible occurrences of fraud.

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resulting confusion – particularly in the thirty days immediately preceding the Election – was a detriment to the voters, our poll workers, and the electoral system.

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The third category Mr. Chairman is Voter Information – known in political circles as Getting Out The Vote. Because of the intentional or unintentional activities of others, voters in Franklin County received misinformation about Election Day activities.

Approximately three weeks before the Election, the Board determined that so much misinformation had been disseminated that we responded by mailing a post card to every one of the 847,000 registered voters in the county notifying them of their correct precinct and voting location at a cost of more than $250,000 to the County.

As I wrap-up my testimony, Mr. Chairman, the last two situations in Franklin County have been taken up by the conspiracy-theorists and internet-

bloggers alike as "evidence" of fraud and their reason why Franklin County's and Ohio's election results cannot be trusted. Regrettably, even Ohio's Secretary of State and some of our fellow elections officials have joined their lot in wrongly blaming the statewide recount on these events in Franklin County. These two situations are, of course, the long-lines at voting locations allegedly due to the intentional misallocation of voting machines and the misreported, unofficial election night results from one of our county's precincts.

Yes, Mr. Chairman, there were long lines to vote in Franklin County – in all of Franklin County. Some have alleged that precincts in predominantly African-American and-or Democrat precincts were deliberately targeted for a reduction in voting machines, thus creating the only lines in the County. I can assure you Mr. Chairman, both as a leader in the black community, Chairman of the local Democratic Party, and as Chairman of the Board of Elections that these accusations are not true. On Election Day, I spent several hours driving around the county in the rain and observed long lines in every part of the county: urban *and* suburban neighborhoods, black *and* white communities, Democrat *and* Republican precincts.

Long lines on Election Day were the result of three combined things and these three things only. First, nearly one hundred thousand more people voted on

Election Day 2004 than during 2000 – this is almost a 25% percent increase over the previous presidential election. Which brings me to the second reason.

Despite the fact that we had a dramatic and historic increase in the number of registered voters compared to previous elections the resources available to the Board of Elections remained static. In 2000, the Board of Elections owned an inventory of 2,904 voting machines for 680,000 registered voters in 759 precincts. Four years later, in 2004, the Board of Elections owned an inventory of 2,904 voting machines – the exact same number of voting machines as in 2000 – a static resource that had to be spread even thinner to meet the increased demand of voting machines for 847,000 registered voters in 788 precincts.

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COMPARISON OF 11/2/04 ELECTION RESULTS
FRANKLIN COUNTY - GAHANNA 1-B

POSITION 5B = KERRY
POSITION 13B = BUSH

ELECTION NIGHT RESULTS REPORT - 11-2-04

ELECTRONIC 1242 5T
MACHINE # 013717
CARTRIDGE # 013717

FINAL VOTE COUNT
11-02-04
GAHANNA 1 - B

PRESIDENT AND VP	207
KERRY, J	92
NADER, R	0
PEROUTKA, M	0
BADNARIK, M	0
BUSH, G	115
WRITE-IN VOTES	0
US SENATOR	201
FINGERHUT, E	69
VOINOVICH, C	132
WRITE-IN VOTES	0
CONGRESS (12TH)	196
TIBERI, P	130
BROWN, E	66
WRITE-IN VOTES	0
STATE REP (20TH)	197
MCGREGOR, J	125
MURDOCK, M	72
CO COMM (1-2-05)	184
BROOKS, P	97
SHOEMAKER, A	87
CO COMM (1-3-05)	187
GOODMAN, D	109
KILROY, M	78
PROS ATTORNEY	141
O'BRIEN, R	141
CLERK OF COURT	183
O'GRADY, J	86
SALERNO, A	97
WRITE-IN VOTES	0
SHERIFF	156
KARNES, J	156
COUNTY RECORDER	140
MONTGOMERY, R	140
COUNTY TREASURER	180
CORDRAY, R	107
TIMKO, J	73
COUNTY ENGINEER	137
RINGLE, D	137
CORONER	142
LEWIS, B	142
STATE BD OF EDUC	140
COCHRAN, M	47
MILLER, A	37
MOYER, J	33
WALLACE, M	23
J SUP.CH(1-1-05)	161
CONNALLY, C	81
MOYER, T	80
J SUP CT(1-1-05)	156
FUERST, N	73
LANZINGER, J	83
J SUP CT(1-2-05)	132
PFEIFER, P	132
J SUP CT(12-06)	155
O'DONNELL, T	86
O'NEILL, W	69
J CT APP(1-1-05)	146
FRENCH, J	91
TOOTLE, T	55
J CT APP(1-2-05)	162
MCGRATH, P	99
O'NEILL, D	63
J CT APP(1-3-05)	130
BROWN, B	130
J CT APP(2-9-05)	121
KLATT, W	121

CARTRIDGE MEMORY REPORT

ELECTRONIC 1242 5T
MACHINE # 015489

CARTRIDGE # 011892

ELECTRONIC 1242 5T
MACHINE # 015489

CARTRIDGE # 013717

ELECTRONIC 1242 5T
CARTRIDGE TOTALS
CARTRIDGE # 013717

2A	207	207	207
17A	201	201	201
19A	69	69	69
20A	132	132	132
23A	196	196	196
25A	130	130	130
26A	66	66	66
29A	197	197	197
31A	125	125	125
32A	72	72	72
5B	92	92	92
13B	115	115	115
2C	184	184	184
4C	97	97	97
5C	87	87	87
7C	187	187	187
9C	109	109	109
10C	78	78	78
12C	141	141	141
14C	141	141	141
16C	183	183	183
18C	86	86	86
19C	97	97	97
22C	156	156	156
24C	156	156	156
26C	140	140	140
28C	140	140	140
30C	180	180	180
32C	107	107	107
33C	73	73	73
35C	137	137	137
37C	137	137	137
39C	142	142	142
41C	142	142	142
2E	140	140	140
4E	47	47	47
5E	37	37	37
6E	33	33	33
7E	23	23	23
9E	161	161	161
11E	81	81	81
12E	80	80	80
14E	156	156	156
15E	73	73	73
17E	83	83	83
21E	132	132	132
23E	155	155	155
25E	86	86	86
26E	69	69	69
28E	146	146	146
30E	91	91	91
31E	55	55	55
33E	162	162	162
35E	99	99	99
36E	63	63	63
38E	130	130	130
40E	130	130	130
2G	121	121	121
4G	121	121	121
6G	147	147	147
8G	89	89	89
9G	58	58	58
11G	146	146	146
13G	46	46	46
14G	100	100	100
16G	129	129	129
18G	129	129	129
20G	122	122	122
22G	122	122	122
24G	148	148	148
26G	86	86	86
27G	62	62	62
29G	146	146	146
31G	82	82	82
32G	64	64	64
34G	143	143	143
36G	72	72	72
37G	71	71	71
2I	109	109	109
4I	38	38	38
6I	71	71	71

MACHINE MEMORY REPORT

ELECTRONIC 1242 5T
MEMORY TOTALS
MACHINE # 013717

2A	207	207	207
17A	201	201	201
19A	69	69	69
20A	132	132	132
23A	196	196	196
25A	130	130	130
26A	66	66	66
29A	197	197	197
31A	125	125	125
32A	72	72	72
5B	92	92	92
13B	115	115	115
2C	184	184	184
4C	97	97	97
5C	87	87	87
7C	187	187	187
9C	109	109	109
10C	78	78	78
12C	141	141	141
14C	141	141	141
16C	183	183	183
18C	86	86	86
19C	97	97	97
22C	156	156	156
24C	156	156	156
26C	140	140	140
28C	140	140	140
30C	180	180	180
32C	107	107	107
33C	73	73	73
35C	137	137	137
37C	137	137	137
39C	142	142	142
41C	142	142	142
2E	140	140	140
4E	47	47	47
5E	37	37	37
6E	33	33	33
7E	23	23	23
9E	161	161	161
11E	81	81	81
12E	80	80	80
14E	156	156	156
15E	73	73	73
17E	83	83	83
21E	132	132	132
23E	155	155	155
25E	86	86	86
26E	69	69	69
28E	146	146	146
30E	91	91	91
31E	55	55	55
33E	162	162	162
35E	99	99	99
36E	63	63	63
38E	130	130	130
40E	130	130	130
2G	121	121	121
4G	121	121	121
6G	147	147	147
8G	89	89	89
9G	58	58	58
11G	146	146	146
13G	46	46	46
14G	100	100	100
16G	129	129	129
18G	129	129	129
20G	122	122	122
22G	122	122	122
24G	148	148	148
26G	86	86	86
27G	62	62	62
29G	146	146	146
31G	82	82	82
32G	64	64	64
34G	143	143	143
36G	72	72	72
37G	71	71	71
2I	109	109	109
4I	38	38	38
6I	71	71	71
7I	149	149	149
9I	89	89	89
10I	60	60	60
12I	134	134	134
14I	105	105	105
16I	29	29	29
17I	124	124	124
19I	124	124	124
2J	202	202	202
10J	180	180	180

BROWN, B 130

J CT APP(2-9-05) 121
KLATT, W 121

J COM PL(1-1-05) 147
HOLBROOK, M 89
MCINTOSH, S 58

J COM PL(1-2-05) 146
HEDRICK, B 46
LYNCH, J 100

J COM PL(1-3-05) 129
PFEIFFER, B 129

J COM PL(1-4-05) 122
TRAVIS, A 122

J COM PL(1-6-05) 148
CONNOR, J 86
HUBLER, J 62

J COM PL(1-7-05) 146
BENDER, J 82
RANKIN, M 64

J COM PL(1-9-05) 143
FRYE, R 72
SHEERAN, P 71

J COM PL(7-1-05) 109
BROWN, E 38
PETERSON, G 71

J COM PL(1-2-07) 149
REECE, G 89
BERROTT, M 60

J COM PL(1-6-07) 134
SCHNEIDER, C 105
THORMAN, III, W 29

J COM PL(1-5-05) 124
BROWNE, K 124

#01 STATE ISSUE 202
YES 100
NO 102

#55 GAH INC TAX 180
YES 99
NO 81

#56 GAH CH AMEND 179
YES 118
NO 61

#89 MIFFLIN FIRE 193
FOR 101
AGAINST 92

#106 FRANK CO TX 203
FOR 136
AGAINST 67

POLLS CLOSED
Public Count = 213
Elapsed Time = 13:37
Results contained
in MC number 013717.

Certified by:

Certified by:

Certified by:

xxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxx
---- Here ----

34G	146	146	146
36G	72	72	72
37G	71	71	71
2I	109	109	109
4I	38	38	38
5I	71	71	71
7I	149	149	149
9I	89	89	89
10I	60	60	60
12I	134	134	134
14I	105	105	105
15I	29	29	29
17I	124	124	124
19I	124	124	124
2J	202	202	202
10J	180	180	180
15J	179	179	179
20J	193	193	193
29J	203	203	203
8L	100	100	100
9L	102	102	102
13L	99	99	99
14L	81	81	81
18L	118	118	118
19L	61	61	61
27L	101	101	101
28L	92	92	92
33L	136	136	136
34L	67	67	67
1X	213	213	213
2X	1337	1337	1337
3X	1037	1037	1037
4X	0	0	0
5X	5	5	5
6X	18F	18F	18F
7X	8F00	8F00	8F00
8X	21BC	21BC	21BC

15I	29	29	29
17I	124	124	124
19I	124	124	124
2J	202	202	202
10J	180	180	180
15J	179	179	179
20J	193	193	193
29J	203	203	203
8L	100	100	100
9L	102	102	102
13L	99	99	99
14L	81	81	81
18L	118	118	118
19L	61	61	61
27L	101	101	101
28L	92	92	92
33L	136	136	136
34L	67	67	67
1X	213	213	213
2X	1337	1337	1337
3X	1037	1037	1037
4X	0	0	0
5X	5	5	5
6X	18F	18F	18F
7X	8F00	8F00	8F00
8X	21BC	21BC	21BC

BOARD OF ELECTIONS

ELECTION 2004:
A Report to the Community

Board of Elections
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INTRODUCTION

On November 2, 2004, 533,564 people or 63% of the 845,720 registered voters of Franklin County cast a ballot at the Presidential General Election. This was one of the highest percentages of turnout in County history and clearly the largest number of actual voters presenting themselves to vote in County history.

Since the Election, questions have been raised about the performance of the Board of Elections in conducting its official responsibilities in administering the Election. Most of the concerns resulted from excessively long waiting times experienced by voters in nearly every area of Franklin County and post-election reports of a limited number of unused voting machines on Election Day.

As a part of its regular post-Election evaluation, the Board conducted an internal review of operations and activities related to the November 2004 General Election. In addition to this review, the Board sought public comment through an open forum on December 16, 2004. These two functions resulted in the identification of five primary areas for improvement. These areas are as follows: Voting Machine Allocation, Precinct Election Official Training, Voting Location Selection, Absentee Voting Procedures, and General Board Operations. This report will discuss these five areas and will conclude with an explanation of the misreported unofficial election results in Gahanna 1-B.

Clearly, during this election, there were multiple outside forces that placed unprecedented pressure on the Board, its employees, its precinct election officials, and the voting public, not the least of which included federal Court decisions, appeals, and reversed decisions that created an environment in which the Board found it difficult to execute its responsibilities flawlessly. However, the Board extends to its full and part time staff and its nearly 5,000 precinct election officials thanks and support for the hard work and dedication provided to hold an election that was accurate, fair, and transparent.

1.0 VOTING MACHINE ALLOCATION

The Franklin County Board of Elections has a total inventory of 2,904 voting machines, or one voting machine for every 292 voters. In preparing for the November 2004 General Election, the final voting machine allocation was as follows: Original Voting Machine Assignment (2,741), November 1 Supplemental Voting Machine Assignment (44), November 2 Supplemental Voting Machine Assignments (33), Available yet Unassigned Machines (22), Training Class Demonstration Machines (20), Repair and Replacement Machines (28), Central Office Machines (2), Drop Off Zone Machines (10) and the remaining four machines were inoperable.

A total of 2,818 total machines were assigned for use on Election Day, or one voting machine for every 301 registered voters. For comparison purposes, 2,712 total machines were assigned for use on Election Day in 2000, or one voting machine for every 251 then-registered voters.

Historically, the Board has determined that a certain number of voting machines needed to be kept in reserve as a part of its disaster mitigation planning. The number of reserve voting machines in 2004 was 99. It was determined following the close of registration on October 4, 2004 that many, if not all, of these machines would need to be assigned for use in the Election, but not until all machines had been safely delivered by the Board's contract hauler.

Of the 44 voting machines that were assigned on November 1, 2004, 38 were delivered prior to Election Day and five were delivered on Election Day; one of the 44 machines malfunctioned during its logic and accuracy set-up testing and was not delivered. Of the 33 November 2 Supplemental Voting Machine Assignments, 17 recorded zero votes because either the poll workers refused delivery or the delivery was attempted so late that the polling location had already closed.

1.1 Total Voting Machine Inventory

The 2,801 assigned and used voting machines recorded a public count of 474,112 voters or an average of 169 voters per voting machine.

Under existing Ohio law, a voter is permitted up to five minutes to cast the voter's ballot. Using this rule as a base line, there are 156 total voting sessions available per machine during the thirteen hours that polls are open. While many voters clearly voted in less than five minutes, others, particularly those voters in the City of Columbus who had a minimum of fifty-seven offices and issues on which to vote, may have taken more than five minutes to vote. Assuming that each voter used the maximum period of time permitted to vote under Ohio law, the Board of Elections would have needed to deploy a minimum of 3,040 voting machines at a rate of one machine for every 279 registered voters, or 136 more machines than its current total inventory at an estimated cost of $820,000.

Had the Franklin County Board of Elections sought to deploy voting machines at the same ratio of machines to registered voters as Election 2000 (1:251), it would have needed a total inventory of 3,430 voting machines, or 526 more voting machines than its current total inventory at an estimated cost of $3.16 million.

Substitute House Bill 262, enacted in 2004, establishes a state minimum number of registered voters to voting machines at one machine for every 200 registered voters. Had the Franklin County Board of Elections sought to comply with this new mandate in time for Election 2004, it would have needed a total inventory of 4,229 voting machines, or 1,325 more voting machines than its current total inventory at an estimated cost of $7.95 million.

Regardless of the measure used, the bottom line is that the current inventory of 2,904 voting machines is insufficient to handle high turnout countywide elections.

ACTION ITEM: The Franklin County Board of Elections will seek to expand its total inventory of voting machines to 4,229 by the 2006 General Election (1,325 machines, $7.95 million) and will purchase voting machines in order to maintain its ratio one machine to each 200 registered voters even as voter registration rolls continue to increase.

1.2 Voting Machine Reserve

When the Franklin County Board of Elections evaluates its inventory of voting machines to determine allocation for an election, it begins by setting aside the equivalent of one load of voting machines as a part of its disaster mitigation planning. Past disasters have included the destruction by fire of voting machines already delivered to a location and these contingencies defend against vandalism of machines at a voting location or a delivery accident that renders an entire load useless for Election Day. The reserve could also be used to respond to unexpected turnout increases in isolated precincts.

In the past, voter registration growth and anticipated Election Day turnout did not warrant the widespread assignment of these reserve machines. However, Board staff wisely determined that the Election environment in 2004 did indeed necessitate the use of these machines. To that end, seventy-seven of the ninety-nine reserve machines were assigned for delivery and use following the safe delivery of the final load of machines by the contract hauler on November 1. However, only sixty were actually delivered and used.

There was an internal breakdown in communication on the total number of reserve machines that were to have been assigned on November 1 resulting in only fifty machines being assigned the day before the Election. There was a subsequent breakdown in communication on Election Day that resulted in twenty-two voting machines never being assigned for use at all. Finally, the lengthy time necessary to assign a machine, print its ballot, program its machine cartridge, perform the set-up logic and accuracy tests, and then deliver a machine – and personnel constraints for performing these and other Election Day tasks – reduced the ability of the Board to nimbly and timely respond to significant increased voter turnout.

ACTION ITEM: The Board will continue to maintain its prudent policy of maintaining a 100-machine reserve. However, for expected high turnout elections (such as federal General Elections) the Board will have in place an assignment list for all of the reserve machines prior to the day before Election Day and will engage its contract vendor in assisting with the delivery of these machines. For municipal elections and other low

turnout Elections, the Board will have its contract vendor on standby to provide assistance in delivering voting machines on or before Election Day.

1.3 Voting Machine Allocation Formula

When determining voting machine allocation, the Franklin County Board of Elections considers the number of active voters per precinct as the primary measure, and supplements this data with precinct registration change, past turnout, and the relative political interest in candidates and issues on the ballot for the Election in question within any given precinct. These are both objective and subjective measures making allocation decisions a little bit of math and a little bit of art.

For Election 2004, Board staff began its voting machine assignment process in July in order to prepare for the programming, printing, and set-up processes that began in late August. To begin with, the Board allocates a minimum of two machines to each precinct, regardless of any indicator. Starting with two machines per precinct as the baseline, or 1,576 machines, staff began allocating the remaining 1,165 initially available machines based upon active voters and the other indicators. Because the number of voting machines available for use was fixed, staff had to continually increase the threshold of active registered voters required for adding a machine, until all of the 2,741 initially available machines were allocated.

Accusations have been made that partisanship or bigotry played a role in voting machine allocation. This is untrue and baseless. However, the Board recognizes that with the partially subjective nature of the allocation decision it opens itself to potential criticism and skepticism.

ACTION ITEM: Prior to the 2006 General Election, the Franklin County Board of Elections will allocate available machines among the precincts at the rate of one machine per 200 registered voters per precinct with the exception that each precinct shall have at least two machines. If the total inventory of available voting machines is insufficient to meet this criterion, a mathematical equation shall be written governing the equal distribution of voting machines based upon the sole factor shall be registration.

1.4 Staff Synergy, Communication, and Accountability

President Abraham Lincoln said during the Civil War, "a house divided against itself cannot stand." While the Franklin County Board of Elections has an exceptionally professional and experienced staff, the command and control system is broken by the fact that essential and related Board operations are divided between two physical locations.

Voting machines are stored and maintained at the Warehouse. Voting machine assignment decisions are made at the Central Office. Voting machine serial number assignment is made at the Warehouse while subsequent system programming, cartridge burning, and ballot printing takes place at the Central Office. Voting machines are set-up and the logic and accuracy tests performed at the Warehouse. While the Board's phone system allows precinct election officials to self-route their calls to the appropriate department for Election Day assistance, voting machine problems and additional supply needs are handled at the Warehouse while all other Election Day

issues, including those of precinct election officials and the public, are processed at the Central Office.

This physical distance between the Central Office and the Warehouse inhibits staff synergy, impedes communication, and provides for only partial accountability particularly during the frenetic pace during the ten-day run-up to and on Election Day.

ACTION ITEM: The Franklin County Board of Elections will seek to unite all of its operations under one roof by the 2006 General Election.

2.0 PRECINCT ELECTION OFFICIAL TRAINING

For the 2004 General Election, the Franklin County Board of Elections recruited, trained, and placed a record 4,728 precinct election officials, including 788 Presiding Judges, in response to expected increased turnout. Precinct election officials received mandatory training during one of fifty-four total training sessions held over a period of four weeks that began on Monday, October 11 and continued through Monday, November 1. Training included a revised training manual, a live narrated PowerPoint presentation, group questions and answers, hands on voting machine training, and a four-page letter mailed the weekend before the Election outlining the most recent information on Provisional Voting and Challengers and Witnesses, the two subjects of popular litigation.

It is imperative to note at this point that the precinct election officials are truly on the vanguard of Election Day activities and are the unsung heroes of the success of each Election. They are poorly paid and over worked and deserve the gratitude of each and every Franklin County voter and resident for their dedication to ensuring access to the democratic process. To the precinct election officials of Franklin County, the Board offers its sincere thanks and deepest respect.

The Board faces a series of challenges in recruiting and training precinct election officials. Few registered voters are interested in working a fifteen-hour day for paltry compensation. Adult precinct election officials generally, and senior adults specifically, require a unique style of training. Many precinct election officials are experienced and knowledgeable and require only a refresher course; some are experienced yet need thorough training; and others are first time workers who require detailed information, extensive instruction, and hands-on experience.

Finally, to avoid confusion and to further consolidate communication, the Board eliminated its previous practice of providing multiple phone numbers to precinct election officials used to contact the Board for assistance. The new single precinct election official hotline had an automated menu that allowed the precinct election official to self-route the call to the appropriate department. Due to technological limitations, this hotline proved insufficient to handle the high inbound call traffic from precinct election officials seeking assistance.

2.1 Training Review and Revision

Public comment and calls from precinct election officials demonstrated that despite the best efforts of the Board to adequately train its precinct election officials, many precinct election officials were overwhelmed by their Election Day responsibilities. Reported problems included unfamiliarity with voting machine operation, inequitable enforcement of voting rules and procedures, poll book processing problems, provisional voting errors, and the poor general administration of the polling place. Precinct election officials lacked instruction on how to provide adequate accessibility assistance to special-needs voters at the polling place and how to react to the operational demands of high turnout.

However, many precinct election official training classes are already two hours in length. Printed take-home material is not likely to be sufficiently reviewed and understood and when

training is not mandatory, compensation alone for attending a training class is not an adequate inducement.

While the Board has maintained the *status quo* despite difficult outside influences, the entire process for training precinct election officials needs to be thoroughly reviewed and revised.

ACTION ITEM: The Franklin County Board of Elections will seek to partner with The Ohio State University or other entity to conduct a thorough evaluation of Election Day precinct operations through onsite evaluation including but not limited to polling site set-up, poll book administration, voting machine operation, opening and closing procedures, curbside voting, provisional voting administration, and queuing strategies.

ACTION ITEM: Subsequently, the Franklin County Board of Elections will seek to partner with The Ohio State University and/or private sector experts to evaluate current and develop new precinct election officials training programs and materials for integration concurrent with the implementation new voting system, including but not limited to separate classes for experienced precinct election officials, and separate classes for Presiding Judges.

2.2 Phone System Support

While many precinct election officials liked the convenience of having only one phone number to call in order to obtain assistance from Board staff, the existing Franklin County phone system was insufficient to handle the unprecedented inbound traffic of 788 precincts calling for assistance. In order to facilitate the number of calls to the precinct election official hotline, Franklin County Public Facilities Management telecommunications personnel acted as human phone switches rather than relying on the county's outdated analog system to switch the calls.

ACTION ITEM: While Franklin County Public Facilities Management is seeking to upgrade the county's analog phone system to a modern, advanced, digital system, the County or the Franklin County Board of Elections may need to seek unique system upgrades to handle the unique call volume demands of Election Day.

ACTION ITEM: The Franklin County Board of Elections will increase the number of seasonal, part-time employees available to answer voter questions during the Election Cycle and will bring the employees in early enough so as to provide adequate election information training.

3.0 VOTING LOCATION SELECTION

For Election 2004, the Franklin County Board of Elections had 788 precincts that voted in 514 different locations. Of these, 201 locations are in public schools, 12 locations are in private schools, and 86 locations are in other public facilities. The remaining 215 locations are in other private locations such as Churches. Private locations must sign a one-year contract that outlines the requirements of the Board and grants compensation of $20 per voting machine used at the private location in each Election for which the private location is used.

3.1 Accessibility

Federal and Ohio law require accessibility of the voting location but provide for very little guidance as to the specifications that make a location legally accessible. The Board established an Accessibility Advisory Committee late in 2004, but because of Election activities, the Committee was only able to meet once. The Board received several complaints that voting locations that it considered accessible were not. Additionally, while there may be standards for accessibility, issues such as chairs for senior voters who are waiting and other issues may also fall into accessibility requirements for voting locations.

ACTION ITEM: The Franklin County Board of Elections will more actively engage the Accessibility Advisory Committee and will develop, using the United States Justice Department ADA Checklist for Polling Locations, will develop a Franklin County-specific accessibility checklist to ensure acceptable voting location accessibility by the first federal election of 2006.

ACTION ITEM: The Franklin County Board of Elections will engage the Ohio Secretary of State in securing accessibility upgrade grants through the United States Health and Human Services Department as a result of the Help America Vote Act to be used for temporary accessibility solutions or permanent improvements. The Board will work with the County to develop a local grant program to be administered by the Board to supplement these federal funds.

3.2 Logistics

From parking to building entrances to the location of the voting station within the building, some voters found voting locations difficult to find, regardless of whether it was a single precinct or multiple precinct location. Once at the polling station, few voters reviewed the public notices, particularly the sample ballot, and some voters reported confusion in not knowing whether to stand in the line to sign the poll book first or to stand in the line for the machines first.

ACTION ITEM: The Franklin County Board of Elections will purchase voting location signage for each precinct, including but not limited to external signage identifying the building as a voting location for a respective precinct (Vote Here: Columbus 21-A), voter parking signage, additional directional signage, queuing signage or devices, and sample ballot handouts. In expected high turnout elections such as Election 2004, the Board may seek to hire Precinct Greeters to answer voter questions and provide "traffic cop" services.

ACTION ITEM: The Franklin County Board of Elections will enhance the current features of its online voter registration and voting location search engines that will provide the user with links to a map identifying the location of the poll site.

3.3 Congestion and Confusion

Perhaps the most pervasive concerns raised about voting locations were that the location was too small to handle the number of voting machines and/or long lines as a result of the high turnout or that voters waited in line for one precinct before realizing or being directed to another line in which to wait for a different precinct in a multiple precinct location. Additional signage, queuing devices, and Precinct Greeters alone cannot mitigate this problem.

ACTION ITEM: The Franklin County Board of Elections will seek to eliminate as many multiple precinct locations as possible before the November 2005 General Election. Only when the Director or Deputy Director evaluate a site and sign a policy waiver shall any precinct vote in a multiple precinct location after Election 2006. It shall be the official policy of the Board that all future precincts created shall be placed in single precinct voting locations.

ACTION ITEM: In adopting accessibility standards, the Franklin County Board of Elections will also adopt minimum physical location standards such as the minimum square feet for actually voting site within a location, the minimum number of voter-use parking spaces, etc.

4.0 ABSENTEE VOTING PROCEDURES

For Election 2004, more than 60,000 – twice the number as during Election 2000 – Franklin County registered voters cast an absentee ballot.

4.1 Tracking and Delivery

The most frequently voiced concerns over absentee voting revolved around the inability of Board staff to track absentee ballot requests, mailed ballots, and returned ballots. While a vast majority of the applications received by the Board were processed into ballots that were successfully received by voters, a limited few of the mailed ballots were returned as undeliverable. And while the vast majority of successfully mailed ballots were returned as voted ballots, there remains a legitimate concern about the ability of a voter to track the progress of an absentee voting request from receipt of an application at the board, to the mailing of the ballot to the voter, to the return of the voted ballot back to the Board, and the processing of the voted ballot by the Board. In an age when an individual can follow a catalog order for a sweater via the internet from the vendor warehouse to the carrier's various distribution hubs, to final delivery at the individual's front door, government agencies should aspire to provide similar information.

ACTION ITEM: The Franklin County Board of Elections will engage outside vendors including but not limited to its Voter Registration and Election Management System vendor (Sequoia), its mail processing vendor (Pitney-Bowes), the United States Postal System, FedEx, or some other carrier to create a complete tracking system by the 2006 General Election.

5.0 GENERAL OPERATIONS

5.1 Voter Information – Phone System

Between November 1 and 2 (Election Day) more than 60,000 inbound phone calls were logged by the Franklin County Board of Elections' automated phone system. Of these callers, nearly half requested or required assistance by a live Board Clerk. During this two-day period, as well as the thirty-day period running up to the Election, the main line to the Board of Elections rang busy most of the time, despite a 100-line automated switching and voting location look-up feature and a 100-place on-hold queue for Voters Services Clerks. While the automated system requires some improvement as a result of complicated and varied requirements of the Help America Vote Act (HAVA) it was sufficient to handle the workload. However, human assets were insufficient to handle the number of callers seeking live assistance.

ACTION ITEM: The Franklin County Board of Elections will hire and train additional part time employees in the forty-five days before a federal general election to staff a formal call center to provide greater voters services.

5.2 Voter Information – Website

The Franklin County Board of Elections has dramatically increased the data and information available to the public on its website. From October 1 through Election Day, the Board's website had nearly seven million hits and more than 157,000 visitors. The most frequently used services of the website were the Voter Registration Form, the Absentee Ballot Request Form, and the Voter Registration and Voting Location Search functions. However, answers to the most frequently asked questions are difficult to find and navigate, email questions to the Board have to go through one person to be routed to the proper department, and the Board lacks Voter Information personnel to relieve Election Technology personnel from having to respond to requests.

ACTION ITEM: The Franklin County Board of Elections in conjunction with the Franklin County Data Center to enhance email routing, easing website content navigation, and developing automated responses to frequently asked questions and the Board's Voter Registration and Election Management System vendor (Sequoia) or Voting System vendor (Danaher) to enhance Voter Registration and Voting Location search functions to include maps and ballot images. The Board shall also move email responses from Election Technology to Voter Information / Outreach personnel.

5.3 Voter Information – Outreach

Despite the absence of Voter Information and Outreach resources and personnel, the Board reached out to the Community through conferences, festivals, and other public meetings during Summer 2004. Outreach included voter registration information, absentee ballot applications, precinct election official recruitment, and voting machine training. However, the Board came under some criticism for not being visible and accessible enough, particularly to voters with

unique needs. The Board made significant strides through its countywide mailing of voting location information to all registered voters, but more detailed communications are required.

ACTION ITEM: The Franklin County Board of Elections will hire a Voter Information / Outreach coordinator to oversee regular community outreach. Additionally, the Board will seek to provide an annual General Election mailing to all registered voters providing voting location information, unique voter ballot image for education purposes, and detailed information on how to cast a ballot.

6.0 MISREPORTED UNOFFICIAL RESULTS

6.1 Gahanna 1-B

Before a detailed description of the root cause of the misreported unofficial Election results in Gahanna 1-B, a detailed description of the actual voting system must be undertaken.

The ELECTronic 1242 Voting System, manufactured and supported by Danaher Controls, has multiple, redundant safeguards to prohibit unauthorized access to the system and to ensure the secure and accurate recording, tabulation, and reporting of results. When a voter presses the VOTE button thereby casting a ballot on the ELECTronic 1242 machine, the voter's selections are simultaneously recorded in each of five memory tables. Three of the memory tables are saved within the machine itself. The final two memory tables are saved within the removable cartridge. The contents of each of these memory tables can be produced in printed form as accumulated results from the machine (machine memory dump), as accumulated results from the cartridge (cartridge memory dump), and as randomized ballot images (ballot image retention) wherein each ballot with each voter's unique selections are reproduced in random order. When the precinct election officials activate the "close polls" function, the accumulated results are printed in hard copy (results tape) and used for public posting and post-election auditing purposes. The cartridge is then removed by the precinct election official and delivered to a regional tabulating zone where Board of Elections personnel plug the cartridge into a Memory Cartridge Reader/Programmer (MCRP) that reads and transfers the data to a laptop computer that accumulates results from multiple cartridges before transmitting the data to a central tabulator that reports the countywide unofficial Election Night results.

When the misreported results were discovered, (for President and Vice President – Bush results were overstated by 3,893 and Write-In's were overstated by 87 and for County Commissioner (FTC 1-2-05) – Brooks results were understated by 97 and Shoemaker was understated by 87) the Board produced both machine memory and cartridge memory table printouts from Machine and Cartridge 13717, respectively, and compared the results to those from the Election Night close of polls results tape. The results were consistent across all memory and cartridge result records. Board personnel then re-read the cartridge into a copy of the Election Night database. The re-read results were consistent with the results tape and the machine and cartridge memory dumps. Staff then reviewed the Election Night database from the regional zone laptop computer. The unofficial results as read on Election Night at the MCRP and laptop level did not match the results tape and the memory dumps, isolating the error at the cartridge reading level. Staff then tested the tabulation software to eliminate outside tampering or hacking as a possible cause. The act of reading a cartridge overwrites any data previously hand entered for a cartridge and the software locks out the user's ability to hand enter data once the cartridge has been read.

Danaher Controls was then asked to provide detailed technical analysis to determine the root cause at the MCRP-laptop computer level. Danaher completed a comprehensive review of the mission critical processes of its system. Additionally, it thoroughly analyzed the election data, the MCRP code, the tabulation software, and the steps the data takes during the transmission process from the MCRP to the PC and then into the tabulation software. Finally, Danaher

analyzed the differences between the expected data stream and the actual data stream that produced the unexpected results.

Danaher has determined that the discrepancies were the result of a communications block between the laptop computer and the MCRP; at the exact moment the MCRP sent the memory cartridge data to the laptop, the laptop was busy completing another task. As a result, the laptop did not receive the data as fast as it was sent by the MCRP and consequently, data was lost. Danaher has traced the data loss to the exact bytes that were dropped during the transmission process and it consistently replicated the same values that were misreported in the unofficial election night results.

ACTION ITEMS: Danaher Controls has developed an additional level of error checking between the MCRP, the laptop, and the tabulation software that will alert the user of similar errors in the future.

7.0 CONCLUSION

A thorough review of the actions of the Franklin County Board of Election in 2004 would be incomplete without at least partial listing of many of the major positive advances enacted by the Board in order to provide for an informed electorate and the efficient administration of the 2004 elections:

- ✓ A Countywide Street and Road Guide was distributed to each polling location, listing each address range for every street in the County as well as the corresponding precinct and voting location to that address, enabling the Presiding Judges and other precinct election officials to guide voters to the correct precinct, thus reducing the number of provisional ballots cast in the wrong precinct.

- ✓ The Board solicited matching advertising slots from each of the four local broadcast television stations and the local cable service providers and produced two televisions commercials the first of which was a strong voter registration message and the second was a strong election day participation message, both of which prominently featured important contact information for the Franklin County Board of Elections.

- ✓ Knowing that voter turnout for the General Election would be high and that there would be an increased demand on just 4 precinct election officials per precinct, the Board increased the minimum number of poll workers to six per precinct.

- ✓ The Board implemented the Champions of Democracy that encouraged local labor, business, government, and civic organizations to give their employees a "day off for democracy" to be a precinct election official on Election Day. Nearly 100 public, private, and civic organizations participated significantly increasing the number of poll workers that had to be recruited through other means. Additionally, the Board provided special training classes at the organization's location for the convenience of the new poll workers.

- ✓ Following the close of registration, the Board mailed a post card size notice to the address on file of every registered voter with the registered voter's name. The post card gave each specific voter their assigned voting location (location name and address) and information for contacting the Board.

- ✓ In 2003, the Board launched a voter registration search engine on its website. For the 2004 General Election, the Board enhanced the feature with a voting location lookup feature, primarily designed for provisional voters who had to vote at a new voting location and needed to search by address only rather than by name.

- ✓ Responding to the possibility that various groups or individual might challenge voters on a widespread basis, the Board developed a special Challenged Voter Workbook with special instructions to the poll worker, special instructions to the

Challenger, and special instructions for challenged voters who had to use a redesigned Affidavit of Challenged Voter.

- ✓ Given the recent changes to federal and state law, the Board increased opportunities for training and the dissemination of information to employees and poll workers alike. Full and part time employees were required to attend poll worker training classes and additional informational and question and answer sessions were held. All precinct election officials were required to attend poll worker training classes, regardless of their number of years of service. Additionally, the Board mailed a detailed four-page letter to each poll worker the weekend prior to the Election to outline final instructions such important topics as provisional voting and challenged voters.

- ✓ Though voters and the media wouldn't have known unless an emergency did arise, the Board had worked closely with local law enforcement and other county entities in preparing redundant back up systems to ensure that Board operations continued on Election Day despite a problem.

- ✓ The Board printed and distributed more than 100,000 voter registration cards at County's expense to assist individuals and organization in registering to vote for the Election. The Board also took a proactive position with local media to encourage voter registration prior to the close of registration on October 4. On October 4, the Board set up a "drive-through" voter registration system at its Central Office to efficiently assist individuals seeking to register or change their address at the last minute.

- ✓ Knowing that there would be multiple legal questions on Election Day from provisional voting to challengers and witnesses to possible demonstrations or disruptions, the Board established an exclusive line on its self-routing poll worker hotline that was answered by Assistant Franklin County Prosecuting Attorneys. Local law enforcement also provided a radio-dispatcher to ensure the safety and security of the voters, precinct election officials, and physical voting locations.

- ✓ To reduce the response time of the part time employees who were responsible for providing voting machine technical support and to increase the response time for the replacement of basic precinct supplies or dispatches for problems at polling locations, the County was divided into multiple zones with "day drivers" who were pre-stocked with replacement supplies, could respond to problems, and visited every polling location to make sure that it was open.

- ✓ An easier to use poll book was designed to more easily reflect HAVA-ID voters, and registered voters having previously requested an absentee ballot were pre-printed in the poll book with the "ABS" designation so that poll workers no longer had to pour over separate lists to find absentee voters and mark them of the rolls.

Ms. MILLENDER-MCDONALD. Mr. Chairman, before you get started, may I please ask Mr. Anthony to supply us with your testimony. We must have the copy of your testimony so that we can have it for my record as well as the record of the Committee.

Mr. ANTHONY. Yes, ma'am.

Ms. MILLENDER-MCDONALD. We have everyone's but yours.

Mr. ANTHONY. I am sorry. We just got finished with a couple of hours ago. We will provide it.

Ms. MILLENDER-MCDONALD. Thank you.

The CHAIRMAN. I will ask a few questions. I don't want to dominate the entire time. I want to thank all of you for being here. I think you are probably one of the most important panels because you do this, and you do it all the time. You have a lot of good poll workers, and do a good job with all the things you have to deal with. Additionally, you are at the local level. I think it is important, as we put together the Help America Vote Act, that we consult the election center and the individuals that represent you.

Also, I wish we could have gotten the Help America Vote Act quicker. I wish the EAC could have been put together quicker. One of the reasons it took us a long time was because we went through this line by line and literally had a lengthy conference committee where members actually sat there and actually read legislation until 5:00 in the morning. Time after time, members reread the bill, literally 30 times, Democrats, Republicans, staff, and everyone in the room. With this you don't want to get it wrong.

Now, it is not perfect, and that is why we are here today. I would appreciate your comments on HAVA. I am not blaming any one single entity or individual, but the delay Ohio had in implementing HAVA made things difficult. That brings me to my first question. I have some individual questions and some generic questions for anybody that wants to answer.

Mr. Sciortino, I would like to address your concerns with HAVA. Let us reiterate that HAVA, in fact, does not say that Franklin County has to have the same system as Mahoning County or Belmont County or other counties. That is an individual decision of the states and the legislature. You do have the issue of keeping your DREs, do you not? To clarify, isn't that a major issue in being able to implement the vote?

Mr. SCIORTINO. Mr. Chair, that is precisely the major issue that Mahoning County is facing. As I mentioned in my testimony, back in 1998 we began looking at election systems wanting to get away from optical scan into a DRE-based system. We now have the DRE system. I am not advocating that the DRE system is a perfect system whatsoever.

I am advocating that in terms of Mahoning County it is the best fit for Mahoning County. With the passage of House Bill 262 we are faced with either retrofitting our DRE machines with some type of voter verified paper trail mechanism which does not exist with the current election system and software.

Or simply putting our DRE machines aside and having the state purchase the DRE machines and repurpose an optical scan system for Mahoning County. We spent $3 million on our DRE system which under the Help America Vote Act complies because we pur-

chased this system under the existing '02 federal guidelines and it is HAVA compliant after 2000.

But we face being noncompliant with the Ohio rules in 2006 so either we are grandfathered out of VVPAT or VVPAT is repealed or VVPAT or set aside for the time being where some workable standard for retrofitting will come into play or simply the state purchases our machines from us and purchases the new optical scanners.

The CHAIRMAN. You had optical scanners at one time in Mahoning County.

Mr. SCIORTINO. Right.

The CHAIRMAN. In Georgia, when they converted from optical scans to DREs, they went from 7 percent under or over error rate, I hope I am quoting that correctly, which meant that under the DRE system they can scan 71,000 more people than under the optical scan. I don't know who they are or who they voted for. It is irrelevant.

It is important that 71,000 more people could be counted. Their vote could be counted under Georgia's rates. Do you happen to have any statistics? You don't have to provide them today, but do you have any statistics from Mahoning County where you switched from optical scan or where you count error under or over voting at that time?

Mr. SCIORTINO. Chairman Ney, with our reporting under optical scan systems we were able to track over and under votes. Depending on what type of office or race you are targeting because you have drop-off in the ballot and for purposes of our discussions today we can just use the presidential election as the first office on the ballot. As you go down the ballot there is always drop-off.

In other words, there are voters who consistently vote for the presidential ballot and as we get down to the local offices or the issues, I am not saying this is every time but there is a drop-off. In terms of percentages or statistics, I can tell you that our percentages for under votes, which I think are more critical, undervoting was an issue on the paper ballot system.

We did not have a precinct count optical scan system that is compliant under HAVA. We had a centralized count optical scan system which means the voter votes his or her ballot. It is placed in a box and it is counted later that night at the Board of Elections. Our under-vote percentages were higher, five or six percent.

Under the DRE, as you know, you either vote on the particular race by submitting your choices or you don't. Under-voting was significantly reduced by way of DRE to less than a percent. In fact, this past election it was even less. I don't have the actual percent but I could get it to you.

I heard some numbers across the state and the panelist can comment if they know, but the amount of under-votes across the state on a punch card system was nearly 70,000 which is a very alarming number when you talk about the presidential election. The DREs certainly combated that problem and was one of the reasons why we moved from optical scan to DRE.

Mr. CUNNINGHAM. Mr. Chairman, may I continue that conversation?

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Our county has been running optical scan since 1995, the only county in the state. I think when we talk about optical scan we have to make sure we differentiate between precinct count and central count. Our situation on election day this year, I have about 45,000 ballots cast at the polls. There were only 73 over-votes recorded so I think precinct count optical scan probably is comparable to DREs in the numbers dealing with residual votes.

The CHAIRMAN. I have a question about the DREs themselves because there was the Paper Trail Bill. I would also like to address the people in the country that felt prior to the election that the machines would be rigged and all the things that were said about machines being fixed, etc.

Maryland moved to address some problems with DREs to have them checked in some random sampling. I am sure you are aware of the nonscrutiny that the machines in the casinos go under, so that they are not fixed, and people can win large sums amounting to millions of dollars. We have had that discussion.

At the time that the bill was introduced, if we had went to a system that would have required immediately that every state would have to have the paper trail, it might have caused complete chaos in the country. There was no way that could have been implemented at that time. If that was going to be considered, it should have been the original Help America Vote Act. It is great to discuss and debate these things, but to have implemented it would have been a problem.

However, nothing in HAVA says you couldn't have implemented it. Our state chose to have the paper trail. Putting aside the paper trail debate for a second, what security changes have been made to DREs? I have always argued that you can fix the machine to fix the paper trail. I am not a computer guru, but that should looked into.

What about some random checks on DREs for states that implement a policy? The EAC can grapple with this. By the way, how you check these DREs for fraud? Does anyone have any thoughts on DREs or how to check for fraud?

Mr. VU. There is a lot of discussion revolving around the security of this and I think this goes to the heart of the DRE devices. One of the things that has been implemented, in fact, in California was parallel testing and I think that would be a wonderful effort in actually conducting for all states that move toward the DRE is doing parallel testing to be able to determine whether fraud is occurring or not.

It does mitigate some of the issues that we have with the VVPAT standards or the VVPAT requirements as we have today but I think parallel testing is one of the items that we should be discussing and hasn't been discussed on a national level.

Mr. SCIORTINO. Mr. Chairman, just to follow that up, prior to our election in Mahoning County we conducted a full 13–hour mock election day coordinated and monitored by our local League of Women Voters. They basically come in and pick any dozen machines off of the rack and conduct an election for 13 hours. It required volunteers. It required record keeping.

That type of random auditing if made a proper procedure or necessary and routine as part of the Board of Elections in terms of opening up these machines and allowing for independent verification as to whether they have been accurately checked and are calibrated. Robust and random audits I think is key because you mentioned the voter verified paper trail.

I think the rules changed after the implementation of the Help America Vote Act. I am not saying it is necessarily a bad thing. I understand where people are coming from when they say, "We need a verified paper trail." But at the other end, we have to allow them the opportunity to come in and learn more about the system. I think we do that maybe by parallel testing or some random audits, mock elections and to be a part of programming that to see how it is done.

A lot of times people call these systems computers. They are not computers. Not in the sense that we use the terminology computer. They are more like a calculator. They are redundant systems of storing memory and that is basically it. But we have to open up our doors and sort of share that to get that message across.

The CHAIRMAN. Let us discuss provisional ballots for a second. There has been discussion on the percentage count of provisional ballots. Now, the implication is that jurisdictions of the higher percentage count are somehow to be commended while those with the lower percentage count are to be criticized. I wonder, is that fair? Does this effectively punish the jurisdictions that have a good registration list? If every eligible voter is already on the list the provisional ballot rejection rate would be 100 percent. Any comments on that?

Mr. CUNNINGHAM. Mr. Chairman, I believe those of us in the election business that do this every day are a little dismayed by the discussion that has been taking place the last couple of years because what is never discussed is the voter's responsibility.

Ms. MILLENDER-MCDONALD. The vote what?

The CHAIRMAN. The voter's responsibility is to register in a timely fashion, to change their address with us when they move, and to keep their voter registration current. Now, if all of that is done, the voter has no problem whatsoever. We certainly try on an ongoing basis through our local meetings and so forth to put that word out. Particularly as we get close to elections.

I don't think that the percentage of provisional votes counted is a reflection of board function. I think it is more of a reflection of voter function because boards were using the same criteria across the board to count provisional ballots. I believe in a county where there were probably a lower percentage of provisional ballots counted, it was more reflective that more unregistered people tried to vote in that county than what the board function reflected.

Mr. SCIORTINO. Mr. Chairman, I think——

Ms. MILLENDER-MCDONALD. Mr. Cunningham, you are saying that provisional ballots and some of the inaccuracies that are being counted is left up to the voter. Am I understanding you on this? If I am not mistaken, you are putting all of the onerous on the voter as opposed to the local county elected officials having some type of education program that is ongoing because I don't know

about Ohio, I haven't looked at your immigration percentages, but we have 87 languages spoken in California.

In fact, more than that now. There are many who perhaps are not cognizant of this or are not readily aggressive enough to come forward and ask for this. I am not sure whether or not we should change which totally depends, if I am understanding you correctly, that provisional ballots or the lack of intelligence on how to move with that, should be left up totally to the voter.

Mr. CUNNINGHAM. I think you misunderstood me with all due respect. Provisional ballot is voted because there is some anomaly in the voter's registration. I certainly would not even attempt to make you believe that is all the responsibility of the voter. Boards of Elections certainly do enter data incorrectly from time to time or make mistakes.

But there is also a very large percentage of provisional ballots that could be avoided if voters were to—perhaps if we were to spend a little more time educating voters and voters would spend a little more time educating themselves.

Ms. MILLENDER-MCDONALD. Absolutely.

Mr. CUNNINGHAM. My point was in the discussions over the last couple of years one thing that has been absent in all of the discussions has been any identification of voter responsibility in this equation. I am not advocating that in lieu of Board of Elections responsibility but I don't think we do ourselves any good. If we also in the course of holding Boards of Elections accountable and talking about what is required of them we are not doing ourselves any good. We also don't educate the voter better as to what is required of them.

Ms. MILLENDER-MCDONALD. I agree with you on that. Thank you, Mr. Chairman.

Mr. VU. Chairman, I think you were talking about the acceptance rate. That is one of the things that, as I stated in my testimony, the high percentage that Ohio had and Cuyahoga had relative to accepting the provisional ballots may be also on the reverse side of this that we were accepting it which is an outstanding aspect of our staff to be able to accept them.

But it also may be an indicator as to what occurred on election day and what confusion there was regarding provisional ballots on election day. It goes back to some of the directives that we were sent prior to the election, the time frame between what we had to implement. The court decisions also, mind you, and some of the things that we had to institute. The poll workers had to be educated prior to the election.

The CHAIRMAN. I want to ask an additional question about that. We will go to Mr. Anthony.

Mr. ANTHONY. I am sorry. I thought you were going to ask the question first. You know, when it comes down to the whole provisional voting aspect of this, unlike my colleagues here I chair our Board of Elections. I don't do the day-to-day operations of it but I do know that in the past years prior to this election we had conducted our provisional voting differently. We had allowed folks to vote and then it was the bipartisan board's responsibility to take a look at those that were in question to see if they were actually voting in our county or not or if we could accept them.

We had asked for some clarification on that because we had an inkling that things might change here in Ohio. As I said in my testimony, we had asked for clarification in August of 2004. We got no response back until September when the directive came out.

Ms. MILLENDER-MCDONALD. Who were you supposed to get a response from?

Mr. ANTHONY. From the Secretary of State's office.

Ms. MILLENDER-MCDONALD. That is what I thought.

Mr. ANTHONY. That last minute maneuvering with all this stuff knowing good and well because I was also part of a law suit in my role as a party chairman against the Secretary of State for making that decision to make provisional voting only allowed in the precinct where our voter lives. I believe my colleagues also will tell you that is not quite the way we have done it in the past elections.

Coming so close to the eve of election created the turmoil and the confusion, I believe, that a lot of folks had as to where they were supposed to vote. I believe in Franklin County how we ended up having such good numbers in our provisional voting, one, because we took a proactive position to actually do, and we paid for this itself with no HAVA money, to do advertising on public radio with my counterpart from the Republican party telling folks exactly how to register to vote, how important it is to register to vote, and also to get out and vote.

Now, we did that. We found some money in our own budget and we paid for that. We believe that helped us to keep our numbers down somewhat. Then we took a proactive stance on mailing out information to all of our voters at a cost to our county. We did that because we knew that there would be problems with provisional voting.

Not only did we do that but we also produced a Road and Atlas Guide that we put at every voting location so that if you came in there and you happened to be at the wrong polling location because there was a lot of confusion with the challengers and law suits flying, folks had no idea. It could have been a bigger mess. Those Road and Atlas Guides allowed our coworkers to at least tell folks where to go, which precinct they should go to based on where they live and based on their voter registration information.

What I think ought to happen, and the Franklin County Board of Elections feels should happen, we should have a no-excuse absentee voting which is AKA early voting. I believe that should happen. I believe that we should go to early voting and I believe that the election day should either be a holiday or an employer should allow folks time to go vote.

The CHAIRMAN. On the holiday week we talked about that during the Help America Vote Act. We couldn't ascertain whether we would be encouraging more voting or whether people would go on vacation. I am not saying it was good or bad, but we had a huge debate for days on that.

Mr. CUNNINGHAM. Miller Lite would probably advocate the holiday. I have to take some exception here. I really hate to do it at my colleague's expense. My county has always counted provisional ballots in the home precinct. I believe law has always been very clear on that matter.

Now, if there were questions and the Board wanted clarification, I understand that but I think Ohio law has always been very clear that a ballot must be cast in the precinct in which you live. Our county did nothing different in this election than we have ever done in regards to county provisional ballots.

Ms. MILLENDER-MCDONALD. Mr. Chairman, may I say that your law provides you the opportunity to only have persons fill out provisional ballots in the precinct by which they are registered. Am I correct on what you said, Mr. Cunningham?

Mr. CUNNINGHAM. Heretofore in Ohio provisional ballots have been used by people who have moved since the voter registration or have failed to update the voter registration prior to the deadline.

Ms. MILLENDER-MCDONALD. That is correct.

Mr. CUNNINGHAM. We have always endeavored. In fact, we even have a transmittal slip that if you come into a precinct and you are not in the book, the first thing our poll workers have been instructed to do is call the Board of Elections to see if we can direct you to the correct precinct. We have a transmittal sheet that we use because usually the person comes into this precinct and they say, "We are sorry. You are not registered."

Ms. MILLENDER-MCDONALD. And is this the practice that you did on this last election?

Mr. CUNNINGHAM. Yes, ma'am.

Ms. MILLENDER-MCDONALD. So, therefore, you did not follow HAVA because HAVA said that you have the autonomy to give that provisional ballot to a person irrespective of whether they were inside of their precinct or not and then allow that ballot to be counted later.

Mr. CUNNINGHAM. No. We were discussing there the traditional Ohio provisional ballot.

Ms. MILLENDER-MCDONALD. That is correct.

Mr. CUNNINGHAM. We had HAVA ballots available as well and they would be issued if a voter insisted on voting. We tried as much as possible to direct a voter to the correct precinct and we always have done that.

Ms. MILLENDER-MCDONALD. When you say a HAVA ballot, what is different?

Mr. CUNNINGHAM. A HAVA provisional?

Ms. MILLENDER-MCDONALD. Yes. What is different than just a provisional ballot? Did you not just have provisional ballots irrespective of whether it was HAVA or not? Did you identify that as a HAVA ballot?

Mr. CUNNINGHAM. Yes, we have basically in our county HAVA provisional ballots.

Ms. MILLENDER-MCDONALD. Because it was in conflict with their regular law? Is that the reason why?

Mr. CUNNINGHAM. It didn't serve the same purpose. The traditional provisional ballot in Ohio is to accommodate a voter that has moved or their registration is incorrect. It is not to enfranchise——

Ms. MILLENDER-MCDONALD. This is what I am saying. That goes across the board, across the nation.

Mr. CUNNINGHAM. Yes.

Ms. MILLENDER-MCDONALD. Irrespective of that with the HAVA law——

Mr. CUNNINGHAM. If we attempted to send you to the correct precinct and you insisted on voting in this precinct, we gave you a HAVA ballot. According to court order, you were also then given the affidavit saying you understood.

The CHAIRMAN. I want to move on to one other question. I want my colleagues to be able to ask questions on some other issues. On the provisional voting, I think Mr. Anthony said that the rest of Ohio had provisional voting, but didn't have a provisional ballot necessarily within the law. Is this correct?

Mr. ANTHONY. Yes, sir.

The CHAIRMAN. One of the issues we had with the Help America Vote Act was this: people from different parts of the country would come to me and say, that they were turned away from the polls because of race. They were turned away from the polls because of some condition, or they were turned away from the polls because of their political party. Now, in some cases that might be genuine. We won't say it hasn't happened.

In some cases it may not have happened, but the idea of provisional voting, is so important. I discussed this with Mr. Hoyer, our colleagues, civil rights groups, and members both sides of the isle. Provisional voting means that you are not turned away from the polls.

Now, in Ohio, I know there are cases where somebody walked in, and I know some of the people this has happened to, and said, "I want to vote." Somebody without malice said, "You are not on our polls." They then walked out and said, "I wasn't given a chance to vote." They felt disenfranchised for whatever reason.

So provisional voting, and, in a way, the Help America Vote Act, codified the existing rules on provisional balloting in Ohio, and made it clear that you have to give them a ballot. Now, I know that local boards, all of you, Democrat and Republican, are smart enough to say, "By the way, it looks like you are not registered in Belmore County anymore. You are now in Monroe County." But that person insists, "I still want that ballot." "You take it." The Help America Vote Act says you accept it no matter what.

Now, counting it is a different story. Counting it is left to local state law. The idea in the provisional voting was that it would guarantee the right to cast a provisional ballot. I just wanted to clarify that about provisional voting.

Let me go to my last question and then move on to my colleagues. The long lines. Mr. Vu, I think you mentioned in your testimony that the longest recorded wait time was two and a half hours. It took place in the suburbs. We have heard people claiming 10 hours. I respectfully quoted you to the U.S. House because I was managing the electoral college on the House side for the majority party with Mr. Larson, who was also managing the House side. I quoted about the lines with regards to the machines, where machines were placed, or were not placed, in certain minority precincts.

I didn't quote either one of you because I didn't have enough evidence. That is not putting anybody on the spot. I am just saying that he addressed the long lines. Anything to add on the long lines? The second question I guess I want to ask you is, do you think we,

the Federal Government, should cure your long-line problem if you have one? Those are the two questions I have.

Mr. ANTHONY. There were long lines in Franklin County. As I said in my testimony, they were in all of Franklin County. The problem we had in Franklin County was that we did not have enough machines. I know there were folks out there that claim we purposely took machines out of black areas and moved them into white areas as a way to somehow suppress the black vote.

If that was our intention, it certainly didn't work in Franklin County because there were 50,000 votes and most of the votes came from the core city. What happened was purely numbers. We did not have enough machines. We had an increase in voter registration and we count all of our 847,000 votes as active voters and we allocate machines purely number wise the best that we could based on the 2000 election and the turnout in the 2000 election. There were population shifts and there were areas that grew more than other areas. We at least tried to have two machines for each precinct and the long lines happened. On election day all heck broke loose.

Mr. Chairman, we don't have a large staff but our first order of business on election day is to make sure that those machines that are out in the voting area are working and that folks can vote. That took pretty much the better part of the day for us. After that we started taking a look at our limited resources of our employees and trying to get machines out to areas that needed them.

We did the best we could. Our whole intent on election day was to have brand new machines by 2003. That didn't happen because we had House Bill 262 kick in on us and it placed a whole new requirement on the types of machines that we could purchase.

Also, we could not lease additional machines because the machines we have were, I think, Danier. We don't have machines just sitting out there waiting to be leased. Plus, we couldn't have bought more machines even after we knew that this House Bill 262 and some of the other HAVA requirements. Danier was not on the approved list of vendors that Secretary of State had previously approved so even if we could have bought some more, they weren't on the list.

Not only were they not on the list, but our machines didn't meet the HAVA standards and certainly not the House Bill 262 standard. We were between a rock and a hard spot which is why we are trying to get clarification on provisional voting and why we did all the other steps that we did to try to at least make the process go a lot faster. What would help us currently, I mean, right now we have an injunction on the Secretary of State not to force us to use scan machines here in Franklin County.

We feel that the long-range cost of those machines far outweighs the benefit of them. We would like to continue with our DREs and go to the next generation of DREs. Our hands are tied right now because we have House Bill 262 and also some of the HAVA requirements. And we are between a rock and a hard spot because those regulations we have to comply by them by the 2006 election.

Any help you could give us and maybe some help in some machines we could take a look at and those that we think would fit better in Franklin County. We just don't believe the scan machines

will work in a large county such as ours. That is what we could use some help on, to slow it down or some regulation so that we could come into compliance and still take care of our voters.

Mr. CUNNINGHAM. Boards of Elections historically handle turnouts anywhere from 13 to 40 percent the other three years of the cycle. We sort of toiled in obscurity those three years and everybody pays attention in a presidential year.

Boards of Elections are funded and staffed by in large by what their turnout normally is. I really don't know why it would surprise anybody that when suddenly the turnout spikes to the largest in the history of the country that the lines would be longer.

Now, the other thing that plays into this is when these equipment allocations are made it is usually before the registration deadline. If you have allocated equipment to a precinct and all of a sudden at the very last minute, this goes to the issue we talked about today, 600 or 700 new registrations get dropped on you in that precinct 30 days out, there is not much you can do to adjust. You just have to try and manage that as best you can.

We probably will not see more than a 15 to 20 percent turnout on May 3rd in Ohio and the line problem suddenly won't be there. Either we have to equip and adjust to 70 plus percent turnouts which I think probably would be wasteful in the long run to our county governments or we have to just figure out a way to flex on the big years and understand that there is probably going to be a little—I think every Board of Elections in the state prior to election day was telling people in their community, "Be prepared to spend a little more time voting this year. We just expect a higher turnout."

The CHAIRMAN. I am going to move on. Mr. Vu.

Mr. VU. I just wanted to respond to your questions about Cuyahoga County specifically. Long lines occurred in urban and suburban precincts. Unlike Frankly County where there were not enough resources we had enough resources. We had 10,000 voting devices. Almost approximately nearly 10,000 voting devices.

There was a study and analysis that was done by the paper The Plain Dealer, where they assessed what our resources were and also where we distributed those voting devices. We did it across the board and we had one device for every approximately 115 registered voters. I think that was a really good number to use for it.

What we learned, though, is two things. Again, as I stated in my testimony, we saw voting behaviors as well as poll worker issues that we didn't expect. One of those voting behavior issues is that we had three precincts at a location, as the Congresswoman had stated earlier, where we might have three or four precincts in a polling location. When a voter sees a line, they will go to that line as opposed to going and finding their precinct.

Some of the actual experiences from talking with voters on election day that I heard was that they had waited in line for an hour to find out that they were in the wrong line. Also on election day we found out that our poll workers, in some cases, and I visited some of these polling locations and precincts on election day, were confused as to the provisional voting portion of it and all the other extraneous part of the election that were coming last minute.

Things like challenges. Things like pre-challenges prior to election day so there were a lot of things revolving in and around that area.

What The Plain Dealer article found out is that our allocations of our voting devices was evenly across the board between suburbs and urban precincts. One of the things that we also found out is that poll workers didn't utilize all of their voting devices on election day and that is something that can be easily remedied for future elections. That is a concern, as far as your question, and concern about funding level as Mr. Cunningham approached you.

We are not funded at 100 percent capacity for every election. That is due, in part, because of the nature of the way we conduct elections and the four-year cycles that we have. If we were going to do it, and which I advise as we move toward election time, that local Boards of Elections get funded not only for devices and equipment, but also for public education efforts also.

The CHAIRMAN. It was an unusual election. I am not saying that we should criticize all these people who turned out at the polls. They die to vote in Iraq and Afghanistan. Real quick, yes or no, because I do want to move on to my colleagues. Do you believe that a federal commission, say the EAC, or the U.S. Congress, should set how many machines you have, or should it be done within the state or the current process here?

We will start with Mr. Cunningham.

Mr. CUNNINGHAM. If you want to do it efficiently, you should leave it to the local jurisdiction.

Mr. SCIORTINO. As a member of the standards board and the EAC I think there is a debate with the state's rights versus the federal sovereignty and I think it needs to be left to the states to come up with that.

Mr. VU. I would say it needs to be left for each local Board of Elections to determine that number.

Mr. ANTHONY. I would say each level of jurisdiction should have that responsibility.

The CHAIRMAN. Thank you.

The gentlelady from California.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman, and thank you all. You are very professional men and you are very honorable. In fact, it brings me to the point that there are all honorable men and worthy women here anyway testifying from this great state of Ohio.

I am going to start with Mr. Cunningham. Mr. Cunningham, you did mention that you believe that Ohio should adopt a no-excuse absentee voting because partially it would solve the long lines. I couldn't agree with you more so if you would get with your representative, Mr. DeWine, who is presenting this HB House Bill 3. He is in a quandary as to whether or not that should be part of that bill so maybe you can help him by telling him that this is something that you at the local level deem important for him to have in his field.

Mr. CUNNINGHAM. The association has presented that testimony.

Ms. MILLENDER-MCDONALD. Very good. Secondly, and I am happy that you are open to that, I hope you are also open to same-day voting as well as some of the variations of voting that are now beginning to take place.

Mr. CUNNINGHAM. I heard you mention it earlier. I am not sure what you mean by same-day voting. Do you mean same-day registration?

Ms. MILLENDER-MCDONALD. That is right, registration.

Mr. CUNNINGHAM. I would be adamantly opposed to same-day registration.

Ms. MILLENDER-MCDONALD. And why is that?

Mr. CUNNINGHAM. It is a recipe for fraud. I am sorry. That is not a workable solution.

Ms. MILLENDER-MCDONALD. Even with electronic devices now and high technology that can be verified?

Mr. CUNNINGHAM. There are only three states that use it. That is probably the reason why. I don't think that is a good idea in a practical application.

Ms. MILLENDER-MCDONALD. You mentioned also in your statement that you believe that persons, advocacy groups who solicit registration forms should be required to turn in all registration forms and not just those that are endemic to their cause. That is against the law if they don't. That is really against the law.

Mr. CUNNINGHAM. Provided that you know.

Ms. MILLENDER-MCDONALD. They are supposed to do that and if there is anyone who is doing that practice, we should know about that. Nobody is supposed to withhold any registration forms irrespective of whether it is in opposition to what you think or not. And given that provisional ballots can and do enfranchise voters and so I do believe in that irrespective.

The other thing that you mentioned that Congress and our chairman is absolutely calling for immediate and full funding of HAVA. That is really a position of all members of Congress, not only those of us who are on this committee. Congress really does have a deep commitment to the principles set forth in HAVA and, thereby, should fund that. You know that we have a war and the President is calling for some $80 some billion. We, too, have to be cognizant of our fiscal constraints and all states will have to as well because of the various amounts of money that is being taken off for other reasons.

The last thing that I would like to ask you, Mr. Cunningham, is that were you giving active funding from the state to carry out the mandates on HAVA? Did you get that funding in time? Secondarily, were the last-minute directives from the Secretary of State in conflict with Ohio's law as it has been outlined by Mr. Anthony many times, the House Bill 262?

Mr. CUNNINGHAM. The first part of the question is the funding? Did I receive enough funding?

Ms. MILLENDER-MCDONALD. Yes.

Mr. CUNNINGHAM. Well, there is never enough money.

Ms. MILLENDER-MCDONALD. Exactly.

Mr. CUNNINGHAM. There is never enough money. I am not going to take issue with the Secretary of State on that matter. Could we have used more? Of course you can always use more.

Ms. MILLENDER-MCDONALD. And I don't intend for you to do that. I am not putting you in that position but was there a formula?

Mr. CUNNINGHAM. Yes. I believe the formula was evenhanded across the state. I don't think that I got any less than anybody else.

Ms. MILLENDER-MCDONALD. Was it in adequate time?

Mr. CUNNINGHAM. I don't have any complaints with the time frame. I think it flowed to us. Quite honestly, the last minute directives were only a part of the confusion. There were a lot of confusing things going on before the election leading right up to it.

Ms. MILLENDER-MCDONALD. They were not the last-minute directives solely.

Mr. CUNNINGHAM. Absolutely not.

Ms. MILLENDER-MCDONALD. There were other things.

Mr. CUNNINGHAM. Political activists were very involved. We have never had attorneys in our office. We have never had activists in our office. I mean, they were quite honestly very disruptive, very distracting. This is probably the single most—I am pushing my 8th year and the November 2004 election was probably the single most difficult thing I have ever tried to manage in my life.

Ms. MILLENDER-MCDONALD. They were not supposed to be disruptive. Or were they?

Mr. CUNNINGHAM. Well, for instance, the card we send out to voters to tell them where they are registered, what your precinct is, I spent the better part of an afternoon arguing with somebody that the type on the card was too small when it is the same card we have been sending out for some time. It is the default setting of the printer. My belief, ma'am, is that not everyone in November of 2004 was dealing in good faith. There were people on the ground and present in Ohio——

Ms. MILLENDER-MCDONALD. Not everyone in 1870 was dealing in good faith. I mean, you never have everybody dealing in good faith no matter what year it is.

Mr. CUNNINGHAM. I am confident my colleagues were dealing in good faith. There were people that were tempting to create chaos and confusion in hopes that out of it would come something that could be exploited.

Ms. MILLENDER-MCDONALD. That is unfortunate.

Mr. CUNNINGHAM. I would probably say to you that I think the four people at this table, and we are outnumbered, by the way. Our association has far more women than it does men.

Ms. MILLENDER-MCDONALD. Thank you very much.

Mr. CUNNINGHAM. I think it is absolutely stunning that the election officials in Ohio pulled the election off in the fashion that they did, managed it the way that they did, and succeeded as they did in light of the absolute chaos and confusion that was taking place.

Ms. MILLENDER-MCDONALD. The confusion did not come from anyone particular group. Am I correct?

Mr. CUNNINGHAM. No, ma'am.

Ms. MILLENDER-MCDONALD. They were on both sides of the political spectrum?

Mr. CUNNINGHAM. It is everybody. Yes, ma'am.

Ms. MILLENDER-MCDONALD. Okay. Fine.

Mr. CUNNINGHAM. I am not taking any issue with one group or other group.

Ms. MILLENDER-MCDONALD. Mr. Sciortino, first of all, you should tell your state representatives that Ohio was the swing state.

Thereby, this was the reason that all eyes were on Ohio. Please tell that to your state reps that were here earlier, especially Senator Jacobson?

Mr. SCIORTINO. I have told him that personally but I will do it again.

Ms. MILLENDER-MCDONALD. Sometimes the second time. It is by rote. You have to constantly remind people. You also said that there were two and a half weeks leading up to the election. There were changes in directives and other things, last minute directives and that type of thing. Also Mr. Blackwell provided daily telephone conversations to you guys.

Did you not have his total input for the two-and-a-half weeks? Did you have a statewide or how wide spread was your campaign election education so that you would have been able to have some intelligence on a lot of things that perhaps could go wrong or just the mere fact of educating the masses on what to expect?

Mr. SCIORTINO. Leading up to the election, again, it was my job as president of our association to try and conceptualize all the issues that were facing the association. Again, as time progressed it is not as though we knew what was going to happen next because this was not a regular election year. There were issues about some late directives but that wasn't the impounding reason.

Ms. MILLENDER-MCDONALD. But given that your state was the swing state, did you not recognize that you were going to have an abundance of new registers?

Mr. SCIORTINO. Sure, and that is where we had dialogue between the county boards, ourselves. There was some litigation popping up over provisional voting and what not. We met with the Secretary and asked the Secretary for additional resources in terms of improving communication.

Ms. MILLENDER-MCDONALD. Was it given to you?

Mr. SCIORTINO. The output of that was this daily——

Ms. MILLENDER-MCDONALD. Was that given to you, the funding for more outreach and education?

Mr. SCIORTINO. Not specifically to each county but the daily telephone conferencing with regards to how on a daily basis boards can better handle these election issues.

Ms. MILLENDER-MCDONALD. But that was only two and a half weeks out. We are talking about really months to get this thing going.

Mr. SCIORTINO. In all honesty, I don't think a lot of the major issues hit until September, October. I was more worried about administrative issues, you know, handling questions from these lawyers that come in. Then as questions started to come in to our boards, I was getting other questions from other Boards of Elections. Let us try and communicate better. That was our biggest goal.

Ms. MILLENDER-MCDONALD. Those administrative questions should have been answered by you. How about poll workers? Were they trained adequately?

Mr. SCIORTINO. I can only speak for Mahoning County and I am sure across the state at least a month out we began training poll workers the presidential year. As well as in the primary every poll worker was trained as well as our auxiliary poll workers.

Ms. MILLENDER-MCDONALD. It should be more than one month. Although you are not part of the Secretary's state association but it should have been ongoing really for at least a year out. We recognize that this was a presidential year. You being the president of the Ohio Association of Elected Officials certainly you would have, and I would like to think, that you would have been able to discern early on that this was going to be that rash of registrants and provisional ballot requests and you would have been able to educate people much earlier than a month or two.

Mr. SCIORTINO. Well, are we talking about the voters themselves or poll workers?

Ms. MILLENDER-MCDONALD. Poll workers so that they will then, in turn, speak to various voters. A lot of the lines could have been circumvented it seems to me if poll workers were more educated to some of the things that would happen and they would direct them to the various precincts within the areas they were supposed to go to.

Mr. SCIORTINO. Well, two things. We do training following state guidelines in terms of poll worker training and what not. I tend to do it 30 days out because any sooner than that you run into whether or not retention in terms of what they have learned is going to carry over into election day. I think that is what we do in our county. I think that is pretty consistent across the state. The other thing is there are financial burdens because we pay our poll workers to come to training.

Ms. MILLENDER-MCDONALD. Are you suggesting that House Bill 262 is in conflict with HAVA?

Mr. SCIORTINO. How is that?

Ms. MILLENDER-MCDONALD. In that it seems that all of the law that you follow tends to be the Ohio state law and not the integration of HAVA with that law or the HAVA law as opposed to the Ohio law.

Mr. SCIORTINO. Well, we made every attempt to, and I think we have, train in terms of poll workers train on the new provisions contained in HAVA absolutely. I don't know, you know, what specific portion of House Bill 262 gave additional resources for the county to pull upon other poll workers. Obviously the voter verified paper trail issue comes into play with 262. Our colleagues, every Board of Elections tried to have every new training source available to bring HAVA into play.

Ms. MILLENDER-MCDONALD. Mr. Vu, speak about poll worker training and HAVA is very strong on that. Does that House Bill that we keep hearing about and that Mr. Anthony spoke about many times, 262, does it talk about poll worker training?

Mr. VU. House Bill 262 outlines voter education and the allocation of $2.5 million, actually $5 million, 2.5 going to the Secretary of State to educate the entire state and then the other 2.5 allocated on a formula basis to all the various counties with a minimum of $5,000. Then this past election we did not receive any of that $2.5 million. None of those monies were appropriated to any local Board of Elections that I am aware of. I am sure that occurred.

Ms. MILLENDER-MCDONALD. And, yet, that is an Ohio law that you were supposed to get $2.5.

Mr. VU. That is correct, for local Boards of Elections.

Ms. MILLENDER-MCDONALD. Local boards.

Mr. VU. Let me, if I may, describe some of the training efforts that we did. Of course, we can always do better with our poll workers. As you probably know, poll workers are citizens like you and I. On election day they serve as election officials for a 13-hour time frame. There are some retention issues that we have.

In this past election we had training that occurred during the primary election and also the general election. The primary election occurred in March and the general, of course, in November. During the general election we overhauled our poll worker manual and instituted a highlight page because many poll workers have done this for years.

In fact, in once instance we actually gave a resolution to one of our poll workers because they had done it for 50 years. As you probably can tell, they go to a poll worker training year in and year out. One of the complaints that we hear is, "It is the same stuff. Why should we go?" We institute different things to kind of change the format, especially this year.

Ms. MILLENDER-MCDONALD. You need to tell them that they have to go.

Mr. VU. We did. It is a requirement for Cuyahoga County for them to attend, although they had by statute met their obligations for primary election training. Of course, we wanted them for the November election to have training for our poll workers. The reason why is because there are so many different things that they had to be aware of like chads.

Also things like various directives that had occurred. By the time that we were able to train our coworkers was almost after the fact of when we started receiving the directives. For Cuyahoga County we have to recruit 6,000 poll workers for election day, plus 500 as a reserve for election day. This becomes a mass last-minute education effort on election day to send out all this information and on election day we actually were sending out more information for poll workers. You could just imagine——

Ms. MILLENDER-MCDONALD. Election day is too late to be sending out any information about what one should be doing, for Heaven's sake.

Mr. VU. That is what we were told.

Ms. MILLENDER-MCDONALD. No wonder these people were so flustered because you are sending out these directives. The registration cards that you mentioned in your statement which were missing some vital information but you did not receive directions in this matter or directions from the Secretary of State?

Mr. VU. That is correct. I believe the reason why is because there is nothing within state statute that talks about incomplete registration cards. One of the things, the National Voter Registration Act, that was passed in 1993 essentially did was erred on the side of the voter and that is the way we have proceeded once we did not receive any indication from the state.

Ms. MILLENDER-MCDONALD. The best practice tool kit that was put out by EAC, did any of you follow that leading up to the election given that they have the best practices for many states that have proven to be very useful?

Mr. VU. Yes. I did look at the best practice guidelines. I actually did. There are a couple of check-off lists that I used as well as the Cuyahoga County Board of Elections used. In fact, what I did was used that but also coupled it with the election center checklist that they had and also what was unique for Cuyahoga County. So I essentially created a separate template of best practices for Cuyahoga County.

Ms. MILLENDER-MCDONALD. Before I get to Mr. Anthony for the last questioning, Knox County. Who takes care of Knox County? Any of you?

The CHAIRMAN. That is me.

Ms. MILLENDER-MCDONALD. I was told that there were many, Mr. Chairman, students who went to a neighboring school that had to wait until 4:00 a.m. in the morning to vote.

If that is not a 10-hour plus time span given the fact that voting starts at 7:00, 8:00, and that they were in line at a reasonable time and had to wait up through 4:00 a.m. the next morning, my goodness. What in the world are we going to do to circumvent that from happening again with this younger population who we are trying to get to buy into the political process? Mr. Cunningham.

Mr. CUNNINGHAM. First, I think it should be noted that was one precinct in thousands in the state of Ohio.

Ms. MILLENDER-MCDONALD. Anytime one voter is disenfranchised or has to stand in line that long, it is as if everyone throughout this country.

Mr. CUNNINGHAM. I do not run Knox County. My understand——

Ms. MILLENDER-MCDONALD. I am sorry?

Mr. CUNNINGHAM. I said I don't really have anything to do with Knox County or run it but my understanding through the association is that some of that issue is attributable to what we have been talking about where literally thousands of registrations were dropped on the Board of Elections at the registration deadline and they were simply overwhelmed and unable to compensate for that many people, that many new registrations in that precinct. I am not saying that is totally the reason but in part the tremendous number of new registrations in that precinct played a role in the length of those lines.

Ms. MILLENDER-MCDONALD. Mr. Anthony, will you clarify for me what you mean by saying, and I put this in quotes because I am trying to say it verbatim, "Provisional ballot voting is not like we used to do or accustomed to doing. You know there would be problems with provisional ballots." Can you kind of explain what you are talking about here?

Mr. ANTHONY. Mr. Chairman, Madam Committee Member, I have been on the Board of Elections, I believe, this is my 7th year. The way we have always done our provisional balloting or voting in Franklin County is that we always try to err on the side of the voting. We feel if a person took the time to come out and go vote, that we should do what we can to make sure that person's ballot is counted.

In the past what we have done in Franklin County is if a provisional vote comes before us, before the Board of Elections, the staff takes a look at it and makes sure that they are a registered voter,

that they live in the precinct, and they basically qualify. Those folks' vote would be counted.

The ones where we had concerns about, they would bring them before the bipartisan board, two Democrats and two Republicans, and we would take a look at those and then they would tell us what their concerns were. We would make every effort to either allow that person to vote, what items they could vote on that ballot if they are voting out of precinct. There may be some local options or maybe a split——

Ms. MILLENDER-MCDONALD. Right.

Mr. ANTHONY. What we would do then is we would allow that. If they were a qualified voter, then we would accept that vote. It would be done by bipartisan. All four of us would have to agree to it.

Ms. MILLENDER-MCDONALD. And that qualified voter would be whom?

Mr. ANTHONY. They would be in our voter file.

Ms. MILLENDER-MCDONALD. Irrespective of whether they were in the precinct by which that provisional——

Mr. ANTHONY. That is correct. If they were on our voter rolls as a registered voter.

Ms. MILLENDER-MCDONALD. Okay. So provisional ballots were distributed rather fairly across the counties irrespective of whether those voters were actually voters in that precinct?

Mr. ANTHONY. What we did was we allowed—anybody that wanted to vote could vote and I think that is the clear distinction. Congressman Ney said it real clearly there that we instructed out poll workers if they come in there, you let them vote. You don't sit there and argue. You let them vote. Give them their right to vote. We in the past figured that stuff out at a board meeting. That is where it was figured out.

Ms. MILLENDER-MCDONALD. Also, Mr. Anthony, you said that there were increased voter registration and you did not have either the machines to fulfill the voters' wishes to vote. Am I correct in that assessment of what I think you said?

Mr. ANTHONY. Mr. Chairman, Madam Congressperson, that is correct.

Ms. MILLENDER-MCDONALD. And, yet, Mr. Vu said that there were 10,000 election devices. Would that not have been—could that not have been some devices used to help this gentleman in his county or what were you saying?

Mr. ANTHONY. Mr. Chairman, Madam Congressperson, we use two different voting systems. He uses a punch card system. We use a DRE type system in Franklin County so there is no way we could have shared equipment and there was no way that I could have acquired additional equipment because of the reasons I stated earlier which were:

1. They would not have met the HAVA requirements; 2. They wouldn't have met the Senate Bill 262 requirement; 3. They wouldn't have met the requirements on the Secretary of State's preferred vendor's list; 4. There would have been maybe some compatibility issues with our current system by bringing in new Danier machines. They were Danier machines that we had. Because of all

of that it became totally not prudent for us to even try to pursue this.

Ms. MILLENDER-MCDONALD. It was very honorable of you to 30 days out map outline differences of precincts as you outlined here where people should go to vote. It was three weeks, you say, from this information. Yet, you put out these cards to folks to let them know where they were supposed to go. Am I correct on what you said there?

Mr. ANTHONY. Yes, ma'am. It is two different things there. We had found out that a lot of groups had gotten the voter registration information from the Secretary of State's office. That information is probably six months old so it is not real current information. We provide the information to the Secretary of State's office. Then what happened——

Ms. MILLENDER-MCDONALD. Are you saying information from the Secretary of State's office is old?

Mr. ANTHONY. It is six months beyond ours. We give to him and then we——

Ms. MILLENDER-MCDONALD. How can that be?

Mr. ANTHONY. All that is getting ready to change now with the new voter registration system. During this time frame——

Ms. MILLENDER-MCDONALD. That is awful.

Mr. ANTHONY. What happened was a lot of those groups purchased those lists from the Secretary of States and had the wrong precinct on them. That information was sent out to voters telling them where to go vote. There were phone calls out to some voters to tell them where to go vote and it was not the correct information. We took it upon ourselves that we should do that.

Ms. MILLENDER-MCDONALD. So your Secretary of State was blaming you guys for this information.

Mr. ANTHONY. The other part of this, too, if you have got—these guys probably know this.

Ms. MILLENDER-MCDONALD. You can just answer yes or no on that.

Mr. ANTHONY. Yes. What happened is we are taking in voter registration forms on a daily basis so our stuff is up to date. Our information is up to date. We transmitted to the Secretary of State's office. I am not sure how that process works.

Ms. MILLENDER-MCDONALD. Obviously they are not checking it or even implementing it if it is six months late for Heaven's sake.

Mr. ANTHONY. At any rate——

Ms. MILLENDER-MCDONALD. You don't have to answer that. You have already done that by your silence.

Mr. Chairman, thank you so much. After Ms. Tubbs-Jones we would like to introduce you to what you have told us what would be some of the things that we can improve HAVA after the gentlelady speaks.

The CHAIRMAN. Just for the record, Knox County is a wonderful county that I represent.

Ms. MILLENDER-MCDONALD. I think it is because it sent you to Congress. That is correct.

Ms. TUBBS-JONES. Mr. Chairman and Ranking Member, gentlemen thank you very much for coming this afternoon. I am sitting on this Committee by opportunity of the Chairman and the Rank-

ing Member so I don't get as much time as they do in asking questions or getting answers so I would appreciate if you could to restrict your answers specifically to my question. Otherwise, I will run out of time and not get to ask all the questions I would like. I, again, would like to thank all of you for coming.

Let me start with Mr. Cunningham. Mr. Cunningham, how many people vote in Allen County?

Mr. CUNNINGHAM. Total registration of 67,000. Turnout is 50 some thousand depending on the election.

Ms. TUBBS-JONES. Mr. Sciortino.

Mr. SCIORTINO. Yes.

Ms. TUBBS-JONES. How many people vote in New York County?

Mr. SCIORTINO. We have about 190,000 registered voters. Roughly close to 70 percent turn out.

Ms. TUBBS-JONES. Mr. Vu, Mr. Anthony, I know the answer to that question for both of you. I spend a lot of time in both your counties.

Mr. Cunningham, in the conversations that we have been having about absentee balloting and all those other things. One of the things that I want to assure and all of us want to assure is that every vote counts. In some communities that means different things for different people. How many workers do you have on election day? Pollers?

Mr. CUNNINGHAM. Approximately 600.

Ms. TUBBS-JONES. Approximately 600.

Mr. CUNNINGHAM. Right.

Ms. TUBBS-JONES. How many do you have, Mr. Vu?

Mr. VU. 6,000 plus.

Ms. TUBBS-JONES. 6,000. It is a lot easier to manage 600 than 6,000.

Mr. CUNNINGHAM. I have a staff of five and he has a staff of 70 or 80.

Ms. TUBBS-JONES. Regardless of that, sir, but it is a lot easier to manage 600 people than it is 6,000.

Mr. CUNNINGHAM. I would say it is all relative, ma'am.

Ms. TUBBS-JONES. Okay. Well, I see I am not going to get an answer out of you on that one, Mr. Cunningham. Let me go forward to something else and say to you one of the things that is important and we are looking at, all of us recognize that poll workers often will say, and I heard Mr. Vu say this, that, "I've been working at a polling place for 20 years." "I've been working here 15 years." "I've been doing this all my life and no matter what the mandate says, I am going to do it like this anyway."

Not just elections but anywhere. Pretty fair statement. Conceptually it is almost like being in management. People say management is like oil and water. The directors are the oil floating on top of the water and the people are at the bottom. The oil doesn't stay at the bottom of the glass. The directors stay on top. You are familiar with what I am talking about as a manager.

What I am trying to get to is that conceptually all of us could have done all the things we need to do on election day to assure a perfect election but a poll worker could have said, "The hell with them. I am not going to do it like that. I've been doing this all my life and I am going to keep doing it."

Which meant that they control how many machines were put up, how fast the people made it through the process, whether or not they were given a provisional ballot, all of those other things. This is not degradation to poll workers because I love poll workers. I am an elected official and I love poll workers.

Without them we wouldn't have a process. Conceptually those are the kind of things that you can't control as a manager or on election day. I will go on to my next question even though that might have been a statement which is what we do in Congress occasionally.

How much money, Mr. Cunningham, did you receive for voter education in Allen County?

Mr. CUNNINGHAM. None.

Ms. TUBBS-JONES. How much money did you get, Mr. Sciortino, for voter education in your county?

Mr. SCIORTINO. I didn't get any.

Ms. TUBBS-JONES. Mr. Vu, how much money did you get for voter education in your county?

Mr. VU. None.

Ms. TUBBS-JONES. Mr. Franklin—Mr. Franklin, I am sorry. Mr. Anthony, how much money did you get in your county for voter education?

Mr. ANTHONY. We got zero from the state but we have 200,000 from our own internal funds.

Ms. TUBBS-JONES. You got none from the Secretary of State or any state organization?

Mr. ANTHONY. That is correct.

Ms. TUBBS-JONES. And you are all aware that the Secretary of State received money from voter education from HAVA. Are you not, Mr. Cunningham?

Mr. CUNNINGHAM. Yes.

Ms. TUBBS-JONES. Wouldn't it have helped you in this process had you received any money for voter education?

Mr. CUNNINGHAM. Obviously, yes, ma'am.

Ms. TUBBS-JONES. And it might have cured some of the issues that were floating around throughout this election had you received any of that money. Correct? Another interesting thing for me is HAVA requires the Secretary of State to come up with a plan to meet the HAVA requirements. Are you aware of that? Are all of you aware of that? Have any of you been brought into a meeting by the Secretary of State to help put together a plan for Ohio?

Mr. CUNNINGHAM. No.

Ms. TUBBS-JONES. Have you been asked?

Mr. CUNNINGHAM. No.

Ms. TUBBS-JONES. Have you been asked?

Mr. SCIORTINO. No.

Mr. VU. No.

Ms. TUBBS-JONES. Have you been asked?

Mr. ANTHONY. No, ma'am.

Ms. TUBBS-JONES. And you are the people where the rubber meets the road. Is that correct, sir? Gentlemen?

Mr. CUNNINGHAM. Yes.

Ms. TUBBS-JONES. It would have made sense for you to have been brought to the table for party create in Ohio. Don't you think so, sir?

Mr. SCIORTINO. Yes.

Mr. VU. Yes.

Mr. ANTHONY. Yes, ma'am.

Ms. TUBBS-JONES. Mr. Chairman, I know my time is up. Gentlemen, I thank you for the opportunity to speak with you this afternoon. I look forward to future opportunities. Please let me hear from Cuyahoga County. I take an oath to represent all the people. I welcome your comments about elections and I look forward to helping you in the future. Thank you very much.

The CHAIRMAN. To the panel, just real quick, a question to Mr. Cunningham. You talked about a requirement that groups submit all registrations they gather, not just for the candidate they favor. Did you hear of groups starting registrations?

Mr. CUNNINGHAM. I don't have any empirical data that would stand up in a court of law or anything like that but it has been pretty well rumored and talked about that it did take place.

The CHAIRMAN. But you don't have any data on it?

Mr. CUNNINGHAM. No, but I think we certainly have people that claim they filled out voter registrations. The problem is we don't know who circulated those registrations so we have no way to go back.

The CHAIRMAN. Mr. Vu, you mentioned one who dumped 16,000 registrations on you in August and they were dated March and February?

Mr. VU. Some of them, yes.

The CHAIRMAN. Was it a certain group or across different groups?

Mr. VU. There was one specific group. That group was Project Vote.

The CHAIRMAN. Project Vote. Has anybody told you why they did that?

Mr. VU. No. There was no explanation. From my understanding it was to start the process to reach a certain number from my understanding but no one directly came in and told me why they were submitting the registration cards like they did.

The CHAIRMAN. Thank you. How about the implementation of the ID requirement, briefly. How did that go? We haven't touched on that. I am just curious because there isn't an ID requirement in HAVA.

Mr. CUNNINGHAM. It was confusing. We did manage to work it out. Probably the biggest problem——

The CHAIRMAN. When we created HAVA we provided a lot of latitude. You may not have a driver's license, so we gave out bank card stickers. We gave a lot of latitude, I know we put that into the bill, which probably should have caused——

Mr. CUNNINGHAM. It caused the poll workers more problems than it caused us personally in the office. The other issue was it took us—when that provision was ordered to take place when we begin to start tracking who registered by mail, our software didn't have a field in it for that so we had to do it by hand until we could quickly get the software to do it. We are through it, though. It will be okay.

The CHAIRMAN. So you feel more comfortable?

Mr. CUNNINGHAM. It will be better next time, sir.

The CHAIRMAN. Also, were there any bad reactions from voters?

Mr. CUNNINGHAM. There was mixed reaction. In our county some voters it is like when you ask them for ID at the bank. Some people appreciate it and some people get offended by it. I would say it was pretty mixed all in all.

Mr. SCIORTINO. I would agree.

The CHAIRMAN. I will clarify for you. I am sorry. First-time voters.

Mr. SCIORTINO. First-time voters, correct. I agree with Keith. I don't want to expound anything more. I was allowing individuals who didn't have that on their registration card to—I was providing notice of that before the election—to get that in as quickly as possible because if we can solve a problem before election day, if I can target who is going to be a provisional voter and try and get them on the roll before election day, that solves a problem. It is going to allow that voter to go through the process. On election day let us flag that voter registration book and that voter and ask them that question and get that ID. Some didn't like it, like Keith said, but I think we have a better handle on it now.

The CHAIRMAN. Mr. Vu.

Mr. VU. I would say the exact same sentiments as the two gentlemen to my right. The only other item that I would add to that also is that when we start implementing issues like ID requirements and trying to train poll workers as to a first time by mail registered voter per HAVA we start being very concise and specific. Again, this becomes a poll worker training issue which we need to get better at and in due time it will mature.

One of the things that we learned out of this is that poll workers were, again, similar to like the primary elections were asking individuals that were supposed to provide identification so there was some miscommunication on that end as to what the poll workers were doing.

Ms. MILLENDER-MCDONALD. Mr. Chairman—oh, you want him to answer this question.

The CHAIRMAN. Mr. Anthony.

Mr. ANTHONY. I have the same answer. It generally worked very well for us and it was a poll worker training issue. The report that we submitted to you we are talking about trying to be a little—trying to do more poll worker training partnering with our high school and university level groups to try to help us.

The CHAIRMAN. Gentlelady.

Ms. TUBBS-JONES. I think the gentlewoman needs to raise one more question if she is permitted to do that.

Ms. MILLENDER-MCDONALD. Mr. Chairman, thank you very much. Mr. Vu, just one more question, or quick series of questions. In fact, the Cuyahoga County Board of Elections made the decision to not follow a directive of the Secretary of State with regard to the provisional ballot. Is that correct, sir?

Mr. VU. I apologize that I need to elaborate on this. We had a forum, a road map to the 2004 election forum where we stated that there was a directive and that we were going to err on the side of the voter that if the voter, similar to what Chairman Ney was say-

ing, is that if the voter insisted that they were in that precinct, that we would give them that provisional ballot.

Of course, this was contrary to a directive that we had received because we had specifically stated and asked for clarification on this directive as to whether or not we could issue a provisional ballot. It was the issuing portion of it.

Ms. MILLENDER-MCDONALD. Right.

Mr. VU. Whether we could issue a provisional ballot to the voter and the answer to that was no. Of course, that went to litigation and the appeals court, 6th District Appeals Court, said it was parallel to what the Board of Elections in Cuyahoga County thought.

Ms. MILLENDER-MCDONALD. In fact, the Secretary of State said to you if you don't follow his directive, he threatened every member of that Board of Elections for choosing to make that claim. Did he not?

Mr. VU. That is correct. We received a letter from the Secretary of State's office that if we did not follow the directive that the director and its board may be dismissed.

Ms. MILLENDER-MCDONALD. Thank you. I better follow up on that. Was this the only county where that threat was made by the Secretary of State or was it all of you?

Mr. CUNNINGHAM. I wasn't threatened.

Mr. ANTHONY. It was implied.

Ms. MILLENDER-MCDONALD. I am sorry?

Mr. ANTHONY. It was an implied threat.

Ms. MILLENDER-MCDONALD. Sir, threats are not implied. They are directed.

Mr. ANTHONY. Yes, ma'am.

Ms. MILLENDER-MCDONALD. They are direct threats. Threats are not implied.

Mr. ANTHONY. We didn't receive communication.

Ms. MILLENDER-MCDONALD. Why is it that your county was the only one where you were threatened or the members of your board?

Mr. VU. I believe it was out of the forum. There was an article that was written as a result but there was no communication on our end from the Secretary of State's office asking for clarification of what was said in the forum. It was an article that was written as to what our position was relative to the provisional voting that prompted the letter to be directed to the Cuyahoga County Board of Elections.

The CHAIRMAN. Did you deem it to be a threat or the Secretary of State's perception of following current law?

Mr. VU. It was the Secretary of State. According to the letter it was the Secretary of State and the Board of Elections following the law.

Ms. MILLENDER-MCDONALD. If you did not then?

Mr. VU. That any and all including dismissal of the Board and its director would be——

Ms. MILLENDER-MCDONALD. And that is in your law?

Mr. VU. It is the prerogative of the Secretary of State and the authority of the Secretary of State.

Ms. MILLENDER-MCDONALD. No, it is not in the law.

The CHAIRMAN. It is actually in the law.

Mr. CUNNINGHAM. We are appointed by the Secretary of State and he has the authority to remove us from office if he thinks we are not doing our job.

The CHAIRMAN. Whether we like it or not it is in the law.

Mr. CUNNINGHAM. Yes. He is the boss.

The CHAIRMAN. Whether we agree or not he carries out the law.

Ms. MILLENDER-MCDONALD. Therefore, it is not bipartisan by any means.

Mr. CUNNINGHAM. I don't think it is fair to say that because the situation in Ohio is——

Ms. MILLENDER-MCDONALD. Let me just leave this, sir. It is my time to do that, sir. Mr. Chairman, I will do this and be done with it. Volunteers from all over the world took part in the Fair Election International Project spearheaded by global exchange, an international human rights organization.

In December the Organization released a report summarizing the election observations conducted by 15 election experts and democracy advocates from five continents who observed voting activities in Florida, Ohio, and Missouri.

The report concluded that, "Despite reforms undertaken in response to the 2000 election, confidence in and the equity of the United States electoral system continues to be compromised by ambiguities and election standards, partisan oversight, and problematic voting equipment. All of the practices the coalition agreed needlessly undermined voter confidence and the integrity of the United States election system." I thank you.

The CHAIRMAN. Let me just close by thanking my colleagues. This is something that should be aired and it is a good thing that I can do it. We also have a bipartisan group. I am assuming some of you are Democrats.

You have been a wonderful panel. We surely appreciate your time. Also on behalf of all the election people that I know on both sides of the aisle, they do a very, very decent job, and I think all parties are alike in their performance. Thank you very much for your testimony.

We are going to take a five-minute recess.

[Whereupon, at 3:38 p.m. the committee recessed to reconvene at 3:52 p.m.]

STATEMENTS OF KEN BLACKWELL, OHIO SECRETARY OF STATE; DANA WALCH, DIRECTOR OF LEGISLATIVE AFFAIRS, OFFICE OF THE OHIO SECRETARY OF STATE; PAT WOLFE, ELECTION ADMINISTRATOR

The CHAIRMAN. It is a pleasure to have the Secretary of State Ken Blackwell here, and also Dana Walch from the Secretary of State's office. We also have one other person.

Mr. ANTHONY. Pat Wolfe.

The CHAIRMAN. I know who she is. I wanted to read her nice biography. She is from Shacklyn County.

Mr. ANTHONY. Absolutely. Here you go, Mr. Chairman.

The CHAIRMAN. I just want to take a second. Pat Wolfe has been in the election profession for 21 years. She served as both the Director and Deputy Director of Shacklyn County Board of Elections, one of 16 counties I represent. I specifically brought her here today.

Ms. MILLENDER-MCDONALD. It was the Secretary of State who brought her.

The CHAIRMAN. We endorsed it. From 1984 to 1992 she served as Assistant Elections Administrator and Director of Elections and she joined the Secretary of State's office in '92. She is a member of the National Association of Election Directors.

She was only the third State Election Administrator in the nation to receive the certified Elections Registration Administrator Certification in August of '98 from Auburn University. I just wanted to say hello. With that we will begin with Mr. Walch.

STATEMENT OF DANA WALCH

Mr. WALCH. Thank you, Mr. Chairman. Chairman Ney, members of the Committee on House Administration, thank you for providing me the opportunity to testify before you today. My name is Dana Walch and I am the Director of Legislative Affairs for Secretary of State Ken Blackwell. For background purposes, I have also served the Secretary of State's office as the Director of Elections and the Director of Election Reform, overseeing our implementation of the Help America Vote Act of 2002 (HAVA).

Today I would like to discuss Ohio's progress in implementing the requirements of HAVA. While we have had bumps along the way, Ohio is well on its way to meeting all of the requirements of HAVA. I will discuss not only the progress we have made with HAVA implementation, but also the difficulties we have faced.

Ohio has been a leader in HAVA implementation. While many jurisdictions have complained that there was not enough time to meet the requirements of HAVA, the State of Ohio has embraced the change and moved forward from the very beginning. We were one of the first states in the nation to release a Request for Proposal (RFP) from voting machine vendors to purchase new voting equipment to meet the voting system standards in HAVA.

We qualified three vendors providing five voting systems to offer to our counties. Through our negotiation process, we secured the best pricing, warranty, and maintenance package in the country. Once we completed our process of selecting vendors, we posted our Vendor Proposal Evaluation Findings Report on our website so that other jurisdictions could use it as a guide if they chose. In short, we believe we had the most comprehensive, transparent voting machine procurement process in the country.

We have also made great strides on the statewide voter registration database. We have built the statewide database and put the infrastructure in place to the 88 county boards of elections. In the 2004 general election, Ohio had 71 of its 88 counties on the statewide system. We currently have 81 of our 88 counties on the system with the remainder to come on board in the coming months. We feel very confident that our statewide voter registration database will be completed well in advance of the January 1, 2006 deadline in HAVA.

We have in place other requirements of HAVA such as the development of an administrative complaint procedure, the posting of voter information at polling locations, and the creation of a toll-free system for voters to verify if their provisional ballot was counted.

We had all of these requirements in place for our March 2004 primary election.

We also met the provisional ballot requirements of HAVA. Ohio has had a system of provisional balloting for over 10 years, but some modification was necessary due to HAVA. The issuance and counting of provisional ballots was an issue that was litigated right up to election day in Ohio. The major issue was the definition of the word jurisdiction.

We feel, and the courts agreed, that HAVA was very clear in stating that the definition of jurisdiction was at the discretion of the states. In our state, jurisdiction is defined as the precinct. This court action forced our office to issue a number of different directives regarding provisional balloting as we approached election day. Now that this issue has been litigated and clarified by the courts, our implementation of HAVA provisional ballots will be much easier in the future.

While we have made great progress in the State of Ohio in meeting the requirements of HAVA, we still have a long way to go. Due to a number of factors, we have been unable to begin purchasing new voting equipment for our counties. The first obstacle was the security concerns raised in 2003 over Direct Recording Electronic (DRE) voting systems. As most of our counties were preparing for a conversion to DRE voting equipment, we felt it necessary to conduct further security testing on this equipment to ensure the public that their votes would be secure.

For that reason, we contracted with the Compuware Corporation and InfoSentry Services to conduct the most thorough security evaluation of voting equipment done to date. These security reviews did uncover some items that the vendors could do to improve the security of the equipment and Secretary of State Blackwell mandated that the vendors make these necessary modifications before we would purchase the equipment. In keeping with our philosophy of public disclosure, we publicly released the findings of the security reviews.

Then in the spring of 2004, our state legislature began discussion on the need for all DRE voting machines to be equipped with a voter verified paper audit trail (VVPAT). In May of 2004, the Ohio General Assembly passed Amended Substitute H.B. 262 that did mandate that all DRE voting machines be equipped with a VVPAT by the first federal election after January 1, 2006. Due to our approved vendors not having voting devices with a VVPAT, this legislation brought our plans to implement new voting machines for the 2004 general election to a halt.

The other item that has caused a slowing of our process was the Ohio General Assembly requiring the Secretary of State to develop standards for the operation of a VVPAT. As I am sure you are aware, there are currently no national standards for the operation of a VVPAT system.

The State of Ohio has done considerable research on this subject and our proposed rule on these standards will be heard this week before the Joint Committee on Agency Rule Review (JCARR). We have had numerous meetings with each of our vendors and interested parties to develop these standards. Once these standards are

official, the vendors can modify their equipment to include this new requirement.

Because of the cost associated with the addition of a VVPAT, and that no voting system with a VVPAT has been certified for sale in the State of Ohio, we have made the decision to implement Precinct Count Optical Scan systems to meet the voting system requirements of HAVA. As you are aware, Ohio experienced a 12 percent increase in voter registration in 2004.

There is simply not enough money available to purchase DRE voting equipment for our entire state while accounting for the additional cost of VVPAT, the increase in voter registration, and to provide enough voting devices with a VVPAT to keep lines at the polling places to a minimum. We will provide for one DRE voting device at each polling location to meet the disability voting requirements of HAVA once systems are certified.

As it relates to HAVA, I would respectfully offer the following suggestions:

(1) That the United States Congress completes the funding of HAVA. Congress has done an excellent job of funding HAVA, but there is still approximately $900 million that was authorized in HAVA that has yet to be appropriated. While I am aware that Congress is concerned with appropriating more money when not all of the states have drawn down their appropriated funds, states like Ohio that have been moving forward to meet the requirements could use the remaining funds to complete our job. We are not asking for additional funds, we are just asking that you finish funding what was authorized in HAVA.

(2) That Congress asks the National Institute of Standards and Technology (NIST) to develop and for the Election Assistance Commission to implement standards for DREs with a VVPAT. These standards should be developed quickly so they are available to states that may implement VVPAT as a requirement. This would keep states from having to go through what Ohio has had to do in developing VVPAT standards on their own.

(3) That Congress let states implement necessary changes to meet the requirements of HAVA before passing additional legislation. Many states are having difficulty meeting the time lines in HAVA, and additional changes now could put states even further behind in their implementation efforts.

In conclusion, I would like to make a couple of comments relating to the 2004 presidential election. In 2004, election officials in Ohio and throughout the country were put under tremendous pressure and our election system faced its highest level of public scrutiny ever. We were faced with constant litigation over a variety of issues, an unprecedented increase in voter registration, and the largest voter turnout in our state's history.

The communication between the Ohio Secretary of State's office and the 88 county boards of elections was the best it has ever been. We instituted a daily conference call with the 88 county boards of elections to communicate up-to-the-minute information. While our election in Ohio was not perfect, as no election ever will be, I am proud of the work that our office and the bipartisan boards of elections did to ensure that every voter had the ability to cast a ballot and have that ballot counted accurately.

I am greatly disturbed that some have decided to rely upon the misinformation spread by internet bloggers and those with partisan agendas instead of relying on the word and experience of the honest, hard working men and women charged with administering our elections. While there has been much written by the many conspiracy theorists about the election in Ohio, I would like to note for the committee that we only had one individual file a complaint through our HAVA mandated administrative complaint procedure. The over 50,000 Ohio election officials and poll workers who worked in the 2004 election should be commended for a job well done.

Chairman Ney, thank you again for providing me the opportunity to testify before you today and I would welcome any questions the Committee may have.

The CHAIRMAN. Thank you very much.

Secretary of State.

[The statement of Mr. Walch follows:]

Testimony before the Congress of the United States
Committee on House Administration

Dana Walch
Director of Legislative Affairs
Ohio Secretary of State
March 21, 2005

Chairman Ney, members of the Committee on House Administration, thank you for providing me the opportunity to testify before you today. My name is Dana Walch and I am the Director of Legislative Affairs for Ohio Secretary of State Ken Blackwell. For background purposes, I have also served the Secretary of State's office as the Director of Elections and the Director of Election Reform, overseeing our implementation of the Help America Vote Act of 2002 (HAVA).

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We also met the provisional ballot requirements of HAVA. Ohio has had a system of provisional balloting for over 10 years, but some modification was necessary due to

HAVA. The issuance and counting of provisional ballots was an issue that was litigated right up to election day in Ohio. The major issue was the definition of the word jurisdiction. We feel, and the courts agreed, that HAVA was very clear in stating that the definition of jurisdiction was at the discretion of the states. In our state, jurisdiction is defined as the precinct. This court action forced our office to issue a number of different directives regarding provisional balloting as we approached election day. Now that this issue has been litigated and clarified by the courts, our implementation of HAVA provisional ballots will be much easier in the future.

While we have made great progress in the State of Ohio in meeting the requirements of HAVA, we still have a long way to go. Due to a number of factors, we have been unable to begin purchasing new voting equipment for our counties. The first obstacle was the security concerns raised in 2003 over Direct Recording Electronic (DRE) voting systems. As most of our counties were preparing for a conversion to DRE voting equipment, we felt it necessary to conduct further security testing on this equipment to ensure the public that their votes would be secure. For that reason, we contracted with the Compuware Corporation and InfoSentry Services to conduct the most thorough security evaluation of voting equipment done to date. These security reviews did uncover some items that the vendors could do to improve the security of the equipment and Secretary of State Blackwell mandated that the vendors make these necessary modifications before we would purchase the equipment. In keeping with our philosophy of public disclosure, we publicly released the findings of the security reviews.

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the increase in voter registration, and to provide enough voting devices with a VVPAT to keep lines at the polling places to a minimum. We will provide for one DRE voting device at each polling location to meet the disability voting requirements of HAVA once systems are certified.

As it relates to HAVA, I would respectfully offer the following suggestions:

1) That the United States Congress completes the funding of HAVA. Congress has done an excellent job of funding HAVA, but there is still approximately $900 million that was authorized in HAVA that has yet to be appropriated. While I am aware that Congress is concerned with appropriating more money when not all of the states have drawn down their appropriated funds, states like Ohio that have been moving forward to meet the requirements could use the remaining funds to complete our job. We are not asking for additional funds, we are just asking that you finish funding what was authorized in HAVA.
2) That Congress asks the National Institute of Standards and Technology (NIST) to develop and for the Election Assistance Commission to implement standards for DREs with a VVPAT. These standards should be developed quickly so they are available to states that may implement VVPAT as a requirement. This would keep states from having to go through what Ohio has had to do in developing VVPAT standards on their own.
3) That Congress let states implement necessary changes to meet the requirements of HAVA before passing additional legislation. Many states are having difficulty meeting the timelines in HAVA, and additional changes now could put states even further behind in their implementation efforts.

In conclusion, I would like to make a couple of comments relating to the 2004 presidential election. In 2004, election officials in Ohio and throughout the country were put under tremendous pressure and our election system faced its highest level of public scrutiny ever. We were faced with constant litigation over a variety of issues, an unprecedented increase in voter registration, and the largest voter turnout in our state's history. The communication between the Ohio Secretary of State's office and the 88 county boards of elections was the best it has ever been. We instituted a daily conference call with the 88 county boards of elections to communicate up-to-the-minute information. While our election in Ohio was not perfect, as no election ever will be, I am proud of the work that our office and the bipartisan boards of elections did to ensure that every voter had the ability to cast a ballot and have that ballot counted accurately.

I am greatly disturbed that some have decided to rely upon the misinformation spread by internet bloggers and those with partisan agendas instead of relying on the word and experience of the honest, hard working men and women charged with administering our elections. While there has been much written by the many conspiracy theorists about the election in Ohio, I would like to note for the committee that we only had one individual file a complaint through our HAVA mandated administrative complaint procedure. The

over 50,000 Ohio election officials and pollworkers who worked in the 2004 election should be commended for a job well done.

Chairman Ney, thank you again for providing me the opportunity to testify before you today. At this time, I would be happy to answer any questions you may have.

STATEMENT OF SECRETARY KENNETH BLACKWELL

Secretary BLACKWELL. Thank you, Chairman Ney and members of the Committee, for the opportunity to testify today. As Ohio's chief elections officer, I am keenly interested in the Help America Vote Act and proposed changes to the federal law, and, more than that, I am interested in fair, clean, and transparent elections in my state and other jurisdictions.

The state of Ohio received more than its fair share of attention during the long campaign of 2004. With the prospect of a close contest for the state's 20 Electoral College votes, Ohioans experienced an unprecedented media blitz and energetic drives to register voters, which produced nearly 1 million new voters. As Election Day approached, attorneys for both sides, and I underscore from both sides, were in position, combing Ohio's election rules for provisions that would help their candidate or their particular campaign.

In addition, they scrutinized the process for errors that might invalidate the election if that would help their respective candidate. There have been plenty of materials and evidence for the public record to that effect and to that end.

Let me quote one succinct statement about the outcome: "Overall, Ohio has a good system. Like any system, if you scrutinize it enough, you are going to find weaknesses."

This quote is from Don McTigue, a Democratic election lawyer who worked in the secretary of state's office in a previous administration, and who was deeply involved in the election and its aftermath.

I happen to agree with Mr. McTigue. Overall, Ohio has a good system, and it performed well under extraordinary stress. And yes, it has some imperfections, areas where we must work to make our system even better. But I also must speak to, and I do in my full statement that I have submitted for the record, fabrications and exaggerations that some who dislike the fact that their presidential candidate lost Ohio keep repeating.

Unlike Mr. McTigue, they dismiss evidence and simple explanations and the word of fellow Democrats when the intimation of some vast conspiracy to steal the election is so easy to grasp and to promote that some of them found that this was more exhilarating for them.

Sadly, these fabrications come not only from disappointed partisans talking to each other on internet boards, but also from people in responsible positions and people with enough experience in electoral politics to know better.

We had a tremendously complex election day. As has been described to you on many occasions, but most recently during the last panel, we have 50,000 poll workers and election officials. Ohio is made up of 45,000 square miles of geography. We have 88 counties with their own Boards of Elections. We have 176 appointed Democrat members of those boards and 176 appointed Republicans. Our system and its strength is a bipartisan transparent system. Every step of the way, everything is scrutinized by Democrats and Republicans alike.

Let me say that I had the occasion to peruse the media accounts of other meetings where questions were asked about some issues that I think are very, very important. The biggest issue, which was

raised in the question and answer session with the last panel, was around provisional ballots and directives. We will in our question-and-answer period give you a keen sense of the history of those provisional ballots.

I will give you a directive on provisional ballots that was issued in compliance with Ohio's law in 1994 by my most immediate predecessor, the now Governor Bob Taft. I will show that it was in the month of August that we got a rash of inquiries as to whether or not we were going to liberalize the provisional ballot law.

Most people who inquired understood that to change the law would take an action or a decision by the legislature. But they were asking me, as did the Franklin County Board of Elections, for my interpretation. Listening to a host of lawyers who had different legal perspectives we, in fact, in mid-September advanced a directive that had a slight change in it. It actually liberalized our provisional ballot law.

It immediately was pounced on as not being liberal enough or having changed substantially the provisional ballot law in the state of Ohio and gave rise to a series of legal challenges where we had courts directing me to change my directive every other week.

If you really want to understand why there were late directives, there were late directives because, one, there were serious questions that started in August about our interpretation of the Help America Vote Act. In mid-September we provided a directive that would have allowed ballots in split precincts that had been erroneous given to a voter by a poll worker to be counted in this case. That was a change.

Now let me tell you, federal courts threw out that change and basically said I had overstepped my bounds in terms of liberally interpreting that law. They, in fact, directed me to go back to the original interpretation, which was a much more conservative interpretation.

If you really want to know why there were exchanges back in October, it was because the courts kept changing their minds. I think most folks sitting on this panel understand that. I think most folks in Congress understand that. I can tell you that most folks who read the newspapers in Ohio understood and understand that.

The other question is around poll worker training. I just want to get to it right at the top. Poll worker training. What you heard from those individuals was that poll worker training followed the normal course of events this time around. What you didn't hear from that panel was that we had two statewide meetings, plus a primary election in 2004. We had a meeting of all the election officials in January of 2004. We then had a primary and we had a summer meeting of all the election officials.

Those are sessions where clarifications are made, where, in fact, we talk about techniques that are working, and we exchange best practices. Not only did the EAC and the NASS, the National Association of the Secretaries of State, distribute best practices, we, in fact, used those best practices. Because, you know what? Ohio was referenced in those best practices as much, or if not more, than any other state. We actually do know how to handle provisional ballots in this state.

What I have suggested to you is that the courts, the legislature, and I as the Chief Election Officer of this state, what we did was we went with Ohio law and we did it within the context of HAVA. We happen to be privileged to have the Moritz College of Law here in Columbus who did an extensive legislative history on the evolution of HAVA and it was brought to our attention in that legislative history that there was a profound debate within the Congress where in the House there was a belief that jurisdiction would mean any place in the county so it was a broader definition.

Senator Bond, who led the effort in the Senate, wanted the more conservative definition of jurisdiction. In conference committee the Senate won and so HAVA basically says that it is up to the state to determine jurisdiction. The narrow definition did not get approved, nor did the broader definition.

HAVA left that up to the state. I submit to you from the record that legislative history. I would suggest to you that everyone sitting up there understood that legislative history and everyone in Congress who was following the process understood that legislative history and the courts and the Secretary of State's office understood that history.

We had a good election in the state of Ohio. Not a perfect election. Elections are, in fact, human endeavors and as a consequence they are never perfect. But just as Lincoln said about our union, "Elections are perfectible. We can make them better."

I was struck by the fact that there is common ground between myself and members of this Committee. I have advocated since the inception, my first day on the job, my first week on the job. My first legislative idea was to go with no-fault absentee ballots for broader use of absentee ballots, moving away from the 11 or so excuses that are there now that you have to meet in order to get an absentee ballot.

I am a very strong advocate of early voting and have been. I also am respectful of the legislative process and understand that this is a matter where the balance of power works and the legislature has said that we will not have at this point a broader use of absentee ballots, nor will there be early voting.

I can tell you if you want to come and help me campaign with the legislature for their broader definition, you are more than welcomed, but I would suggest to you that just as you like to have your integrity respected, so does the Ohio legislature. They are the elected representatives of the people of Ohio in this legislative process.

I hope that we can find common ground. I can tell you right now I was among the first to challenge the continued use of punch-card ballots. That is why I got this letter. Not just a form letter, but a handwritten note from Congressman Steny Hoyer and the Chairman basically saying that I was in the forefront of moving forward the passage of HAVA and the elimination of punch-card ballots. We, in fact, in the 11th hour, got House Bill 262, which basically changed the rules of the game and said that we needed a voter-verified, paper audit trail.

I don't know where you all net out on that, but I am here to tell you it has been a center piece of the national debate, a center piece. But the EAC has yet to establish standards and the inde-

pendent testing authorities have yet to establish standards. So as a consequence, we are in a situation where Ohio law prevails and I have my marching orders from the legislature and I am going to play out the hand that was dealt me.

You all haven't changed the implementation schedule. They haven't changed the VVPAT requirement. And we haven't gotten any more money. We have $105 million for machines and the only way that we can be in compliance and meet your schedule and deal with the money that has been provided is by going to the precinct-count optical scan, which those machines are HAVA compliant, they are within our budget of the money allotted, and we can, in fact, meet our deadline.

In closing, let me say, because this seems to be another issue of question, the legislature in House Bill 62 allocated the dollars for voter education and they had two strategic objectives. The counties were to receive voter education money at the point that they implemented and deployed new machines. Because the voters would be using new machines, House Bill 262 said that at that point they would get $2.5 million to be allocated on formula. We had OEAO agreement, the Ohio Association of Election Officials. Nobody spoke to the conference committee to the contrary.

Secondly, let me tell you why we spent $2.5 million on a voter education program that is considered to be the template of best practices, because 70 percent of our voters use the punch-card system, a punch-card system that many on the panel found to be discriminatory against low income and minority voters in urban areas.

I was in the forefront of saying that we needed to get rid of that system and I am still in the forefront of saying that we are going to meet your time lines to get rid of that system. I would just suggest to you that we will, in fact, spend the money on the new system on voter education, but we must measure the effectiveness of our education program.

I know the Chairman has had a question. He has had a question about whether or not we have had impact on over or under ballots where, in fact, you can measure folks who over-vote. You can't determine whether folks who under-voted did so initially or if there was some machine malfunction.

As compared to 2000, we had fewer over/under votes percentage wise because we had over a million more voters than we did in 2000. The education program worked. It was cost effective, because we made commercials that could be used across the state because the dominant system in our state was the punch card.

We, in fact, ran an aggressive voter education campaign. By anybody's measure, it worked. If we want to get more money out to counties, then we start with the legislature and we say let us get them more money. But the fact is that we are not to denigrate a statewide system that worked against a statewide problem. Thank you.

The CHAIRMAN. Thank you very much for your testimony.

[The statement of Secretary Blackwell follows:]

Testimony to the
U.S. House of Representatives Committee on House Administration
Help America Vote Field Hearing
Delivered by Ohio Secretary of State J. Kenneth Blackwell
Columbus, Ohio
Monday, March 21, 2005

Thank you, Chairman Ney, for the opportunity to testify today. As Ohio's chief elections officer, I am keenly interested in the Help America Vote Act (HAVA) and proposed changes to the federal law, and – more than that – interested in fair, clean, and transparent elections.

The state of Ohio received more than its fair share of attention during the long campaign leading to the November 2 election. With the prospect of a close contest for the state's 20 Electoral College votes, Ohioans experienced an unprecedented media blitz and energetic drives to register voters, which produced nearly 1 million new voters. As Election Day approached, attorneys for both sides were in position, combing Ohio's election rules for provisions that would help, them and watching the process for errors that might invalidate the election.

Let me quote one succinct statement about the outcome: "Overall, Ohio has a good system. Like any system, if you scrutinize it enough, you're going to find weaknesses." This quote is from Don McTigue, a Democratic election lawyer who worked in the secretary of state's office in a previous administration, and who was deeply involved in the election and its aftermath.

I happen to agree with Mr. McTigue. Overall, Ohio has a good system, and it performed well under extraordinary stress. And yes, it has some weaknesses. I will speak to some problems and our plans to address them.

But first, I am compelled to speak to the fabrications, exaggerations, and innuendos that some who dislike the fact that their presidential candidate lost Ohio keep repeating. Unlike Mr. McTigue, they dismiss evidence and simple explanations – and the word of fellow Democrats – when the intimation of some vast conspiracy to steal the election is so much more exhilarating.

Sadly, these fabrications come not only from disappointed partisans talking to each other on internet boards, but also from people in responsible positions and people with enough experience in electoral politics to know better.

A reported dated January 5, 2005 by the U.S. House Judiciary Committee minority staff made several misleading and intellectually dishonest assertions regarding the 2004 election in Ohio. That report and its false assertions where shamefully used to challenge Ohio's electors at the Joint Meeting of Congress to ratify the Electoral College vote. It was a stunning and disgraceful display demonstrating that there are those in Congress who are very willing to cast aside the Constitution and the lawfully certified vote of the

people to wage a nasty and disingenuous partisan attack. I am certain that history will not look kindly on those who engaged in the shenanigans of January 6, 2005.

While the report's charges were thoroughly examined and debunked by the Ohio media, I would like to address some of the document's more egregious mistakes.

The report stated "the misallocation of voting machines led to unprecedented long lines that disenfranchised scores, if not hundreds of thousands, of predominantly minority and Democratic voters."

To believe this statement, you would have to conclude that somebody decided to distribute voting machines with the idea in mind that mostly Democratic voters, when faced with long lines, would give up and go home.

There are numerous problems with that statement. First, the "misallocation" would have to have been the work of bipartisan election officials. Ohio has a system of decentralized election administration; meaning day-to-day management of election procedures (including the disbursement of voting machines) is handled at the county level.

County boards of elections are bipartisan led by two Republican and two Democrat board members. The board chair and staff director are of opposite political parties. In Franklin County, the epicenter of disenfranchisement charges, the chairman of the board of elections, Mr. William Anthony, is a Democrat, but not just any Democrat. Mr. Anthony is also the chairman of the Franklin County Democratic Party. In addition, the person responsible for voting machine allocation in Franklin County, board deputy director Michael Hackett is also a Democrat. To believe that these two individuals some how conspired with Republicans to disenfranchise voters is silly – even insulting.

It is true that the bipartisan election officials in Franklin County had difficultly in allocating voting machines and as result some voters faced delays in voting. This is a matter that the county board of elections has investigated. My office will conduct its own investigation. What we know is that following a formula based on historic turnout patterns and population shifts in the county (where the suburbs are growing while the city is not), Democrats and Republicans made what they thought were informed choices about the allocation of available machines.

It is, however, absolutely false that "scores, if not hundreds of thousands of, predominantly minority and Democratic voters" where disenfranchised as cited in the report. In fact, nearly a million more Ohio voters participated in the 2004 general election as compared to the 2000 general election. In Franklin County, more than 100,000 more voters cast ballots in the 2004 general election compared to 2000.

We can make up numbers all day about the number of voters who might have cast ballots if the lines were shorter. But what would be the point? We can only count the ballots of the voters who registered their preferences, not the phantom voters of someone's dreams.

We need to keep these same facts in mind – a decentralized and bipartisan election administration coupled with surprising turnout – in considering the other famous case of long lines in Knox County. There, the bipartisan election officials calculated that the usual two machines that served Gambier, home of Kenyon College, would suffice. It always had, since typically year-round residents voted there, while students voted absentee or not at all.

A late registration effort that encouraged students to vote in Ohio caused a dramatic spike in turnout. No nefarious conspiracy – just miscalculations on the part of election officials and student activists. However, to the credit of Ohio election law and dedicated Ohio poll workers, all those who were in line by the 7:30 p.m. poll closing time were permitted to stay and cast their ballot.

Regarding provisional ballots the report stated, "Mr. Blackwell's decision to restrict provisional ballots resulted in the disenfranchisement of tens, if not hundreds, of thousands of voters, again predominantly minority and Democratic voters. Mr. Blackwell's decision departed from past Ohio law on provisional ballots."

In the 2004 general election, Ohio ranked fourth (78 percent), tied with Nebraska, in the percentage of provisional ballots counted according to the recently published non-partisan Electionline.org *March 2005 Briefing*, which I submit for the Congressional Record. Only Alaska (97 percent), Oregon (85 percent), and Washington State (80 percent) counted a higher percentage of provisional ballots. However, the overwhelming majority of voters in Alaska and Washington vote by mail or absentee ballot. And all voters in Oregon, with the exception of Election Day walk-in voters, vote by mail. These non-precinct based systems may naturally produce higher validation rates because voters typically know that a problem occurred when their ballot does not arrive in the mail, allowing time to inquire with local officials.

Nonetheless, Ohio counted a higher percentage of provisional ballots than most states with less so-called restrictive provisional ballots laws. We tied with Nebraska among states with similar laws. And we were first among states of equal or greater population, regardless of counting standards and laws. In Pennsylvania, for example, which allows voters to cast provisional ballots outside their home precincts, only 48 percent of the provisional ballots were either fully or partially counted. And in California, which also allows voters to cast provisional ballots outside their home precincts, 74 percent were counted. Not bad, but not as good as Ohio.

I would like to be very clear to the committee on this particular point: Ohio did well with provisional ballots because we have operated under the same provisional ballot review and qualification standards since the passage of Am. Sub. S.B. 30, effective January 1, 1995. I would like to submit, for the Congressional record, a directive establishing Ohio's provisional ballot standards issued on December 9, 1994 by my predecessor, Ohio's current Gov. Bob Taft.

The long-standing Ohio law referenced in the 1994 directive clearly requires a voter to cast his or her ballot in their home precinct in order to have that ballot counted. The provisional ballot directive I issued on Sept. 16, 2004 simply restated Ohio's rules regarding provisional ballots – rules shared by 27 other states and the District of Columbia. Those rules where upheld as Constitutional and compliant with HAVA by the United States Court of Appeals for the Sixth Circuit. In addition, I would also like to submit for the Congressional record a legislative history of provisional ballots written by Professor Ned Foley of the Ohio State University Moritz College of Law.

Regarding voter registrations the report stated: "Mr. Blackwell's widely reviled decision to reject voter registration applications based on paper weight may have resulted in thousands of new voters not being registered in time for the 2004 election." This assertion falls when considering that during the 2004 election, more than 800 thousand Ohioans were added to our voter rolls and that relatively few provisional ballots where not counted.

Ohio's paperweight requirement for voter registration forms was in place for many years. Its goal was to protect the forms from damage by postal equipment and was based on US Post Office requirements for self-mailers.

In the past elections, most voter registration forms where filled out by individual voters and mailed to the appropriate board of elections, the requirement served an important purpose. It insured that forms arrived to their destination in one piece and the voter registration was processed. However, in the 2004 election we saw a change in the voter registration process in Ohio and across the nation. In addition to individual voters submitting registrations, third party groups registered voters and then delivered registration forms directly to county board of elections. While my office printed and distributed four million voter registration forms during the 2004 election, some groups in well-intentioned efforts reproduced forms that did not meet Ohio standards. The paperweight requirement that previously served voters well now seemed archaic. I removed the requirement and a record number of Ohio voter registration forms were accepted and processed.

The report stated, "there were 93,000 spoiled ballots where no vote was cast for president, the vast majority of which have yet to be inspected." Actually, the over and under vote in Ohio was 94,488 or about 1.65 percent. While roughly the national average for punch card ballots, it is an improvement for Ohio compared to the 2000 general election when the state had 1.9 percent over and under votes.

But these figures should not be new for the committee (considering the enormous time and effort its members spent crafting HAVA – specifically to do away with punch cards). In fact, over and under votes should not be new to members Congress, who are election system experts in their own right. The shame, however, is in the report's implication that those ballots were not inspected and arbitrarily disregarded. Bipartisan teams at county boards of elections inspected every over and under voted ballot. If a ballot was torn or inserted into the voting device backwards, it was remade. If a punch

card chad was hanging by one or two corners, the chad was removed and the ballot was counted. I challenge the authors of the report to identify a more comprehensive ballot review system. I doubt that they will even attempt to search. Because, sadly, those individuals are not interested in truth or fair elections, they are interested in bluster and deceptive partisan rhetoric. This committee has an obligation to the people of the great state of Ohio to set the record straight and atone for the mischaracterizations by those that challenged Ohio's electors.

And one last point about Ohio's bipartisan system. There have been some who have noted as if it were some deep, dark, meaningful secret that I was a co-chair of the President's campaign in Ohio. I confess: I'm a Republican. And with every other Republican elected to statewide office, I was an honorary co-chair of President Bush's Ohio campaign. It was an honor – one shared by previous Ohio secretaries of state of both parties, in presidential elections – but it was one that carried no responsibilities.

Moreover, the176 Democrats and 176 Republicans who lead Ohio's county boards of elections are political appointees who have, in addition to their official roles, political responsibilities. Their partisan affiliations make them extra vigilant.

American University Professor Emeritus and Election Administration Reports Editor Richard G. Smolka recently lauded Ohio's bipartisan election system in an analysis of the 2004 election published in *Elections Today*, which I also submit for the Congressional record. Professor Smolka wrote:

> "The value of this type of system was highlighted when it became clear that the outcome of the presidential election depended on this state. Each four member county board of elections in Ohio has a chair from one party and a vice chair from the other. Each county also has a full-time director of elections, who is a member of the opposite party than that of the chair, and a deputy director of the party opposite that of the vice chair. Both major political parties are aware of every administrative decision and share in every decision.
>
> "Thus, when Democratic presidential candidate John Kerry sought information on Election Day about Ohio's election procedures, anomalies and results, he had access to Democratic officials in each county who were themselves, in part, responsible for election procedures and the vote count. Kerry conceded the election with confidence that the information he obtained was complete, accurate and would not change the results.
>
> "Although nonpartisan election administration finds excellent models in nations such as Canada and Australia (and most U.S. election administrators attempt to conduct themselves in a nonpartisan manner), Ohio's bipartisan model served the nation well in 2004."
>
> Professor Richard G. Smolka
> American University Professor Emeritus and
> Election Administration Reports Editor
> *Elections Today*, Vol. 12, No. 4 - 2005

And while our transparent bipartisan system did indeed serve Ohioans and the nation well, the professionalism exhibited by Ohio election officials served us equally well.

They and I had and have an obligation to the law and citizens of Ohio that is greater than the one to our political parties. I would like to submit for the Congressional record a detailed conference call question and answer document, which was available to all Ohio election officials to assist with pre and post election issues.

While Ohio's county election officials and I had differences of opinion on a variety issues, we have worked through those differences in a manner that has maintained the integrity of our elections system. Some of my decisions, such as requiring that boards of elections follow Ohio's provisional ballot laws, made Democrats unhappy. Some, such as removing Ralph Nader from the Ohio ballot, made Republicans unhappy. That is because my primary responsibility is to follow Ohio and federal law.

I will continue to work to make Ohio's elections fair and fraud free. It is my official responsibility and it is what the citizens of Ohio deserve. I will work to fix the real problems in Ohio's election system. I only wish those who intimate some dreadful conspiracy governs Ohio's elections would follow the facts and do the same.

Thank you.

###

ELECTION ANALYSIS

UNDER ADVERSE CONDITIONS IN 2004

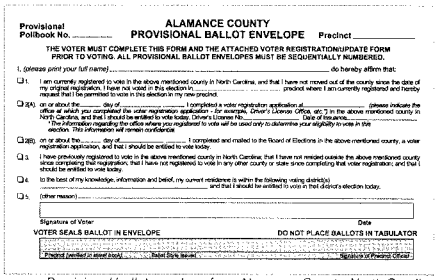
ELECTION OFFICIALS PERFORM WELL

by Richard G. Smolka

The U.S. presidential election of 2004 was the most scrutinized in the nation's history. Political parties deployed thousands of attorneys, nonpartisan groups sent a multitude of poll watchers and the media assigned large numbers of reporters to focus on election procedures. The resulting reports, lawsuits and inquiries identified numerous administrative errors, suggesting to some that election officials in the United States are incompetent. Despite this, a strong case can be made that the election was, in fact, administered fairly, legally and efficiently and that election officials, for the most part, did an excellent job given the difficult circumstances they faced.

With more than 120 million voters casting ballots marked with substantially more than one *billion* individual votes for candidates and issues, the 2004 elections were extremely complicated. The introduction of new electoral requirements generated by the federal Help America Vote Act (HAVA) of 2002 made officials' work even more daunting. Voters simultaneously elected a president, a vice president, 34 Senators, 435 members of the House of Representatives and thousands of state and local officials. They also decided thousands of bond issues and other questions on state and local ballots. Moreover, this election saw the introduction of new federal and state election laws, new procedures, new technology and new voting machines in many jurisdictions. Even with this complex situation, only a few election outcomes remained unresolved a day or two following November 2, a significant accomplishment on the part of election officials.

Much went right in 2004 for two good reasons. First, HAVA authorized funds for state and local governments to improve electoral procedures, a first in U.S. history. Among other things, these funds helped vastly improve poll worker training. HAVA money also contributed to the purchase of voting machines that people with visual limitations could use to vote without assistance, and helped make polling places accessible to people with disabilities. In addition, HAVA mandated that states establish a complaint procedure to adjudicate problems.



Provisional Pollbook No. ..... **ALAMANCE COUNTY PROVISIONAL BALLOT ENVELOPE** Precinct _____

THE VOTER MUST COMPLETE THIS FORM AND THE ATTACHED VOTER REGISTRATION/UPDATE FORM PRIOR TO VOTING. ALL PROVISIONAL BALLOT ENVELOPES MUST BE SEQUENTIALLY NUMBERED.

I, *(please print your full name)* ..... do hereby affirm that:

☐ 1. I am currently registered to vote in the above mentioned county in North Carolina, and that I have not moved out of the county since the date of my original registration. I have not voted in this election in ..... precinct where I am currently registered and hereby request that I be permitted to vote in this election in my new precinct.

☐ 2(A) on or about the ..... day of ..... I completed a voter registration application at ..... *(please indicate the office at which you completed the voter registration application - for example, Driver's License Office, etc.)* in the above mentioned county in North Carolina, and that I should be entitled to vote today. Driver's License No. ..... Date of Issuance ..... ** The information regarding the office where you registered to vote will be used only to determine your eligibility to vote in this election. This information will remain confidential.*

☐ 2(B) on or about the ..... day of ..... I completed and mailed to the Board of Elections in the above mentioned county, a voter registration application, and that I should be entitled to vote today.

☐ 3. I have previously registered to vote in the above mentioned county in North Carolina; that I have not resided outside the above mentioned county since completing that registration; that I have not registered to vote in any other county or state since completing that voter registration; and that I should be entitled to vote today.

☐ 4. to the best of my knowledge, information and belief, my current residence is within the following voting district(s) ..... and that I should be entitled to vote in that district's election today.

☐ 5. (other reason) .....

Signature of Voter Date

VOTER SEALS BALLOT IN ENVELOPE DO NOT PLACE BALLOTS IN TABULATOR

Precinct (verified in voter book) Ballot Style Issued Signature of Precinct Official

Provisional ballot envelope from Alamance County, North Carolina

The second reason for the success of the recent elections was the important contribution by the bipartisan election boards in Ohio. The value of this type of system was highlighted when it became clear that the outcome of the presidential election depended on this state. Each four-member county board of elections in Ohio has a chair from one party and a vice chair from the other. Each county also has a full-time director of elections, who is a member of the opposite party than that of the chair, and a deputy director of the party opposite that of the vice chair. Both major political parties are aware of every administrative decision and share in every decision.

Thus, when Democratic presidential candidate John Kerry sought information on Election Day about Ohio's election procedures, anomalies and results, he had access to Democratic officials in each county who were themselves, in part, responsible for election procedures and the vote count. Kerry conceded the election with confidence that the information he obtained was complete, accurate and would not change the results. Although nonpartisan election administration finds excellent models in nations such as Canada and Australia (and most U.S. election administrators attempt to conduct themselves in a nonpartisan manner), Ohio's bipartisan model served the nation well in 2004.

Though much went right in 2004, there were also problems. Excluding those related to voting equipment, major administrative problems fell into three categories: (1) inconsistent solicitation and processing of voter registration forms; (2) confusion about provisional ballots; and (3) the effects of a lengthened election calendar.

Although election reformers often focus on the maintenance of a statewide voter registration list, the problems with voter registration are more basic. Local voter registrars have no control over people who solicit or distribute voter registration applications, whether they are government employees in motor vehicle agencies, political parties, interest groups or individual volunteers.

Secondly, the registrar (who is responsible for determining voter eligibility and the proper precinct for a given voter) is unaware a registration form is coming until it arrives in the election office. Often submitted in bulk, registration forms are unloaded on the registrars at deadline, and they must then attempt to process appropriately those that are not completed properly (perhaps due to poor instructions, negligence or even fraud). In some cases, problems arose because forms never arrived; some volunteers solicited registration applications and then failed to deliver them, disenfranchising potential voters who believed they were registered. In other cases, political organizations paid workers by the number of registrations they obtained, and workers simply filled in names and addresses from telephone books or used celebrity names with fictitious addresses. As a result of incidents like these, many registrars were unable to compile complete and accurate registration lists by Election Day. Congress sought to improve this situation, and protect voters' rights, by mandating provisional voting.

No election law was more confusing to the public or to state, local and precinct officials (or was the basis of more lawsuits) than the law concerning provisional voting. Voters who believed they had registered were permitted to cast provisional ballots that could be counted if the voters' registrations were confirmed. Many voters were only able to vote because of provisional voting. However, HAVA left it to the states to determine when provisional votes are counted. As a result, the application of provisional voting procedures varied among and within states. The U.S. Election Assistance Commission is currently gathering information on provisional voting and will offer guidance on this topic later in the year. As HAVA is currently written, uniform application of provisional voting among the states is not required. Uniform application within each state, however, is necessary.

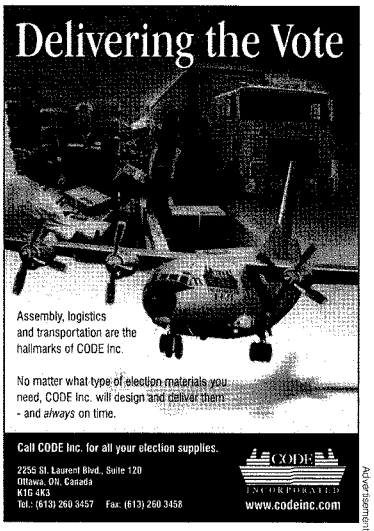
State laws attempting to make voting more convenient by extending the registration and/or voting period also contributed to election problems. In the late twentieth century, there was a long-term trend towards allowing voters to register closer in time to Election Day. Currently, 30 days is the longest period any state requires, and six states allow Election-Day registration, the shortest period. In 2004, voting began on September 13, when North Carolina began mailing absentee ballots. Many states began the same process five days later. Each year more states permit early voting in person at designated locations in the county up to three weeks prior to the election. Counting both early voting and absentee ballots, as many as 20 percent of all votes are cast before Election Day. In many counties, this percentage is well over 50 percent, and in Oregon, which conducts an all-mail election, it is 100 percent.

However, during this lengthy period of voting (50 days in 2004), ballots and election rules are subject to change. For example, courts ruled that presidential candidate Ralph Nader be put on the ballot in some states and taken off in others after absentee ballots were mailed. Some state and local candidates were similarly affected. Late lawsuits also challenged election procedures, ranging from the interpretation of federal law to relatively trivial administrative regulations. The combined effect of these two trends is that voting may begin before the names of all candidates on the ballot are decided and before the complete list of eligible voters is compiled and election procedures are finalized.

Each late decision ordering a change had major negative administrative consequences and often imposed costly solutions on local jurisdictions. Whenever changes are made after voting has begun, whether these changes are by judicial fiat or by administrative response to a situation, ballots cast under one set of circumstances must be segregated from those cast under other circumstances, and the differences must somehow be accommodated.

The number of administrative problems with elections would be drastically reduced with a clearly defined provisional ballot law and procedure in each state, with individuals who solicit voter registration applications held accountable for their actions, and with judicial and legislative acceptance of the idea that ballots and election procedures should not be subject to change after voting has begun. These steps would go a long way towards making U.S. elections the most effective they can be.

Richard G. Smolka is Professor Emeritus at American University and the Editor of Election Administration Reports.



Advertisement

BOB TAFT
Secretary of State
State of Ohio

DIRECTIVE 94-35
DECEMBER 9, 1994

ALL COUNTY BOARDS OF ELECTIONS

TO: Members, Directors and Deputy Directors

VOTING PROCEDURES UNDER AM. SUB. S.B. 300 FOR REGISTERED VOTERS WHO MOVE OR CHANGE NAMES AND FAIL TO UPDATE THEIR CURRENT REGISTRATION - "WALK-IN VOTERS"

Am. Sub. S.B. 300, effective January 1, 1995, provides new procedures for "walk-in" voting in divisions B,C and D of R.C. 3503.16. Current "walk-in" voting procedures, commonly referred to as H.B. 237 voting procedures and contained in R.C. 3503.11(E) have been repealed.

Under the new provisions of the Am. Sub. S.B. 300, a currently registered voter who has moved within a county or to another county or changed his or her name **on or prior to election day** and has failed to file the change with the board of elections qualifies to vote an absentee ballot as a "walk-in" voter.

NAME CHANGE OR MOVE WITHIN A COUNTY

Under the new provisions of R.C. 3503.16(B), a "walk-in" voter who has moved **within** the county or changed his or her name may vote during the time periods and at specified locations as follows:

1. <u>During the absentee voting period</u>: At the board of elections or site designated by the board

2. <u>On the day before the election</u>: At the board of elections or site designated by the board

3. <u>On election day</u>: At the voter's **new** polling place, the board of elections or site designated by the board.

30 East Broad Street, 14th Floor • Columbus, Ohio 43266-0418 • 614-466-4980

Boards must give instructions to pollworkers on voting a "walk-in" voter who presents himself or herself at their precinct on election day. The presiding judge must be provided with specific instructions on how to assist a voter if the voter is not in his or her correct precinct.

MOVE TO ANOTHER COUNTY

A walk-in voter who has moved **from one county to another** in the state in accordance with of R.C. 3503.16(C), may vote in the county of his or her new residence during the absentee voting period, the day before the election or on election day, but only at the board of elections or site designated by the board.

VOTER STATEMENT

The voter must complete a notice of change of address or name and a statement signed under penalty of election falsification, which states the voter moved or changed his or her name on or prior to election day, the voting location and a statement that the voter will not vote or attempt to vote at any other location for this election.

To lessen the number of statement forms required under R.C. 3503.16(B), an identification envelope, which includes on the front of the envelope the notice of change of address or name and the required statement which is signed under penalty of election falsification, has been newly prescribed. A copy of the prescribed information which must be printed on the identification envelope is enclosed. The envelope must be specially marked so that it may be easily separated from other voted ballots. This may be done by marker, sticker or use of a colored envelope.

If the voter has moved **from one county to another** within the state, the voter must complete a **new registration form** in addition to the identification envelope.

In addition, the identification envelope for absentee voters, Form 12-A, has been simplified. A copy of the prescribed information which must be printed on the envelope is enclosed.

VOTING AND HANDLING OF BALLOT

After the voter has completed and signed the identification envelope, the voter will be provided with the correct ballots for the **new** precinct, vote the ballot and return the ballot in the sealed identification envelope to election officials.

"Walk-in" voter ballots shall be separated from ballots to be counted on election day and set aside in the identification envelope and counted **only** during the official canvass.

Between election day and the day of the official canvass, the board must verify that the voter did not vote at any other location and voted the correct ballots for his or her new precinct.

If the voter moved **from one county to another**, the board must also verify that the voter is currently registered in the prior county of residence before the ballot may be counted. The board should verify by phone the voter's previous voter registration and request a copy of the card by fax or mail. Once the board has verified the voter's registration, a copy of the identification envelope should be sent to the previous county board of elections for cancellation of the voter's registration in that county.

Once the board has determined the voter is qualified, voted at the correct polling location and on the correct ballot for his or her new precinct, the ballot shall be counted.

If you have any questions, please contact my Elections Staff at (614) 466-2585.

Sincerely,

Bob Taft

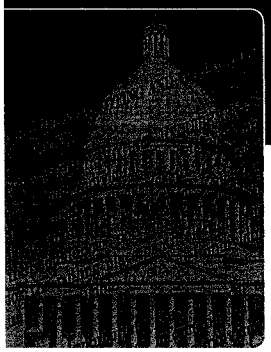
Bob Taft
Secretary of State

BT/pw
nvra

MARCH 2005

electionline.org

Briefing



Solution or Problem? Provisional Ballots in 2004

They weren't quite the "hanging chad" of 2004, nor quite the safeguard envisioned by voting rights advocates. But regardless of how they were perceived, provisional voting was one of the most controversial aspects of post-Florida election reform around the country.

The federally-mandated system of provisional voting, included as part of the Help America Vote Act (HAVA), provides for voters who believe they are registered but whose names do not appear on polling place rosters. November marked the first time provisional ballots were required nationwide in a general election, with results that could generously be rated as mixed.

The election revealed quite dramatically that when it comes to provisional ballots, a national standard hardly means national uniformity – a reality that resonates across the entire issue of election reform and HAVA implementation.

This lack of uniformity in implementation of a uniform standard was especially stark with provisional ballots, where voters received such ballots under different circumstances and for different reasons. In Georgia, those not on registration rolls could have their provisional ballots counted if they were cast in the correct jurisdiction. Across the border in Florida, a voter found to be otherwise qualified would have his vote rejected if he cast it in a precinct other than his own.

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Correction: double-click here

Additional differences complicated the process as well. In Connecticut, voters were told to go to their correct precinct before they could be given a ballot. In Florida, poll workers issued provisional ballots to voters in the incorrect precinct – if the voter demanded it.

Then there were distinctions within states. News reports in Ohio indicated some provisional ballots cast by people not in their assigned precinct were counted – an apparent violation of a state directive.[1]

Some counties in Washington tracked down voters who would have otherwise had their provisional ballot rejected because they failed to complete part of their voter registration form.[2] This "second chance" for some voters had a number of politicos fuming as the state tried to sort out the closest gubernatorial election in Washington's history.

"Some counties have gone above and beyond what's required by law," said John Pearson, the state's deputy director of elections.[3]

It is these imbalances that have many concerned that Congress' cure for what ailed much of the electoral system before the 2000 election might now be sick as well.

This 10th *electionline.org* Briefing investigates provisional ballots by analyzing the counting and rules for qualifying ballots in each state. Who received a provisional ballot and why? Where did they receive the ballot? Under what circumstances were their ballots counted or rejected? And overall, how many ballots ended up being included in the final tally?

By looking at the numbers from each state, *electionline.org* found the differences in provisional ballot rules from state to state affected how many ballots were counted.

This report does not intend to imply that provisional ballots were a failure. To the contrary, more than 1.6 million voters received provisional ballots in the 2004 presidential election. More than a million were counted.

Five years ago, hundreds of thousands of those voters would have been turned away at the polls with no remedy – even if they were left off the rolls through no fault of their own.

Prior to the passage of HAVA in 2002, most states, but not all, offered some form of provisional ballot. No state gave the voter the right to find out the status of their ballot after the election, as required by the federal act. In Florida, thousands of voters who had been wrongly pegged as felons were denied the right to vote. Lacking any recourse, Florida election officials sent those voters home – and cemented the state's place as ground zero for arguably the most controversial presidential election in American history.

There were dozens of factors that affected whether ballots were counted or not counted. In some cases, the data did not fit any known assumptions.

Our national survey found that 70 percent of provisional ballots were counted in states with rules that allowed those ballots to be considered if cast anywhere in the correct jurisdiction.[4] That number dropped to 60 percent in states limiting consideration of provisional ballots to those cast in the correct precinct.

Some states with seasoned statewide voter registration databases had fewer provisional ballots, possibly indicating fewer problems managing new applications.

For example, Alaska and Michigan both have statewide voter registration databases. However, Michigan, which ranks 8th nationally in population, distributed 5,610 provisional ballots. Alaska, ranked 47th in population, issued more than 23,000 provisional ballots. In terms of the total vote count, Alaska led the nation in provisional votes, with the fail-safe ballots accounting for more than 7 percent of the state's vote total, compared with Michigan, where provisional ballots accounted for less than one-tenth of 1 percent of the vote.[5]

For more details, see the "Key Findings" section on page 5 and the tables beginning on page 11.

Provisional voting can and did work for many on Nov. 2. But the disparities in the application of the law have been of continuing concern to lawmakers, policy experts and civil rights advocates. This study seeks to explore what those differences in application of federal law meant to voters in all 50 states and the District of Columbia. It is by no means comprehensive enough to offer a final say on the use of provisional ballots in 2004. But it does begin to reveal some trends that could prove significant as HAVA implementation moves forward.

Executive Summary

November 2, 2004 marked the first time all states offered federally-mandated provisional ballots in a general election. While the use of fail-safe affidavit or provisional ballots was not new to more than two-thirds of states before the passage of the Help America Vote Act (HAVA), the requirements enacted by Congress requiring notification for voters of the dispensation of their provisional ballot were.

The use of provisional ballots could, in one sense, be considered a national success. Nearly 1.1 million provisional ballots were counted out of 1.6 million cast. Many of those voters would have been otherwise disenfranchised.

But that success was not unqualified. The study of provisional ballot statistics from around the country revealed that even a national standard does not mean uniformity. The lack of uniformity has raised concerns from civil rights groups to the halls of Congress. And for good reason – if the intention of HAVA was to make sure every vote counted, the national mandate for provisional ballots did not always achieve that goal.

The pre-election controversy over how provisional ballots would be cast and counted continues. Ballots counted in one state would be discarded in another. In one state, poll workers would issue ballots to voters in the wrong precinct – sometimes knowing those ballots were destined to be disqualified. In some counties, election officials defied state law or practice to count ballots that in other counties in the same state would not be counted.

Voters in some counties were given a chance after the election to fix problems with their registration forms that kept them off the rolls – offering essentially a second chance to have their votes counted. Most, however, did not have that opportunity and instead had their votes discarded, sometimes for technicalities such as an unchecked box on a registration form.

In a number of key battleground states that lacked safeguards previously, including Florida, Ohio and Pennsylvania, the federal rules ensured that voters who would otherwise be turned away from the polls if their names did not appear on registration rolls at least had the opportunity to cast a ballot and have their vote counted if they were found to be properly registered voters.

Among the findings in the report:

THE DATABASE EFFECT

The use of statewide voter registration databases did not necessarily decrease the percentage of list omissions. There is little difference between the percentages of provisional votes counted in the 17 states with statewide voter registration databases than the states without them. However, statewide voter lists might have led to fewer provisional ballots being cast.

VOTE COUNTING VARIED WIDELY

Around the country, the percentage of provisional ballots counted ranged from a national high in Alaska of 97 percent to a low of 6 percent in Delaware. Further study is needed to determine why some states counted so many and some so few. State practices could play a significant role.

IN-PRECINCT VS. OUT-OF-PRECINCT RULES

Whether a state accepted a provisional ballot cast outside of a voter's home precinct or not had some impact on the percentage of provisional ballots cast. In the 18 states where ballots were partially or fully counted if cast in the wrong precinct but correct jurisdiction, 70 percent of provisional ballots were counted. In the 25 states that did not count ballots cast in the incorrect precinct – and provided data – 60 percent were tabulated.

There are holes in the provisional balloting data that make comparison difficult, but not impossible. The varying state practices – when a provisional ballot is given, to whom and in what location – lead to the "fruit salad" problem where an apples-to-apples or even apples-to-oranges comparison is not possible. But this report does begin to form conclusions about how provisional balloting worked – or did not – in November 2004.

The Trouble with Numbers

Caveat Lector (Reader Beware)

By compiling and releasing the enclosed data on provisional ballot acceptance rates, *electionline.org* hopes to further inform the ongoing debate about the provisional voting requirement in the Help America Vote Act (HAVA). The research, however, has its limits.

These figures are not definitive on the subject of provisional voting, for two key reasons:

■ **States cannot be directly compared (a.k.a. the "fruit salad" problem).** Because HAVA allowed states to implement provisional voting as they saw fit – resulting in widely varying requirements and procedures nationwide – there is no way to make definitive comparisons of one state to another. Moreover, because of varying state practices, *electionline.org* collected the enclosed data at different times from different sources in different states. [Indeed, as this Briefing went to press, some states had yet to release final official provisional voting statistics.] This variation makes comparisons very difficult; as Ohio's Dana Walch says, comparing provisional ballot statistics is not like "apples to apples." In fact, given the degree of variation between (or even within) states, any provisional ballot comparison is not even apples to oranges – it is more like fruit salad.

■ **Correlation is not causation.** Throughout this Briefing, we make observations about the differences in provisional ballot rates associated with different conditions such as statewide voter databases (or lack thereof), voter identification requirements or "in-precinct" voting rules. As noted in our key findings, some of these conditions appear to be associated with different acceptance rates of provisional votes between states. It does not mean, however, that such conditions "cause" increases or decreases of provisional ballot acceptance rates – such conclusions can only be drawn after a more careful examination.

Why, then, compile these figures at all?

The answer is that this first analysis serves to identify areas of future inquiry for policymakers and election officials on the subject of provisional voting.

For example, the figures suggest that states without statewide voter databases count only a slightly higher percentage of provisional ballots (68 percent) than states with such databases (65 percent). This small difference would seem to run counter to the conventional wisdom that new databases will significantly reduce the impact of provisional voting.

Yet, upon closer examination, we see that fewer provisional ballots were cast in states with databases – partly because several larger states have yet to develop databases (such as California and Ohio), but perhaps also because the database states have the ability to screen out voters who should not vote provisionally. And in states where databases are new, there is also the implementation problem – as Election Assistance Commission member Ray Martinez noted at the recent hearing in Columbus, Ohio, such new databases sometimes create more problems than they solve in the short run.

In any event the lack of clear statistical separation between database and non-database states should serve as a signal to policymakers and researchers to actually test the belief that better lists will reduce the impact of provisional voting – and if so, to identify more concretely if such lists will inform voters of the right (or lack thereof) to cast a ballot.

Provisional voting has become a politically and emotionally-charged issue, with partisans and advocates debating its impact on the tradeoff between access and integrity in the voting process. By identifying potential linkages between certain conditions and provisional voting, the preliminary numbers in this Briefing – messy, incomplete and admittedly imprecise – nonetheless suggest ways in which election reform stakeholders across the spectrum can focus the debate on HAVA's provisional voting requirement.

To put it another way, these figures are not the final word on HAVA's provisional voting requirement – but they are intended to help move the conversation forward.

Key Findings

Thousands of voters in Florida lost their voting rights in 2000 because of administrative errors and database problems. State law had no remedy for voters missing from registration rolls. Qualified voters – most often African Americans – were sent home, disenfranchised by registration roll mistakes caused by a private company managing a purge. Under the radar, safeguards were lacking in other states as well.

The outrage was widespread and bipartisan. Congress passed the Help America Vote Act (HAVA) in 2002, sweeping legislation responding to the troubled 2000 vote that included mandating the use of provisional ballots nationwide.

The rules, though not new to more than two-thirds of the states (not including, of course, Florida), nonetheless codified the national minimum standard allowing those whose names are not on voter lists but believe they are registered to cast ballots that could be checked later to verify a voter's eligibility.[6]

The provisional ballot mandate was the most widely hailed aspect of federal election reform, touted as a cure to some of the problems that plagued Florida in 2000.

Good intentions, however, did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.

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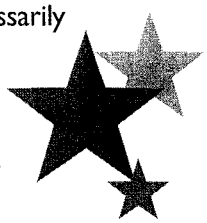

It became clear well before November 2 that provisional ballots would be dealt with differently in different states. National standards, even those seeking to achieve precisely the same goal, did not mean uniformity. To the contrary, provisional voting – once a bipartisan goal in the wake of 2000 – became one of the most contentious election administration issues before, during and after November 2 and led to litigation, legislation and calls to federally standardize the process.

Provisional ballots in 2004

Despite the controversy, provisional ballots could be considered a success. Over 1.6 million provisional ballots were cast and nearly 1.1 million, or 68 percent, were counted.[7] Unlike in 2000, there were no reports of large numbers of voters being turned away at the polls. To the contrary, in some states, large numbers of voters stood in long lines at the polls, waiting because there were too many of them and too few machines.

electionline.org's survey of provisional ballot results had some clear indications and also some challenges. Thus, the findings have some caveats.

A thorough analysis of provisional ballot data presents problems and complexities that make drawing broad generalizations difficult. "Comparing provisional ballot numbers between states is not comparing apples to apples," stated Dana Walch, election reform project manager in Ohio.[8]

Those difficulties and differences can be defined in categories – who gets a ballot, which ballots are counted and what laws for fail-safe ballots existed prior to the passage of HAVA.

Who receives provisional ballots and which provisional ballots are counted vary from state to state. Sometimes, counting rules even varied over county lines.

Who gets a provisional ballot?

In many states, the universe of voters who could potentially receive provisional ballots is much larger than just those voters who claim they are registered to vote but are not on precinct rosters. HAVA also

Key Findings

states they can be issued when an election official claims an individual is not eligible to vote.

Many states issue provisional ballots to voters who do not show ID but are required to do so, either because of HAVA's minimum standard or because of other state law. There are other reasons for the ballots to be issued as well – to voters who are challenged or if the poll hours have been extended.

Whose ballot gets counted?

Whether a provisional ballot was counted relied largely upon the home state of the voter.

In 28 states, a provisional ballot cast in the wrong precinct was not counted. In 18 states, a ballot cast in the wrong precinct but correct jurisdiction would be counted.[9] This disparity in state practice – more than any other election reform issue – triggered a number of lawsuits in battleground states in the weeks and months leading to the November election.

In the post-election period, the issue has led some at the state and federal level to call for national standards of counting provisional ballots. Kay Maxwell, president of the League of Women Voters, told *The Associated Press* that her organization is urging a reconsideration of the precinct-only rules limiting pro-

Provisional Ballot Notification Process

The Help America Vote Act (HAVA) requires every state to "establish a free access system (such as a toll-free telephone number or an Internet Web site) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted."[10]

However, it too has been implemented differently in different states. Which free-access system or systems are used, when information is available to voters and whether or not the information is available from the county or state level differs across the country.

States were left with some leeway on how to meet the free-access system requirement. A toll-free number and/or Web site as mentioned in HAVA are used by a number of states, but many also use written notification, either in conjunction with one of the other systems or on its own.

Texas, for example, sends out written notification 10 days after the election.[11] An official with the Texas Elections Division told *electionline.org* that counties could choose to use a Web site or toll-free number, but none of them do so at this time.[12]

The length of time that the states have to make the information available also differs by state. By statute, Alaska has 60 days after the certification of an election to send a letter to the voter[13] and has 30 days to make the information available through a toll-free number,[14] whereas Alabama does it within 10 days as a matter of policy, not law.

Pennsylvania's Web site has provisional ballot information available for most counties three days after the election,[15] while North Carolina has their information available eight to 10 days after the election.[16]

Virginia has a toll-free number provisional voters can use to check the status of their ballots. Those whose ballots did not count receive a letter, but anyone can call the number. Information is available several days after the election, depending on when the local electoral boards end their meetings to determine the status of the ballots. Provisional voters and political party officials have the right to be present at those meetings in order to present evidence either for against the counting of specific provisional ballots.[17]

Other states also leave the notification process up to the counties, including (but not limited to) Alabama, Arkansas, Arizona and Washington.

Key Findings

visional voting in more than half of the states.

"We felt strongly that individuals who ended up in their so-called wrong precinct ... they should have been able to cast ballots for president and vice president and any statewide offices," Maxwell said. "If it's a problem for even a couple of people, then it's a problem that needs solving."[18]

However, leaving this issue up to the states was by no means unintentional. During the Senate debate over HAVA, Sen. Christopher Dodd, D-Conn., stated, "whether a provisional ballot is counted or not depends solely on state law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter's eligibility to vote is determined under State law."[19]

Prior to the 2004 election, approximately two-thirds of the states were using some form of provisional voting, meaning laws and mechanisms were in place that already varied from state to state.[20]

The provisional voting experience

With state-by-state differences in mind, data from the 2004 election still can provide some general insights into the experience nationally using provisional voting.

■ *Counting varied*

Alaska had the highest percentage of provisional ballots cast with 97 percent and five other states counted more than three-quarters of their provisional ballots – Oregon, Washington, Nebraska, Ohio and Colorado.

The lowest percentage of counted provisional ballots came from Delaware which tallied only 6 percent. Five other states counted 15 percent or fewer of their provisional ballots – Hawaii, Oklahoma, South Dakota, Kentucky and Indiana.[21]

■ *The 'good database' effect?*

Five of the six states that had the lowest percentage of provisional ballots cast have statewide registration databases in place. Indiana was the sole exception.

Prior to the November 2004 election, conventional wisdom among election experts was that a healthy statewide voter registration database would reduce errors. That would, in turn, lead to a reduced need for provisional ballots. Further, "good" statewide databases would mean fewer mistakes in list maintenance.

The same conventional wisdom also suggests that those seeking provisional ballots in states with good databases probably were not properly registered, filled out a form incorrectly or perhaps were never registered at all.

The preliminary data does not support convention wisdom.

When comparing states that had statewide voter registration databases in use during the November election with those that did not, there is little difference in the percentage of ballots counted. In states with databases, 65 percent of provisional ballots were counted. In states without databases, 68 percent of these ballots were counted.

■ *Number of ballots issued*

Several states issued a large number of provisional ballots. More than 3.5 percent of votes cast for highest office in three states and the District of Columbia were provisional ballots.

Ned Foley, a law professor at the Ohio State University, said he wondered if in states with low rates of provisional ballot use, voter registration data was handled better.

Whether a provisional ballot counted relied largely upon the home state of the voter.

"Maybe states with lower usage rates were able to put out fires ahead of time," Foley told the Election Assistance Commission in February 2005.[22]

■ *In-precinct vs. out-of-precinct rules*

In the 18 states where ballots were counted or partially counted if they were cast in the wrong precinct but correct jurisdiction (county, township), 70 percent of provisional ballots cast were counted. Eleven of these states counted more than 50 percent of these ballots.

Key Findings

In the 25 states that did not count provisional ballots cast in the wrong precinct (and provided data), 60 percent of the ballots counted. Sixteen of these states counted fewer than 50 percent of these ballots.

■ *Election-day registration*

Six states – Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming – have election-day registration and are exempt from HAVA provisional ballot rules. Four of these states do not use provisional ballots - Idaho, Maine, Minnesota and New Hampshire.[23]

Wisconsin and Wyoming, however, use provisional ballots for first-time voters who were not on the voter list and do not have identification. Both states had small numbers of provisional ballots cast and a low percentage of provisional ballots counted – Wisconsin counted 32 percent of its 373 provisional ballots and Wyoming counted 25 percent of its 94 provisional ballots.[24]

State-by-state variation

A brief examination of how provisional voting is handled in several states demonstrates just how varied the process is.

Ohio, arguably the most watched state during the 2004 election, was one of five states, along with Colorado, Florida, Michigan and Missouri, that faced a lawsuit over the counting of provisional ballots cast in the wrong precinct. The court ruled for the state and agreed that ballots cast outside the correct precinct should not be counted.

Dana Walch explained the high number of provisional ballots cast – over 150,000 – could be at least partially explained by the state's policy of issuing provisional ballots to voters who moved and did not update their registration forms. Those voters were eligible to have their ballots counted.[25]

> Maybe states with lower usage rates were able to put out fires ahead of time.
>
> – Ned Foley, Ohio State University.

In the opposite case – an unusually small number of provisional ballots cast and/or counted – state law or practice can adequately explain the numbers.

Vermont, one of the least populous states, had an extraordinarily low number of provisional ballots cast – 101 cast, 37 counted. The state avoids issuing provisional ballots to most by allowing voters to use a sworn affidavit at the polling place on Election Day and vote a regular ballot.[26]

In Pennsylvania, reports of confusion about registration and provisional voting surfaced. According to newspaper reports, fewer than 50 percent of provisional ballots cast were counted. The number was even lower in some mid-state counties.

"Some people thought they could just come in the day of the election and vote with a provisional ballot. I also think a lot thought they were registered and they actually weren't," Steven G. Chiavetta, director of Dauphin County's elections and registration bureau told *The Patriot News*.[27]

In-state variation

Not only does the question of whose ballot gets counted vary from state to state, it sometimes varies even within a state.

In Arizona, a state that requires provisional ballots be cast in the correct precinct to be counted, at least two counties, Gila and Pinal, counted provisional ballots cast in the wrong precinct.[28]

Illinois had a similar issue. During the state's presidential primaries, Illinois did not count provisional ballots cast in the wrong precinct. The State Board of Elections issued a directive for the November election instructing counties to count ballots cast in the wrong precinct for some federal races. Some counties followed the directive, while others citing state law requiring the correct precinct did not.[29]

And like everything else in election administration, procedure matters. In King County, Washington – the center of the contentious guber-

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Provisional Ballots Spur Activity in Congress and State Legislatures

The inclusion of provisional ballots in the Help America Vote Act was universally hailed as a major step in ensuring the right to vote for Americans who might otherwise be turned away from the polls.

As the 2004 presidential election approached, it also became clear that the varied ways in which states planned to handle the ballots could swing the election one way or the other.

A high-stakes race, new territory in election law and partisan feuding combined to produce a frenzied fight over provisional voting in the months leading up to the November vote, when advocates and others challenged provisional voting rules in five battleground states, most notably Ohio, Florida, Michigan and Missouri.

At the center of the lawsuits was the method of distribution and rules for counting ballots. Some argued that ballots cast in the wrong precinct should be completely voided while others claimed that votes cast on provisional ballots for federal and statewide offices should be counted no matter where they were cast.

After the election, calls to standardize provisional ballot rules emerged, not surprisingly from those states where the ballots had the greatest impact in determining the outcome of races.

In the state of Washington, Democrats and Republicans introduced legislation that would make provisional ballots distinguishable from standard and absentee ballots. Lawmakers want the ballots to be marked by different colors in order to avoid a repeat of what occurred on Election Day in King County when more than 300 provisional ballots were improperly run through tabulating machines before the voters' registration status could be verified.

Jim Kastama, D-Tacoma, said the state must set high standards to assure public trust in elections. "You have no other choice but perfection," said Kastama, the chairman of the Senate Government Operations and Elections Committee. "To do otherwise is to say that you discount someone's vote."[10]

Lawmakers in Illinois re-opened the pre-election debate on standards for when a provisional ballot should be counted. The distribution and counting of provisional ballots in Illinois varied so widely that according to news reports only some of the state's 110 jurisdictions followed the State Board of Elections' recommendation that provisional ballots cast in the wrong precinct should still count for some federal offices.[11]

Democratic lawmakers in North Carolina passed a measure during the first week of March that affirmed a 2003 law that allows for the counting of out-of-precinct ballots cast on Election Day.[12]

At the federal level, Rep. John Conyers, D-Mich., introduced legislation that would amend HAVA to mandate that provisional ballots cast by eligible voters anywhere in a state would count. Two other bills, one proposed by Sen. Hillary Clinton, D-N.Y. and the other by Sen. Christopher Dodd, D-Conn., include provisions that would do the same.

In mid-February, Florida's Secretary of State's office recommended that those who cast provisional ballots should be given a week, instead of two days, to prove their eligibility as well as grant supervisors and canvassing boards more time to review the ballots, eliminating some of the pressure to make a decision during an election.[13]

Key Findings

CONTINUED FROM PAGE 8

natorial election – hundreds of provisional ballots were incorrectly counted in polling place counting machines before they could be verified as eligible votes.[34]

Litigation, legislation and looking ahead

Not surprisingly, the problems some states faced with provisional ballots have led to both post-election litigation and legislation.

North Carolina election officials, following state law, initially counted provisional ballots if they were not cast in the correct precinct. The state Supreme Court unanimously ruled, however, that the officials were incorrectly interpreting state law and threw out at least 11,000 provisional ballots cast in the wrong precinct. In response, Democratic lawmakers passed a measure that clearly allows for the counting of out-of-precinct provisional ballots. An appeal is likely.[35]

A similar bill has been introduced in Illinois which would require counting races for federal and statewide offices on provisional ballots cast out of precinct.[36]

Federal response to provisional ballot confusion

Several bills have been introduced at the federal level amending HAVA to require out-of-precinct provisional ballots to be counted. Sen. Hillary Clinton, D-N.Y., introduced S. 450 which states, "the determination of eligibility shall be made without regard to the location at which the voter cast the provisional ballot and without regard to any requirement to present identification to any election official."[37]

Rep. John Conyers, D-Mich., has introduced a similar bill H.R. 533 stating, "notwithstanding at which polling place a provisional ballot is cast within the state, the state shall count such ballot if the individual who cast such ballot is otherwise eligible to vote."[38]

However, a bill introduced by Sen. Mitch McConnell, R-Ky., and Sen. Christopher "Kit" Bond, R-Mo., demonstrates the ever-present partisan divide over state authority and may be an indicator of the difficult road any moves to further standardize provisional ballot rules face at the federal level.

"As we expressed throughout the debates standard requirements for elections are to be implemented by the state. On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide," Bond said when he introduced the bill.[39]

Not surprisingly, state officials agree. In an open letter to Congress, the National Association of Secretaries of State urged lawmakers not to pass federal legislation creating national standards for administering elections.

"The passage of any such law would undercut the states' ability to effectively administer elections and interfere with the progress they have made in implementing election reforms. Perhaps most importantly, it would discount our country's unique political philosophy — the belief in the division of authority between state and federal governments," the letter states.[40]

> On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide.
>
> – Sen. Christopher "Kit" Bond, R-Mo.

Table 1: Provisional Ballots Cast and Counted by State

State	Cast	Counted	Percent Counted
Alabama	6,560	1,836	28%
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
Arkansas	7,675	3,678	48%
California	668,408	491,765	74%
Colorado	51,477	39,163	76%
Connecticut	1,573	498	32%
Delaware	384	24	6%
District of Columbia	11,212	7,977	71%
Florida	27,742	10,017	36%
Georgia	12,893	3,839	30%
Hawaii	346	25	7%
Illinois	43,464	22,167	51%
Indiana	4,029	598	15%
Iowa	15,406	8,038	52%
Kansas	45,563	31,805	70%
Kentucky	1,494	221	15%
Louisiana	5,971	2,411	40%
Maryland	48,936	31,860	65%
Massachusetts	10,060	2,319	23%
Michigan	5,610	3,277	58%
Missouri	8,183	3,292	40%
Montana	653	357	55%
Nebraska	17,003	13,298	78%
Nevada	6,154	2,447	40%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Ohio	158,642	123,548	78%
Oklahoma	2,615	201	8%
Oregon	8,298	7,077	85%
Pennsylvania	53,698	26,092	49%
Rhode Island	2,147	984	46%
South Carolina	4,930	3,207	65%
South Dakota	533	66	12%
Tennessee	8,778	3,298	38%
Texas	36,193	7,770	21%
Utah	26,389	18,575	70%
Vermont	101	37	37%
Virginia	4,172	728	17%
Washington	87,393	69,645	80%
West Virginia	13,367	8,378	63%
Wisconsin	373	120	32%
Wyoming	95	24	25%
TOTAL	**1,626,160**	**1,097,933**	**68%**

Table 2: States Ranked by Percentage of Provisional Ballots Counted

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
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Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	**1,626,160**	**1,097,933**	**68%**

See notes on page 13.

Table 3: Provisional Ballots Counted: Database Status

Statewide registration database in place

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Louisiana	5,971	2,411	40%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Massachusetts	10,060	2,319	23%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	**211,159**	**137,366**	**65%**

Statewide registration database not in place

State	Cast	Counted	Percent Counted
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
TOTAL	**1,415,001**	**960,567**	**68%**

Table 4: Provisional Ballots Counted: In vs. Out-of-Precinct

Provisional ballots eligible for counting if cast outside correct precinct

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Arizona	101,536	73,658	73%
Utah	26,389	18,575	70%
Maryland	48,936	31,860	65%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Vermont	101	37	37%
Georgia	12,893	3,839	30%
Delaware	384	24	6%
TOTAL	**1,234,874**	**864,588**	**70%**

Ballots disqualified if cast outside correct precinct

State	Cast	Counted	Percent Counted
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
District of Columbia	11,212	7,977	71%
Kansas	45,563	31,805	70%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
Montana	653	357	55%
Iowa	15,406	8,038	52%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Florida	27,742	10,017	36%
Connecticut	1,573	498	32%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
TOTAL	**391,286**	**233,345**	**60%**

See notes on page 13.

Table 5: Percent Counted of Total Vote[4]

State	Cast	Counted	Percent Counted	Vote for Highest Office	% Counted of Total Vote
Alaska	23,275	22,498	97%	312,598	7.20%
California	668,408	491,765	74%	12,419,857	3.96%
Arizona	101,536	73,658	73%	2,012,585	3.66%
District of Columbia	11,212	7,977	71%	227,586	3.51%
Kansas	45,563	31,805	70%	1,187,756	2.68%
Washington	87,393	69,645	80%	2,859,084	2.44%
Ohio	158,642	123,548	78%	5,627,903	2.20%
Utah	26,389	18,575	70%	927,844	2.00%
Colorado	51,477	39,163	76%	2,129,630	1.84%
Nebraska	17,003	13,298	78%	778,186	1.71%
Maryland	48,936	31,860	65%	2,386,678	1.33%
North Carolina	77,469	42,348	55%	3,501,007	1.21%
New Mexico	15,360	8,767	57%	756,304	1.16%
West Virginia	13,367	8,378	63%	755,887	1.11%
Iowa	15,406	8,038	52%	1,506,908	0.53%
Pennsylvania	53,698	26,092	49%	5,769,590	0.45%
Illinois	43,464	22,167	51%	5,275,415	0.42%
Oregon	8,298	7,077	85%	1,836,782	0.39%
Arkansas	7,675	3,678	48%	1,054,945	0.35%
Nevada	6,154	2,447	40%	829,587	0.29%
Rhode Island	2,147	984	46%	437,134	0.23%
South Carolina	4,930	3,207	65%	1,617,730	0.20%
Tennessee	8,778	3,298	38%	2,437,319	0.14%
Florida	27,742	10,017	36%	7,609,810	0.13%
Louisiana	5,971	2,411	40%	1,943,106	0.12%
Missouri	8,183	3,292	40%	2,731,364	0.12%
Georgia	12,893	3,839	30%	3,301,867	0.12%
Alabama	6,560	1,836	29%	1,883,415	0.10%
Texas	36,193	7,770	21%	7,410,749	0.10%
Massachusetts	10,060	2,319	23%	2,912,388	0.08%
Montana	653	357	55%	450,434	0.08%
Michigan	5,610	3,277	58%	4,839,252	0.07%
Connecticut	1,573	498	32%	1,578,769	0.03%
Indiana	4,029	598	15%	2,468,002	0.02%
Virginia	4,172	728	17%	3,198,367	0.02%
South Dakota	533	66	12%	388,215	0.02%
Oklahoma	2,615	201	8%	1,463,758	0.01%
Kentucky	1,494	221	15%	1,795,860	0.01%
Vermont	101	37	37%	312,309	0.01%
Wyoming	95	24	25%	243,428	0.01%
Delaware	384	24	6%	375,190	0.01%
Hawaii	346	25	7%	429,013	0.01%
Wisconsin	373	120	32%	2,997,007	0.00%
TOTAL	**1,526,160**	**1,097,933**	**68%**	**104,980,618**	**1.05%**

NOTES FOR TABLES 1-5:

1. States with incomplete data - not all counties have reported provisional ballot numbers: Indiana, Pennsylvania, South Carolina and Virginia
2. No data from Mississippi, New Jersey and New York.
3. No data for states with election-day registration (Idaho, Maine, Minnesota and New Hampshire).
4. North Dakota does not require voter registration.
5. Data compiled from phone calls and emails to state election officials, data provided by the U.S. Election Assistance Commission, an *electionline.org* survey and press reports. For more information, see the methodology.

Snapshots of the States

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Alabama

CAST: 6,560 ▮ COUNTED: 1,836 (28%)

Summary: Provisional ballot issued if voter's name is marked off voter list because he/she applies for absentee ballot, if voter does not provide the required proof of identity or voter is challenged.[42] Provisional ballot eligible to be counted if cast in correct precinct.

Alaska

CAST: 23,275 ▮ COUNTED: 22,498 (97%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity and is not known by elections board[43] or if voter is challenged.[44] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Arizona

CAST: 101,536 ▮ COUNTED: 73,658 (73%)

Summary: Provisional ballot issued if voter moves to a new address within the county and does not notify the election board before the deadline.[45] Provisional ballot eligible to be counted if cast in correct precinct.

Arkansas

CAST: 7,675 ▮ COUNTED: 3,606 (48%)

Summary: Provisional ballot issued if voter is challenged.[46] Provisional ballot eligible to be counted if cast in correct jurisdiction.

California

CAST: 668,408 ▮ COUNTED: 491,765 (74%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,[47] or if voter moves within the county, does not re-register, and votes at the polling place assigned to their new address.[48] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Colorado

CAST: 51,477 ▮ COUNTED: 39,163 (76%)

Summary: Provisional ballot issued if voter's name is marked off the voter list because he/she applies for an absentee ballot,[49] if voter does not provide the required proof of identity,[50] or if voter moves to a new address within the state and does not notify the elections board before the deadline.[51] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Connecticut

CAST: 1,573 ▮ COUNTED: 498 (32%)

Summary: Provisional ballot issued if voter is challenged or if the voter does not provide the required proof of identity.[52] Provisional ballots eligible to be counted if cast in correct precinct.

Delaware

CAST: 384 ▮ COUNTED: 24 (6%)

Summary: Provisional ballots eligible to be counted if cast in correct jurisdiction.

District of Columbia

CAST: 11,212 ▮ COUNTED: 7,977 (71%)

Summary: Provisional ballot issued if voter moves to a new address within the District and does not fill out a form before Election Day.[53] Provisional ballots eligible to be counted if cast in correct precinct.

Florida

CAST: 27,742 ▮ COUNTED: 10,017 (36%)

Summary: Provisional ballot issued if a voter registers for the first time by mail and does not provide the required proof of identity, a voter is challenged, or the voter either refuses to sign an oath as to their eligibility or a majority of the clerks and inspectors doubt the voters eligibility.[54] Provisional ballots eligible to be counted if cast in correct precinct.

Georgia

CAST: 12,89 ▮ COUNTED: 3,839 (30%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[55] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Hawaii

CAST: 34 ▮ COUNTED 25 (7%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Idaho

CAST: N/A ▮ COUNTED: N/A

Summary: Election-day registration.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Illinois

CAST: 43,464 ▮ COUNTED: 22,167 (51%)

Summary: Provisional ballot issued if voter is challenged and the challenge is sustained by a majority of election judges or if voter applies for absentee ballot but wishes to vote in person and does not produce the unused absentee ballot.[56] Provisional ballot eligible to be counted if cast in the correct jurisdiction.

Indiana

CAST: 4,029 ▮ COUNTED: 598 (15%) (INCOMPLETE DATA)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Iowa

CAST: 15,406 ▮ COUNTED: 8,038 (51%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide require proof of identity[57] or voter is challenged.[58] Provisional ballot eligible to be counted if cast in correct precinct.

Kansas

CAST: 45,563 ▮ COUNTED: 31,805 (70%)

Summary: Provisional ballot issued if voter applies for absentee ballot but the ballot was spoiled, destroyed, lost, or not received,[59] the voter is challenged,[60] voter registers for the first time by mail and does not provide the required proof of identity,[61] voter changes their name or moves within the county and does not re-register.[62] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Kentucky

CAST: 1,494 ▮ COUNTED: 221 (15%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity or voter is challenged by all four precinct election officers.[63] Provisional ballot eligible to be counted if cast in correct precinct.

Louisiana

CAST: 5,971 ▮ COUNTED: 2,411 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[64] Provisional ballot eligible to be counted if cast in correct parish (county).

Maine

CAST: N/A ▮ COUNTED: N/A

Summary: Election-day registration. State uses "challenge ballots" of which all are counted. The only time challenge ballots are looked at specifically would be in the case of a recount.

Maryland

CAST: 48,936 ▮ COUNTED: 31,860 (65%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity, if voter applies for absentee ballot but wishes to vote in person, voter moves to new address within the county or changes name and does not notify election board before deadline or if vote is challenged.[65] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Massachusetts

CAST: 10,060 ▮ COUNTED: 2,319 (23%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Michigan

CAST: 5,610 ▮ COUNTED: 3,277 (58%)

Provisional ballot eligible to be counted if cast in correct precinct.

Minnesota

CAST: N/A ▮ COUNTED: N/A

Summary: Election-day registration

Mississippi

CAST: 25,975 (NUMBER DOES NOT INCLUDE TUNICA COUNTY) ▮ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Missouri

CAST: 8,183 ▮ COUNTED: 3,292 (40%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Montana

CAST: 653 ▮ COUNTED: 357 (55%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,[66] or if the voter is challenged.[67] Provisional ballot eligible to be counted if cast in correct precinct.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Nebraska

CAST: 17,003 ▮ COUNTED: 13,298 (79%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Nevada

CAST: 6,154 ▮ COUNTED: 2,447 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[68] Provisional ballot eligible to be counted if cast in correct precinct.

New Hampshire

CAST: N/A ▮ COUNTED: N/A

Summary: Election-day registration

New Jersey

CAST: NO INFORMATION ▮ COUNTED: NO INFORMATION

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter moves to a new address within the county or changes his/her name and does not notify the elections board before the deadline.[69] Provisional ballot eligible to be counted if cast in correct precinct.

New Mexico

CAST: 15,360 ▮ COUNTED: 8,767 (57%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[70] Provisional ballot eligible to be counted if cast in correct jurisdiction.

New York

CAST: NO INFORMATION ▮ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

North Carolina

CAST: 77,469 ▮ COUNTED: 42,348 (55%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[71] Provisional ballot eligible to be counted if cast in correct jurisdiction.

North Dakota

CAST: N/A ▮ COUNTED: N/A

Summary: No voter registration.

Ohio

CAST: 158,642 ▮ COUNTED: 123,548 (78%)

Summary: Provisional ballot issued if voter moves to a new address within the county or from one Ohio County to another during the last 28 days before Election Day.[72] Provisional ballot eligible to be counted if cast in correct precinct.

Oklahoma

CAST: 2,615 ▮ COUNTED: 201 (8%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter's political affiliation is disputed in a primary.[73] Provisional ballot eligible to be counted if cast in correct precinct.

Oregon

CAST: 8,298 ▮ COUNTED: 7,077 (85%)

Summary: Provisional ballot issued if voter never received their ballot or if they want to vote in person in a different town or county than the one in which they are registered.[74] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Pennsylvania

CAST: 53,698 ▮ COUNTED: 26,092 (49%)

Summary: Provisional ballot issued if a voter is voting for the first time in his/her county or has recently moved to another residence within the county and does not provide the required proof of identity, or if a voter is challenged.[75] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Rhode Island

CAST: 2,147 ▮ COUNTED: 984 (46%)

Summary: Provisional ballot issued if a voter does not provide proof of identity, if a voter is challenged, or if person whose name does not appear on the list of registered voters for the voting district but does appear on the community list contends they are voting in the correct voting district.[76] Provisional ballot eligible to be counted if cast in correct jurisdiction.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

South Carolina

CAST: 4,930 ▮ COUNTED: 3,207 (65%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if a voter is challenged,[77] moves to a different precinct within the county and does not notify the county board of registration. Provisional ballot eligible to be counted if cast in correct precinct.

South Dakota

CAST: 533 ▮ COUNTED: 66 (12%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, they sign an affidavit, and their affidavit is challenged.[78] Provisional ballot eligible to be counted if cast in correct precinct.

Tennessee

CAST: 8,778 ▮ COUNTED: 3,298 (38%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Texas

CAST: 36,193 ▮ COUNTED: 7,770 (21%)

Summary: Provisional ballot issued if a voter does not provide required proof of identity or if a voter has applied for a ballot by mail but has not received it.[79] Provisional ballot eligible to be counted if cast in correct precinct.

Utah

CAST: 26,389 ▮ COUNTED: 18,575 (70%)

Summary: Provisional ballot issued if a voter is challenged.[80] Provisional ballot eligible to be counted if cast in the wrong precinct and the ballot is identical to the one that the voter would have voted if he or she appeared at the correct jurisdiction.

Vermont

CAST: 101 ▮ COUNTED: 37 (37%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

Virginia

CAST: 4,172 ▮ COUNTED: 728 (17%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[81] Provisional ballot eligible to be counted if cast in correct precinct.

Washington

CAST: 87,393 ▮ COUNTED: 69,645 (80%)

Summary: Provisional ballot issued if a voter requests an absentee ballot but wishes to vote in person.[82] Provisional ballot eligible to be counted if cast in correct jurisdiction.

West Virginia

CAST: 13,367 ▮ COUNTED: 8,378 (63%)

Summary: Provisional ballot issued if the signature on the poll slip and the registration card don't match, if a voter moves to a different precinct within the county or if a voter does not provide the required proof of identity.[83] Provisional ballot eligible to be counted if cast in correct precinct.

Wisconsin

CAST: 373 ▮ COUNTED: 120 (32%)

Summary: Election-day registration. Provisional ballot issued if a voter registers for the first time by mail, does not provide the required proof of identity at the time of submitting the registration form, and does not do so at the polling place. In addition, if a voter's registration application was submitted as part of a voter registration drive, their application was not witnessed by an official voter registration deputy, and the voter does not provide the required proof of identity at the polling place, they are entitled to receive a provisional ballot. In order for the provisional ballot to be counted, the voter must provide the required proof of identity before Election Day, to poll workers before polls close on Election Day, or to the municipal clerk's office by 4:00p.m. the day after the election.[84] Provisional ballot eligible to be counted if cast in correct precinct.

Wyoming

CAST: 95 ▮ COUNTED: 24 (25%)

Summary: Election-day registration. Provisional ballot issued if a voter does not have the required proof of identity when attempting to register on Election Day. The voter has until close of business the day after the Election to provide proof of identity to the county clerk. The same holds true for a challenged voter; after they sign an affidavit, they have until close of business the next day to have their proof of identity approved by the county clerk.[85] Provisional ballot eligible to be counted if cast in correct precinct.

Methodology

Information for this report was taken from primary sources – interviews with state election officials, an *electionline.org* survey of state election officials – as well as secondary sources including newspaper articles. In addition, data collected by the Election Assistance Commission in its February 9, 2005 *Testimony Before the House Administration Committee* was used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

Endnotes

1 Claussen, Nick. "Election board deals with provisional votes, employee complaint," *The Athens News*, November 18, 2004.

2 Willmsen, Christine and Kelleher, Susan. "Ballot checks vary widely across state," *The Seattle Times*, December 19, 2004.

3 Ibid.

4 Jurisdiction is generally defined as the geographic area served by one voter registrar – either county, township, or independent town or city.

5 Data is derived from information found in Table 5 and information provided by the U.S. Census Bureau at www.census.gov.

6 The Help America Vote Act (hereinafter HAVA), Public Law 107-252, § 302(a) ("If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.")

7 Data for some states is not final and for other states is incomplete – not all counties had reported to the state their provisional ballot numbers. New York and New Jersey did not provide data and Mississippi had numbers for how many ballots cast but not counted. For more detailed information on sources and data collection please see the methodology section.

8 Telephone interview with Dana Walch, February 2005.

9 The remaining states have election-day registration. North Dakota does not require voter registration.

10 HAVA § 302(5)(B).

11 Texas Elec. Code § 65.089.

12 Phone conversation with Texas election official, February 2004.

13 Alaska Stat. § 15.20.207(D)(2).

14 Alaska Stat. § 15.20.207(K).

15 Phone conversation with Julio Pena, Pa. Bureau of Commissions, Elections and Legislation, February 2005.

16 Phone conversation with Johnnie McLean, Deputy Director of Administration, N.C. Board of Elections, February 2005.

17 Phone conversation with Rosanna Bencoach, Policy Manager, Virginia State Board of Elections, February 17, 2005.

18 McCarthy, John. "League president: Wrong precinct no excuse for denial of vote," *The Associated Press* as published in *The Beacon Journal*, February 23, 2005.

19 148 Cong. Rec. S10504 (October 16, 2002).

20 See *electionline.org's Election Reform Briefing: The Provisional Voting Challenge*.

21 Indiana's data is incomplete because not every county has reported provisional ballot counts to the state.

22 Foley, Ned. Testimony before the Election Assistance Commission, February 23, 2005.

23 Maine has a "challenged ballot," whereby, "a new voter who declares residency on Election Day, but does not have satisfactory proof of such residency, must be allowed to vote a challenged ballot." These ballots are unlike provisional ballots in that they are initially counted as regular ballots. They are only examined if there is a recount and the challenged ballots would affect the outcome. Maine Rev. Stat. Ann. Title 21-A §696(1).

24 Wyoming is one of only a handful of states that has detailed information on its state Web site listing the status of all 94 provisional ballots. The two main reasons for ballots not being counted – acceptable ID never provided or the voter cast the ballot in the wrong precinct. "Statewide Provisional Ballots – Wyoming Official Summary – November 2, 2004," Wyoming Secretary of State Web site, http://soswy.state.wy.us/election/2004/results/g-prov-b.pdf (last visited March 11, 2005).

25 Telephone interview with Dana Walch, February 2005.

26 Email from Kathy DeWolfe, Vermont state elections director, May 3, 2005.

27 Sherzer, Jack. "Counties toss most paper ballots," *The Patriot News*, February 14, 2005.

28 Burnette, Daniel. "Ballots Cast in Wrong Precinct Counted – Sometimes," *Arizona Capital Times*, February 7, 2005.

29 "Election officials want uniformity in provisional ballot counts," *The Associated Press*, November 21, 2004.

30 McGann, Chris. "Senate Election-Overhaul Bills Advance," *The Seattle Post-Intelligencer*, February 18, 2005.

31 "Election Officials Want Uniformity in Provisional Ballot Counts," *ABC7 Chicago*, November 21, 2004.

32 Robertson, Gary. "New Election, New Law are Focus in Provisional Ballot Hearing," *The Winston-Salem Journal*, March 2, 2005.

33 Kallestad, Brent. "Fla. Official Pitches Election Law Changes," *The Herald*, February 17, 2004.

34 "King County acts to avoid counting unverified provisional ballots," *Seattle Post-Intelligencer*, February 9, 2005.

35 *op.-cit.*, Robinson

36 Illinois General Assembly, HB0111.

37 S. 450.

38 H.R. 533.

39 151 Cong. Rec. S1626 (February 17, 2005).

40 National Association of Secretaries of State. "Open Letter to Members of Congress," February 7, 2005.

41 The vote for highest office data is derived from information provided by the United States Election Project at George Mason University. Total ballots cast data is not used because there is insufficient information gathering at the state level.

42 Ala. Code § 17-10A-2.

43 Alaska Stat. § 15.15.225(2)(c).

44 Alaska Stat. § 15.15.210.

45 Ariz. Rev. Stat. § 16-584(C).

46 Ark. Code Ann. § 7-5-312 (b)(1).

47 Memo from California Director of Elections John Mott-Smith, (http://www.ss.ca.gov/elections/hava_faq/hava_id_prov_ball_req.pdf) (October 1, 2004) (updating California provisional ballot rules) (last visited March 11, 2005).

48 Calif. Election Code § 14311.

49 Colo. Rev. Stat. § 1-7.5-107(3.5)(d).

50 Colorado Secretary of State Amended Election Rules 26.2.3, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).

51 Colorado Secretary of State Amended Election Rules 26.1, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).

52 Provisional Ballot instructions, (http://www.sots.state.ct.us/ElectionsDivision/HAVA/ProvisionalBallot3.pdf) (last visited March 11, 2005).

53 D.C. Code Ann. § 1-1001.07 (i)(4)(C).

54 Fla. Stat. Title 9 Chapter 101.048.

55 Ga. Code § 21-2-417(b).

56 10 Ill. Comp. Stat. Ann. 5/18A.

57 Iowa Senate File 2269, (http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&frame=1&GA=80&hbill=SF2269) (last visited March 11, 2005).

58 Iowa Code, Title 2, Chapter 49.81.

59 Kan. Stat. § 25-2908 (C).

60 Kan. Stat. § 25-409.

61 Kansas Secretary of State Election Standards - Chapter II (Election Administration) at 37 (http://www.kssos.org/forms/elections/election_standards/ChapII-ElecAdmin.pdf) (last visited March 11, 2005).

62 Kan. Stat. §25-2316c.

63 Ky. Rev. Stat. § 117.245.

64 Louisiana Secretary of State, "Provisional Voting" (http://www.sos.louisiana.gov/elections/elections-index.htm#provisional) (last visited March 11, 2005).

65 Maryland State Board of Elections, "Election Day Frequently Asked Questions" (http://www.elections.state.md.us/registered_voters/election_day_faq.html) (last visited March 11, 2005).

66 Mont. Code Ann. § 13-13-114 (2).

67 Mont. Code Ann. § 13-13-301(3).

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electionline.org Briefing

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THE CINCINNATI ENQUIRER

WEDNESDAY, MARCH 16, 2005

CLERMONT CO.

FBI won't probe recount

The FBI will not open an investigation into allegations of voter fraud in Clermont County during the November presidential election, said Michael Brooks of the FBI's Cincinnati office. Rep. John Conyers Jr., D-Mich., requested in January that the bureau look into allegations made by recount observers that stickers were used to tamper with votes. Clermont elections officials said less than 100 oval-shaped stickers were used to correct mistaken votes and determine voter intent. Clermont Republicans called the allegations a futile attempt to muddy the waters of President Bush's 118,599-vote victory.

The Plain Dealer | Sunday, December 5, 2004

Conspiracy theories on Ohio vote refuse to die

BILL LUBINGER
Plain Dealer Reporter

Voters up to here with election overload thought Nov. 2 would finally end the trashing, bashing and bluster.

They thought wrong.

It's been just over a month since George W. Bush eked out a second presidential term, but accusations of election fraud and conspiracy cram e-mail inboxes and fill Internet "blogger" pages, air time on radio talk shows and cable TV and newspaper columns daily.

SUSPICIONS: A look at some of the theories. **A18**

"I would say it's unprecedented," said Ned Foley, director of the election law program at Ohio State University. "It's taken on a life of its own. And the fight is going on even when Kerry said, 'No, it's not there.' People were just not ready to give up."

And if Ohio was the epicenter of a close, contentious campaign, then these are the aftershocks.

Lawsuits have been filed, one demanding a statewide recount, another questioning the rejection of thousands of provisional ballots. More recently, the Rev. Jesse Jackson's Rainbow/Push Coalition is considering filing a lawsuit over Ohio's voting irregularities.

Several Web sites offer voters a place to submit suspicious Election Day incidents and criticize so-called "mainstream media" for ignoring the story.

Public meetings have been held, with still more planned to gather testimonials of Election Day problems and to protest the result.

SEE ELECTION | A18

ELECTION

FROM A1

Conspiracy theories just won't die

Even the Government Accountability Office, the investigative arm of Congress, is reviewing election 2004 — not to affect the result, but to try to separate fact from fiction.

Among the most pervasive conspiracy theories? Electronic voting machines were rigged for Bush. Early exit polls showed challenger John Kerry ahead in key states that he eventually lost, proving the fix was in. Voter totals in Cuyahoga County and elsewhere exceeded registrations. Those theories are either explainable or unproven.

"We don't have any evidence of orchestration," Foley said.

So why such fervor?

The Bush-Gore mess in 2000 set the stage. Lawyers from both sides were primed for battle. Democrats, many of whom swear that the election was stolen four years ago, vowed not to let it happen again.

Fear, mistrust, a polarized electorate, a nasty campaign and aggressive work to persuade people to vote are ingredients that feed suspicion and anger if your candidate loses.

"In that environment," said University of Akron political expert John Green, "conspiracy theories flourish."

The following facts don't help: Some Republican Party officials reject the need for electronic voting machines to have paper results as backup. The chief executive of a voting machine maker promised to "deliver" Ohio for Bush. Laws allow a state elections chief to double as a presidential candidate's campaign chairman.

And there were Election Day problems widely reported by the news media — voting machine malfunctions, long lines at the polls, the rejection of provisional ballots — most of which Green and other political observers consider "run-of-the-mill" stuff.

"The election irregularities were modest by comparison" with 2000, Green said.

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The Plain Dealer | Sunday, December 5, 2004

Untangling the voting controversies

Since the hotly contested presidential election, dozens of allegations of voter irregularities and conspiracies have been made, many on the Internet. Here are several of the claims most often heard and an analysis of their veracity.

NORTHEAST OHIO

ALLEGATION	EXPLANATION
More ballots were cast than there are registered voters in Cuyahoga County	Unofficial results posted on the Cuyahoga County Board of Election's Web site showed several suburbs that appeared to have more votes than registered voters. The board admits it's confusing, but the numbers included absentee votes cast in congressional/legislative districts, not just the individual suburbs.
The Cuyahoga County Board of Elections' canvass report shows the county with 22 more precincts than the Ohio Secretary of State's report.	The Cuyahoga board counts the number of absentees cast in the 22 House/Senate/Congress districts separately, so it's reflected as 22 additional precincts.
The Cuyahoga County Board of Elections rejected 34 percent, or 8,552, of the 25,309 provisional ballots cast — a high percentage of votes to lose in an area that voted 2 to 1 for Kerry.	The rejection rate was definitely higher, but not completely unexpected because of the large turnout and run in last-minute registrations. Statewide, the rejection rate was about 23 percent. The board rejected 5,770 provisional ballots because voters weren't registered. A national watchdog group is challenging. On Nov. 26, the People for the American Way Foundation sued Ohio Secretary of State Ken Blackwell and the Cuyahoga County Board of Elections. The foundation wants the court to order electronic voter registration rolls cross-checked against paper registration records and to have each invalidated voter notified and given a chance to contest the decision.

AROUND OHIO

A computer glitch in Franklin County (Gahanna) resulted in 3,893 extra votes for Bush.	It happened, and Franklin board officials have no idea why a push-button voting machine malfunctioned. The error, discovered the day after the election, was to be corrected in the board's official count, said Deputy Director Mike Hackett, a Democrat. The machine's cartridge and "reader" will be sent to Danaher, the manufacturer, to find out why, but not until the official count — and recount, if there is one — is completed, he said. The other machines appeared to have accurately reflected the number of registered voters.
A computer glitch in Mahoning County (Youngstown) resulted in a count of negative 25 million votes.	It happened, and another glitch in Mahoning's electronic touch-screen voting machines produced a count of plus 12 million votes. Five precincts came back with garbled numbers, which election officials believe were caused by bad cartridges. The problem was discovered immediately. Numbers were downloaded again and corrected that night. The result: Countywide, Kerry won 63 percent to Bush's 37 percent — similar to the 2000 election.
Some precincts in Montgomery County (Dayton) reported a high percentage of voters who cast ballots but didn't vote for president.	A punch-card counter had an electrical problem that wasn't immediately detected, so those votes weren't tabulated properly. The undervote problem was corrected in an official count completed on Nov. 23, said the board's deputy director, Steven Harsman, a Democrat. The result: Bush picked up about 1,000 votes; Kerry about 400.
In Lucas County (Toledo), some ballots weren't counted when optical-scan machines clogged.	At some precincts, ballots got wet and weren't being read. Poll workers were instructed to store those ballots in emergency compartments and then [illegible] when ballots were scanned by bipartisan teams, said Election Director Paula Hicks-Hudson, a Democrat. She wasn't sure how many ballots were affected but estimated there were less than 1,000.
The CEO of Diebold, a maker of electronic voting machines, was quoted last year as having promised to win Ohio for Bush.	Only two Ohio counties — Lucas and Hardin (in northwest Ohio) — used Diebold machines, and those were optical-scan machines that read paper ballots. Blackwell had postponed the rollout of Diebold touch-screen machines until security risks could be addressed. The result: Kerry won in Lucas County with 60 percent. Bush won Hardin County with 63 percent.
Two counties found people who voted twice and one county found about 2,600 votes double-counted.	An elderly couple in Madison County voted twice — by absentee ballot and then in person on election day. The county prosecutor is determining whether criminal charges should be filed. In Summit County, election officials found 19 double votes for such garden variety reasons as voting absentee and in person or voting in an old precinct and provisionally in a new precinct, said Deputy Director John Schmidt, a Democrat. The problems were discovered in a post-election review and are being investigated. And in Sandusky County, a duplicate disc was accidentally made for 10 precincts. "It just doubled the votes for everybody," said Elections Director Barb Tuckerman, a Democrat. The problem was discovered three days later, when one precinct reported 131 percent voter turnout. A correction was made when vote totals were certified.

The Plain Dealer | Sunday, December 5, 2004

Predominantly black areas of Franklin County (Columbus) were shorted on voting machines, creating longer lines to discourage voters in heavily Democratic precincts.	William A. Anthony Jr., Franklin County Democratic Party chairman and chairman of the Board of Elections, who is black, told the Columbus Dispatch that long lines were caused by higher turnout, an overall lack of voting machines and a ballot with more than 100 choices for some voters. What's more, he added, the supervisor in charge of allocating voting machines is a Democrat.
Election boards were so backlogged that some failed to get voter cards on polling places to new registrants in time, messed up absentee ballots and generally disenfranchised new voters, most of whom are Democrats.	Advocacy groups have found evidence that a few hundred seemingly valid voters in Cuyahoga County were not listed in poll books, and for some people absentee ballots arrived late or not at all. But the scale of these problems seems small in perspective, given that the number of registered voters in the county rose from 820,000 to more than 1 million in the past four years. It's also impossible to say if those affected by election errors were Democrats or Republicans, because Ohio voters do not have to declare a party affiliation in general elections, and both parties aggressively courted new voters.
Election officials in Warren County (near Cincinnati) locked out the media and others not on a pre-approved list as votes were counted, citing terror threats.	It happened, but Jeff Ruppert, a lawyer for the Kerry-Edwards campaign, was inside and saw nothing unusual. "It was as clear and open as it could possibly be," he said. Witnesses also included Democratic members of the election board and several Democrats hired to help count votes.
On at least some ballots in Madison County (near Columbus), Libertarian candidate Michael Badnarik's name was blacked out.	"Yes, that did happen," said Paula Rafferty, the election board's deputy director, a Democrat. But neither she nor the director would discuss it. She referred a call to Joanna Morris, a board member who she said was responsible for the mark-out. A call to Morris was referred to Madison County Prosecutor Steve Pronal, who couldn't be reached. His assistant said the prosecutor was investigating. Meanwhile, Badnarik, Green Party candidate David Cobb, seven Ohio voters and Common Cause Ohio, a nonprofit group, have sued Blackwell for a statewide recount.

AROUND THE NATION

Several heavily Democratic counties in Florida uncharacteristically voted for Bush, which suggests inaccuracies.	The Miami Herald reviewed more than 17,000 optical-scan ballots in three counties where Democrats heavily outnumber Republicans, but backed Bush. The results were accurate, the paper reported.
Electronic voting machines were purposely rigged for Bush.	Computer experts say that it is conceivable that votes cast on electronic machines could be manipulated. Election officials counter, however, that too many checks and balances exist — in Ohio, boards of elections are controlled by equal numbers of Democrats and Republicans, for example — for it to happen. Those who are less trusting are taking the issue, among others, to court in Ohio and Florida.
Touch-screen machines in Broward County, Fla., started counting backward.	The St. Petersburg Times reported that vote-counters in the machines weren't programmed to expect more than 32,000 votes in any single precinct. As the limit was exceeded, vote totals started to decline. The error was noticed and fixed. Nobody's vote was lost.
The Wyoming secretary of state Web site shows an unofficial voter turnout of 106 percent.	There were 232,396 registered voters in Wyoming prior to the election, and 245,789 voted. This was possible because Wyoming allows voters to register and vote at the polls on Election Day.
How could exit polls be so wrong? They showed Kerry ahead in Ohio, Florida and Pennsylvania. He wound up losing Ohio and Florida, two must-win states.	Even academicians are battling over this one. Researchers at California Institute of Technology and Massachusetts Institute of Technology concluded there were no irregularities, based on early unofficial returns in Florida. But an analysis by the University of California at Berkeley claims to have found "statistical anomalies" in several heavily Democratic Florida counties. And a University of Pennsylvania professor calculated the odds of exit polls being off in all three key states at 250 million to 1. Nonsense, says Richard Morin, The Washington Post's director of polling. The exit poll numbers could indeed be accurate, he said, but, historically, they are not predictors of outcome, at least not in close elections. "In the case of blowouts, yeah, they can be suggestive," he said, comparing exit polling to predicting the winner of a football game after the first quarter.

INFORMATION COMPILED BY BILL LUBINGER, SCOTT HIASSEN MARK NAYMIK AND JULIE CARR-SMYTH | THE PLAIN DEALER

The Plain Dealer | Sunday, January 9, 2005

Untangling the voting controversies

Since the hotly contested presidential election, dozens of allegations of voter irregularities and conspiracies in Ohio have been made, many on the Internet. Here are several of the claims most often heard and an analysis of their veracity.

STATEWIDE

ALLEGATION	EXPLANATION
About 94,000 people chose either no one or more than one person when they voted for president. That meant their votes didn't count. In such a hotly contested race it was impossible to imagine that many people wasting a vote.	Do the math. Those 94,000 ballots are less than 1.7 percent of the total cast statewide. Experts say that's not far from the national average of 1.5 percent who vote twice or not at all for president. It's not anywhere near enough to cast doubt on the presidential race, said Edward Foley, director of the Election Law Program at Ohio State University's Moritz College of Law.
Election officials have not inspected all of those 94,000 "spoiled" ballots for pregnant or hanging chads or other signs of voter intent. Those ballots should be reviewed and counted.	There's a three-part explanation: First, Ohio law says election employees should take reasonable steps to inspect punch cards before the initial count. So ballots should have been reviewed. Second, Ohio law is specific about what counts and doesn't count as a vote. Pregnant chads don't; chads loosed at three or four corners do. That leads to the third point: reviewing punch card ballots by hand makes little difference, according to election expert Dan Tokaji, a law professor at Ohio State University. Tokaji points out that many things can go wrong with punch card ballots. They don't, for example, alert voters who have accidentally selected two people for president and allow them to correct their mistake. And double voting doesn't change upon review.
Too many provisional ballots, cast by those who believed they were registered but whose names didn't appear on voter registration rolls, were never counted. Election workers found problems with them — the voter wasn't registered, for example — and didn't enter them in the final tally.	Ohio counted a larger percentage of its provisional ballots than many other states, according to electionline.org, a nonpartisan clearinghouse for election reform information. Of the 17 states it had gathered data for by Dec. 1, Ohio counted the most — 77.33 percent. That compares to 6.38 percent in Delaware, 22.53 percent in Massachusetts and 57.52 percent in Michigan.
Exit polls showed Kerry ahead in Ohio, but Bush won the state. Votes must have been tampered with.	Two polling firms — Edison Media Research and Mitofsky International — were hired for exit-polling for ABC, CBS, NBC, CNN, Fox News Channel and The Associated Press. Joe Lenski, executive vice president of Edison Media Research, said exit polls were done at 50 precincts throughout Ohio. He said the firms are investigating results nationally, and that no evidence of fraud was found in Ohio. Lenski said states such as Vermont, Connecticut and Delaware had higher discrepancies between exit polls and election results than did Ohio. Kerry won those three states, but "no one's questioned those," he said. "There's this fiction out there that exit polls are accurate to the decimal point, and that's just not true. They're a survey, like any other survey."

COUNTY-BY-COUNTY

FRANKLIN COUNTY **Minority precincts were intentionally deprived of voting machines, which created long lines and thousands of potential voters leaving in frustration.**	Democratic and Republican election officials allocated machines based on voting patterns and estimates on where more were needed. Because of a growth and shift in population since the 2000 election, 29 precincts had been added. Election officials reviewed active voter files as of July 2004 to decide where to put the machines. William Anthony Jr., who is black, and chairs both the Franklin County Democratic Party and its elections board, said, "It broke the way it broke because the growth wasn't in the inner city, not because we wanted to disenfranchise black voters."
FRANKLIN COUNTY **People not inside some polling places by 7:30 p.m. were told to leave, even if they had waited in line for hours, violating the Voting Rights Act.**	Anthony and Mike Hackett, deputy director of the elections board, both Democrats, said no voter allegedly turned away has come forth. They said they would investigate any such complaint made to them.
HOCKING COUNTY **A repairman may have tampered with results when he showed up to check a voting machine before the recount. He found a fuse was out and replaced the fuse.**	Hocking County Prosecutor Larry Beal ordered the repairman to show reporters, the elections board, computer experts and others how he made the repair, and Beal, a Democrat, ruled that nothing fishy happened.
KNOX COUNTY **Mostly Democratic students at Kenyon College, a liberal arts school, waited nine or 10 hours to vote while students at Mount Vernon Nazarene University — more likely to support Republican candidates — had no wait.**	A late registration drive at Kenyon meant many names were added in the two weeks before Election Day, after voting machines had been assigned and programmed. Election workers had no way of predicting that the Kenyon precinct would have one of the highest turnouts in the county — almost 73 percent — said Rita Yarman, deputy director of the Knox County Board of Elections and a Democrat.
MAHONING/FAIRFIELD COUNTIES **Some voters chose Kerry but their machines registered a vote for Bush. This allegedly happened in other Ohio counties.**	Mahoning County had problems with machines early on Election Day but some machines recorded votes for Kerry when Bush was selected too, said elections Director Michael Sciortino, a Democrat. The machines not working were quickly fixed and voters corrected their mistakes — electronic machines highlight the name of the candidate so voters can catch errors before their vote is cast. Fairfield County officials say they don't know how the rumor got started about machines there. They use punch card ballots. "So if you voted for Kerry, you voted for Kerry and if you voted for Bush, you voted for Bush," said Director Alice Nicolia.
MIAMI COUNTY **On election night, vote totals changed from 31,620 to 50,235, both based on 100 percent of precincts tallied. In both counts, Bush and Kerry oddly maintained the same percentage, 66 percent to 34 percent, in Bush's favor. Even more unlikely, the margin in the higher vote total was exactly 16,000 votes, raising suspicions about the accuracy of optical-scan machines.**	Miami County officials, according to the Dayton Daily News, said the 19,000 "new" votes appeared because Ohio Secretary of State Ken Blackwell's Web site initially used incomplete results when it posted what it said were final figures. The correct numbers were sent when the error was found.
WARREN COUNTY **Some Democrats with proper identification were forced to use provisional ballots so that their ballots were subjected to closer review when counted.**	Robert Hammock, Board of Elections chairman and co-chairman of the county's Democratic Party, wasn't aware of such complaints.

INFORMATION COMPILED BY BILL LUBINGER | THE PLAIN DEALER

THE COLUMBUS DISPATCH | News | FRIDAY, JANUARY 7, 2005

Ohio voting complaints, explanations varied

A look at the allegations of election irregularities in Ohio:

PROBLEM: Long lines at the polls
ALLEGATION: The number of voting machines was reduced in Democratic and minority areas, resulting in waits of several hours that caused some voters to give up and leave without casting a ballot, while machines were added in suburban or GOP areas.
DETAILS: Most complaints came from Franklin County, where the most heavily Democratic precincts had 17 fewer machines compared with 2000, and the most heavily GOP areas had eight additional machines; and from Knox County, where some college students waited at least eight hours to vote on two machines.
OFFICIAL RESPONSE: Politics played no role in allocating machines, and the problem was too few machines in both Democratic and GOP precincts to handle the crush of voters. Knox County had only two machines for every precinct and didn't want to leave any precinct with just one machine, in case it failed. Democrats helped decide where machines were placed.

PROBLEM: Provisional ballots
ALLEGATION: Ohio Secretary of State J. Kenneth Blackwell directed county elections boards to reject provisional ballots cast in the wrong precinct, affecting thousands of voters. Also, unclear guidelines caused many voters to improperly be denied provisional ballots at the polls or led to thousands of ballots being rejected.
DETAILS: Of 153,539 provisional ballots cast statewide, 77 percent were ruled valid and counted. Most invalid ballots were rejected because the voter wasn't registered. Validation rates ranged from a high of 100 percent in Champaign County to a low of 59 percent in Lucas County.
OFFICIAL RESPONSE: Blackwell followed state election law, which the courts ultimately upheld. Ohio led the nation in the percentage of provisional ballots counted.

PROBLEM: Paper weight of registration cards
ALLEGATION: Blackwell initially directed that voter registrations that weren't printed on paper with a certain thickness be rejected, denying people the right to vote.
DETAILS: It's unclear how many registrations were rejected or not completed before Blackwell bowed to pressure and reversed his order Sept. 29.
OFFICIAL RESPONSE: Blackwell issued the directive because cards on lighter paper were being damaged by post-office machinery.

FILE PHOTO

Barbara Johnson, right, sits during the long wait to vote Nov. 2 at the Driving Park Recreation Center on the South Side.

PROBLEM: GOP challenging 35,000 newly registered voters
ALLEGATION: Republicans wanted to discourage first-time voters, many of them minorities.
DETAILS: After a court fight, scheduled hearings on the challenges were canceled, but voters still received mail notifying them they were being challenged.
OFFICIAL RESPONSE: The challenges were based on mail sent to the registrants returned as undeliverable, and the GOP wanted to stop fraudulent voting.

PROBLEM: Warren County lockdown
ALLEGATION: On election night, Warren County, a traditionally Republican stronghold, barred reporters from observing the counting on grounds there was a terrorist threat — making President Bush's gain of about 20,000 votes from the 2000 election suspicious.
DETAILS: No threat was ever confirmed, and there have been conflicting reports about why the building was locked down. County officials have pledged reforms to avoid a repeat.
OFFICIAL RESPONSE: Democrats — including Democratic presidential candidate John Kerry's legal representative in the county — say they didn't observe anything unusual inside the building on election night.

PROBLEM: Voting in Mahoning County
ALLEGATION: Improperly calibrated electronic machines transferred an unknown number of Kerry votes to Bush.
DETAILS: Voters complained that votes for Kerry "flipped" to Bush when the machine asked them to confirm their selection.
OFFICIAL RESPONSE: The problem was limited to 25 machines and was fixed, but there is no indication of how many votes might have been affected.

PROBLEM: Voting patterns
ALLEGATION: Votes in some counties "migrated" from Kerry to Bush based on results from an Ohio Supreme Court race also on the ballot Nov. 2.
DETAILS: C. Ellen Connally, an underfunded Democratic candidate for the Ohio Supreme Court, received more votes than Kerry in several counties — or her margin of defeat was narrower than Kerry's.
OFFICIAL RESPONSE: There's no proof of vote "migration," and although Kerry was identified as a Democrat on the ballot, Connally, as a judicial candidate, was not.

PROBLEM: Phantom votes for Bush in Gahanna
ALLEGATION: Bush received 3,893 extra votes in Gahanna Precinct 1B based on unofficial results, raising questions about the accuracy of votes elsewhere.
DETAILS: Bush received 4,258 votes and Kerry 260 votes, even though only 638 people voted in the precinct.
OFFICIAL RESPONSE: There was one faulty voting-machine cartridge but no explanation for why it malfunctioned. The error was corrected in the official count.

PROBLEM: Additional votes in Miami County
ALLEGATION: About 19,000 votes were added after initial results were announced.
DETAILS: Miami County's final vote totals were reported on Blackwell's Web site as 20,807 for Bush and 10,724 for Kerry. They were later changed to 33,039 for Bush and 17,039 for Kerry. Kerry received the exact same percentage of both vote totals, an unlikely statistical outcome.
OFFICIAL RESPONSE: Miami County officials say the 19,000 new votes came because Blackwell's Web site used incomplete results when it posted final fig-

ures. The correct numbers were sent as soon as the error was found.

PROBLEM: Discrepancies in records
ALLEGATION: More people voted in some counties than the number who signed precinct voting books at the polls.
DETAILS: In Trumbull County, for example, an observer reviewed 106 precincts and found 580 more absentee votes cast than absentee voters listed in precinct poll books.
OFFICIAL RESPONSE: Bipartisan teams of election officials check unofficial vote totals against precinct books to determine official vote count. In Trumbull County, the observer examined poll books that had to be printed before final information was available.

PROBLEM: Uncounted votes
ALLEGATION: Votes for president weren't counted on thousands of ballots, disproportionally affecting minority and Democratic voters.
DETAILS: There were 92,672 uncounted votes for president statewide because either no vote was recorded for the race or too many were, invalidating the vote.
OFFICIAL RESPONSE: More than 80 percent of the uncounted votes came from counties using punch cards, which have a higher rate of uncounted votes than any other type of voting machine. Some "undervotes" are intentional.

PROBLEM: Exit polls
ALLEGATION: Votes must have been added to Bush or subtracted from Kerry because exit polls in Ohio and several other states showed Kerry winning, and the poll — used to detect fraud in overseas elections — is too reliable to be wrong.
DETAILS: The exit poll of voters in Ohio said Kerry would win by 52.1 percent to 47.9 percent, for example, but Bush actually won by 50.8 percent to 48.7 percent.
OFFICIAL RESPONSE: A poll is not as accurate as the actual vote, and exit polls are based only on responses from voters who agree to participate.

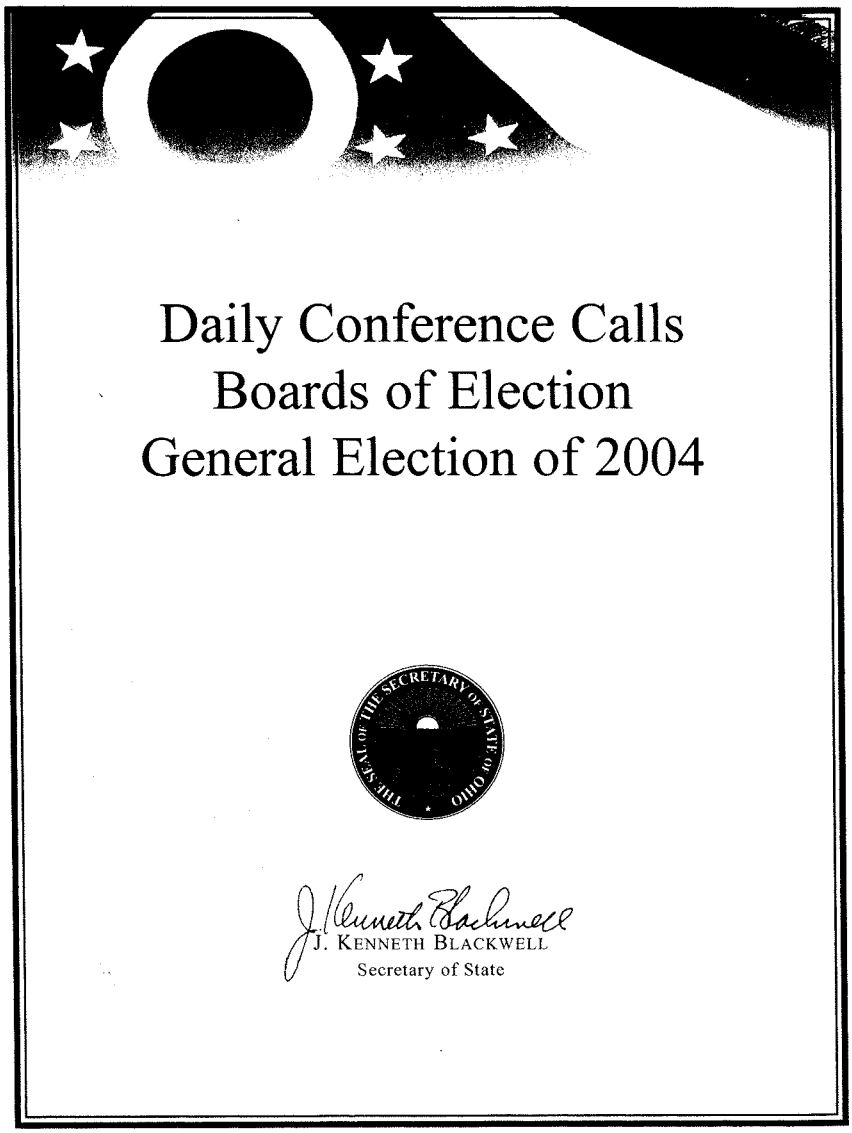
PROBLEM: Late recounts
ALLEGATION: Recounts started too late because Blackwell delayed certifying official results.
DETAILS: Blackwell certified the state's official vote totals Dec. 6, one day before the federal deadline to resolve disputes about Ohio's Electoral College members — and too late for a recount to be conducted to meet that deadline.
OFFICIAL RESPONSE: Ohio has an extensive process to check unofficial results before they are certified and was it done faster in 2004 than in previous years. Results in 2000 were certified on Dec. 11 of that year and 2002 results on Dec. 20, 2002. Certification could be accelerated if it appears on election night that a recount will be required.

PROBLEM: Recount questions
ALLEGATION: Ballot-tabulating computers in Hocking and other counties were tampered with to ensure hand counts would match machine counts.
DETAILS: The allegations are based mostly on an affidavit from a Hocking County election worker who had concerns about a technician from Triad Governmental Systems — which provides vote-counting software in 47 Ohio counties — working on a computer before the recount and suggesting a "cheat sheet" be posted.
OFFICIAL RESPONSE: The company says the technician simply fixed a broken computer; the election worker says she doesn't think any fraud occurred; the Democratic prosecutor in Hocking County is satisfied nothing improper happened.

PROBLEM: Recount procedures
ALLEGATION: Some counties didn't follow guidelines for a recount, such as not picking 3 percent of ballots at random to count by hand to check against machine counts — or not counting all ballots by hand when the 3 percent hand-count didn't match the machine count. That casts doubt on the recount.
DETAILS: Fairfield and some other counties did not recount all ballots by hand when machine counts did not match. Instead, tabulators were deemed to be faulty and replacements sought.
OFFICIAL RESPONSE: Counties have discretion to conduct recounts within state guidelines.

PROBLEM: Partisan politics
ALLEGATION: Blackwell, as the state's chief election official, also was a co-chairman of the Bush-Cheney campaign in Ohio — and issued directives or took other official actions to help Bush.
DETAILS: Blackwell issued directives regarding provisional ballots and other matters that prompted lawsuits and criticism from Democrats.
OFFICIAL RESPONSE: The courts ultimately upheld Blackwell's actions, and elections are run by county boards with equal numbers of Democrats and Republicans.

Sources: "Preserving Democracy: What Went Wrong in Ohio," Status Report of the House Judiciary Committee Democratic staff; media reports



Daily Conference Calls
Boards of Election
General Election of 2004

J. Kenneth Blackwell
Secretary of State

BOE Daily Conference Call Questions

Challengers and Witnesses

1. **If the precinct election judges reach a tie on their decision to allow a person to vote or not, how is the tie broken?**

   R.C. 3505.20 provides that if a majority of the precinct election judges believes the person is not entitled to vote, the judges shall refuse the person a ballot. Therefore, if the precinct election judges tie, the tie should be broken in favor of issuing a ballot to the person.

   However, see response to question 5 under this section.

2. **Can challengers for a group of 5 or more candidates appoint any candidates, or do they have to be candidates in the area where the challenger wants to file (i.e. a certain congressional district, ward, ect.)?**

   R.C. 3505.21 authorizes "any group of five or more candidates to appoint one person ... who shall serve as challenger *for such candidates during the casting of ballots ... .*" (Emphasis added.)

   Candidates have standing only in those precincts where they are candidates. Thus, the language of the statute seems to indicate that the candidates can appoint a challenger only to polling places where the all of candidates comprising the appointing group are on the ballot or are write-in candidates.

3. **If the parties are filing in more than one precinct, can one person be a challenger in more than one precinct?**

   Pursuant to R.C. 3505.21, a challenger may be appointed "to any of the polling places." Thus, an entity that is entitled to appoint challengers may appoint one challenger to any polling place, whether that polling place serves one, or one dozen, precincts.

   An entity that is entitled to appoint challengers need not appoint different persons to serve as its challengers at the different polling places; it may appoint the same qualified person to serve as its challenger at more than one polling place.

4. **(a) Can a person be both a challenger and a witness in the same precinct?**

   Yes.

   (b) If someone files as a witness in a certain precinct, does that give that person the right to watch the ballot counting at the board of elections, if that's where the

counting is done? Otherwise, do you file as a witness at the board of elections or where the counting is done?

A witness' appointment must specify at which specific counting station(s) the witness will be serving.

5. **Some election boards are confused about the challenge process at the polls, specifically about what a voter's appeal rights are. If a voter is ruled ineligible to vote, does he have the right to appeal that decision or demand a provisional ballot so his vote can still be counted if eligibility is determined later?**

   A person challenged at the polling place may vote a provisional ballot and have any eligibility issues resolved later.

   Although R.C. 3505.20 states that "[t]he decision of said judges shall be final as to the right of the person challenged to vote at such election," the November 2, 2004 election also is governed by federal law. HAVA § 302(a) provides that a person whose eligibility to vote is challenged by an election official may vote a provisional ballot if that person declares that the person is a registered voter in the county in which the person desires to vote, and the person is eligible to vote in an election for Federal office.

6. **How should we address the anticipated situation pertaining to observers for the upcoming election? I have received my first official communication from a local attorney indicating he has been designated as the counsel in my county for Kerry/Edwards 2004.**

   See Directive 2004-40 which states:

   The Ohio Revised Code 3501.30, 3501.35 and 3599.24 collectively prohibit ***anyone***, on Election Day, from:

- Engaging in election campaigning within 100 feet of the entrance to a polling place.
- Entering a polling place for any reason other than to vote, unless the person is an election official, a challenger or witness appointed pursuant to R.C. 3505.21, or a police officer.
- Loitering, congregating, hindering or delaying a person from reaching or leaving the polling place.

Questions From Conference Call

1. **What about persons wanting to check the 11 and 4 list?**

   - These persons are allowed into the polling place to check the lists only. The lists should be conspicuously posted and placed for easy access and away from, if possible, the main flow of voters coming in to vote.

2. **If we have multiple precincts in a polling place, do we issue a precinct by precinct form to each one of the presiding judges in that building?**

   - Yes.

3. **Do the challengers have to be at the polls the entire day, or can they come and go?**

   - The challengers can come and go if they so choose.

Write-in Candidates

1. **What determines a valid write-in vote?**

   The voter must write in the name of an eligible candidate in the place provided, providing sufficient information so that the board can determine the voter's intent, and the voter must not overvote the ballot.

2. **Can a voter write-in the name only, or the last name only without the office? / Must both the office and the name be written in?**

   The voter can write in the name only, if that will be sufficient for the board to determine the voter's intent.

   However, if there is more than one candidate in the voter's precinct with that name, the voter needs to provide more information to enable the board (a) to know for whom the voter is voting, and (b) to verify that the voter did not overvote the ballot. If two

candidates, e.g., "White" and "Whyte," are running for the same office, it may be necessary for the voter to provide the desired candidate's full name, to avoid confusion.

Bottom line: The more information the voter provides, the better the chance that the write-in vote will be counted, because it cannot be counted if election officials are unable to determine the voter's intent.

3. **We have a countywide write-in for sheriff. Can we have the pollworkers tally up the write-in votes instead of keeping the ballot cans locked and having our inspections teams opening them and tallying the write-ins?**

   No; the votes must be tabulated as part of the same process at counting stations where witnesses may have been appointed.

4. **Are pollworkers / election officials able to volunteer the name and office of a write-in candidate? Or can this only be done if the information is requested by a voter?**

   Election officials are not to volunteer information about write-in candidates, as that would constitute campaigning and may be perceived as trying to influence voters. However, the board of elections must include in the precinct kit the list of any write-in candidates that may be voted on in that precinct. Election officials shall show that list to any voter in that precinct who asks about write-in candidates.

5. **Can write-ins be written in either pencil or pen?**

   It depends on the voting system. Although most voting systems will accept pen or pencil, some systems – such as optic scan ballots – may require that a specific writing utensil be used in order that the write-in vote register.

6. **(a) Can write-in items be handed out outside the polls such as labels, stickers, rubber stamps, or pencils with the write-in candidates name written on them?**

   Anyone who is outside the 100-foot area marked by the U.S. flags may hand out campaign materials, including pens, pencils, stickers, stamps, etc.

   (b) If so, can they be used to mark the write-in on the ballot?

   Yes, no and maybe:

   - **NO** to labels, stickers and rubber stamps; the voter must write the candidate's name in the place provided.

   - **YES, MAYBE**, to pens or pencils; again, it depends on the voting system. If a voting system will allow the voter to use any pen or pencil to write in the candidate's name, then a voter may use the pen or pencil – even if it has the candidate's name on it. If a voting system requires that a particular writing

utensil be used, then the voter must use only that utensil, if the voter wants the vote to count.

NOTE: Voters must take pens/pencils/other campaign materials for any candidate or ballot issue with them when they leave the voting booth. Precinct election officials must protect the neutrality of the polling place by checking the voting booths as often as may be necessary to ensure that no campaign materials have been left behind and that the ballot has not been altered.

BOE Daily Conference Call Questions

Challengers and Witnesses

1. What is the role of a challenger?
2. What is the role of a witness?
3. How are challengers and witnesses appointed?
4. What is the deadline for the appointment of challengers and witnesses?
5. Can the appointment of the challengers or witnesses be changed?
6. Can a person be a challenger in more than one precinct? / Can the party appoint the same person to different precincts?
7. Can and individual name himself as a challenger in all precincts by the deadline, and then amend it later with specific names for specific locations?
8. Under what circumstances if any can amendments to the witnesses and challengers be made?
9. If someone appoints challengers in several precincts prior to the deadline, can that same person add additional precincts before the deadline? Can they add precincts after the deadline?
10. What form needs to be filled out to be a witness?
11. What is the deadline for witnesses and challengers to be appointed?
12. Who may appoint witnesses and challengers?
13. Does the challenger have to leave the polling location at 7:30 p.m.?
14. Who can be in the polling location after 7:30 p.m.? The challenger or the witness or both?
15. If a voter's residence is challenged and they attest on Form 10-U that they reside in the precinct can the judges ask for a form of identification to prove their residency?
16. If the polling location judges reach a tie on their decision to allow a voter to vote or not, how is the tie broken?
17. Please provide examples of questions that may be asked of the voter if challenged for the following reasons:
    a. Not a U.S. citizen
    b. Not a resident of Ohio for 30 days immediately before the election
    c. Not a resident of the county or the precinct
    d. Not 18 years of age by the election
18. Who may challenge a voter?
19. What can be done if challengers have a conflict with the pollworkers and or other challengers of the opposite parties?
20. Who gives the oath to a challenged voter?
21. Are there any limits as to how close a challenger can be to the pollworkers and voters?
22. Can challengers for a group of 5 or more candidates use any candidates, or do they have to be candidates in the area where the challenger wants to file (i.e. a certain congressional district, ward, ect.)?
23. If the parties are filing in more than one precinct, do they have to use different people, or can one person be a challenger in more than one precinct?

24. Can a person be both a challenger and a witness in the same precinct? If someone files as a witness in a certain precinct, does that give that person the right to watch the ballot counting at the board of elections, if that's where the counting is done? Otherwise, do you file as a witness at the board of elections or where the counting is done?
25. Who rules in challenger at the polls, when a challenger questions the eligibility of a voter? The presiding judges at the polls? The board of elections?
26. Some election boards are confused about the challenge process at the polls, specifically about what a voter's appeal rights are. If a voter is ruled ineligible to vote, does he have the right to appeal that decision or demand a provisional ballot so his vote can still be counted if eligibility is determined later?
27. How should we address the anticipated situation pertaining to observers for the upcoming election? I have received my first official communication from a local attorney indicating he has been designated as the counsel in my county for Kerry/Edwards 2004.

Absentee Ballots

1. If a voter is now listed as having an "inactive" status due to a mailing being returned to the BOE and now wants to vote absentee, do we accept the request at the same address as the voter confirmation of that, since the ballot (first class) will be returned to us?

Provisional Voting

1. Regarding provisional ballots, are you directing boards of elections to keep a count of the number of provisionals cast that will be released on election night? One board told me it just puts provisionals in a pile and doesn't determine how many were cast until later.
2. If someone challenges a provisional ballot, who rules on that? Does it require a hearing by the board of elections?
3. Is it ever appropriate to give a provisional ballot to a potentially our of precinct prospective voter?

Recount Procedures

1. If there is a recount, automatic or otherwise, what accommodations will be made for the press to observe? Do we need anything in advance or file any formal request to monitor?

Write-in Candidates

1. What determines a valid write-in vote?
2. Can a voter write-in the name only, or the last name only without the office? / Must both the office and the name be written in?
3. We have a countywide write-in for sheriff. Can we have the pollworkers tally up the write-in votes instead of keeping the ballot cans locked and having our inspections teams opening them and tallying the write-ins?

4. Are pollworkers / election officials able to volunteer the name and office of a write-in candidate? Or can this only be done if the information is requested by a voter?
5. Can write-ins be written in either pencil or pen?
6. Can write-in items be handed out outside the polls such as labels, stickers, rubber stamps, or pencils with the write-in candidates name written on them? If so, can they be used to mark the write-in on the ballot?

Identification Requirements

1. If a person comes to vote and provides missing information, including signature, can we allow them to vote? Would they vote a regular or provisional ballot?
2. ? The question is…can the boards flag these folks for the election so that if they haven't returned the prescribed form before the election, the boards can attempt to get it at the polls on election day….as in vote them provisional or…..require them to complete it before they vote…or suggest something if you can?

Voter Registrations

1. How long must we keep incomplete voter registrations?
2. Our VR system has the capability of pending a voter for missing information. We have several registrations that came with this big push to get everyone registered that have missing birth dates, addresses, and missing signatures. Since the forms were here by the 4th, if we get that information from the voter can they be registered for the Nov. elections?
3. If someone fails to update their registration by the 4th, such as address, name, precinct, will they need to file a provisional ballot in their new precinct?
4. We are hearing many news reports and need to know exactly what to do with Election Day voters whose forms were missing one of the following: date of birth or signature or those voters who provided only a P.O. Box for an address. Currently, we are entering as much information as was provided and then fatally pending those voters. Is this correct?
5. As for voters who did not provide either their driver's license numbers or the last 4 digits of their SSN, we are simply flagging them for ID Required. If we a wrong, please let us know.
6. Is it permissive for the Board of Elections to accept incomplete registration cards received after the registration deadline as outlined in R.C. 3503.19? At issue is whether the Board of Elections is legally permitted to accept a registration form that was received before the deadline, was found to be incomplete and the individual subsequently provided the information after the registration deadline. It should be noted that it was as a result of the Board sending correspondence to these individuals that prompted them to provide the incomplete information.

Exit Polling

1. Please provide the guidelines for exit polling (media polling).
2. The OAEO has respectfully asked that our office hold to a strict interpretation of R.C. 3501.35, which states in part "…no person shall…in any manner hinder or

delay an elector in reaching or leaving the place fixed for casting his ballot…." What is our response on this issue?

Security at the Polls

1. Our sheriff will be assisting us with disruptions and monitoring of the polls. To assist with this our prosecutor has asked to have a contact person with the SOS office who he can reach directly and quickly in the event that a serious problem would occur. Can you provide us with someone?

BOE DAILY CONFERENCE CALL QUESTIONS

Challengers and Witnesses

Follow up questions from October 21, 2004 conference call:

1. **Are challengers and witnesses eligible to vote an absentee ballot?**

   Yes. Challengers and witnesses are considered *elections officials*. *See* Oliver v. Bode, et al.(1896), 6 Ohio Dec. 57, 1896 WL 735.

2. **Must the presiding judge verbally ask the questions to the person challenged or may the challenged voter fill out the appropriate section of Form 10-U?**

   R.C. 3505.20 contemplates that the questions would be asked of the challenged voter by the presiding judge. The form was created to provide consistency of questions presented and provide a document for the voter to sign.

3. **Why do some of the challenge and witness forms state to be signed by the chair and secretary of the party and others state by the chair and secretary of the committee?**

   R.C. 3505.21 states "challenger and witness .....shall be appointed in writing by the chairman and secretary of the controlling committee." Since political party county by-laws are different for each county, the term "executive/central committee" was used to reflect whichever one is the controlling committee for that party.

4. **Must both forms 214 and 216 be completed for a person appointed as a witness at the Board of Elections?**

   Yes. R.C. 3506.13 requires that the witness file his/her certificate of appointment at the proper counting station (Board of Elections).

Additional questions received via email:

5. **Can the appointment of the challengers or witnesses be changed?**

   Yes. The deadline for amending challenger and witness appointments is 4 p.m. the day before the election; i.e., Monday, November 1, 2004.

6. **Can an individual name himself as a challenger in all precincts by the deadline, and then amend it later with specific names for specific locations?**

   Yes.

7. **Under what circumstances if any can amendments to the witnesses and challengers be made?**

   The amendment may change the person who was appointed or may change the name of the polling location. Additional polling locations may not be added.

8. **Can a political party appoint more than one challenger to a polling location?**

   No. R.C. 3505.21 states the party may appoint to any of the polling places one person who is a qualified elector.

9. **When a challenger has been appointed to more than one polling location, but is asked to leave one polling location by the presiding judge, are they allowed to go to the other location to be a challenger?**

   Yes. Since the person was properly appointed, he/she may go to the other designated polling location.

10. **Our tabulation room is very small as is the area outside of this room. Can Board Members limit access because of space and security? How many persons can file as witnesses?**

    The Board must make a reasonable effort to accommodate the witnesses. Each party, each group of five or more candidates and recognized issue committees may appoint witnesses (limit of six).

11. **Please provide Boards with some guidance in terms of setting these matters for hearings and defining the notice requirement. It is clearly not feasible to have a hearing not later than two days prior to the election to determine the registration status of those challenged. In terms of compliance, would it be a reasonable accommodation to simply challenge these voters on Election Day?**

    If a properly filled out Form 257 is filed by the close of business today (Oct. 22), eleven days before the election, the Director must send notice of the hearing and the Board must do the following:

    R.C. 3503.24 states in part: On receiving an application or challenge filed under this section, the **director *shall* promptly set a time and date for a hearing** before the board. **The hearing *shall* be held no later than two days prior to any election**. The director shall send written notice to any elector whose right to

vote is challenged and to any person whose name is alleged to have been omitted from a registration list.

The notice shall inform the person of the time and date of the hearing, and of the person's right to appear and testify, call witnesses, and be represented by counsel. The notice shall be sent by first class mail no later than three days before the day of the any scheduled hearing. The director shall also provide the person who filed the application or challenge with such written notice of the date and time of the hearing.

....The Board ***shall*** **reach a decision** on all applications and challenges **immediately** after the hearing.

12. May a committee of 5 or more candidates execute only one Form No. 217 and attach the list of filed challengers instead of having to sign 300 or whatever total number of certificates they might have? In the space provided for precinct and person appointed, the certificate could read, "please see attached list of filed challengers and witnesses." Is this allowable?

No. The Form 217 must be presented to the presiding judge(s) at the polling location. Therefore, attaching a list to the form would not provide that individual certificate that is required to be filed with the presiding judge.

13. May challengers be present for the opening of absentee ballots?

Yes, if a person has been properly appointed to be a challenger at the Board of Elections.

Questions from the conference call:

14. Does a person applying to be a challenger need to be an elector from that county?

A challenger must be a qualified elector in the state. The person does not have to be registered in the county where the person is acting as a challenger.

15. As the director of a board of elections and secretary of the party, do you see a conflict with me signing Form 214, Appointment of Challenger and Witness?

No.

16. Regarding Form 215, the actual challenger delivers the form to the presiding judge?

Correct.

17. What is the definition of a good cause for a challenge?

The reasons for good cause are listed on Form 10-U.

18. Our Chad room is separate from the tabulator room. Are the witnesses allowed in the Chad room? Are the same people in the tabulator room allowed in the Chad room?

Witnesses are allowed to watch any and all parts of the tabulation process. Your county needs to make accommodations so that they can see what is happening. You must determine a reasonable way to conduct the process while still giving the witness access to observe the procedures.

POLLING PLACE ACCESS

19. Please review the exit polling procedures and review news media in the polling location. I know that in the past, some counties will allow the news media in the polling place to take a picture, no interviews or shooting someone in the booth, but just a general picture.

As stated yesterday, Directive 2004-40 states:

The Ohio Revised Code 3501.30, 3501.35 and 3599.24 collectively prohibit ***anyone***, on Election Day, from:

- Engaging in election campaigning within 100 feet of the entrance to a polling place.
- **Entering a polling place for any reason other than to vote, unless the person is an election official, a challenger or witness appointed pursuant to R.C. 3505.21, or a police officer.**
- Loitering, congregating, hindering or delaying a person from reaching or leaving the polling place.

ABSENTEE VOTING

20. We have several persons to whom absentee ballots have been mailed...they claim they have not received them. Our policy is not to issue two ballots in the same person's name...unless we receive the old one back as a soiled and

defaced ballot. Are we correct with this policy or should we take someone's word and issue another ballot to them?

Your policy is not incorrect, however, we know from voter registrations, that not all mail reaches its intended designation. Therefore, you may cancel out the first ballot and resend another ballot if your board will allow this procedure. Your absentee system must be able to prohibit sending out another ballot unless the first one is cancelled and prohibit the ability to process (count) two ballots for the same person.

21. A military voter returned their ballot without the secrecy envelope. The name and address appear on outside envelope. Do we count it or not?

The ID envelope must be signed in order for the ballot to be counted. R.C. 3509.05 states in part – "The elector shall cause the statement of the voter on the outside of the identification envelope to be completed and signed." Also, one of the reasons for rejection of an absentee ballot is that the signature does not match his registration signature pursuant to R.C. 3509.07.

22. We have voters jailed awaiting trial in other counties who have requested an absentee ballot. May we mail ballots to the jail? Further, since they have their own system of distributing mail, should we send ballots certified? What about those incarcerated in our own county?

Yes, you may mail ballots to persons incarcerated in other counties pursuant to R.C. 3509.08. The statue does not require certified mail.

R.C. 3509.08 provides that if an elector is confined to a public and private institution within the county, the board shall designate two such employees for the purposes of delivering and returning the ballots to the board.

Questions from the conference call:

23. Who can vote in the board of elections office on Monday, November 1st and Tuesday, November 2nd?

Provisional voters may vote on either day at the board of elections office.

The following may take place on Monday, November 1st:

- R.C.3509.03 – Absentee ballots may be voted in person at the boards of elections until the close of business hours.
- R.C. 3509.031 – Militia on active duty may file applications in person for absentee ballots by 4:00 p.m.

The following may take place on Tuesday, November 2nd:

- R.C.3509.08 – Voters hospitalized because of medical emergency may apply for absentee ballots until 3:00 p.m.

24. We have received absentee ballot requests from the Amish stating religious reasons. Is this a valid reason to send an absentee ballot?

- Yes.

25. If we receive unsigned absentee envelops returned to the board of elections, can we call the people to have them sign their envelope?

- No. Once the ballot is submitted the voter is finished.

BOE Daily Conference Call Questions

Challengers and Witnesses

1. **On Form 214, a political party has filed 5 people to serve as challenger/witnesses at the board of elections and 5 people to serve as challengers/witnesses at the voting tabulation place.**

    - **Can they file more than one person in the precinct?**

      No, the entity can only appoint one to a polling location.

    - **The Board of Elections is the tabulation place. Does that mean they can only have one person appointed here?**

      Yes, one per entity, however see R.C. 3505.21 for exception for issue committees.

2. **Is it one challenger per precinct or per polling location? We have a polling location with 15 precincts and one of the parties wants one challenger (or two) per precinct. Is this right?**

    R.C. 3505. 21 states: "[A]ny political party supporting candidates to be voted upon at such election and any group of five or more candidates may appoint to any of the **polling places** in the county or city one person, **a** qualified elector, who shall serve as challenger…"

    Consequently, an entity that is entitled to appoint challengers may appoint one challenger to any polling place, whether that polling place serves one, or one dozen, precincts.

3. **We just had Form 214 filed by a party chairman naming challengers in all 81 of our precincts using the same four people just alternating them from one precinct to another until all 81 precincts were covered plus the board of elections office. Is this acceptable?**

    Yes, with a caveat: an entity that is entitled to appoint challengers may appoint one challenger to any polling place, whether that polling place serves one, or one dozen, precincts.

4. **A challenger just filed 30 Form 257's in our office challenging a person on each form as to whether or not they are a resident of the precinct where they registered. What process do we follow from here?**

   Follow the procedure set forth in R.C. 3503.24, which provides in part:

   "On receiving an application or challenge filed under this section, the director shall promptly set a time and date for a hearing before the board. The hearing shall be held no later than two days prior to any elections. The director **shall send written notice** to any elector whose right to vote is challenged and to any person whose name is alleged to have been omitted from a registration list. The **notice shall inform the person of the time and date of the hearing,** and of the **person's right to appear and testify, call witnesses, and be represented by counsel.** The notice shall be sent by **first class mail no later than three days before** the day of **any scheduled hearing.** The director shall **also provide the person who filed the application or challenge with such written notice** of the date and time of the hearing."

   At the request of either party or any member of the board, the board shall issue subpoenas to witnesses to appear and testify before the board at a hearing held under this section. All witnesses shall testify under oath. **The board shall reach a decision on all applications and challenges immediately after the hearing.**

5. **Should our county prosecutor be involved in the hearing process?**

   Your prosecutor should be informed of the hearings. Your board should request that he/she attend these hearings.

6. **Our board has had 171 challenges filed and we need some guidance. We have read R.C. 3503.24 and understand the procedure to follow, but the person filing the challenges has requested that the names be removed from the list and the registrations be cancelled. Doesn't this conflict with provisional voting under NVRA and HAVA, since even if these individuals no longer reside at the address on file they are still registered and can vote a provisional ballot?**

   This is why the board is required to:
   - mail a notice to the person being challenged under R.C. 3503.24 and
   - conduct a public hearing on the challenge prior to deciding whether to remove an elector's name from the precinct list.

   The challenged voter could vote a provisional ballot under HAVA section 303(b)(2)(B), but election officials will determine, applying state law, the provisional voter's eligibility after Election Day.

7. **Must a challenger fill out an individual form for each person challenged at the polls?**

   No. The challenger verbally informs the presiding judge of the reason for the challenge (one of those listed on form 10-U).

8. **Please explain the mechanics of deciding a challenge in a polling location with several precincts.**

   An entity entitled to appoint challengers may appoint one qualified person per polling place, regardless of the number of precincts housed at that polling location. When a voter appears at a precinct in that polling location to vote and is challenged, the presiding judge of that precinct will ask the appropriate questions from Form 10-U.

Conference Call Questions:

9. **If Form 257 contains the name/address of the challenged voter, but not the precinct, is it a valid filing?**

   Yes.

10. **On the pre-challenges, if we determine that the individual challenged is not on our registration list, are we required to have any sort of hearing?**

    No.

11. **We have a challenger that has filed and been appointed, but they do not want to challenge the voter's residency, they want to be able to tell a voter that comes in and needs to provide ID that they should go home, obtain their ID, come back to their polling location and vote a regular ballot instead of a provisional ballot. Are they allowed to do this, are they allowed to talk with the voter at all?**

    No.

Absentee Voting

12. **May a county using punch cards open absentee ballot envelopes prior to Election Day?**

    Yes. If the volume of absentee ballots is so large that the board could not process all the ballots in order to count on election day, the board may begin to open the envelopes the day before election day. If a challenger has been appointed to be at the board, the board must give notice of the date, time and place of opening the

envelopes to the challenger. The board must have teams of one Democrat and one Republican to open the envelopes. Proper security procedures for ballots must be observed at all times. The counting of the absentee ballots may not begin until Election Day.

13. Does the voter have to complete the Absentee ID Envelope (i.e. name, address, reason for voting absentee and signature)?

See R.C. 3509.07 and R.C. 3509.05(A), first paragraph, last sentence.

R.C. 3509.07:
"**If** election officials find that **the statement accompanying an absentee voter's ballot** or absent voter's presidential ballot **is insufficient**, that **the signatures do not correspond with the person's registration signature**, that the applicant is not a qualified elector in the precinct, that the ballot envelope contains more than one ballot of any kind, or any voted ballot that the elector is not entitled to vote, or that Stub A is detached from the absent voter's ballot or absent voter's presidential ballot, the vote shall not be accepted or counted. The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials shall determine the legality of that ballot. Every ballot not counted shall be indorsed on its back "Not Counted" with the reasons the ballot was not counted, and shall be enclosed and returned to or retained by the board of elections along with the contested ballot."

R.C. 3509.05 (A), first paragraph, last sentence:
(A) When an absent voter's ballot, pursuant to his application or request therefor, is received by the elector, he shall, before placing any marks thereon, note whether there are any voting marks on the ballot. In the event there are any voting marks, the ballot shall be returned immediately to the board of elections; otherwise he shall cause the ballot to be marked, folded in such manner that the stub thereon and the endorsements and facsimile signatures of the members of the board of elections on the back thereof are visible, and placed and sealed within the identification envelope received from the director of elections for that purpose. **Then the elector shall cause the statement of voter on the outside of the identification envelope to be completed and signed, under penalty of election falsification.**

Voter Registration

14. Is there any special dispensation for a person who became a citizen on October 15, 2004 to be able to register and vote in this election?

No.

Felons

15. Are felons who receive "community control" considered to be incarcerated?

Felons subject to some forms of community control may be considered incarcerated, while felons subject to different forms of community control may not be considered incarcerated. The board should consult with the prosecuting attorney to learn what type of community control the felon has been placed, and whether those differences affect the eligibility of an otherwise qualified felon to vote.

BOE Daily Conference Call Questions

Special Note

We are changing our position on the previous questions that we've received regarding challengers being allocated by precinct versus polling location. Upon further review of the Ohio Revised Code, we have determined that challengers can be assigned by precinct. You will receive a directive later today that will supersede the Frequently Asked Questions document. You will also receive a document on pre-challenges and how they should be handled.

Witnesses and Challengers

1. **We had Challengers filed for each one of our 35 precincts yesterday by the Democratic Party only. They used their Central Committee people in most instances. Five or more of these had already accepted positions as pollworkers with us at the same precinct. Apparently they assume they can do both simultaneously. We don't want the conflict. Are we right in asking them not to do both?**

   A person cannot serve simultaneously as a precinct election official appointed under R.C. 3501.22 and a challenger appointed under R.C. 3505.21. (The law regards those as different positions having separate and distinct functions, even though both a precinct election official and a challenger have in common the statutory right to challenge a person's eligibility to vote pursuant to R.C. 3505.20.) So your pollworkers have a choice: they can serve either as pollworkers, or they can serve as challengers appointed by a political party, but they cannot serve in both positions at the same election.

2. **Another Central Committee person, who is working at the polls, has signed up to be the Witness at the Board of Elections tabulation room. We'd prefer he not do both--are we okay in asking him not to?**

   Assuming that "working at the polls" mean that the person is a pollworker, then yes, the board may ask him not to be a witness. The board has total discretion on whether to employ as a pollworker someone who plans to serve as a witness appointed under R.C. 3505.21, as that dual service may constitute a conflict of interest [check with the county prosecutor] or, at the very least, may create the appearance of impropriety. But the person in question may opt to serve as a witness, in which case the board you will need to rescind his appointment as a precinct election official and appoint another qualified elector to serve in his place.

3. **At least one Central Committee person who usually works in our Chad Room on election night has filed to be a challenger. We're not too anxious to have someone who's been up real early and at the polls all day come in to work with our other fresh faces. Can we ask him not to do both?**

   Yes. Just because the board employed this person to work in the past does not mean it has to employ him for Nov. 2. If the board is of the opinion that using an election challenger to check chads on ballots presents a conflict of interest or creates the appearance of impropriety [check with county prosecutor], then give this person a choice: election official or challenger.

4. **Some of the persons listed on Form 257 have voted absentee and are at their winter home out of the county. Are we required to send the hearing notice to their registered address or may we send it to the address given on their absentee?**

   Nothing prohibits a board from sending the notice to both addresses; under the circumstances, dual mailings would be fair and reasonable.

5. **Can people who are related to a candidate on the ballot be named as witness[es] / challengers by their political party?**

   Yes, because nothing in R.C. 3505.21 prohibits it.

6. **Can a person who's been challenged for residency in the precinct refuse to complete form 10-U, and ask for a provisional ballot under HAVA?**

   Yes.

7. **When a challenger chooses a voter to challenge, do the judges then vote whether to proceed based on good cause and have the person fill out the 10-U or, do they fill out the 10-U and then decide whether it's a legitimate challenge or not?**

   The judges decide on the merit of the challenge based upon the answers of the questions (Form 10-U) asked to the voter by the presiding judge.

8. **Do we send a list of challengers to each polling location for our poll managers?**

   Though not required by law it is helpful to the pollworkers to have a list of challengers prior to receiving the certificates of appointment on Election Day.

9. **How many challengers can be in our office on Election Day? We have 10 for each party assigned.**

A party is only entitled to one challenger for the board office.

10. Whose responsibility is it to fill in the information on Form 215 and Form 216? Who is responsible for issuing the certificates to the challenger?

The appointing entity is responsible for filling out, signing and issuing the certificates of appointment to the challengers and witnesses.

11. Did Form 214 need to be accompanied by Form 215 and Form 216 in order for the appointments to be valid?

No. Form 215 and/or Form 216 are filed on Election Day with the Presiding Judge. These forms are not filed with the board.

12. Is the challenger permitted to use a cell phone and/or a pager in the precinct?

If your board has adopted a policy to prohibit cell phone usage or pagers in the polling place, except for your pollworkers, you may prohibit the use of cell phones and pagers.

13. If one person is appointed as both a Challenger and Witness at the Board of Elections, can they then challenge an absentee voter ballot?

Yes.

14. Form 214 filed by the Republican Central Committee contained 10 names appointed as both Challengers and Witnesses for Polling Place "Board of Elections" and "Voting Tabulation Location". (5 were appointed to the Board of Elections and 5 to "Voting Tabulation Location".) Since the Board of Elections is the Voting Tabulation Location, how many of these 10 can be at the Board of Elections for Tabulation?

The party may have only one witness per counting station (BOE).

15. May a challenger appointed to the board of elections be present for the opening of absentee ballots?

Yes, the challenger must be notified of the date, time and place.

16. Once the precinct judges have decided that the challenged voter can vote, does the board have any further involvement?

R.C. 3505.20 states: "The decision of said judges shall be final as to the right of the person challenged to vote at such election."

17. **We have 9 different people filed as Challengers and Witnesses for our office from one party. How is it determined who will be the 1 challenger and 1 witness for our office from that party?**

    The party will need to amend their filing by the November 1 deadline.

Conference Call Questions:

18. **If someone was appointed as a Witness and Challenger on Form 214, should two forms be filled out listing them once as the Challenger and once as a Witness to give to the presiding judge?**

    Yes. The person would need a certificate of appointment as a Challenger and one as a Witness.

19. **Who is to provide Form 10U used at the polling place, the Challenger or the board of elections at the precinct level?**

    The board of elections must distribute the 10U Form's. These forms must be part of your precinct kit that you send to all the precincts. Please double-check your supplies to make sure you have plenty of Form 10U's to cover all of the possible challenges in your precincts.

20. **How are the Challengers and Witnesses to be identified at the polling places? Are they to have nametags provided by the Board of Elections or by their appointing parties or what?**

    They shall provide to the presiding judge upon their arrival, their certificate of appointment. That's the only thing that they need to provide as identification to the presiding judge. The certificate of appointment will alert the presiding judge to their right to be allowed in the polling location to serve their official purpose.

Party Affiliation

21. **If a voter asks which political party a judicial candidate belongs, being a non-partisan race, can we tell them?**

    A person's party affiliation is a public record. You have those records at your BOE. If a person calls the BOE and asks another person's party affiliation, I would consult your public records and answer the question. There is no reason to surmise what the person may or may not be doing when he or she calls and asks.

Military and Overseas Civilian Voters

22. Can a military or civilian overseas voter who has previously requested an absentee ballot at least 30 days before the election send in a federal write-in absentee ballot (FWAB) if he/she has not received his/her regular absentee ballot?

Yes. See Advisory 2004-01, page 9.

Conference Call Questions:

23. If a military voter has not attempted to request an absentee ballot, but has sent a write-in ballot, should that be counted?

No.

ID Provisions

24. If an "M" voter comes to the polls, does he have to SHOW his ID or can he simply TELL you? For example he reads his drivers license number to the PJ, but the PJ does not see it.

The voter can simply tell the pollworker.

25. Does his SS# (last 4 digits) qualify as an acceptable ID to vote a regular ballot at the polls for an M voter?

Yes.

BOE Daily Conference Call

Witnesses and Challengers

1. **Must the name and address of the persons named on Form 214 be the same as their registered address? It looks like some have used their business address.**

   You must be able to determine if the person is a qualified elector from the information provided.

2. **If a voter is challenged may the other challenger intercede?**

   No, this is the role of the judges.

3. **If a person who was challenged at the polls votes a provisional ballot, how do we know whether to count that ballot or not?**

   See Directive 2004-44, emailed to all counties on October 26, 2004.

4. **Based on comments from today, if a party has filed one challenger per polling location can they now amend it to reflect one challenger per precinct?**

   Yes, but they cannot add additional Challengers. See Directive 2004-45, emailed to all counties on October 26, 2004.

5. **When a presiding judge is challenging a voter, is the Form 10U the only form needed or do they fill out form 259A (Challenge of Right of a Person to Vote) also?**

   The presiding judge will only use Form 10U. Form 259A should not be used at the polling places. It is for a challenge filed at the board of elections office under R.C. 3505.19.

6. **Can one person serve as a witness to 5 precincts in the same polling location if they have a certificate for each precinct?**

   Yes.

7. **Pre-Challenge Hearing: Since many Challenges are based on PO Box address information missing, some boards are getting information proving residency prior to the hearings. Is this sufficient? There for do those individuals not need to come to the hearing?**

   If a proper challenge has been filed, a hearing must be held, but check with your county prosecutor for legal advice.

8. **Witness/Challengers: A party designated more than one individual to be a witness at the Board of Elections. Can they simply issue a memo stating the one they want to be the witness? Or do they need to complete a new form or what is suggested?**

   The appointing entity must file an amendment using Form 214 by the November 1 deadline.

9. **If we have challengers filed for every precinct, could they change that from a precinct to the board office to watch while the absentees are opened Election Day? If they want to watch the provisionals being processed could they do that?**

   They could amend their filing changing one Challenger from a precinct to now be at the board of elections office. They cannot add additional Challengers. The person would then be able to observe/challenge the provisionals.

10. **If they want to watch the official count, are they too late for that?**

    The entity would have had to list a witness for the board of elections on Form 214. The filing deadline for this form was Friday, October 22, 2004.

11. **Can we accept a faxed copy of Form 214?**

    No. You must have received the completed original Form 214 by 4:00 p.m. on Friday, October 22, 2004.

12. **Who is the presiding judge at the board of elections?**

    The presiding judge can be who ever the board appoints which could be the director, deputy director or another board employee.

13. **May the Director/Board establish ground rules for witnesses, such as where they may stand, that they may not question or otherwise bother workers, that they may not conduct interviews with the press while at the BOE?**

    Yes. The board of elections may establish policies regarding witnesses, but these policies must not restrict the witness to the point that they are unable to fulfill

their duties. We encourage the boards to establish ground rules and hold a meeting with the challengers and witnesses in advance, if possible, to review the ground rules.

14. **On what grounds may a witness be removed? If they refuse to leave, does the sheriff remove them and should we advise the sheriff in advance of such a possibility?**

    R.C. 3501.33 requires pollworkers to protect challengers and witnesses in the performance of their duties. It also allows them to eject from the polling place any such challenger or witness for violation of any provision of Title 35. To do this, they may call upon the sheriff, police or other peace officers to aid them in enforcing the law. How a board wants to arrange with law enforcement to keep the peace on Election Day is up to the board. It is recommend that the board have some agreement with law enforcement officials in advance of Election Day so if the pollworkers need help they can readily get it.

    Also see R.C. 3599.24(A)(3) which prohibits any person from attempting to intimidate an election officer or prevent an election official from performing the official's duties.

Conference Call Question

15. **When a challenger challenges someone, they must state the reason for the challenge, then the 10U must be filled out, and then the judges decide whether to proceed. What if they challenge, lets say a 70-year-old woman on age, and it is obviously frivolous. What happens then?**

    Refuse to permit the challenger to proceed with their challenge. Warn them they are in violation of their oath and any further violations will lead to their removal.

    Refer to R.C. 3505.21 for the oath, which reads:
    "You do solemnly swear that you will faithfully and impartially discharge the duties as an official challenger and witness, assigned by law; that you will not cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of their qualification as electors; and that you will not disclose or communicate to any person how any elector has voted at such election."

Provisional Voting

16. **The new affirmation pertaining to the "Directive No. 2" is different than the previous HAVA Provisional Voter Statement of Affirmation (HAVA 302).**

Are we to make the previous affirmation obsolete or should both be used in different situations?

Yes, the Home Precinct Balloting Provisional Voter Statement of Affirmation is different from the HAVA Affirmation Statement and the Ohio Provisional Envelope. The new Home Precinct Balloting Provisional Voter Statement of Affirmation must be signed by all provisional voters in addition to the HAVA Affirmation and the Ohio Provisional Envelope.

17. **Are we to provide provisional hotline cards for this election?**

Yes. The Provisional Ballot Hotline telephone number is 1-866-OHIO VOTE or 1-866-644-6868. Voters will be able to contact the hotline from November 17, 2004 through January 5, 2005.

See the HAVA Hotline Reminder that was sent to all the counties on October 26, 2004 for a template to make cards for distribution.

Conference Call Question

18. **What is the difference between the HAVA provisional affirmation envelope and home precinct balloting envelope?**

There is no home precinct balloting envelope. It is an additional affirmation statement. It can be a card; it can be a piece of paper. If a person does not appear on the voter registration list, but is claiming to be a registered voter, the person would have to fill out both the HAVA envelope and the home balloting precinct HAVA affirmation statement. The provisional envelope with the affirmation statements would be affixed together in the most secure way possible for transportation down to the board.

Polling Place Access

19. **I was called last week by a documentary film producer who wants to do a documentary on Election Day nationally. They will be filming in cities around the country. She learned about the challengers that we will have in one of our cities. She wants to cover the work of a Republican and a Democrat Challenger at the same polling place. They would like to set up in the poll where the two challengers will be on Election Day and film there. I was also contacted by someone else wanting to know about bringing a home video camera into the polls. Is this ok?**

No. Directive 2004-40 states:

The Ohio Revised Code 3501.30, 3501.35 and 3599.24 collectively prohibit ***anyone***, on Election Day, from:

- Engaging in election campaigning within 100 feet of the entrance to a polling place.
- **Entering a polling place for any reason other than to vote, unless the person is an election official, a challenger or witness appointed pursuant to R.C. 3505.21, or a police officer.**
- Loitering, congregating, hindering or delaying a person from reaching or leaving the polling place.

Conference Call Question

20. May a photographer be in the polling places to take pictures from a distance, not of the voter actually voting.

No. See Directive 2004-40 and the October 22 Board of Elections Daily Conference Call frequently asked question 14.

Voter Registration

21. If a person alleges that they registered to vote at the License Bureau this summer however we do not have her voter registration card are they eligible to vote?

Under HAVA they would be able to vote a HAVA Provisional Ballot (person declares she registered, but not listed in the pollbook). The board of elections would determine if the ballot is counted at the official canvass.

Election Day

22. By what time must boards of election be in session on Election Day?

All boards should be in session no later than 6:30 a.m. on Election Day pursuant to R.C. 3505.30.

23. What type of disaster recovery/security plan should our board prepare for Election Day?

Please refer to the memorandum sent to all the counties on July 23, 2004. This memorandum contains three templates to assist you in developing your business continuity plan.

**Please see the main body of this email for copies the templates.

Non-English Speaking Voters

24. Can non-english speaking individuals bring someone to the polls to assist them to vote?

No, unless the voter is illiterate.

Board of Elections
Polling Place Emergency Preparedness Guidelines

Pre-Opening Checks of Each Polling Place

- Building walk-a-round
  - Locate area to evacuate if necessary
  - Identify where to go in case of severe weather, fire, bomb threat or other emergency
  - Locate Emergency Exits – make sure they are marked and unobstructed
  - Locate Fire extinguishers – make sure they are charged and serviceable
  - Locate light switches and circuit breakers – can you get to them?
  - Do you have access to an emergency generator for backup power, especially if you have electronic voting? (Fire Departments are a good place to start if you have not made other arrangements.)
  - Is there a working telephone onsite? If no landline is present, make sure you have a fully charged cell phone.

Evacuation Procedures for Natural Disasters

- How are you notified of warnings?
- Where will you go if you have to evacuate?
- Who will secure the ballots?
- Who will get voters out of the building?

Fire or Electrical Failure

- Is the building alarmed?
- Where are the fire "pull stations?"
- Is the alarm connected to the Fire Department?
- Are sprinklers in the building?
- Public buildings have fire drills. Make sure one is not scheduled during polling – if there is a drill you must evacuate as if it was a real fire.
- Do you know how to check the circuit breakers in case you lose power?
- Follow same evacuation procedures as for natural disaster or severe weather.

Bomb Threat

- Call local law enforcement.
- Each poling place should have a Bomb Thread Aid Card near each telephone so the person who receives the call knows how to handle the caller.

Disruption at the Polling Place (protesters, disruptive voter, medical emergency)

- Call local law enforcement first and request assistance if lives or property are threatened.
- Call the Board of Elections second so they are aware of any problems and can provide guidance and assistance if necessary.

Election Worker or Voter Becomes Ill

- Make sure emergency numbers are posted and are up to date. Call EMS for medical emergencies. Notify the board immediately so a replacement poll worker can be provided if necessary.

Safeguarding Ballots if Evacuation is Required

- **Make sure someone has been assigned this specific responsibility so you know in advance who is responsible for handling this.**
- **NOT VOTED: ballots not voted should be secured and accounted for in accordance with the normal operating procedures for handling ballots.**
- **VOTED: ballots that have been voted should be secured in the ballot box as they are after an election.**
- **VOTING: ballots that are being voted should be spoiled and the voter issued a new ballot when voting resumes.**

Call Lists

- Make sure you have current phone numbers for police, fire, EMS, homeland security, Board of Elections and the Secretary of State's office.

EMERGENCY NOTIFICATION ROSTER

POSITION / NAME	ADDRESS	TELEPHONE #	KEY
	Board Staff		
BOE Director			
BOE Deputy Director			
IT Director			
Vendor			
	Local Emergency Responders		
Police			
Sheriff			
Emergency Medical Services			
Fire Department			
County Disaster Relief Coordinator			
Homeland Security			
	SECRETARY OF STATE EMERGENCY TELEPHONE		
HAVA Main Line	(614) 728-8361		
Help Desk	(614) 466-8467		

BOMB THREAT AID

Place this card under your phone!

Number at which call was received: _____

Length of Call	Time of Call	Date of Call	Type of Ring

Exact wording of the threat: _____

QUESTIONS TO ASK

When is the bomb going to explode? _____
Where is the bomb located? _____
What does it look like? _____
What kind of bomb is it? _____
What will cause it to explode? _____
Did you place the bomb? _____
Why? _____
Where are you? _____
What is your name? _____

REPORT CALL IMMEDIATELY TO THE WOOD COUNTY SHERIFF'S OFFICE (354-9001)

Caller's Sex	Age	Accent
M/F		

CALLER'S VOICE

CHECK ALL THAT APPLY

☐ Angry	☐ Calm	☐ Cracking Voice	☐ Laughing
☐ Normal	☐ Crying	☐ Distinct	☐ Raspy
☐ Ragged	☐ Deep	☐ Clearing Throat	☐ Familiar
☐ Rapid	☐ Slow	☐ Deep Breathing	☐ Loud
☐ Nasal	☐ Slurred	☐ Stutter	☐ Lisp
☐ Excited	☐ Soft	☐ Disguised	☐ Foreign

If voice sounds familiar, whose voice did it sound like? _____

BACKGROUND SOUNDS

☐ Street	☐ P.A. System	☐ Motor (fan, A.C., etc.)
☐ Animal Noises	☐ Local Call	☐ Factory Machinery
☐ Airplanes	☐ Music	☐ Office Machinery
☐ House (dishes, TV)	☐ Voices	☐ Long Distance
☐ Clear	☐ Static	☐ Phone Booth
☐ OTHER: (specify)		

LANGUAGE

☐ Well Spoken	☐ Irrational	☐ Taped Message
☐ Foul	☐ Incoherent	☐ Message read by threat maker

TURN CARD OVER

REMARKS/COMMENTS

Name of person taking call: _____

Position/Department: _____

BOE Daily Conference Call

Witnesses and Challengers

1. **Please provide clarification regarding the following. Can a person be a challenger at one precinct or can a person be a challenger at one polling location?**

   Both are correct. Refer to Directive 2004-45 emailed to all counties on October 26, 2004.

2. **Our board is planning on opening our absentee envelopes on Monday Nov. 1. We have notified the challenger about the opening of the ballots. There has been talk that the person currently assigned to the board office might switch with someone else. So the question is, because the filing deadline for amendments is not due until 4pm on Monday, November 1, can the current challenger be present for the absentee ballots and then file an amendment for a different person to be there on Election Day?**

   Yes.

3. **On one of the set of list of challengers, the polling places are listed as, for ex., Staunton Twp.-Staunton South - but without a precinct address. Is that a concern?**

   No. Only the name of the polling location or precinct is required for Form 214. The name and address of challenger or witness is required.

4. **What responsibility do we have to the person who filed the pre-challenge other than informing them when the hearing will be?**

   That is the board's only responsibility.

5. **Can the person who filed the pre-challenge be present at the hearings that are held?**

   Yes. That individual would be the one presenting the evidence to support his/her challenge.

6. **Do the Director and Deputy Director need to be present at these hearings?**

   If requested by the board.

7. **Suppose that someone challenges a voter in the polls and the precinct judges decide that the person can vote--and he does. BUT, the challenger still feels strongly that the voter should not have been allowed to vote, can the challenger re-challenge that voter again so the board will hold a hearing? If so, when?**

   Yes, the challenger may re-challenge the voter for future elections pursuant to R.C. 3503.24 and R.C. 3505.19. These are challenges filed with the board of elections.

   What impact would that have on the voter's casting a ballot in this election?

   There would be no impact for this election.

8. **We have a party chair that filed challengers and witnesses in all of our polling locations by precinct. She failed to name the board of elections office for a witness or challenger location. We have 84 precincts and she says her writing "all precincts" covers the board office at tabulation time after the polls close. Nowhere in the forms filed was the board office mentioned. Please advise.**

   The board of elections is a tabulation/counting location. The board office is not considered to be a precinct. Therefore writing "all precincts" does not cover the tabulating/counting location of the board office.

9. **A party chairman filed Form 214 and it was completed by listing the polling place name with a specific precinct name as well. In polling locations with multiple precincts is this filing only good for the precincts that were designated on Form 214 when filed? For example: Wintersville Methodist Church houses 2 precincts A & B. Form 214 lists a challenger for Wintersville Methodist Church, Wintersville A precinct. Is the challenger only entitled to oversee that particular precinct or entitled to oversee both?**

   The challenger is entitled to oversee that particular precinct only.

   And then is it considered to be a valid amendment if the chairman wishes to strike the precinct names, leaving only the polling place names or is that considered an addition?

   No. This would be adding an additional precinct.

10. **A challenger can challenge regarding ID of an elector under 3505.22. The 10U form does not address this challenge specifically. Please advise.**

    See R.C. 3505.22 (Impersonating an elector), which states:

"If any precinct officer, challenger, or other elector has reason to believe that a person is impersonating an elector, then such person, before he is given a ballot, shall be questioned as to his right to vote, and shall be required to sign his name or make his mark in ink on a card to be provided therefor. If, in the opinion of a majority of the precinct officers, the signature is not that of the person who signed such name in the registration forms, then such person may be refused a ballot. Such person may appeal to the board of elections and if the board finds that he is eligible to vote, an order instructing the precinct officer to permit him to vote shall be given to such person. Such order shall be recognized by such precinct officers when presented and signed and such person shall be permitted to vote."

11. You stated one challenger for the Board of Elections, does that include this week while voters are voting absentee?

Yes.

12. If you have a challenger at the absentee opening process and they challenge a ballot, what is the procedure? How is the voter questioned? Does the board vote? Is this resolved immediately or can the board deal with all the challenges at one time?

R.C. 3509.06(D) (Counting of ballots) states in part:

"Each of the envelopes purporting to contain absent voter's ballots delivered to the presiding judge of the precinct or the special judge appointed by the board of elections shall be handled as follows: The judge shall announce the name of the elector who appears to have signed the statement of voter on the outside of such envelope. In counties in which absentee voter's ballots are counted in each precinct, the signature of the elector on the outside of such envelope shall be compared with the signature of such elector on his registration form. Any appointed challenger or any of the precinct officials may challenge the right of the elector named on such identification envelope to vote such absent voter's ballots upon the ground that the signature on such envelope is not the same as the signature on such registration form, or upon any other of the grounds upon which the right of persons to vote may be lawfully challenged. If no such challenge is made, or if such challenge is made and not sustained, the presiding judge shall open the envelope without defacing the statement of voter and without mutilating the ballots therein, and shall remove the ballots contained therein and proceed to count them.

The date of such election shall also be entered on the elector's registration form. If any such challenge is made and sustained, the identification envelope of such elector shall not be opened and shall be endorsed "Not Counted" with the reasons therefor, and shall be delivered to the board.

13. Can we have an attorney for the Republican Party in our office all day election day if he is not appointed as a witness or challenger?

No, unless the board has an area for which visitors may sit.

14. Where do challengers stand in the board office (or satellite office) for provisional voters - with the pollworkers issuing ballots or where the voters are completing the forms?

The challenger should be stationed where the voter is presenting their request for a ballot.

Provisional Voting

15. Is the HAVA Provisional Voter Statement of Affirmation, Home Precinct Balloting, to be filled out by all Provisional Voters?

Yes.

Pollworkers

16. A representative from a candidate's campaign asked for names of pollworkers so that, throughout the day, the pollworkers could let them know how many voters they had. We told them no. Was that correct?

Yes, the campaign cannot interfere with the election officials' duties.

17. Do the pollworkers have to tally the number of voters for anyone who asks?

No, that is one of the purposes of posting the voter list at 11:00 a.m. and 4:00 p.m.

18. The manual of instruction booklet we are using for our precinct polling places supplied by our vendor does not seem to be up to date now that provisional balloting has changed so dramatically over the past few weeks. Should we discard the booklet and only use our Trouble Shooting Guide for this election?

Do not completely discard the manual of instruction booklet, use pages 25-27 for flag positioning. For all other inquiries instruct your pollworkers to use your Trouble Shooting Guide or contact the board office.

Absentee Ballots

19. We have had several former residents requesting absentee ballots. The voter has moved within the state of Ohio and contacted the Board of Elections in the new county to see what they need to do to vote in that county. The voters (several from different counties) have been told to request an absentee ballot at the voter's old address. Should the voter be voting by provisional ballot in the new county?

Yes. Pursuant to R.C. 3503.16, a voter must vote in their new county. No county board of elections should ever send a voter to their old precinct.

Court Case

20. Is the Nader case still in appeals?

No. The U.S. Supreme Court refused to hear his case.

NCOA

21. What is considered "verifying of address" for inactive voters at the polls? What does one have to do to verify? Can it be oral or does one have to present identification?

Assuming "verifying of address" is for an inactive voter due to a notice of change of address (NCOA), the person by simply signing the pollbook is affirming his printed address as his current voting residence. Since signing the pollbook is done so under penalty of election falsification this would be sufficient for this type of voter. However, the board could adopt a policy to use the 10U for this purpose.

BOE Daily Conference Call

Witnesses and Challengers

1. **May Form 214 be amended piecemeal?**

   Yes, Form 214 may be amended by filing an amendment(s) with the board of elections at any time until 4:00 p.m. the day before the election, November 1. (R.C. 3505.21)

2. **Since the Board of Elections office is not a precinct can a party amend their 214 to have somebody in our office if they take away one of their other precincts?**

   Yes.

3. **If we notify the challengers we are opening the absentee ballots on November 1, 2004, is that the time the challenge has to take place?**

   Yes.

4. **If a person is challenged and proves at these hearings that he or she is in deed a resident living at the address challenged or any scenario where the person has proven that they are indeed who they say they are and live where they say they live, can they be re-challenged at the polls by the same challengers or by another group?**

   Please see R.C. 3503.24. No, they cannot be challenged for the same reason at the polls. The decision of the board is final. They could be challenged on other eligibility reasons.

5. **Can a witness for a particular precinct also be a witness for the Court House?**

   A witness' appointment must specify at which specific counting station the witness(s) will be serving. Please see question number 4 part two from the October 21 conference call.

6. **Can a party chair, candidate or central committee person be a challenger/witness?**

   Yes, a party chair and a central committee person can be a challenger/witness. A candidate can only be a challenger/witness if he/she is a member of the party controlling committee (R.C. 3505.21).

7. **Can the location that we have in the Court House for county-to-county Provisionals on Election Day, allow provisional voters (precinct to precinct) to vote on Election Day in the courthouse or are they to be directed to their precinct?**

   In accordance with the National Voter Registration Act (NVRA) and R.C. 3503.16, the voter has the choice of voting at their new precinct, a board of elections office or a site designated by the board of elections.

8. **What happens when the pollworkers tie on a challenge?**

   R.C. 3505.20 requires a majority vote of the judges; therefore the challenge is not accepted if it is a tie. The voter will receive a regular ballot.

9. **Can a party amend to have a challenger also act as a witness when they had previously not appointed any witnesses only challengers?**

   No. This would be adding a challenger.

Provisional Voting

10. **Does the HAVA Provisional Statement that was sent to us earlier go away with the new Home Precinct Balloting Provisional Statement?**

    No.

Ballot Counting

11. **The board would like to have a directive on chads for the counting of Absentee Ballots. What counts and what does not?**

    Please see Directive 2004-43, emailed on October 25, 2004.

Hospitalized Voter

12. **This is concerning how to handle medical emergency out of county. We have no hospital within our county, Revised Code 3509.08 states that a family member can deliver and return the ballot after the office receives a sign application from the voter or the ballot can be mailed. We have had several**

phone calls requesting the ballot be delivered by someone other than a family member, is this permissible?

No. Ballots can only be delivered by a family member as listed in R.C. 3509.05.

BOE Daily Conference Call

Challengers and Witnesses

1. **Our Prosecutor asked us to find out if the use of tape recorders at the polls by challengers to record the questions of the presiding judge and answers by the voter are allowable. Are we within our rights to ask those challengers NOT to record these confrontations?**

   Yes, you are within your rights to ask those challengers not to record the challenges.

2. **May a witness observe the opening of absentee or provisional ballots?**

   No, this is the role of a challenger.

3. **In reference to the conference call dated 10/27/04 number 11. Does this also pertain to Form 220, which is for the Issue 1 opposing committee?**

   Yes, a faxed copy is not valid. The original form had to be filed by the October 22 deadline.

Provisional Voting

4. **Our county has always required voters who move into our county from other counties to vote their provisional ballot at the board office. Is this rule O.K.?**

   Yes. Your board could designate all precincts as designated sites for the purpose of issuing provisional ballots for persons who have moved from another county. See R.C. 3503.16.

Ballot Counting

5. **After we print the Absentee List that we send to the Poll Workers with the other supplies, can we hold & process the Absent Voter Ballots (that are voted in the office) until the official count, so that we can make sure they did not vote at the polling location, also?**

   Yes.

6. **In the conference call you stated that the ballot itself must still be attached to the stub. The post office has totally destroyed our ballots. We've had hundreds of people calling us saying, "when we opened our ballot, it was not attached to the stub. Is my ballot going to be ok?**

   One of the reasons stated in R.C. 3509.07 for rejecting a ballot, is that Stub A is detached from the absent voter ballots. However, (1) if you have good cause to believe there are extenuating circumstances; (2) you can verify the ballot is the correct precinct ballot; (3) the ballot stub number is the ballot issued to the voter, your board should consult the prosecutor for the appropriate procedure in counting these ballots.

Board of Elections Conference Call

1. **When must overseas and military ballots be postmarked and received by?**

   - Out-of-country civilian ballots (R.C. 3509.05) must be postmarked or signed before the close of polls on November 2 and must be received by the boards of elections by November 12th (10 days after the elections) to be counted.

   - Out-of-country armed service absentee ballots (R.C. 3511.11) must be signed on or before the close of polls on November 2 and must be received by the boards of elections by November 12th (10 days after the elections) to be counted.

2. **Where do you find instructions on remaking a ballot?**

   Please see Directive 2004-43.

3. **Do we have to notify the witnesses and challengers as to when we begin the processing of provisional ballots?**

   Yes, they must be notified.

4. **We had several absentee ballots challenged on the basis that the voter was not an election official. Do we hold a hearing?**

   No, this is not a valid challenge so you do not have to hold a hearing.

5. **A voter moved to our county and voted a provisional ballot in their new precinct. Our board has not designated our precincts as designated sites for county-to-county voters. Can we count this ballot?**

   If the person was a qualified elector in the other county and properly completed the provisional affirmation, the ballot is valid.

6. **Must a county-to-county provisional voter in addition to the ID envelope fill out a voter registration form?**

   Although not required at the time of voting, the board should obtain a properly completed voter registration card for their records.

7. **Will the Secretary of State's office extend the date of the official certification?**

   No, all boards must certify their official results by December 1, 2004.

8. **Was Form 214 required to be filed for a person to be a witness at the canvass under R.C. 3505.32?**

   Yes, Form 214 was required to be filed by the statutory deadline. However, due to recent litigation you should also check with prosecutor.

9. **There was an issue on the ballot and the margin of victory on the issue was less than one half of one percent. The group supporting the issue wants to witness the counting of the provisional ballots. The issue group DID NOT file prior to the election as issue witnesses (or challengers). Because the deadline has passed as well as the deadline for amendments, the county wants to know whether the witnesses are allowed.**

   In order for them to witness the counting of the provisional ballots they would have had to file as a witness by the statutory deadline on October 22.

10. **A voter was informed by his county board of elections office to send his completed absentee ballot to our county by the close of polls. The voter is a resident of the other county. Our county is holding the ballot. Can the absentee be sent to the other county to be counted now or is it invalid because it was not received by the other county by the close of the polls on Tuesday?**

    The absentee ballot should be sent to the county where the voter resides, but not to be counted. The vote should be recorded as an attempt to vote by that county. R.C. 3509.05(A) states "...The elector shall then mail the identification envelope to the director from whom it was received in the return envelope, postage paid, or he may personally deliver it to the director, ...but the return envelope shall be transmitted to the director in no other manner...."

11. **A college student from another county who did not receive their absentee ballot said her mom called their county board of elections office and was told her daughter should vote a provisional ballot in the county where she goes to school. So she came to our county board office and we let her vote a provisional ballot because she was so upset. What do we do with it now?**

    Your board needs to make this determination based upon the facts surrounding the issue and whether or not they feel a pollworker error occurred (Directive 2004-33). However, in this situation the person was not properly registered in the county that accepted the ballot so the vote should not count.

12. Ballots which have write-in candidates with the name of the candidate correctly spelled and include the name of an office along with the name, but the candidate written in is not running for that office. However, the candidate named in the write in is a candidate for another race. How should the vote be interpreted?

R.C. 3508.28 provides that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice. It is up to the board to determine from all the relevant facts, the voter's intent. If the board can determine the voter's intent the vote is to be counted. If the board cannot determine the voter's intent the vote is not counted.

Board of Elections Conference Call

Provisional Ballots

1. **In the past, we would use the faxed copy of either the provisional voter's registration form or his provisional ID envelope (from his new county) to serve a basis for canceling him in our county. Can we now use a printout of the emailed query from the new county as a basis to cancel him in our county?**

   No, a signature match is still required for final verification before canceling in your county.

Additional Questions Asked on Call

2. **What is the filing deadline for the February Special Election?**

   The filing deadline falls on November 25 (Thanksgiving) will then fall to the next business day, November 26. If your office is closed on November 26, the deadline then becomes November 29. (R.C. 1.14)

3. **Should the board of elections have a policy regarding board member activities when a family member is on the ballot?**

   Yes, to avoid any appearance of impropriety the board members should -- and in some instances must -- refrain from doing the following:

   - Voting on any matter concerning the family member that is before the board;
   - Handling any ballots with that family members name appearing; and
   - Being at a polling location where that family members name appears on the ballot.

Board of Elections Conference Call

Provisional Ballots

1. **If we neglect to give to or to have the voter sign one of the affirmation statements, can we count that ballot?**

   Please see Directive 2004-55 that was emailed to the counties on November 5, 2004.

2. **What if the voter signs the affirmation and we forget to sign it?**

   Verify with the pollworkers that they witnessed the voter signing the affirmation. If they can verify this, then you count the ballot.

Additional Questions Asked

3. **How has the signing of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA FY05) changed UOCAVA procedures for Federal Write-In Absentee Ballots (FWAB)?**

   Section 566 of the NDAA FY05 makes two key changes to Section 103 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) that sets forth the requirements for the use of the Federal Write-In Absentee Ballot (FWAB) by UOCAVA voters in elections for Federal office. Both changes are effective immediately.

   The first change is that Uniformed Services members on active duty, members of the merchant marine, and their spouses or dependents who are in the U.S. but are away from their voting residence by reason of the active duty or merchant marine service are authorized to use the FWAB as an emergency or back-up ballot in the same manner as overseas voters.

   The second change applies to the rule addressing when states may not count FWABs. One rule has read that states may not count FWABs if the state receives the voter's application for a state absentee ballot less than 30 days before the general election. The new change to that rule permits the states to establish a deadline for accepting a voter's application that is less than 30 days prior to the general election. The states may then count FWABs from voters whose applications were received EITHER at least 30 days before the general election OR on or before the deadline established by the state. **Legislation would have had to been passed in order to change the 30 day application deadline, therefore, Ohio will continue to follow the guidelines set forth in Advisory 2004-01.**

BOE Daily Conference Call

Provisional Ballots

1. **If we have a provisional ballot where the voter stated his previous address was in Warren County and he was not registered there, do we check on the secretary of state's voter query system to see if he is registered in any other county? If he is, do we request confirmation from the other county and proceed as usual?**

   Since the query system is available, yes, you could check to see if he is registered in any other county. If you do find him previously registered in another Ohio county, you may count his ballot if everything has been properly filled out and signed.

2. **If the voter did not give us a previous address (or gave us a different previous address) does his vote count?**

   Assuming this is a voter who has moved in Ohio and has not updated his registration…if he did not give you his previous address it is an incomplete statement. Therefore, under R.C. 3509.07, it is a valid reason for rejection.

   If he gave a different previous address and you can verify that he was previously registered, you may count his ballot if everything has been properly filled out and signed.

3. **I cannot seem to locate the Directive or Memorandum that tells us to keep a list of provisional voters whose ballots were not counted. I believe that communication also said we had to list those provisional voters in our minutes and the reason why their ballot was not counted. Are we also to keep a list of <u>all provisional voters?</u>**

   Please see Directive 2004-48.

Additional Conference Call Questions

4. **We have an individual that sent the FPCA and Federal Write-in at the same time, postmarked October 14 from within the U.S. – should this be counted?**

   No, it is not valid since the FPCA came after the 30-day deadline (October 4).

The fact that the FWAB was sent from within the U.S. no longer matters. With the signing of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA FY05), the UOCAVA procedures for Federal Write-In Absentee Ballots (FWAB) have changed (please see the conference call email from November 9, 2004). Now, Uniformed Services members on active duty, members of the merchant marine, and their spouses or dependents **who are in the U.S.,** but are away from their voting residence by reason of the active duty or merchant marine service are authorized to use the FWAB as an emergency or back-up ballot in the same manner as overseas voters. If you had received the FPCA on or prior to October 4, it would have counted.

5. **What do you do if a voter requests an absentee ballot and then votes a provisional ballot?**

   First, verify that he did not vote the absentee ballot as well. If he did not, cancel the absentee ballot and count the provisional ballot.

6. **A voter voted a provisional ballot in the wrong precinct can it be counted?**

   No.

7. **Where can I find the written guidelines to remake a Federal Write-In Absentee Ballot (FWAB)?**

   Please see Advisory 2004-01.

8. **Are board members eligible for a raise in 2005?**

   No, please see R.C. 3501.12. The last statutory raise for board members was in 2003.

9. **Will the Secretary of State's office be amending the Voter Registration Business Procedures Manual issued June 30, 2004?**

   Yes.

BOE Conference Call

Provisional Ballots

1. **We know that a Provisional ballot may be counted if the Ohio Provisional ID affirmation envelope is complete even though the Home Precinct Balloting ONLY affirmation is missing. Is the reverse also true as far as the following scenarios go?**

   Scenario #1: A voter completed information on, but did not sign or date the Ohio Provisional ID envelope. However, he did sign and date the Home Precinct Balloting ONLY affirmation. Can we count it?

   Yes.

   Scenario #2: A voter did not include a birth date on the Ohio form but did provide it on the Home Precinct form. I don't think lack of birth date has kept us from counting it before. Should it have?

   No, birth date is an optional field on the 12B envelope.

Write-In Candidates

2. **If a person wrote in only the first name of the valid write-in candidate, can we count that as voter intent and count the ballot?**

   Please refer to R.C. 3505.28 and Directive 2004-43.

Certification

3. **If at the certification meeting our board members do not agree if a ballot should be counted or not and there is a tie, does the SOS break the tie? We have made copies of all directives and memos pertaining to the provisional ballots and will have them in the board packets, but they are good at disagreeing and having a 2-2 vote.**

   As the canvass deadline is December 1st, we would discourage boards from having tie votes during this crucial time. However, if a tie does occur it should be submitted to our office.

4. **If a ballot is not counted, does the voter get credit for voting even though the ballot was not counted?**

   Yes, the individual does receive credit for voting.

Board of Elections Conference Call

Provisionals

1. **A provisional voter at the precinct filled out the home provisional statement and a registration card with previous address (from another county) but the voter did not complete the 12B provisional envelope under old address. Do we count the provisional ballot?**

   Assuming the voter completed the 12B except for their old address and signed the envelope, the board should count the provisional ballot.

2. **We understand that provisional voters whose vote won't be counted should be given credit for voting. Does this apply to voters who voted provisionally but were not registered by the deadline?**

   A board cannot give voting credit to a voter who is not registered by the deadline (in this case October 4th) to be a qualified elector.

3. **We have some provisional envelopes with the HAVA affirmation sticker signed by the voter, but not the witnessing judge. Are these to be counted?**

   Please see FAQ question #2 from our November 9th conference call.

4. **We have some yellow envelopes (12B) that have no HAVA affirmation sticker on them, neither the HAVA Affirmation Statement nor the Home Precinct Balloting. The 12-B is completed dated and signed, but does not contain either of the HAVA stickers. Do we count this or not?**

   See the memorandum on Provisional Affirmation Statements issued November 10, 2004. If these voters qualified, under Section 2 of that memorandum, the HAVA Affirmation Statement must be filled out and signed.

5. **A man voted provisionally in our office on Election Day. He was military, residing in Cuyahoga County. He completed the envelope and registration card with his Cuyahoga County address only. Do we count for President ONLY or not count it at all, if not at all, by what reason.**

   No, his ballot does not count. A person must vote in his correct precinct in order for his ballot to be counted.

Additional Conference Call Questions

6. When are pollbooks open for inspection?

Pollbooks may be opened for inspection upon the completion of the official canvass of election returns from all precincts. Please refer to R.C. 3505.31 and R.C. 3505.32.

Board of Elections Conference Call

Provisionals

1. **We've had several questions from boards on whether a provisional ballot cast from the wrong precinct due to pollworker error should be counted.**

   No, they should not be counted. The Sixth Circuit Court of Appeals upheld a directive, which did not accommodate for pollworker error in the case of a voter voting in the wrong precinct. Thus, a ballot cast in the wrong precinct cannot be counted.

2. **If the voter completes the Provisional Identification Envelope but fails to sign it or any other affirmation, but has signed the Provisional Page in the Signature Poll Book, can this be counted?**

   Since it appears that the provisional page in the signature pollbook does not contain an affirmation statement as required by R.C. 3503.16, this voter's ballot should not be counted.

3. **A person has voted provisionally and sealed the ballot inside the envelope and has not provided any information, but did sign the envelope. We discover the voter had no reason to vote provisionally. The name is printed in the Signature Poll Book and the pollworker missed the printed name, can this ballot be counted since there was no change to the voter's records, it was an oversight by the poll worker?**

   Assuming you have confirmed that the voter has not moved, the ballot should be counted.

BOE Daily Conference Call

Provisionals

1. **We again have questions about the college students who requested absentee ballots from our county, but then went to the other county and voted a provisional ballot because they said they had not received the original one from our county. We understood you to say on 11/4 that these provisional ballots could not be counted because they had already begun the absentee process in their home county. Is that still correct?**

   Yes, question # 11 from the November 4, 2004 conference call states the following:

   - **A college student from another county who did not receive their absentee ballot said her mom called their county board of elections office and was told her daughter should vote a provisional ballot in the county where she goes to school. So she came to our county board office and we let her vote a provisional ballot because she was so upset. What do we do with it now?**

     Your board needs to make this determination based upon the facts surrounding the issue and whether or not they feel a pollworker error occurred (Directive 2004-33). However, in this situation the person was not properly registered in the county that accepted the ballot so the vote should not count.

2. **One of our precinct workers allowed a voter to vote a regular ballot. She had called our office and we advised her the voter was deleted, but told her to vote him as a provisional to allow us to verify if he was registered. He filled out the provisional envelope, but they put his ballot in the ballot box. He did not register to vote after being released from prison, therefore his ballot should not be counted but of course we cannot determine which ballot was his. With this in mind, should we give him credit for voting?**

   No, a board cannot give voting credit to a voter who is not registered by the deadline (in this case October 4th) to be a qualified elector. Please refer back to question #2 from the November 15th FAQ's.

3. **Pollworkers mistakenly issued HAVA ballots to voters who had moved but had not changed their addresses with the BOE, instead of issuing the regular provisional ballot. Most of the voters completed the HAVA ID form and also did a Change of Address (Voter Registration) card. The HAVA ID envelope, of course, does not have a place for old address, although it is shown on the**

registration form and completed by the voter. Should these ballots be accepted or rejected?

Assuming the voter fully completed and signed the HAVA Affirmation Statement, provided their previous address on the voter registration card and everything checks out, you may count the ballot.

Records Retention

4. **What is the retention schedule for the 3505.21 Challenges that were filed by the Republican Party?**

   There is no direct reference to this form on the retention schedule, however it does list a 2-year retention for challengers based on party affiliation under R.C. 3513.20. You may want to contact your county records commission for further assistance.

Board of Elections Daily Conference Call

Provisionals

1. **We have a provisional ballot out of county - the envelope is completed and signed but the attached registration card has been completed but not signed. Should we count this ballot?**

   Assuming the information on the provisional envelope and the voter registration card are the same, you may count the ballot and obtain the signature on the voter registration card at a latter date since they signed the affirmation on the envelope.

2. **Back to the college students from our county who did not receive their absentee ballot from us so they attempted to vote provisionally in their college county. Did Judge Katz's decision, contained in Directive 2004-52, mean that voters could vote at the polls in their home county? We had assumed that that was the decision's intent until we started hearing from the college counties. In fact, even before his decision, we had told some absentee voters who had not received their ballots to come into the office and vote a provisional and we'd let the board decide whether it would count. Some college students did. But we do see your point that once they reaffirmed their residency in their home county by asking for the absentee ballot and they are in that process, they should not be able to say (mid-stream) that they have changed residency to another county. One or the other of the statements would be false.**

   The Katz decision absolutely requires that provisional ballots be given to the college students referred to here despite the fact that they were given an absentee ballot. Also, the Carr decision which was upheld in part at the 6th Circuit also said they would sign the Home Precinct Balloting Only affirmation acknowledging that they understand that the vote won't count if they are in the wrong precinct. So it should not count.

Military Ballots

3. **We have several federal write-in ballots that were returned to our office. We do not, however, have an original request for a ballot on file. Are we permitted to count the write-in?**

No, you cannot count those ballots since their absentee ballot requests were not received at least 30 days before the election. Please refer to Advisory 2004-01 page 9.

Statewide Recount

4. **If in fact a statewide recount is requested, does the timeline for requesting a recount begin on the date we certify the results for our county or does it begin when the state certifies all results?**

   The application for a recount must be filed with your board of elections office within 5 days of our statewide certification.

5. **I need to know what the time frame is going to be in the event of a statewide recount. If you certify on the 6th, what are the likely dates for the re-count to be held?**

   Per R.C. 3515.03, the application for recount must be filed with your board of elections office within 5 days of our certification. Your board shall begin the recount not later than 10 days after the application is filed. Your board shall fix the time, method and place for the recount.

Public Records Request

6. **Today we received a lengthy request from Don McTigue requesting information pertaining to one of our precincts. Mr. McTigue is seeking certification forms, signature pollbooks, tally sheets, machine totals, zero reports, audit logs, etc... Are we required to provide all the information requested?**

   Currently, we are awaiting an opinion from the Attorney General's office on whether poll books (prior to official certification of results) are public records for purposes of the Public Records Act. However, the board should speak to your county prosecutor for a final opinion.

BOE Daily Conference Call

Absentee Ballots

1. **An absentee voter made his selections in the booklet rather than using the punch card. The voter appears to have used the punch card stylus to mark his choices on the position number corresponding to the candidate's name. What do you suggest we recommend to the board?**

   If the voter's intent is clearly marked in the booklet, you may remake and count the ballot.

2. **Can an absentee ballot be returned to any county in Ohio or must it be returned to voter's home county? We always thought it had to be returned to the voter's county, but apparently others do not share our interpretation.**

   R.C. 3509.05 states: "The elector shall then mail the identification envelope to the director from whom it was received in the return envelope, postage paid, or he may personally deliver it to the director…"

Election Results

3. **What if a question or issue ties? What must the board of elections do?**

   See page 4 of Directive 2004-43, which states: "A tie vote on a *ballot* ***question*** or ***issue*** is **not** broken by lot, because the issue automatically loses if it has not been passed by a majority vote. However, a mandatory recount still must be conducted in accordance with R.C. 3515.011. The board must notify the appropriate political subdivision or issue committee of the recount."

Sunshine Laws

4. **Do Sunshine Laws pertain to meetings held by Ballot Issue Committees both organized and not so organized?**

   No, they are not a public entity.

BOE DAILY CONFERNCE CALL

Provisional Ballots

1. **We have several provisional ballots voted by people who are registered in another county but moved to our county. However, we do not have a registration for those people. Do we count the provisional ballots and register them or do we not count them?**

   Assuming the voter was a qualified elector in the other county and properly completed and signed the provisional affirmation, the ballot is valid. Although not required at the time of voting, the board should obtain a properly completed voter registration card for their records.

BOE Daily Conference Call

Public Records Request

1. **Exactly how far are we to go to accommodate public records requests?**

   As we discussed during our November 18th conference call, boards should consult with their county prosecutor to make sure the request is legitimate and to find out how you should proceed in answering the request. Please keep in mind that if a report does not exist in your office, you do not have to create one to fulfill the request.

Campaign Finance

2. **Can a loosely formed committee, which acts independently by soliciting and spending funds in opposition to a ballot issue, be held accountable for filing the necessary paperwork with us? If so, who would enforce that?**

   Yes, they are required to file with the board of elections. If this loosely formed group is raising and spending money, there is a reporting requirement. If its activity is focused on the issue, they are most likely a PAC and should file as a PAC by filing both a Designation of Treasurer (DOT) and any pertinent reports. If the group existed prior to the issue and is simply opposing as another of its functions, they may need only file an Independent Expenditure form to detail the money spent. If the committee fails to file the necessary reports the board would then refer them to the Ohio Elections Commission (OEC).

BOE Conference Call

Potential Recounts

1. **Do we have to tabulate and report all issues and candidates for this recount or are we just tabulating and reporting for presidential candidates?**

   The board will only tabulate and report the recount election results for the presidential candidates.

2. **Our board has a recount policy in place that we hand count 3 per cent of the vote from precincts chosen by the board. When this is completed, we run those ballots through the vote tabulator. If there are no discrepancies, we run all precincts through the vote tabulator, and the end result is final. Our question is: Is this going to be sufficient for the Presidential recount?**

   Yes, as long as the board has officially adopted this method as being the most effective for conducting a recount then this is sufficient for conducting the presidential recount since it follows the recount procedure outlined in the revised code and Directive 2001-10. The only caveat to this is if there is litigation to change the method of a recount.

3. **Is there some place the 3 per cent is documented in the R.C.?**

   Please refer to Directive 2001-10, which outlines the recount procedures.

4. **If we are not going to hand count all precincts should we send the check we received back to the NVRI?**

   Please consult with your prosecutor as to whether or not you should send the check back to NVRI.

5. **What is the procedure for a recount for a write-in candidate?**

   The board should follow the same procedures as you would for any other candidate as outlined in R.C. 3515 and Directive 2001-10.

Successor to an Elected Office

6. **Although ORC 3.02 (A) states that "when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified"**

However, ORC 3505.38 states in part "Such certificates of election shall be issued by such election officials after the time within which applications may be made for recounts of votes has expired, and after recounts of votes which have been applied for are completed."

If my board certifies results of a countywide office on December 1, does 3505.38 mean that the successor to the appointee can assume office no sooner than December 7?

Yes, the successor to the appointee must wait 5 days before they can take office to allow time for a recount request.

Candidate Petitions

7. **Will there be any changes on the candidate petitions for this year?**

   The only candidate petition changes at this time are for school district boards and education service centers that have a non-partisan primary election. These changes took place in Substitute Senate Bill 79. The new forms will be sent to you shortly.

Certificates of Election

8. **When a winning candidate pays the 5.00 commission to our fee, we send it to your office. Do we also send the certificate of election along?**

   Yes.

9. **Does the certificate get sent back to the Clerk of Courts with the Governors commission?**

   Yes.

10. After the paperwork is returned to the local clerk, is it the clerk's responsibility to notify the elected officials?

Once the certificate and fee is received by the Secretary of State's Office and the Governor's Commission is received and counter signed by the Secretary of State, they may proceed without notification from the clerk.

P.E.C.P Classes

11. What are P.E.C.P. classes and how do we enroll in them?

These are professional education courses conducted by the OAEO in conjunction with the secretary of state's office. Please contact Carole Garman (Director of Greene County) or Mike Sciortino (Director of Mahoning County) for further information.

BOE Conference Call

Recounts

1. **In conducting any recount, must the board select multiple precincts to hand count until they reach at least 3% of the total vote, or may they choose just one precinct. Obviously, not one single precinct will equal 3% of the total vote.**

   A board must select and hand count as many precincts as it takes to reach at least 3% of the total vote.

2. **If we deposited the check that accompanied the first recount request letter, will that original, premature letter serve as the request for a recount in our county, or must they make another, more timely request after you certify the election?**

   Since your board has already deposited the check, it is absolutely imperative that your county prosecutor be aware of this and advise you on this matter. Our office will be sending further instructions on this matter.

Ballot Counting

3. **Some time ago our office received a Directive, Advisory or some other correspondence describing: What constitutes a vote? If you have this or can direct me to one, I would appreciate it.**

   Please refer to Advisory 2001-04 (House Bill 5) and Directive 2004-43.

Campaign Finance

4. **Can a family trust contribute money to a candidate and/or issue committee?**

   Yes. The contribution is considered to be made by the members of the trust. For example: If a $100 contribution is made by a trust with 4 members that would equal a $25 contribution from each member.

5. **If a county candidate listed a whole page of In-Kind Contributions Received from herself, in the amount of $12,650.13, do we just take that for face value and not insist on receipts, since it does not get paid from her account?**

   You would only ask for backup if you have a reason to suspect that what was reported is not correct. The revised code does not require any validation of in-kind contributions received.

P.E.C.P. Classes

6. **Some of us completed the PECP classes in June. Will there be further classes for us? Can we continue taking the present classes? What is the overall plan?**

   The OAEO leadership will be sending information on the P.E.C.P. classes to all the boards of election in the coming weeks.

BOE Conference Call

Presidential Recount

1. **Are all counties returning the original check from NVRI?**

   Please see the conference call FAQ's from November 30, 2004. Boards of elections were to contact their county prosecutor for the county's procedure on handling the check.

2. **It has always been our Board's policy to allow the local press access when we conduct a recount. Is it necessary or required to alter our past practice?**

   No.

3. **If time does not permit completion of the recount on the designated day may we continue the following day or must we continue until complete?**

   The recount may be conducted during regular business hours. Therefore, if you are unable to complete the recount in 1 day, you may continue the next day or as many consecutive business days as it takes to complete the recount.

4. **In regards to those who may attend: Are the candidates allowed only one (1) witness, or are they allowed one (1) witness per tabulating unit or counting team?**

   See page 3 of the "Outline of Recount Procedures" under D3.

5. **Is there a particular form for the appointment of witnesses for the recount?**

   No.

6. **As indicated in directive 2004-58 a notice must be mailed by certified mail not later than the fifth day before the day fixed for the commencement of the recount. Does the 5-day window include weekend days? Assuming I receive the recount application and check within the next day or so we are hopeful to be able to conduct the actual recount next week. Obviously with such a tight schedule, the 2 days over the weekend may be the difference between conducting the recount the week of December 13 or December 20. As I recall, in the past the weekend was included as part of the 5 day window.**

   The weekends are included.

7. **Refer to page 5 letter a) - does the inspection of each ballot card refer to the 3%manual count or does this mean all ballots must be individually inspected?**

   All ballots must be inspected.

8. **Is ballot inspection a required step of the recount?**

   Yes, please see page 4, number 1(g), of the "Outline of recount procedures."

9. **Does the designation of witness for a recount have to be signed by the candidate who is applying for the recount?**

   Please refer to "The Outline of Recount Procedures" sent with Directive 2004-58. All witness designations must be signed by the candidate or issue chairperson, whichever is appropriate.

10. **We received a letter today from Mr. Cobb and Mr. Badnarik, is this letter the official request for a recount or does the SOS notify the Boards?**

    The letter is the request.

11. **The letter asks for an entire hand recount, and since that is not what the code states how a recount is to be done; is the letter void then since they are asking and sending their bond for something that can't be done?**

    The letter is not void. The applicant can request whatever they want, **but** it is the county boards of election set the time, place and **method** for the recount.

12. **Mr. Cobb and Mr. Badnarik sent a bond to our county for $810.00. If that amount does not cover the entire expense of our recount, do we bill Mr. Cobb & Mr. Badnarik for the remaining costs?**

    Assuming your county has 81 precincts, the $810.00 is the only amount you may charge for the recount.

13. **Does the directive for the recount mean that the candidate can be here along with a witness or does it mean just the candidate or the witness?**

    The third paragraph of R.C. 3515.03 states: "...Each person entitled to receive such notice may attend and witness the recount **and** may have any person whom the candidate designates attend and witness the recount...."

14. **If the results do not change, do we still have to send new certifications forms?**

No. Refer to Directive 2004-58, paragraph 6, which states: "Please notify my office in writing of any recounts of the presidential election. After completing the recount in accordance with R.C. Chapter 3515., please forward the amended certification form and abstract (**if applicable**) to my office as soon as possible."

15. How do we figure that 3% to be hand counted?

Refer to page 5, The Recount (d), of the "Outline of Recount Procedures" attached to Directive 2004-58, which states: "The board must randomly select whole precincts whose total equals at least 3% of the total vote. These precincts' ballots must be manually counted."

16. Must the request for the recount be refiled?

Please refer to the 5th paragraph of the letter sent from the Secretary of State to Mr. Bonifaz on December 7, 2004 (all boards of election were also copied), which states: "Your application for a recount was not filed within the statutory timeframe provided for by in Revised Code Section 3515.02. The Secretary of State is the Chief Elections Officer for the state of Ohio and based upon this authority you are advised that it is the opinion of this office that your failure to conform with the requirements of the filing timeframe for a statewide recount needs to be corrected in order to process your recount application in accordance with Ohio law. In order to do this you should forward another letter dated within the timeframe of Revised Code Section 3515.02 to the counties in which you are applying for a recount. I certified the results of the November 2, 2004 election on December 6, 2004."

17. **Several of the candidates did not receive any votes in our county. Must we send them notice of the recount?**

You are required to notify each person whom votes were cast for such election. However, you may want to send them a notice of the recount as a courtesy since they are a statewide candidate who did receive votes in the election statewide.

18. If for some reason the person requesting the recount stops the recount are we still entitled to the ten dollars for all the precincts, or just the precincts that were actually counted?

Just the precincts that were actually counted.

19. If the parties requesting the recount stop the recount do the other parties have a right to ask it to be finished?

No.

20. Today we heard that A.C.T. Ohio wants volunteers to witness our recount. Are they allowed to send witnesses without being affiliated with any certain candidate?

No. Please see number 9 above.

BOE Conference Call

Presidential Recount

1. **In the request we received today from Cobb and Badnarik, they want us to conduct a full recount by hand of all votes cast. Just to reaffirm. Our board sets the method by which we conduct this recount, correct? We plan on doing the three per cent, as is board procedure.**

   Yes, your board sets the method of the recount. Please refer back to the following: December 8, 2004 Conference Call – question # 11, November 18, 2004 Conference Call – question #5, Directive 2004-58 "Outline of Recount Procedures" and R.C. 3515.03.

2. **We received our official request for a recount Dec. 8. Our board meets Wednesday December 15. The plan is to have them set the date for the recount at the meeting, for December 20 or 21. Is this in an acceptable time frame? We would send the official notices to candidates on Dec. 15.**

   No, this is not acceptable. Please refer to "The Outline of Recount Procedures" (attached to the 2004-58 Directive) page 2 D. Before The Recount: 1. Establish Time of the Recount, which states: "No recount may be held prior to the official canvass and certification. The board must fix the time, method and place of the recount. **A recount must be held within 10 days after the declaration of official results or 10 days after an application is filed."** December 20 or 21 falls outside of these 10 days.

3. **Our board members want to know specifically if we have to hand inspect each ballot over and above the 3% requirement, if the manual count (3%) matches the tabulator count? We had 5 inspection teams on election night; can we fan the cards if we match?**

   Yes, you must inspect all ballots not just the 3% that you hand count but you may use the same procedures you used for your official. Please refer to question number 7 from the December 8 Conference Call and the "Outline of Recount Procedures" attached to Directive 2004-58.

4. **Can a candidate have arranged for a witness to replace a witness that may need to leave during the course of the recount?**

   Yes.

5. **When we begin the recount, do the board members need be present? We (the office staff) were possibly going to start our recount on Wednesday and the board would be in for the monthly meeting on Friday and they would certify the results at that time.**

Although not required to be there the entire time during the recount, they are required to be in session to address any outstanding issues that arise and to certify the results.

6. **There is a high probability that we may have numerous witnesses on hand for the recount. To what extent must we go to accommodate these individuals? We have space constraints where our scanners/office is located.**

   You are required to accommodate these individuals to the best of your ability.

7. **If the board has 5 teams on the day the recount starts and then for some reason the counts do not match and an entire hand count must be done, is the board locked into those 5 teams or can they add additional teams?**

   The board may add additional teams.

8. **Can a candidate name a representative for himself and in addition send the appropriate number of witnesses?**

   No.

9. **In the "Outline of Recount Procedures," Section D, #3 (c), it says, "Appointments of witnesses must be in writing signed by the candidate or issue chairperson." Does that mean the candidates themselves literally have to sign every list of witnesses submitted to each county, or can they designate say the regional chair for a certain area to sign on their behalf, and if so what do they have to do to authorize that designation?**

   The candidate just has to authorize it in writing.

The CHAIRMAN. I will start by asking a question. Secretary of State, I recall that you were the first person involved from the forefront. You were the first person called when this started, as well as your colleague, Democrat Secretary of State Priest from Arkansas. We received unanimous support of NAS. I have said that, and appreciate you doing that, and appreciate the phone call that first day to help us along in this process.

Mr. Walch, you referred in your testimony, and, it was raised about Knox County, to the voter's fair and other issues that have been raised about disenfranchisement and other issues. You mentioned there is only one person that filed an administrative complaint. Do you want to expound on that? That individual is from which county?

Mr. WALCH. Mr. Chairman, that individual is from Allen County, Ohio.

The CHAIRMAN. Why do you think only one person filed a complaint?

Mr. WALCH. Mr. Chairman, I think the overall reason as to why there were so few filed is because, as the Secretary said, and I think I said in my testimony also, I think we had a very good election here in the state of Ohio. Overall things went very smoothly. As I think we have all testified to and said in public statements, it by no means was a perfect election.

There are always improvements that we can do and we have gone through an analysis of the selection and have been working on that. You heard Representative DeWine talk earlier about House Bill 3 and Senate Bill 3, a companion piece of legislation that our office is working very closely with the legislature on to improve an already very good system. My answer to that is the reason I think not more people filed was because we had a good election year in the state of Ohio.

The CHAIRMAN. I have another question for either the Secretary of State or Mr. Walch. A key component of HAVA is the requirement that each state establish a statewide voter registration database. Once this requirement is met here in Ohio, what impact do you think it will have on the registration process and the demand for provisionals? Do you have any reflection on what is coming down the road?

Secretary BLACKWELL. Again Ohio is in the forefront. Most states are having a very difficult time. We now have all 88 counties in place and it will have a tremendous impact. It will, in fact, deal with the time lag that the gentlewoman from California raised with the last panel as to why we trail the counties.

Well, we don't have a centralized system so we are dependent upon information coming in from all 88 counties and then we put the information back out to them. With a very shoebox system, a very paper oriented system, that takes a whole lot of time when you are talking about now, you know, 7.3 million voters. That is an issue. This issue is one of the great accomplishments of HAVA. That issue goes away.

Now, I do want to say that there was some question about HAVA and the statewide plan. We had a statewide plan and I got here just in time to hear each member of the last panel ask if they were on the statewide plan. A more pointed question would have been

were election officials represented on the statewide plan committee which the state plan is now part of the national registry.

It got approved by the Federal Government. It went through the express process of inviting anybody who wanted to testify at at least three public hearings to come in and testify. It was, in fact, a plan that was signed off on by election officials, as well as community-based voter groups. The plan is a statewide plan that had diverse input from across the state.

Let me just say for the gentlewoman from Cleveland that the chairman, Mr. Thomas Coyne. I think he is a Democrat, was a member—he was the Chairman of the Board of Elections, was a member of the statewide plan committee. So our largest county was represented on the statewide planning committee.

It was a committee that had its final product, the statewide plan, vetted nationally because it had to fit on our website and we had to deal with questions and answers from not only from Ohio, but from across the country. It was a well-vetted state plan. It was also a state plan that the National Association of Secretaries of State used as a model.

The CHAIRMAN. I have a question on voter ID. How did that go? Do you have any opinions on voter ID?

Mr. WALCH. Mr. Chairman, we received very few calls about any problems with that on election day. I think in the state of Ohio it went very smoothly. We had implemented that in the primary election we had in March of 2004. The feedback we received from election officials throughout the state was that most people are actually surprised when they have gone to vote and didn't have to show some form of ID. Those that were required to show some form of ID, which were not many in the state of Ohio, those folks didn't have any problem.

The CHAIRMAN. I haven't heard much nationally. We did hear some issues out west, but one of the most common complaints arising from the 2004 election was that the lines were too long at some polling places. I asked the question today. Mr. Secretary, I don't know if you were here at the time, but I asked all four of the last panelists: Do you want the Federal Government to solve that or the local bodies? Nobody wanted the Federal Government. I thought I would mention that, but it is difficult to solve long lines because of an insufficient number of machines.

Again, the two complaints you hear the most are that the lines are too long at some polling places, and that the voters could not cast a provisional ballot anywhere within the county in which they live, but rather had to cast at their assigned polling places in order for it to be counted. Any comment on those two?

Secretary BLACKWELL. You can disagree with Ohio law. California has a different law than the state of Ohio, but the fact is that Ohio law says that the jurisdiction is the precinct in which a voter resides. Now, Ohio law has also allowed for a couple things for a decade. First, anybody who is in question can register and cast a ballot at the Board of Elections. Anybody who wants a provisional ballot can go to the Board of Elections and get it done. They can do that.

Secondly, we allow for the creation of provisional voting centers throughout a county, one as large as Cuyahoga. That has been part

of the law for 10 years. We can't mandate it from the central government of Columbus, but it, in fact, is a provision of the law which allows for the creation of those provisional voting centers. Anybody who has been around for two years, four years, six years, eight years, seven years, as I heard one gentleman say, should know that. That is a fact.

And, you know, as it relates to long lines, I agree with you. No one should have to wait until the wee hours of the morning. No one should have to wait for two and a half hours. But you all have to understand that voting machine deployment has an intersection with a whole host of issues.

First, it is voting pattern history, available dollars, production timing. These machines are not just sitting on a shelf. We in Ohio have allowed for the use of different systems that meet specific standards. I understand that you had a question asked of the gentleman from Franklin County where they had too few machines and the gentleman from Cuyahoga County where they had 1,000 excess machines, but they used two different systems.

The fact is that we have some very real issues that we have to wrestle with, and that is, do we move to a one-system concept. We got to that through the back door. One system in the general sense of a precinct count optical scan even though we are dealing with two different manufacturers. That is optimally what we would like to do but we don't have enough machines at a reasonable cost that meet all of the certification guidelines and so that is a problem.

I was the first to say that we couldn't control the rain. We couldn't control county budgets and state budgets. The fact of the matter is that we can now take steps to make sure that those problems are alleviated in the future with a broader use of absentee ballots and early voting. I said that right out of the chute.

Now, the reality in this county—let us go to Knox County. We got a lot of publicity, and rightfully so, but anybody who has been around election administration for two hours could understand this. The gentlewoman from California, let me just say I agree wholeheartedly with something that you said.

Political veterans understood that there hasn't been a Republican win or retain the White House without carrying Ohio. That was a fact that didn't go to sleep. The Kerry campaign didn't sleep, nor the Bush campaign. The other issue is that if you go back to 2000, you take Ralph Nader off the ballot, you are probably talking about a 1 percentage point difference between then Governor Bush and Vice President Gore.

Anybody who had a historical point of view would know that we are going to have a major, major influx because we had Americans acting together. We had a very hot issue around the definition of marriage and a constitutional amendment that had gotten a lot of folks revved up. Even knowing that, we didn't have enough money to employ additional machines.

Even anticipating that, it wasn't there. Now, at one point I thought it might be there to get half of the counties moved into the new DRE system and, lo and behold, we got the last minute requirement of a VVPAT. I will say, in all fairness, a lot of it was coming from Democratic camps, the demand for the VVPAT.

Here in the state of Ohio, Senator Fedor from the western side of the state was the primary leading Democrat. The fact of the matter is that this is not something that Republicans conspired. It was bipartisan. Senator Jacobson, who I understand had a nice exchange with you today to say it mildly, was right there demanding for VVPAT. It was a bipartisan, last-minute decision. But it was a last-minute decision and it drove up the cost of the machines, so there was no way that you were going to have enough machines.

Let me tell you what happened. In Knox County, where Keynon College is located, traditionally those students vote absentee ballots in their respective home states. Because folks understood Ohio, was going to be the battle ground state, the campaigns both adopted a strategy of getting them to vote in the state of Ohio which was an option open to them. The fact of the matter is they filed their Ohio voter registrations late.

Not past the deadline, but late into the system so there was no way that those folks could have anticipated that there was going to be that change in voter behavior. What they did was the best they could do with too many voters for too few machines. They did the best that they could do. Shame on us if that happens again, because we now have that historical experience.

So, yeah, were there long lines? They were across the board. Were there long lines in Franklin County? Yeah, you heard. But, look, our system is a bipartisan system. It would have taken the collusion of 176 Democrats. Not just any Democrat. Most of them are Democratic leaders. Tim Burke in Hamilton County, Chairman of the Hamilton County Democratic Party, very active in the Kerry campaign.

Bill Anthony, labor leader, Chairman of the Franklin County Party, as well as the Chairman of the Board of Elections. The two people responsible in Franklin County for the distribution of voting machines are two Democrats so it is silly on its face to think that there was some kind of bipartisan conspiracy to disenfranchise black and inner-city voters in Franklin County when you had Democrats and blacks in charge of that system.

The CHAIRMAN. We want to move on to our Ranking Member and member from Cuyahoga County, but I have just one correlation in my mind. If you allow people to cast ballots anywhere in the county or state, you are going to have extremely long lines. I don't know how we could have anticipated where on earth anybody would vote. If you do statewide voting, everybody driving from counties going across Ohio could vote wherever they please. I don't know how we would have known where anybody would vote.

Secretary BLACKWELL. Mr. Chairman, let me just say, the expectation in a fledgling democracy like Afghanistan was that voters would vote in their assigned voting area or jurisdiction. We are veterans of the democratic process. For 228 years, there have been two hallmarks of American elections that are truly free and fair. The first is the protection of the sovereignty, the sanctity of the voting station so that the secrecy of the ballot is protected.

Secondly, it is an honest count. In Ohio, you got an honest count three times—three times. In Ohio you, in fact, had election officials that fought to make sure that we balanced two strategic objectives to meet the first overriding concern and that is the protection of

the voting station and the secrecy of the ballot. That was that we have to balance two strategic objectives. The first is we have to make voting as easy as possible. Make the ballot as accessible as possible.

Secondly, we have to understand that a fraudulent vote discounts legitimate votes, so we have to work very hard to make sure that our system is fraud-free and that we were able to do. That is one reason why we have had a record turnout and the system, no matter how taxed it was, showed stability and professionalism and patience and got the job done. That is what I found so offensive about the charges that were made against the system by folks who didn't have the decency to check the facts. Let me just answer that question and let me just make this statement.

Early on, there was a lot of concern about how we were dealing with provisional ballots and it was positioned as if Ohio was doing something dramatically different and out of the mainstream. Let me underscore, for the record, that 27 other states, plus the District of Columbia, require votes to be cast in the correct precinct to be counted.

There was the amazement on my part is that I didn't see press conferences and pickets going to Boston, Massachusetts, where they have the same laws we have in the state of Ohio. I didn't see press conferences held in the District of Columbia, where they have the same provisional law as we have in Ohio.

So if the controlling principle was the concern about the disenfranchisement of African-Americans, there are more African-Americans per square mile in the District of Columbia than in the state of Ohio. Why weren't there protests there? This positioning of Ohio as doing something that was radically different. It was a false position. We were in the mainstream of states. Twenty-eight states, plus the District of Columbia. None of them changed.

All of them, in fact, found reasonableness in that requirement and they maintained it. I would suggest that there were issues to deliberately cause confusion in the state of Ohio. We were targeted for such chaos and confusion and it is a testament to the professionalism of 50,000 poll workers and election officials that got it right in the face of this.

Mr. WALCH. I am sorry, Mr. Chairman. Can I make an additional comment to the Secretary, please?

The CHAIRMAN. Yes.

Mr. WALCH. To your point of voters not being able to cast a ballot anywhere in the county, I listened to our colleagues on the previous panel talk about that and some previous ways of doing in some counties. I heard Mr. Cunningham talk about from Allen County that he in this election did not do one thing different than he has done in past elections as it related to the issue of counting provisional ballots.

That is because Mr. Cunningham has been doing it by the same directive that has been out there, as Secretary Blackwell talked about earlier, since 1994. If there are counties out there that felt that there was some sort of change to past practice on this, that was due to them not doing it properly in past elections.

But our job at the Secretary of State's office was to ensure that they were doing it by law and that is why we reminded them of

current Ohio practice on issuance and counting of provisional ballots. I would also to your point of provisional ballots, I would also for the Committee's consideration remind everyone that Ohio had the fourth highest acceptance rate of provisional ballots cast in the country according to Electionline.org.

I would say I am very proud of the work that we in the bipartisan Boards of Elections did in ensuring that everybody got a provisional ballot who wanted one and that those provisional ballots were counted if that voter was eligible to vote.

Ms. MILLENDER-MCDONALD. Mr. Chairman, can we get a yield for a moment from Mr. Walch?

The CHAIRMAN. Just on this point, Ranking Member, my intention of HAVA is very clear. You have to have the provisional ballots, but never had the word ballot been written into the law. The idea was, especially for states that didn't have it, to stop disenfranchisement. You have to give people the ballot.

We never, rightfully so, dictated how you count it. You have standards in Ohio and set procedures. If people don't like that then they go to their state legislators and you change it. Now, I mentioned the county thing because I can't imagine—you want to talk lines or chaos, I can't imagine how you could have counting in the county. It would be chaos. Now, in perfect day when we are no longer here on this planet and electronics work, you pull up a little screen and you put your finger on it or your iris, you could be in California and vote in Belmont County, for example. That hopefully will come some day, but we don't have that currently.

I have always asked this question. How on earth would a person in a county vote in St. Clairesville if he is from Bellaire, my original hometown. If you are from Bellaire but you go and vote in St. Clairesville and say, "Well, by the way, I am voting on the St. Clairesville school levy, but I am from Bellaire, Ohio, where I pay my taxes." How do you sort that out? These are things that I find impossible to sort out. I think we would have complete imploding of the election under the current technology.

Secretary BLACKWELL. Mr. Chairman, I think you have to start by the fact that you are never going to have the perfect system. There is always a way to make it better so you are never going to be able to totally eliminate the possibility of long lines.

Let me tell you what my experience has been as I have crisscrossed the country over the six or seven years that I have been in this office. Something that has not been talked about today is that the complexity of the ballot is a big issue. Let me just tell you something, if you want to go back and understand.

If, in fact, you have, like in California, 17 different statewide issues and a whole host of judges that you have to go in and look through, most voter behavior is that they wait until the last couple of hours and many of them go into the voting booth with the League of Women Voters Voter Guide and say, "Let me see where this guy graduated from."

The issue becomes one of voter complexity. In the state of Ohio, thank God, this time around, because we educated against it, but it is still on the books you only have five minutes to vote. Yeah. Now, I tried to get that eliminated, but it didn't get eliminated. You only have five minutes to vote.

The CHAIRMAN. Mr. Secretary, would you like to clarify that?

Secretary BLACKWELL. No, I don't want to clarify it. It is right.

The CHAIRMAN. Mr. Secretary, this is not an adverse situation. It is for the gentlelady's information.

Secretary BLACKWELL. If, in fact, you went into a voting booth and you hadn't done your homework and you decided to read the information while you were in the voting booth, you inconvenience "those who are in line." We are talking about lines now. We are talking about lines.

Ms. MILLENDER-MCDONALD. Irrespective.

Secretary BLACKWELL. Let me tell you. We are talking about lines. What I just told you is that we didn't get that exercised out, but we didn't have that problem this time. By not enforcing the five-minute rule, we added to the wait. You can't tell me—you said they enforced.

Ms. MILLENDER-MCDONALD. No, I am not saying that.

Secretary BLACKWELL. I know you are not. So you said you shouldn't enforce it.

Ms. MILLENDER-MCDONALD. That is right.

Secretary BLACKWELL. So that means that——

Ms. MILLENDER-MCDONALD. And you said you did not enforce it.

Secretary BLACKWELL. We didn't enforce it and that meant that we had longer waits because of people's voter behavior. If you want to talk about this in an academic sense, that has been studied. People take longer sometimes than five minutes if they are not familiar with the ballot or if the ballot is very complicated and has a lot of issues on it.

Ms. MILLENDER-MCDONALD. Of course.

Secretary BLACKWELL. That is all I am saying. So there are a whole host of issues that impact wait and the length of the line.

Ms. MILLENDER-MCDONALD. That is one of those.

Secretary BLACKWELL. That is one of those. Absolutely. If you want to begin to attack ways to eliminate lines, some could argue that you, in fact, enforce the five-minute rule and the voter responsibility is to be educated before he or she walks into the station to execute the ballot. Others will say, "take as long as you want. If somebody else has to wait, so be it."

The CHAIRMAN. We will move on. I was defending you.

Secretary BLACKWELL. I know you were.

The CHAIRMAN. She is from California. I just wanted to clarify.

Ms. MILLENDER-MCDONALD. You put California out there five different times. My goodness. You said California once before and he said California three times.

Secretary BLACKWELL. I said California three times. I sure did.

Ms. MILLENDER-MCDONALD. Just referencing.

Secretary BLACKWELL. Referencing because I have looked at problems——

Ms. MILLENDER-MCDONALD. Problems——

The CHAIRMAN. If you will take me back for a second, Ranking Member, I am clarifying that you are from California and asking if you are familiar with our five-minute rule.

Ms. MILLENDER-MCDONALD. That is true.

The CHAIRMAN. No offense.

Ms. MILLENDER-MCDONALD. He was defending you.

The CHAIRMAN. With that, I will yield to the Ranking Member.

Ms. MILLENDER-MCDONALD. He is a great Chairman.

Secretary BLACKWELL. Yes, he is.

Ms. MILLENDER-MCDONALD. You have given us a great Chairman here from Ohio and we are very pleased with him.

Before I get to the Honorable Secretary of State, I would like to go back to Mr. Walch. You were saying that Mr. Cunningham perhaps had abided by this 1994 law. It seems to me you were implying that the others were not, causing some confusion. Am I correct in my assessment of that?

Mr. WALCH. Mr. Chairman, Congresswoman, yes. That is correct. If a county felt that there was something different going on this year than had gone on in the past, the only explanation for that was they were not doing it correctly in the past. Ohio law——

Ms. MILLENDER-MCDONALD. Isn't it your position then to correct them?

Mr. WALCH. That is what we did.

Secretary BLACKWELL. Let me answer. Let me just say what is unknown, and I will welcome your advocacy. No, I wouldn't. We have 12 central office election officials. What my office does, the majority of my staff does, is on the business services side of the office. Now, the reality is that in terms of elections administration, we have 12. We don't have an enforcement agency. The only thing that we can do through directives is clarify and give reference points for the 88 county Boards of Elections. So it might be easy to come in from out of state and assume I have dozens upon dozens upon dozens of people to cover 45,000 square miles of territory and 88 counties. I don't.

Ms. MILLENDER-MCDONALD. Just——

Secretary BLACKWELL. The issue is you asked him don't we have—this isn't our responsibility. I want to be clear on what our responsibility is.

Ms. MILLENDER-MCDONALD. Is it not your responsibility?

Secretary BLACKWELL. Our responsibility is to state Ohio law and to give a reference point. The only way that we can find out is through a complaint system or through their own admission.

Ms. MILLENDER-MCDONALD. Which you did not get.

Secretary BLACKWELL. Which we did not get.

Ms. MILLENDER-MCDONALD. You did not get that.

Secretary BLACKWELL. Prior to coming into this, right. That is how our system works. And the other issue is one of local enforcement; it is the job of the respective county prosecutor.

Ms. MILLENDER-MCDONALD. Well, you know, Mr. Secretary of State, you do have a lot of improvement to do and that is based on your limitation of personnel or a myriad of other things that you have outlined.

Secretary BLACKWELL. I just——

Ms. MILLENDER-MCDONALD. But I am saying——

Secretary BLACKWELL. The whole state does. I mean, the whole country does.

Ms. MILLENDER-MCDONALD. I am going to say that in Wisconsin. I am going to say it in Pennsylvania. I am going to say it in Florida. I am going to say it wherever I go because there are problems

that are systemic around the country. Now, Mr. Secretary of State, you were well aware that Ohio was a swing state.

Secretary BLACKWELL. Right.

Ms. MILLENDER-MCDONALD. You are well aware that when the swing states come into focus leading up to a presidential election—I was going to ask how long have you been here. You have been the Secretary of State for six or seven years?

Secretary BLACKWELL. Six years.

Ms. MILLENDER-MCDONALD. So it is obvious that you knew that folks would be coming in from all walks of life. You would have a barrage of folks coming in. You knew that and, yet, with all of this, you are saying that you don't know why the media blitz, you don't know why all of these folks are coming in with these different groups.

Secretary BLACKWELL. No, I didn't say that. You go back and check the record. I didn't say that. Somebody might have said it, but I did not say that. I anticipated. I anticipated. Let me tell you when I anticipated it most is when we took Ralph Nader off the ballot and I was very much aware of what I told you beforehand. I knew that Ohio was going to be the premiere battleground state. I knew it.

Ms. MILLENDER-MCDONALD. Then did you know that then you should have known that you were going to have over a 100,000 new registrants perhaps.

Secretary BLACKWELL. Right.

Ms. MILLENDER-MCDONALD. And that you should have put into place some type of mechanism to deal with this onslaught of all these registrations.

Secretary BLACKWELL. Madam, in your brilliance, would you tell me who would have paid for it?

Ms. MILLENDER-MCDONALD. I am sorry?

Secretary BLACKWELL. In your brilliance would you tell me who would have paid for it?

Ms. MILLENDER-MCDONALD. It is a possibility you would not have had that, even though you got the third highest amount of money from HAVA.

Secretary BLACKWELL. Can you tell me who would have paid for it?

Ms. MILLENDER-MCDONALD. But, you know what, Mr. Secretary of State? You are the Chief Election Officer.

Secretary BLACKWELL. You dagone straight I am. Let me tell you something.

Ms. MILLENDER-MCDONALD. You should have had——

Secretary BLACKWELL. I am not the legislature. I am the Secretary of State and I do not allocate money.

Ms. MILLENDER-MCDONALD. I understand the provisions of that.

Secretary BLACKWELL. The legislature does.

Ms. MILLENDER-MCDONALD. Okay. Fine. But it is incumbent upon you to have found some way by which those extra registration forms could have been dealt with differently than what they were irrespective, Mr. Secretary of State, and you had ample time to do that it seems.

Secretary BLACKWELL. Expand on that. I am fascinated how you can fly in here to Ohio, that you would fly in here and you would make an assertion that——

Ms. MILLENDER-MCDONALD. It seems to me——

Secretary BLACKWELL. You are going——

Ms. MILLENDER-MCDONALD. I am not saying you should have.

Secretary BLACKWELL. Okay, it seems to you. I will start wordsmithing with you.

Ms. MILLENDER-MCDONALD. Okay.

Secretary BLACKWELL. The fact is that you have left an impression that, contrary to what all the election professionals have told you, and we will give you full comprehensive answers to your questions. Pat Wolfe is the Election Administrator. She has been introduced to you.

The reality is that we started in January of 2004 at the statewide meeting of the Ohio Association of Election Officials starting to talk about the challenge of this election and what it was going to mean. I can tell you right now that if we hadn't had the preparation that we did have, it would have been a catastrophe. The fact of the matter is that what you don't want to hear is that Ohio——

Ms. MILLENDER-MCDONALD. Do not say what I don't want to hear.

Secretary BLACKWELL. Well, then what you are not hearing.

Ms. MILLENDER-MCDONALD. You don't want me to put words in your mouth.

Secretary BLACKWELL. What you are not hearing is that Ohio, whether you are talking about the National Associations of Secretaries of State or by any other objective measure, has one of the best election administration performances in the country.

Ms. MILLENDER-MCDONALD. Mr. Blackwell, irrespective of that, there have been many allegations put out there. Now, again, you don't want to hear they are out there.

Secretary BLACKWELL. Most of them have been—let me just show you something, madam, because I don't want to waste your time coming into Ohio. Most of the challenges to our state were handled by the media in our state.

Ms. MILLENDER-MCDONALD. I am sorry, who?

Secretary BLACKWELL. The analysis was done by the media of our state, as well as other third party personnel and organizations.

Ms. MILLENDER-MCDONALD. May I just say this, sir?

Secretary BLACKWELL. Yes, ma'am.

Ms. MILLENDER-MCDONALD. One of the things that was raised is that you did have long lines.

Secretary BLACKWELL. Right.

Ms. MILLENDER-MCDONALD. And, therefore, there was a certain amount of disenfranchisement because people just couldn't wait in those long lines. Now, you have said you did have long lines but you have explained why some of the reasons for the long lines.

Secretary BLACKWELL. Right.

Ms. MILLENDER-MCDONALD. Nevertheless, that is out there.

Secretary BLACKWELL. Everybody had long lines in the country. Nobody had the anomaly of Knox County that I know of. Everybody in general had long lines and longer waits. We had a record turnout. We had a million more voters this time around.

Ms. MILLENDER-MCDONALD. Because you are a swing state.

Secretary BLACKWELL. Not only because we are a swing state. Because we, in fact, had encouraged voter education and registration and we got it on both sides of the aisle.

Ms. MILLENDER-MCDONALD. Well, we did not have 10-hour waits, but I am not sure that is an accurate account of the number of hours that folks waited here in Ohio either. Let me ask you about the forms, 800 pound paper stock that was suggested. Are those allegations or is this true that you out of the—as the results of public outcry you have changed that?

Secretary BLACKWELL. No.

Ms. MILLENDER-MCDONALD. Can you explain that to me?

Secretary BLACKWELL. Yes, I can. As a part of reasonable feedback from election officials, we relaxed the standard. Prior to this election, most of our voter registration came to us from the voters themselves and came to us through the mail.

This election, we, in fact, had a record number of third-party registrations. When they were coming to us through the mail, we, in fact, had a paper weight standard because what we didn't want to do is disenfranchise voters by post office machines damaging their registrations. Now, the reality is that this predated me. Now, Pat Wolfe——

Ms. MILLENDER-MCDONALD. What predates you?

Secretary BLACKWELL. The paper weight requirement. Pat is here. She will explain to you the process, why we have it, and how we approached it this time around. As soon as folks told us that they, in fact, were getting more over-the-counter registrations than they were getting through the mail, and that the standard was a problem as opposed to an asset, we, in fact, relieved and relaxed that standard pure and simple.

It is something that had been in our director's guide. We had, in fact, had it for a number of years. I'll let Pat explain to you because I own that. I own two things. I own the directive and I own the relaxation of that directive. But I, in fact, worked on the advice of election professionals and Pat is that election professional and one of the few in the country that is certified. She is certified, and she recommended to me. I will let her explain it to you, but I own it.

Ms. MILLENDER-MCDONALD. I just want to continue to talk with you, sir.

Secretary BLACKWELL. Okay. Pat, would you answer the question?

Ms. MILLENDER-MCDONALD. No, Mr. Secretary of State. Let us finish.

Secretary BLACKWELL. Do you accept that answer or not?

The CHAIRMAN. Let me just stop here for a second. Let us take a deep breath. First of all, gentlelady, you can proceed on the question. After that, I would like to hear from Pat Wolfe. Ranking Member, proceed.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. Mr. Secretary of State, we will get to the lady. We are just trying to clear up some either allegations or misinterpretations of what happened. This is your opportunity to do that so that is why I was——

Secretary BLACKWELL. That is why I am going to give you the whole process.

Ms. MILLENDER-MCDONALD. I understand——

Secretary BLACKWELL. If we really want to get to that, I will give you the whole process. We will put a pin in it, flag it, that Pat will give you the process from the very beginning when it started, you know, when that standard was established and why.

Ms. MILLENDER-MCDONALD. Okay. Mr. Secretary, there are allegations that voters were told that they could not fill out provisional ballots in any other precinct than the one in which they reside. I think you have made some clearances on that. But will you reiterate for the record again with me why was that? Or why are there still allegations out there that you circumvented provisional ballots from being given to voters who did not reside in the precinct by which they had come?

Secretary BLACKWELL. The most simple answer is that I don't know why people would continue to spread misinformation, except there was a mid-October, and you probably have seen it, either officially or politically, a DNC workbook that suggested that folks come in and look for problems. If there were no problems, exercise a preemptive strike and create problems where there were none.

I would suggest that is probably what we are still experiencing here. I will give you a copy, just in case you don't have it, so you can reference it. It was very interesting. It came up in October. I was doing a Fox News Sunday interview with Chris Wallace on set with a Democrat lawyer. Very finely distinguished fellow. This was the first time that I saw that DNC newsletter. The lawyer couldn't respond to it.

Ms. MILLENDER-MCDONALD. Are you saying this was conjured up by——

Secretary BLACKWELL. I don't know. I am just saying that—here it is right here.

Ms. MILLENDER-MCDONALD. Are you suggesting that——

Secretary BLACKWELL. Kerry/Edwards Colorado Election Day Manual. "If no signs of intimidation techniques have emerged yet, launch a preemptive strike, particularly well suited to states in which their techniques have been—where these techniques have been tried before."

Ms. MILLENDER-MCDONALD. So it is not related to Ohio. That is a general statement.

Secretary BLACKWELL. Well, it is a general statement. But just as you recognized that Ohio was a swing state and the premiere battleground state, I am sure they did, too.

Ms. MILLENDER-MCDONALD. The question is did you circumvent any provisional—sir, Mr. Secretary of State.

Secretary BLACKWELL. Go ahead. I am listening.

Ms. MILLENDER-MCDONALD. Yes, but I don't have your——

Secretary BLACKWELL. You have my undivided attention.

Ms. MILLENDER-MCDONALD. No, I don't.

Secretary BLACKWELL. I can chew bubble gum and listen to you at the same time.

Ms. MILLENDER-MCDONALD. Sir, are you saying that there is not a ruling by you or a directive that says that no one should have a provisional ballet who did not reside in the precinct by which they have come to vote?

Secretary BLACKWELL. There was no directive. There was, in fact, a letter back to the Cuyahoga County Board of Elections which basically raised what I would consider to be an ethical question. One, if, in fact, you know that someone is not in the correct precinct, to give that person a ballot that you know is not going to be counted effectively and intentionally, disenfranchises that person, even though it might make election administration more convenient.

What I was told, and it was made very clear, that there were two things we had to separate. One was the provision of the ballot and the other was the counting. The courts told me that when they narrowed the definition of where the jurisdiction was, they upheld Ohio law and Ohio authority, to require the jurisdiction to be the precinct.

They also made it clear to me and my lawyers that the ballot in accordance with HAVA had to be given to anybody. Just for accountability purposes, they were to tell the folks where they should vote. If they still wanted a ballot, HAVA said give them the ballot, but make them sign. Allow for them to sign an affidavit saying that they knew that if this vote was cast in the wrong precinct, it wouldn't be counted. That was a court compromise on a fine point, but it, in fact, was just that. I think, at that point, the court was doing their job.

Ms. MILLENDER-MCDONALD. But are you saying——

Secretary BLACKWELL. So the answer to your question is in Ohio in this election, everybody got a provisional ballot that demanded one. There was a good-faith effort made to tell them that it had to be cast in the precinct in which they resided. Or, as Ohio law says, they could go down and vote at the County Board of Elections and if you happen to live in the county that was forward thinking enough and if they had provisional ballot centers, they could have voted there.

Ms. MILLENDER-MCDONALD. I was going to ask you that. Why is it—so, in other words, provisional ballots are one thing but to count those that were submitted is another thing.

Secretary BLACKWELL. Right.

Ms. MILLENDER-MCDONALD. So you still disenfranchise people for not counting these ballots when, in fact, you should have dragged them down to this provisional center where I suppose you have the setup for them to then follow through on whatever they need to for clearance.

Secretary BLACKWELL. They can be told that.

Ms. MILLENDER-MCDONALD. I am sorry?

Secretary BLACKWELL. I would say in most counties they were told that. Voters have some responsibility. We don't run a taxicab service. The fact is that they were told the precinct in which they could vote and had that vote counted in accordance with Ohio law, not California law, not Massachusetts law. Well, in Massachusetts it wouldn't have counted. We, in fact, told voters that if they still insisted on a ballot, HAVA said they could get a ballot.

Ms. MILLENDER-MCDONALD. That is correct.

Secretary BLACKWELL. And they got a ballot in Ohio. But Ohio law and the courts that upheld this said, "We are not going to, in fact, be responsible for disenfranchising you. We will tell you where

you are supposed to vote and if you don't want to do it and for whatever reason you want a provisional ballot——

Ms. MILLENDER-MCDONALD. But they disenfranchised them anyway.

Secretary BLACKWELL. They disenfranchised themselves if they didn't vote in the right precinct. Look, let me just put it this way: Given the big states, the most popular states, we, in fact, had the highest validation rate than any big state in the country who had a similar law to ours. California in accordance with their, was one notch under. We had 78 percent rate and California had 77.

Ms. MILLENDER-MCDONALD. I understand. That is correct.

Secretary BLACKWELL. Our neighbors next door had about 38 percent and Illinois had 49.

Ms. MILLENDER-MCDONALD. See, we don't tell them that their provisional ballots are not going to be counted.

Secretary BLACKWELL. And Arnold is not the Governor of Ohio either. I understand that we have different laws.

Ms. MILLENDER-MCDONALD. So is your law in conflict with HAVA?

Secretary BLACKWELL. No. HAVA says that in terms of the counting of ballots, jurisdiction is determined by state law. State law has been well established in the state of Ohio as being in the precinct.

Ms. MILLENDER-MCDONALD. Mr. Blackwell.

Secretary BLACKWELL. Yes, ma'am.

Ms. MILLENDER-MCDONALD. Another thing, if you can clear this up with me, because I have a list of problems from Ohio as I will have a list of problems from California and any other state that we go into. This problem says that voters were told, whether it was incorrectly or correctly, and incorrectly in this instance, that the presidential election would be on Wednesday the 3rd of November as opposed to November 2nd.

If you have this really widespread educational campaign program where there are videos and people from the media, why would that be something that voters were told? If that is correct, that is another provision or statement that disenfranchised people.

Secretary BLACKWELL. The answer to that is I don't have a clue why somebody would do something so devilish and evil. I don't have a clue, but the fact of the matter is——

Ms. MILLENDER-MCDONALD. You hadn't heard that before today?

Secretary BLACKWELL. I heard it. I don't have a clue why they would have done it. I still don't know the motivation. You can't even tell me who did it.

Ms. MILLENDER-MCDONALD. No, I cannot.

Secretary BLACKWELL. Right. You can't tell me who did it. I have not a clue because we spent money telling people when the election date was in the 88 counties. You tell me why. A lot of the assertions are made on Internet boards or a lot of the assertions are made by wild conspiracy theories. I have no idea. If I could interpret their brains and their minds, I would be a rich man.

Ms. MILLENDER-MCDONALD. You know what, Mr. Blackwell? Then why is it that this statement of those who went before this House of Congress on January 5, 2005, exercising their rights to raise questions of either improprieties or misinterpretations of alle-

gations, or whatever you want to define these, why were they characterized as nasty and disingenuous partisan people when, in fact, either side of that spectrum, had it fallen on whichever side, you would have the same type of exercise?

I guarantee you that because I have been in the Congress long enough to see that exercise played out on both side of the spectrum. Why do you call Americans who are elected officials who are trying to exercise their constitutional right to inquire nasty and disingenuous?

Secretary BLACKWELL. Let me say that anyone who alleged, intimated that any of our professional election officials or the Secretary of State or the Secretary of State's employees promulgated that nonsense is disingenuous and silly. I really don't care what their nationality is.

Ms. MILLENDER-MCDONALD. We are not speaking on nationality, sir, nor culture nor gender.

Secretary BLACKWELL. That is my point. I call it as I see it. Anybody who suggests that there was an election organization, official election organization in the State of Ohio that promulgated that misinformation is disingenuous or silly and I stick by that label.

Ms. MILLENDER-MCDONALD. Let me say this. You knew ahead of time that these members were going to come to the floor and speak their displeasure about the selection. Why didn't you then write a letter to try to clarify some of this as opposed to calling them nasty and disingenuous?

Secretary BLACKWELL. Well, let me just say——

Ms. MILLENDER-MCDONALD. You are a man of honor.

Secretary BLACKWELL. And integrity and professionalism and the list goes on.

Ms. MILLENDER-MCDONALD. And humble.

Secretary BLACKWELL. Very much so. I will submit for the record the Cleveland Plain Dealer and the Columbus Dispatch third party media representatives who did thorough analysis of the allegations, so it wasn't any propaganda coming from the Secretary of State's office. I, in fact, didn't need to be there. Representatives of our state, the Chairman included, submitted for the record these independent analysis. Yeah, I didn't need to write a letter.

That is why they are elected and that is what they get paid to do and they do it well. They stuck to the facts. You would have to have the imagination of Jonathan Swift to believe some of this nonsense that was promulgated on that day.

Ms. MILLENDER-MCDONALD. Let me say my last thing here, Mr. Blackwell. In your statement you say that when the intimation of some vast conspiracy to steal the election is so much more exhilarating and speaking to the whole notion that they were experienced, the elected officials, those who knew the process, Mr. Blackwell, and that you were disappointed with this bipartisan type of chat.

Let me say this to you and Mr. Walch. While Mr. Walch states that he has only had one complaint and you are saying that these are the only folks who—only the disciplined partisans were the ones who have been very upset about this election. What about the average Joe? What about the average Jean?

What about those who think like those whom you have just outlined? Mr. Walch, we have been inundated with calls from Ohio. Maybe your lines are tied up with other things because those calls are coming to us. But you cannot always identify the partisans. You said yourself, Mr. Blackwell, that you got a lot of registrations of third party people.

Secretary BLACKWELL. Absolutely.

Ms. MILLENDER-MCDONALD. So how can you make that type of assumption or comments that they were partisan acts?

Secretary BLACKWELL. I am glad that you directed folks to that segment of my fully submitted statement for the record.

Ms. MILLENDER-MCDONALD. I am just trying to get some clarification.

Secretary BLACKWELL. I am glad that you pointed that out. I will suggest to you that it was an interesting—let me just give you a quote. Let me compliment a partisan in this regard. On September 29, 2004, Dan Travis, spokesperson for the Ohio Democratic Party, called Blackwell's decision, and this is a quote, "A victory for the citizens of Ohio. You can't attempt massive deception and fraud to make the ballot,"

Travis said. "The law is clear on this and they did not follow the law." This was in the context of an article which, in fact, spoke to the face that I was pretty evenhanded in my decision and that I didn't let partisan persuasion get in the way. He was subsequently fired.

Ms. MILLENDER-MCDONALD. By whom?

Secretary BLACKWELL. The Ohio Democratic Party. He was subsequently fired for speaking the truth.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, gentlelady.

The gentlelady from Ohio

Ms. TUBBS-JONES. Mr. Chairman, thank you very much. Secretary Blackwell, it is so kind of you to come before our Committee and answer questions.

Secretary BLACKWELL. Good to see you.

Ms. TUBBS-JONES. It was so good to see me that you chose not to shake my hand in the anti-room. Is that correct, sir?

Secretary BLACKWELL. I chose not to shake your hand.

Ms. TUBBS-JONES. That is the question. You chose not to shake my hand in the anti-room because it was so good to see me. Is that right?

Secretary BLACKWELL. I chose not to shake your hand until I see how you purport yourself in this setting.

Ms. TUBBS-JONES. Well, you know what? Watch me, sir.

Secretary BLACKWELL. I have been watching you a lot.

Ms. TUBBS-JONES. Let me ask you this question. Could you answer this question for me, sir, please? A quote said, "I chose not to enforce the procedures with regard to the five-minute vote." Can you tell me where the five-minute vote is listed and how you have the option of deciding whether somebody has five minutes to vote or 25 minutes to vote?

Secretary BLACKWELL. I said we didn't have that problem in this election because we basically erred on the side of the voter. Now, if you want me to create longer lines, if you want me to say Ohio

is the state that harasses, the fact of the matter is those are local decisions. Because I only have 12 people, we did not, in fact, encourage the enforcement of the five-minute rule.

Ms. TUBBS-JONES. So you are saying there is a rule under Ohio law that says people only have five minutes to vote and when they don't vote in five minutes, you can push them out of the line and tell them to keep going?

Secretary BLACKWELL. Unfortunately.

Ms. TUBBS-JONES. Would you please cite that for us, please, the citation?

Secretary BLACKWELL. We will get it for you. Before you leave we will have it for you.

Ms. TUBBS-JONES. Let me also ask you, sir, you quoted—you seem to want to quote so many Democratic persons in support of your position. You quoted Don McTigue in your written statement and it says—let me quote a statement about the outcome. "Overall Ohio has a good system. Like any system if you scrutinize it enough, you are going to find weakness."

I was interested that Mr. McTigue would make such a statement so I called him up and asked him was there anything else that he said and he specifically stated to me that there were some deficiencies. "If you look close enough you will see problems like lack of procedure, lack of leadership, and lack of consistency in direction from the Secretary of State." Just so the record is clear, I just wanted to add that to the record, sir.

Now, let me also ask you, sir, I saw your TV ads giving education to people about voting. Can you tell us specifically what you told the voter with regard to voting location, sir?

Secretary BLACKWELL. Vote in your precinct. What we, had instructed and in accordance with Ohio law, Boards of Elections were to tell voters that they must, in fact, vote in their precinct for their vote to count.

Ms. TUBBS-JONES. Did you tell them in their ad that if they couldn't vote in your precinct they could go vote at the Board of Elections?

Secretary BLACKWELL. No, the Boards of Elections did.

Ms. TUBBS-JONES. No, but you were the one spent $2.5 million doing a TV ad for people who, in fact, have the opportunity to do punch card voting because 70 percent of the people in Ohio do punch card voting.

Secretary BLACKWELL. Absolutely.

Ms. TUBBS-JONES. In this ad you said, "Vote your precinct," but you never told them that if they couldn't vote in precinct, they could go the Board of Elections and vote. Did you, sir?

Secretary BLACKWELL. I sure didn't.

Ms. TUBBS-JONES. Excuse me?

Secretary BLACKWELL. Can't you hear? I said I sure didn't.

Ms. TUBBS-JONES. And you did not why?

Secretary BLACKWELL. Because you can only get so much information in a 30-second ad which is the most——

Ms. TUBBS-JONES. That was important information because you just gave that to all of us for the world to see, sir, that either you go vote at a designated voting location, you vote in your precinct, or you go to the Board of Elections.

Secretary BLACKWELL. Absolutely. And that is what they were told. We made sure that those 50,000 election officials and poll workers understood that was an option for someone who was in the wrong precinct but was insisting on——

Ms. TUBBS-JONES. But you did an ad statewide.

Secretary BLACKWELL. Just——

Ms. TUBBS-JONES. You did an ad statewide that you spent $2.5 million on and you didn't tell them.

Secretary BLACKWELL. And it worked.

Ms. TUBBS-JONES. Except——

Secretary BLACKWELL. It worked. It worked. It worked.

Ms. TUBBS-JONES. When you get through saying "it worked" let me go on. How many more times are you going to say it worked?

Secretary BLACKWELL. It worked. It worked and I will say it worked every time you ask the question. The education program worked and if you want the details on it, you can have them, but it worked. The fact of the matter is that we have—among popular states, we had the best validation rate and that meant that those folks counted.

Ms. TUBBS-JONES. But you——

Secretary BLACKWELL. And our campaign was——

Ms. TUBBS-JONES. Just let me know when you are done.

Secretary BLACKWELL. I sure will. Our campaign was Make Your Vote Count. The surest way to make your vote count was to vote your precinct. What I don't have in here—let me tell you what I don't have in here. We went into a million households by phone and they were essentially urban households and they were disproportionately in your district and in Cleveland. We told people there how to vote their provisional ballot. We told them to call their Board of Elections and we had a system that allowed for that. Let me tell you, as much as you want——

Ms. TUBBS-JONES. Mr. Chairman, I can't let you use all my time answering the questions you have already answered.

Secretary BLACKWELL. As much as you want to create a third-world situation in the United States, most households, even in your district, have telephones and we, in fact, called them. We called them. I want you to know that we paid particular attention to your constituents. We called in and told them how to vote that provisional ballot to make their votes count because what I wanted was as many votes to count as humanly possible.

Ms. TUBBS-JONES. Are you done, sir?

Secretary BLACKWELL. For right now.

Ms. TUBBS-JONES. So you specifically said—you called into my district and you told people to go vote their precinct but you never told them they could go vote at the Board of Elections?

Secretary BLACKWELL. No, we told them——

Ms. TUBBS-JONES. The answer is yes or no, sir.

Secretary BLACKWELL. No, it is not yes or no. We told them to call the Board of Elections so that they would, have the option of where to go.

Ms. TUBBS-JONES. But you could have told them. Let us count the words. Vote in your precinct or vote at the Board of Elections. Call the Board of Elections. Same number of words. You could have

said to them vote at the Board of Elections. Could you have not, sir?

Secretary BLACKWELL. But given that I was elected Secretary of State with a constituency much larger than yours, I chose the language for that ad.

Ms. TUBBS-JONES. And in the ad you specifically excluded you could vote at the Board of Elections.

Secretary BLACKWELL. Right. Look, let me just say, all you had to do was go back and look at that ad. We told them where to call. We got them to our website. That information was right there so they got that information. We, in fact, made sure that coworkers understood to give them that information. I will tell you what. I refuse to sit here and be harangued by you.

Ms. TUBBS-JONES. You know what, Mr. Blackwell? I am not trying to harangue you, sir. If you choose not to——

Secretary BLACKWELL. Hold on. Let me——

The CHAIRMAN. Time has expired.

Secretary BLACKWELL. Thank you.

Ms. MILLENDER-MCDONALD. Mr. Blackwell, Mr. Chairman, just one thing, though. Not every voter has a master's degree. Not every voter has a bachelor's degree. We tend to want to make sure that information is on a level where everyone understand. Now, had you said that you vote this way or that way or your vote would not be counted, that would have sparked——

Secretary BLACKWELL. Madam, look. Both of us are trained educators.

Ms. MILLENDER-MCDONALD. I am sorry?

Secretary BLACKWELL. Both of us are trained educators.

Ms. MILLENDER-MCDONALD. Yes.

Secretary BLACKWELL. I, in fact, used the language that a bipartisan firm, and you can have the copies. These are the same guys that did work for Bill Clinton. We used the language that they recommended and they were very much familiar with the demographics.

Ms. MILLENDER-MCDONALD. You know, bipartisan doesn't mean a thing when these folks speak over——

Secretary BLACKWELL. But did you hear the ad? Did you hear the telephone message?

Ms. MILLENDER-MCDONALD. No, I did not see the ad.

Secretary BLACKWELL. We will get you the—hold your judgment on the complexity of the message on the telephone.

Ms. MILLENDER-MCDONALD. I am wide open to anything.

Secretary BLACKWELL. We will get you that.

Ms. MILLENDER-MCDONALD. The last thing I want to say to you is one of you local county folks said that 30 days—in fact, it was Mr. Andrews or Anthony.

Secretary BLACKWELL. Anthony.

Ms. MILLENDER-MCDONALD. Thirty days out there was a map outlining where the precinct would be and it was a change of venue. Three weeks from the election the misinformation was disseminated which means it became absolute chaos so says Mr. Anthony. Now, those were also problems and issues why many were concerned about the disenfranchisement of voters.

Mr. Walch, do you want to answer?

Mr. WALCH. If I could, Mr. Chairman, Congresswoman. That, again, was a case of folks making calls. We have no idea who was making those calls or who they were making them to that were calling folks in Gahanna and telling them that they were now supposed to go vote in Canal Winchester. I don't know the specific jurisdictions. Those were not made by election officials or anything like that. I felt the Franklin County Board of Elections when this came to light that somebody was out making these types of phone calls, Franklin County Board of Elections did a very good job of getting it in the newspaper, that if anybody had any question of where they were to go to vote, they would contact the Board of Elections.

Ms. MILLENDER-MCDONALD. Mr. Walch, do you find that is possibly trying to disenfranchise others?

Mr. WALCH. Absolutely. No question about it but it was not done, again, by election officials or anybody like that. We have no idea who did it. Somebody with an agenda of some sort. That would be very hard to determine.

Ms. MILLENDER-MCDONALD. If you did not know who did it, it could very well have been done by some elected folks who were on either side of the spectrum. Let us be fair about this. You cannot say it was not done given that you don't know who did it.

Secretary BLACKWELL. Right. I can say this. In fact, until proven with hard evidence otherwise, we will defend the professionalism and the integrity of the 50,000 election officials and poll workers in this state. I would defend them to the teeth.

Here for your record, and let me just say to the gentlewoman from California, California taught me the fact that we have an obligation to be bilingual.

Ms. MILLENDER-MCDONALD. I am sorry? An obligation to what?

Secretary BLACKWELL. To be bilingual.

Ms. MILLENDER-MCDONALD. Oh, yes.

Secretary BLACKWELL. Because we have the fourth highest migrant worker population in the country after California, Texas, and Florida. A lot of those folks just migrate, but some families stay around. The Spanish-speaking population has exploded in portions of our state. The outline of how every dollar was spent, the accounting firm, and our report to the controlling board and the legislature is in this document.

We, Mr. Chairman, will make sure that you get that. We will also make sure that the citing for the gentlewoman from Cleveland will be granted to the Committee so there is no misunderstanding about it. I wrestled with it in 2000 because it was a real problem right again here in Franklin County, where people were forced out of the voting booth because they were taking too long.

This is not a perfect science, but if you are standing in line and you have to be at work or you have to go to the babysitter and somebody is taking 15 minutes in that booth and that adds to your line, you now see the human dilemma. Do you rush that person in the booth or do you inconvenience that person who is ready to vote and standing in line?

Those are the on-site decisions that local election officials have to make and that is what we try to do from our historical experience in 2000. We first try to go to the legislature and say, "Look, that makes sense." I would suggest this to you, Mr. Chairman, that

the DRE system is not necessarily a quick system so we have to understand what the tradeoffs are in these new systems. We have to understand that Ohio is becoming more and more a state with referendum or making the ballot. Citizens are speaking out on issues. That means that the ballot is going to become more complex.

Ms. MILLENDER-MCDONALD. That is a good thing.

Secretary BLACKWELL. But it is going to be more complex and it is going to require greater voter education at the county level. Hopefully in 2006, we will not have the punch card dilemma in the state of Ohio or any place in this country.

The CHAIRMAN. Secretary of State, if you are done, there is a question for Mr. Walch by the gentlelady from Cuyahoga County. I would conclude with a brief question to the subject of our hearing today, HAVA. Mr. Secretary, are there any areas in particular that you think we need to readdress or look at on HAVA, or should we let it go to the EAC for a while? Is there anything in general?

Secretary BLACKWELL. Here is the dilemma that we have. It is an age-old dilemma and American federalism. You see it going on now with a case in Florida. Where do federal rights to protect human dignity and human rights and civil rights start versus state rights? You have this issue as to whether or not there is a state requirement of a VVPAT and there is no national requirement.

The question is: Are you willing to take a risk on a machine that has gone through, and we will give it to you, the most comprehensive vetting process in the country but it still has some security issues? Does the Congress? Does this Committee? Any of us want to own that by putting a machine that has not met security concerns? If our search is for the perfect system, it does not exist. We have to make some decisions based on money that is available.

I know why this committee has every intention to try to get us more money. I have to work from the fight that we have $150 million in the bank and that cannot buy an infinite number of machines. It can only by a finite number of machines. The VVPAT increases, at minimum, the cost of the machines, as we understand the design right now, about 25 percent.

If, in fact, one of the things that we want to do is to buy more machines to reduce the voter-to-machine ratio, then we don't have enough money so there has to be some understanding and some tradeoff on functionality of machines, vote security, and dollars available. You have a state government that is talking about a $5 billion deficit. I can't imagine with the prosecution of the war that you are going to get any more money through the Congress.

Maybe you will. If so, more power to you because it is needed. I can tell you right now that the county governments, there might be one or two or three or four or five or six or seven that might tax their own citizens for more expensive machines. For the present you all are the only game in town and the question for us in charge of election administration really does turn on our ability to get this thing done within that budget.

Mr. Chairman, you all accommodated me and I thank you for that. I do think for the public because this is one of the more outstanding issues in front of us that the Chair said you would hear from Pat Wolfe. Pat Wolfe has one of the most important respon-

sibilities on a day-to-day basis. As you indicated, she came not only from your district but she came from the ranks of election professionals. She was a Deputy Director of a Board of Elections. She was a Director. I have told you in my comments that she is one of the most certified election professionals in the country. I do think that for the record we must understand that while I take ownership for complying with state law in the paperwork standard, I think you owe it to Pat to hear why she recommended it to me.

The CHAIRMAN. Let us go to Pat. I think we are finished with the questions. Let me also thank you for being here. Also the $3.9 billion, just to clear that up, people ask how much the feds will supply. We said $3.9 billion.

We need to fund $3.9 billion. We don't want to live the next five, six, seven, 10 years knowing that we gave another unfunded mandate. The commitment we made to all the groups is that we want to provide the $3.9 billion.

Ms. MILLENDER-MCDONALD. Absolutely, Mr. Chairman. Mr. Blackwell, you were saying that you have $105 million in the bank?

Secretary BLACKWELL. For machines.

Ms. MILLENDER-MCDONALD. Oh, for machines.

Secretary BLACKWELL. For machines. Again, the money that you all have given for centralized voter registration, not only was it needed, it was well used and we were among the leaders in the country in implementing that system. It will get at some of the concerns that you all have talked about today.

Congresswoman Tubbs-Jones, the citing is 305——

Ms. TUBBS-JONES. Are you reading from that, sir?

Secretary BLACKWELL. Yes.

Ms. TUBBS-JONES. Can I read with you?

Secretary BLACKWELL. 305.23. "Occupancy of voting compartment."

Ms. TUBBS-JONES. Can I read with you?

Secretary BLACKWELL. "Marking and return of ballot."

Ms. MILLENDER-MCDONALD. Is there another copy?

Secretary BLACKWELL. I'll give you this for the record. Quite naturally I want it for the record. I have a copy, I will read it for the record, and I am going to submit it to you. "No voter shall be allowed to occupy a voting compartment or use a voting machine more than five minutes when all other voting compartments or machines are in use and voters are waiting to occupy."

Ms. TUBBS-JONES. So clearly you know that provision, 305.23, which I haven't had an opportunity to see, sir, is inappropriate and probably violates the civil rights of many voters, etc., so you chose not to enforce it.

Secretary BLACKWELL. What I chose to do is to try to get the legislature to change the statute because I don't think it is fair and I do think that it runs the chance of disenfranchising somebody who is not necessarily illiterate, but a slow reader.

Ms. TUBBS-JONES. And that is what I just said.

Secretary BLACKWELL. Okay. The answer is yes, I thought it was very important to change it. Nobody has challenged the constitution—I mean, the civil rights aspect of it, so I don't know——

Ms. TUBBS-JONES. But as the Chief Elections Officer for the State of Ohio you surely want to bring it to the attention of every-

body so that would never happen to a voter because we are concerned about it.

Secretary BLACKWELL. I already did. I already did, dear. I already, did. I already did. It was one of the things that I jumped on right away after the 2000 election, believe me.

Ms. TUBBS-JONES. Thank you, Mr. Secretary.

Secretary BLACKWELL. You are most welcome. You can come visit me anytime.

The CHAIRMAN. Thank you. We will move on to Pat Wolfe.

STATEMENT OF PAT WOLFE

Ms. WOLFE. I will give you the background of the voter registration form. I have been in election work for 21 years and there has always been a paper weight because it is a permanent record. If you are registered as I have been for almost 27 years or more, it is a permanent record of your registration. It stays with the County Board of Elections so it must sustain during that period of time.

One of the other things that was encountered during the process of all of this, not only is it a permanent record, but when the National Voter Registration Act occurred and designed then the new form that all the boards should use, it also required it be a self-mailer. In order to meet the United States Postal Service requirements for that type of product, it had to meet a minimum thickness which is .007 inches. In order to accommodate that right now it takes an 80-pound paper weight. The reason the postal service has that is because of their new processing machines. You don't have all the hand stamping that you used to have in the processing many years ago. It is now electronic. It is very high speed. It grabs those cards and it will destroy voter registration cards.

It was one of the main purposes that anything that is a self-mailer must meet that paper weight. Unfortunately, as with any election, I am sure there is not a board in this state and our office that those that are damaged have been on the light weight paper have been mailed as a self-mailer and they come totally shredded up.

At times we can make out a date or make out a name or maybe a county, but we cannot tell who that voter is. That is what is occurring with voter registration forms as far as damage that is occurring when they are mailers. As the Secretary pointed out, it was brought to our attention, particularly with this year, were all of the hand-delivered forms that were being done, which was very unusual.

It became an issue with the boards and they were saying, "Okay, the paper forms are coming on regular weight paper but they are being hand delivered." As soon as the Secretary was aware of that and the issues it was creating for the boards, we tried to go back out with information to allow them on regular weight. He did come back out and said, "Now, we will accept them on that weight since they are hand delivered."

The CHAIRMAN. Any questions? The gentlelady from California, any questions?

Ms. MILLENDER-MCDONALD. No. I am sorry, Mr. Chairman. I was just trying to see what time I have left. I have to take a plane out so I have about 15 minutes.

The CHAIRMAN. Thank you. No further questions? I want to thank you for being here today and for sharing your testimony. Thank you.

We will move on to the last panel.

STATEMENTS OF EDWARD FOLEY, PROFESSOR OF LAW, OHIO STATE UNIVERSITY, MORITZ COLLEGE OF LAW AND DIRECTOR, ELECTION LAW AT MORITZ PROGRAM; DANIEL P. TOKAJI, ASSISTANT PROFESSOR OF LAW, OHIO STATE UNIVERSITY, MORITZ COLLEGE OF LAW; MARK F. (THOR) HEARNE, II, NATIONAL COUNSEL, AMERICAN CENTER FOR VOTING RIGHTS; NORMAN ROBBINS, CO-COORDINATOR, GREATER CLEVELAND VOTER REGISTRATION COALITION

Ms. MILLENDER-MCDONALD. Mr. Chairman, because of the time constraints, can we just ask these gentlemen to just give us an overview?

The CHAIRMAN. Edward Foley, Professor of Law, Ohio State University, Moritz College of Law. Mr. Tokaji had to leave from Ohio State University due to the time factor. And Mark Hearne, National Counsel, American Center for Voting Rights, and Norman Robbins, Co-Coordinator, Greater Cleveland Voter Registration Coalition. Starting with Mr. Hearne.

STATEMENT OF MR. MARK HEARNE

Mr. HEARNE. Thank you, Chairman Ney and members of the House Administration Committee. Because of the late hour my testimony has been presented and, as the Ranking Member requested, I will give you just a brief overview of what I did address in that testimony and I will be available for any questions.

My name is Thor Hearne. I am a principal of the Lathrop and Gage Law Firm, I am a long-time advocate of voter rights and an attorney experienced in election law. I was asked and served on the Missouri HAVA implementation committee which helped Missouri comply with HAVA and bring Missouri into compliance. I was asked to serve in that capacity by Secretary of State Matt Blunt.

Today I am here in my capacity as the counsel for the American Center for Voting Rights. The American Center for Voting Rights is a nonpartisan watchdog voting rights organization and legal defense organization which is committed to defend the rights of voters and to work to increase public confidence in the fairness of our election process.

I am joined in this effort by almost a dozen different Ohio lawyers who were involved in this past election representing several of this state's most prestigious law firms. During the conduct of the last election different events were brought to our attention. This report of these events has been assembled and we presented it to the committee. I would ask, Mr. Chairman, that this report be included in the record.

The CHAIRMAN. Without objection.

Mr. HEARNE. The essence of my remarks go to the role, which has been much discussed today that third parties played in the conduct of this election. You have heard it from a number of different witnesses. Specifically, different panelists have spoken of the role these third party groups played in voter registration, fraud

and voter intimidation. I think you mentioned several times, Congresswoman Millender-McDonald, the concern about people making phone calls to deceive people as to the date of the election or where their polling place was. Those are reprehensible acts.

Anybody who makes an effort to have an illegal vote cast is disenfranchising a legal voter. Similarly, any effort to try to prevent anyone from voting who is entitled to do so needs to be very severely dealt with. We are very concerned about that. That was one of the issues which this report goes into.

Mr. Chairman, the questions that I believe need to be addressed aren't just what individuals were involved, but what groups were involved. As I said, there is a massive effort in Ohio, as you have noted Congresswoman Millender-McDonald, this was because of Ohio's status as a battleground state where an onslaught was made against the Ohio election system by third parties with outside interests that are seeking to try to influence the election result in Ohio.

One of these means by which that was done is the type of voter registration fraud that we have seen. We had a reference earlier today to the absolutely outrageous case which happened in Defiance County, Ohio, in which an individual was paid by the NAACP Project Vote in crack cocaine to submit more than 100 fraudulent voter registration forms including the now infamous Dick Tracy, Mary Poppins, Michael Jackson, and George Foreman.

The fraudulent voter registration effort was in many ways only part of the onslaught that Ohio experienced. We saw also the concern that has been expressed because of the litigation. These election lawsuits caused great chaos and confusion and difficulty for the election officials seeking to implement Ohio election law and made it more difficult to have a fair and honest election.

My observation, and that of those who have submitted this report and contributed to this report, is that Ohio election officials worked very hard, both Republican and Democrat, in a bipartisan way to make sure Ohio citizens enjoyed a fair and honest election.

The concern that we present to this Committee is that presented by these third party groups and their role sponsoring the submission of fraudulent voter registration forms and promoting strategic litigation seeking to remove the safeguards that would have prevented fraudulent registrants like Dick Tracy from actually casting a ballot that was counted. This litigation seeking to eliminate safeguards against voter fraud is another significant point of concern that we bring forward to this committee at this point. I will let the balance of my remarks, Mr. Chairman, stand in the prepared testimony.

The CHAIRMAN. Thank you, Mr. Hearne. Without objection.

Mr. Foley.

[The statement of Mr. Hearne follows:]

Chairman Ney, Members of the House Administration Committee, thank you for inviting me to testify here today.

My name is Thor Hearne. I am a principle in the law firm of Lathrop & Gage and a longtime advocate of voter rights and an attorney experienced in election law. I was appointed a member of the Missouri HAVA advisory committee advising the Missouri Secretary of State on Missouri's implementation of HAVA and suggesting appropriate amendments to Missouri election law. Today I am here in my capacity as counsel to the American Center for Voting Rights (ACVR). The ACVR is a non-partisan watchdog – voting rights legal defense and education center committed to defending the rights of voters and working to increase public confidence in the fairness and outcome of elections. I am joined in this endeavor by the almost a dozen Ohio lawyers from several of the states prestigious law firms that have submitted a report detailing concerns that have come to our attention in connection with the Ohio 2004 general election.

There has been much discussion about the outcome of the election in Ohio by some activist organizations. I believe, however, that this is an attempt to distract from the real issues we should be discussing, namely, incidents of voter registration fraud, voter intimidation and an unprecedented assault on the election safeguards adopted by the Ohio Legislature intended to protect the votes of Ohio citizens.

Mr. Chairman, I believe the questions we should be asking are 1) what groups – not just individuals – but what groups -- were responsible for the massive registration fraud that took place in Ohio and in other states. And, 2) what would have been the impact on our election process had many of these same groups who were committing registration fraud also been successful in their effort to eliminate election safeguards in the courts.

Mr. Chairman the people of Ohio who voted in record numbers may not be aware of the unprecedented assault on their election system last year. So the record is clear, today the ACVR submits a report to your committee which catalogues proven incidents of voter registration fraud, intimidation and efforts to remove by judicial fiat the safeguards against vote fraud established by Ohio in bi-partisan legislation..

Mr. Chairman this report contains a number of disturbing incidents and I would like to highlight a few for you now for the purposes of discussion.

VOTER REGISTRATION FRAUD

According to the Defiance County Sheriff's Department, Chad Staton completed more than 100 fraudulent voter registration forms. These include voter registrations for cartoon characters such as, Dick Tracy and Mary Poppins and famous people such as Michael Jackson and George Foreman

These fraudulent voter registrations were submitted to the Defiance County Board of Elections. Chad Staton told the police that he did this because an operative working for the NAACP National Voter Fund paid him crack cocaine to do so. The police report describes how, while at the NAACP operative Georgianna Pitts' home, a "nicely dressed"

man with a brief case came to the house to pick-up the voter forms. During this transaction Chad was asked to step into the other room while Pitts gave the nicely dressed man the voter registration forms. Ms. Pitts, who paid Chad the crack cocaine for the fraudulent voter registrations, has since turned up dead from a drug overdose.

Chad Staton is now being rightly prosecuted for his role in this vote fraud scheme. However, prosecuting Chad only begins to address this problem. A crack addict did not decide on his own to influence the outcome of an election with fraudulent voter registrations. Rather, as Chad testified, he did it because he was being paid in crack cocaine.

Mr. Chairman, if the groups that engaged in voter registration fraud are not held accountable for their activities I submit that they will only become emboldened in the next election.

Regrettably, Chad Stanton was not an isolated situation and the NAACP was not alone. Other organizations such as Acorn, America Coming Together (ACT) and the AFL-CIO have been implicated in similar fraudulent voter registration schemes in Ohio and other battleground states.

The unfortunate fact is that Ohio election authorities experienced an unprecedented number of fraudulent voter registrations and some organizations appear to have been engaged in coordinated and outright vote fraud. Vote fraud was reported in every corner of the state and the fraudulent voter registrations totaled in the thousands.

However, fraudulent registrations appear to have been only the first step.

STEP TWO ELIMINATE ELECTION SAFEGUARDS

Ohio and other states have legislative safeguards in place so that even though "Dick Tracy" is on the voter roll he can not cast a ballot. These safeguards include a requirement that voters present identification, that voters cast only one ballot at their designated precinct and that the election be open to credentialed observers. These safeguards protect the right of Ohio voters to have their vote counted without it being cancelled by one cast by "Dick Tracy" or any of the thousands of other fraudulent registrations. These safeguards were put in place by bi-partisan legislatures and enforced by bi-partisan election officials.

That's why they needed step two. A coalition of organizations – including those involved in fraudulent voter registration efforts - filed lawsuits in virtually every battleground state, including Ohio. These lawsuits sought to eliminate the very safeguards that would prevent Dick Tracy and Chad Stanton's other "cartoon voters" from casting ballots.

Nationally, these groups filed more than 65 lawsuits with the objective of overturning by judicial fiat the election laws adopted by bi-partisan state legislatures.

Specifically, the lawsuits sought to strike down provisions of election law such as the requirement that a voter present identification (even a copy of a utility bill), the requirement that a voter cast their ballot in the proper precinct and the right of individuals to observe the election process and raise objection when illegal activity is observed.

In Ohio federal lawsuits were filed to bar observers from polling places, to suspend the voter ID requirement and to compel election authorities to count ballots cast in the wrong precinct by someone not on the voter roll. These lawsuits were, in the words of one federal judge, an effort to tear down the barriers against vote fraud and voter misconduct. Fortunately for Ohio voters these lawsuits were unsuccessful.

Mr. Chairman there can be no doubt that election safeguards are critical to protecting our elections. So I find it is beyond the pale that the same organizations who unsuccessful sought to remove election safeguards by judicial fiat during the election are once again seeking to eliminate these safeguards by state and federal legislation while continuing their battle in the courts.

The U.S. Supreme Court noted that "Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity." And that "the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Ohio citizens deserve the confidence that they - the voters - not trial lawyers, activist judges and special interest groups soliciting fraudulent votes with crack cocaine determine the result of Ohio elections.

Thank you Mr. Chairman and should you or members of this committee have any questions I am glad to respond.

OHIO ELECTION ACTIVITIES AND OBSERVATIONS

Report to the United States House of Representatives
Committee on House Administration

Representative Robert W. Ney, Chairman

Submitted by

The American Center for Voting Rights

March 21, 2005

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I. Executive Summary

> "Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity."
> *United States v. Classic*, 313 U.S. 299 at 329 (1941).

> "It must be remembered that 'the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'"
> *Bush v. Gore*, 121 S.Ct. 525, 530 (2000), citing, *Reynolds v. Sims*, 377 U.S. 533 (1964).

> "In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger . . . . Such has been the history of all republics, and, though ours has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources."
> *Ex parte Yarbrough* (The Ku-Klux Cases), 110 U.S. 651, 666 (1884).

The 2004 Presidential election was unlike any other, in Ohio and elsewhere. The reason is two pieces of federal legislation. The Bipartisan Campaign Finance Act ("BCRA") – (2 U.S.C. 431 et sec) and the Help America Vote Act. ("HAVA") -- (42 U.S.C. 15301 et sec). This legislation significantly reshaped federal elections in both intended and unintended ways. One of the unintended consequences is the creation of greater opportunities to influence the outcome of the election through vote fraud.

BCRA reduced the traditional role of the political parties and greatly increased the role of third party organizations such as so-called non-partisan §527 organizations, §501(c)(3) and (c)(4) organizations. These organizations became especially active in battleground states and took on an increasingly partisan role in seeking to influence the outcome of the presidential campaign. This activity was especially pronounced in battleground states such as Ohio. These organizations are not subject to campaign finance limits and, for many of these organizations, there is no disclosure of the source of the funds.

The Help America Vote Act compelled all 50 states to rewrite their election laws and added a new federal overlay regulating the conduct of elections. This combination of new state and federal legislation – untested in the courts and, in many cases, written with significant ambiguities – meant that the presidential election was conducted in an unsettled legal environment that invited efforts to determine the outcome of the presidential election through litigation. Much of this litigation was initiated on literally the eve of the election.

This combination of new and ambiguous election law, eleventh hour legal challenges and the greatly expanded opportunity for third party entities to influence the election outcome with unlimited and un-disclosed funds created opportunity for abuse. Ohio, due to its "battleground"

status in the presidential election was a focus for much of this activity and, for this reason, Ohio provides a host of lessons that should be considered when reforming the laws under which future elections will be conducted.

The American Center for Voting Rights, in association with various law firms and legal counsel involved in the conduct of the Ohio presidential election, has assembled this report of events that occurred during the 2004 election. This investigation found the following:

Third party organizations, especially ACT, ACORN, and NAACP engaged in a coordinated "Get Out The Vote" effort. A significant component of this effort appears to be registering individuals who would cast ballots for the candidate supported by these organizations. This voter registration effort was not limited to registration of legal voters but, criminal investigations and news reports suggest, that this voter registration effort also involved the registration of thousands of fictional voters such as the, now infamous, Jive F. Turkey, Sr., Dick Tracy and Mary Poppins. Those individuals registering these fictional voters were reportedly paid not just money to do so but were, in at least one instance, paid in crack cocaine.

The fraudulent voter registrations, however, appear to be only part of the effort of these organizations to influence the election. There was an apparently coordinated national litigation strategy to manipulate election laws in battleground states and, specifically, to eliminate the provisions of election law that would prevent vote fraud. Specifically, these organizations initiated litigation that, if successful, would have allowed an individual, without any identification, to walk into any polling place and cast a ballot that would be counted. Additionally, the litigation sought to bar challengers or witnesses from polling places. This result, if successful, would have allowed essentially unfettered opportunity to have ballots cast and counted by those not entitle to vote or to vote multiple times. Dick Tracy could have voted not just once, but twice.

Any effort to influence the outcome of the election by votes illegally cast is to disenfranchise a legal voter and undermine public confidence in the election. Fraudulent voter registrations and eleventh hour election litigation also make more challenging the responsibility of bipartisan teams of election officials who seeking to conduct an orderly and honest election. Specifically, large numbers of fraudulent vote registrations limit the ability of election officials to process registrations and prevent legitimate voters from being registered.

The objective should be to make it easy to vote and tough to cheat. Every legitimate voter should have the opportunity to cast a ballot and the certainty that his or her ballot was fairly counted and not diluted by an illegal ballot. To achieve this result, the Ohio experience in 2004 suggests that we need clear state and federal election legislation which is adopted in a bipartisan manner and enforced by bipartisan election officials in a fair and uniform manner. Additionally, those individuals and organizations that engage in activity to undermine the lawful conduct of the election should be held accountable through appropriate prosecution.

II. Third Party Organizations Active in Ohio During the November Presidential Election.

A number of organizations seeking to influence the outcome of the presidential election were very active in Ohio. Almost one million new voter registrations were received by election authorities and a total of 5.7 million votes in Ohio were cast in the 2004 General Election, a historic high for Ohio. This unprecedented voter participation should be celebrated. However, not every organization involved in voter registrations efforts is to be commended. Indeed, the unfortunate fact is that Ohio election authorities experienced an unprecedented number of fraudulent voter registrations and some organizations appear to have been engaged in efforts to facilitate and pay for the submission of fraudulent voter registration forms.

Vote fraud was reported in every corner of the state and the fraudulent voter registrations totaled in the thousands. Additionally, many of these organizations also participated in what appears to be a coordinated national litigation strategy that had its object the weakening or removal of the statutory protections against vote fraud.

Several of these organizations or individuals associated with these organizations are currently the subject of investigation for their activities in connection with the election. We will detail the specific reports that have come to our attention, but first provide a general background of some of the organizations involved.

2.1 *ACORN - Association of Community Organizations for Reform Now*

The Association of Community Organizations For Reform Now (ACORN) is a self-described nonpartisan charity group founded in 1970 billing itself as the "nation's largest community organization of low and moderate-income families." ACORN's voter registration arm, Project Vote, is a registered 501(c)(3) nonprofit funded by unlimited anonymous contributions. With offices in Ohio, New York, Arkansas and Washington, DC, ACORN/Project Vote spent $16 million in 2004 and claims to have registered 1.1 million new voters. ACORN/Project Vote's National Director is David Leland, the former Chairman of the Ohio Democratic Party who briefly ran as a candidate to succeed Terry McAuliffe as Chairman of the Democratic National Committee. While ACORN/Project Vote claims to be nonpartisan, an internal ACORN plan from 2003 said the goal of a minimum wage amendment campaign it pushed in Florida was to "help defeat George W. Bush and other Republicans by increasing Democratic turnout."

In 2004, ACORN/Project Vote was part of "one of the earliest, most massive and most sophisticated voter registration and mobilization efforts ever mounted." It was also one of the most controversial.

There are reports from throughout Ohio that ACORN/Project Vote workers turned in fraudulent voter registrations cards. In June, ACORN/Project Vote was forced to fire workers after several dozen "blatantly false" voter registration forms were filed with elections officials in

Columbus. In September, a warrant was issued in Franklin County for an ACORN/Project Vote employee who forged a signature on a voter registration form. And in October, registrations filed in Franklin County by ACORN/Project Vote and other groups were reported to include a dead person, 25 addresses for the same man, and a suspected terrorist.

ACORN/Project Vote's activities in Ohio appear to be just part of a pattern of activities observed across the country, in which their workers submitted fraudulent voter registration information to election authorities. ACORN/Project Vote is closely aligned with ACT, SEIU and NAACP National Voter Fund through the America Votes Coalition, a coordinating council of approximately 30 liberal interest groups. The voter registration activities of some of these groups have been investigated by law enforcement and election authorities and subject to press scrutiny in a number of states including Ohio.

2.2 *America Coming Together – ACT*

America Coming Together (ACT) is a voter registration and grass roots voter turnout organization founded in 2003 after receiving a $10 million commitment from billionaire financier and activist George Soros. Dubbed the "mother of all 527s", ACT is led by former Clinton Deputy Chief of Staff Harold Ickes and former AFL-CIO organizer Steve Rosenthal. ACT raised and spent $135 million opposing President Bush's re-election in the 2004 cycle. ACT is incorporated in Washington, DC as both a 527 group and a federal PAC, meaning that it can raise unlimited contributions and must report receipts and expenditures to the Internal Revenue Service and Federal Election Commission.

The Service Employees International Union (SEIU) was ACT's top contributor in both money and manpower, reportedly contributing $26 million and deploying thousands of union members to work on ACT's behalf. ACT's top individual donors were George Soros, who gave $14.5 million, and Cleveland insurance magnate and drug legalization advocate Peter Lewis, who is reported to have pledged $10 million.

ACT ran the largest get-out-the-vote program in American history in 2004, with 93 field offices in 17 battleground states and over 100,000 paid staff and volunteers. ACT had a particularly large presence in Ohio, where the group had 30,000 "paid foot soldiers" on Election Day and became, for the day, the state's largest employer. ACT's election activities weren't without controversy in the Buckeye State and elsewhere around the country. In June, an Associated Press review of ACT's payroll records revealed that the group was employing violent felons – including a murderer and a rapist – as door-to-door canvassers in Ohio, Missouri and Florida. In September, the group drew scrutiny after the Cleveland Plain Dealer reported that ACT submitted a fraudulent voter registration application for an elderly nursing home resident. In October, the Toledo Blade reported that elections officials in Lake County were investigating ACT and the NAACP National Voter Fund for "hundreds of suspicious registration forms and absentee ballot requests." ACT intends to continue its activities into the future and become a "permanent part of the political landscape," working in "7-9 battleground states with key elections in 2005, 2006 and 2008."

Harold Ickes, President of ACT, recently addressed ACT's continuing activity in an E-mail to supporters. He wrote, "Today, ACT has the best voter file available with more than 65

million targeted Democratic voters in 17 states. We nearly built it from scratch, tracking responses and voting patterns precinct-by-precinct, person-to-person. This is ACT. Continuing this kind of work is the only way we'll beat the Republicans in 2006 and 2008...I want to first say that everyone at ACT welcomes and applauds the recent changes at the DNC. I personally endorsed Gov. Dean's chairmanship and look forward to watching him bring energy and new ideas to organizing and activating Democrats and progressives in all the states...In 2004, ACT worked closely with the 34 members of the America Votes Coalition and many other grassroots organizations. We provided a stable and permanent infrastructure to support these combined efforts which made all of us more efficient and effective. ACT had the plan - the vote goals, targets, data and professional organizers - to harness this incredible grassroots energy and apply it where it was most effective." ACT clearly intends to be active in future elections.

2.3 *NAACP National Voter Fund*

NAACP National Voter Fund is a 501(c)(4) group created by the NAACP to "advance the cause of civil rights" through "nonpartisan advocacy activities, such as voter registration and get out the vote efforts, issue advocacy, and lobbying." As a 501(c)(4) nonprofit, contributions to NAACP National Voter Fund are unlimited and not publicly disclosed.

Headquartered in Washington, DC, NAACP National Voter Fund is led by its Executive Director, Gregory Moore, a former Chief of Staff to Rep. John Conyers (D-MI) and Deputy Political Director at the Democratic National Committee. Former NAACP President Kweisi Mfume, who recently announced that he would seek the Democratic nomination for U.S. Senate in Maryland in 2006, serves as Chair of NAACP National Voter Fund's Board of Directors. NAACP National Voter Fund reported registering 225,000 new voters nationwide in 2004 and 83,000 in Ohio.

NAACP National Voter Fund's voter registration activities weren't without controversy in 2004. In September, the Cleveland Plain Dealer reported that NAACP National Voter Fund registered a man in Lake County who had been dead for more than two decades. In October, Ohio newspapers reported that a NAACP National Voter Fund worker paid a man in crack cocaine for over 100 fraudulent voter registration applications for Mary Poppins, Dick Tracy and other false identities. NAACP National Voter Fund is closely aligned with ACT, SEIU and ACORN/Project Vote through the America Votes Coalition and was a co-litigant with these groups in efforts to remove state laws protecting against vote fraud.

2.4 *Service Employees International Union*

Service Employees International Union (SEIU) is the AFL-CIO's largest union with 1.8 million members. Based in Washington, DC, and organized as a 501(c)(5) labor union, many of the union's political expenditures are not publicly reported. SEIU also operated both a 527 and federal PAC in the 2004 cycle, and those activities are reported to the Internal Revenue Service and Federal Election Commission, respectively. SEIU spent $65 million opposing President Bush's re-election in 2004, more than any other union. SEIU President Andy Stern was a founder of America Coming Together (ACT) and the union he leads was ACT's top donor of money and manpower.

SEIU contributed $26 million to ACT and provided over 2,000 of its members, who were given paid leave from their jobs, to work on ACT's behalf in key battleground states. Further, the powerful SEIU Local 1199 from New York spent $10 million sending hundreds of its members to battleground states to campaign for Senator Kerry through ACT. Indeed, the ACT-SEIU connection is so close that top SEIU political aide Gina Glantz was recently named Chair of ACT's Board of Directors.

SEIU is also a member of the America Votes Coalition.[1]

[1] The America Votes coalition of organizations includes ACORN, AFL-CIO, AFSCME America Coming Together (ACT), American Federation of Teachers, Association of Trial Lawyers of America, Brady Campaign to Prevent Gun Violence, United With the Million Mom March, Clean Water Action Defenders of Wildlife Action Fund, Democracy for America, EMILY's List, Environment2004, The Human Rights Campaign, League of Conservation Voters, The Media Fund, MoveOn.org Voter Fund, Moving America Forward, Music for America, NAACP National Voter Fund, NARAL Pro-Choice America, National Education Association, National Jewish Democratic Council, National Treasury Employees Union, Partnership for America's Families, Planned Parenthood Action Fund, SEIU, Sierra Club, USAction, Voices for Working Families, Young Voter Alliance, and 21st Century Democrats.

III. Voter Registration Fraud – How Dick Tracy, Mary Poppins and Jive Turkey Registered to Vote in Ohio

3.1 Overview

A number of organizations and political parties were very active in Ohio registering thousands of new voters and helping to achieve one of Ohio's highest Election Day turnouts in decades. Thousands of new voter registrations were received by election authorities and a total of 5.7 million votes in Ohio were cast in the 2004 General Election, an historic high for Ohio voter participation. This unprecedented voter participation should be celebrated. However, not every organization involved in voter registrations efforts is to be commended. Indeed, the unfortunate fact is that Ohio election authorities experienced an unprecedented number of fraudulent voter registrations and some organizations appear to have been engaged in efforts that financed and facilitated vote fraud. Examples of vote fraud were reported in every corner of the state and the fraudulent voter registrations totalled in the thousands.

Third party organizations were notorious for submitting faulty, incomplete or outright fraudulent registrations across the country.[2] Ohio was not spared this onslaught of fraudulent voter registrations. Boards of elections were flooded with hundreds, if not thousands, of faulty and fraudulent registration cards. Worse still, these groups collected and compiled these cards for months, apparently holding back new voter registration cards and delivering them to election authorities on or shortly before the statutory deadline.

This delay in submitting these voter registrations minimized the ability of election authorities to validate the registrations. This delay also left legitimate registrants unable to determine if their registrations were accepted and to timely correct any errors. It left boards unable to timely notify voters of their proper voting location, and left some individuals who thought they were registered unable to vote. In at least one instance, a large number of voter registrations collected by one of these groups were held aside in a mislabeled box that was overlooked until three days after the statutory deadline, leaving an unknown number of legitimate registrants unable to vote.

Fraudulent registration cards were submitted by mail, sometimes intermingled with legitimate registration cards, without any indication of how they were collected or by whom. Registration cards were sent to the wrong board of elections, requiring that they be sorted and redirected, thus delaying the registration process even further. There is no current determination of how many thousands of the fraudulent registration cards were never detected in the crush of last minute activities and which may have resulted in a registered phantom "voter" appearing on the poll books. Examples of this voter registration fraud – and how pervasive this fraud was occurring – are available in media reports, from boards of elections, and in civil litigation and criminal prosecutions or investigations. A small sample of those follows:

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[2] See, The Center for Ethics and the Free Market study of fraudulent voter registration activity by ACT in Missouri. www.centerforethics.org/VoterRegistrationStudy.htm (Exhibit A.)

3.2 Specific Examples of Ohio Voter Registration Fraud and the Organizations Involved

Reports of voter registration fraud and irregularities were commonplace in the months before the November General Election. In September 2004, the media reported that an overwhelmingly large number of fraudulent voter registrations were being investigated across the state. That report detailed 803 fraudulent cards submitted by the Cuyahoga County AFL-CIO and forged registration cards presumably submitted by nursing home residents. See, *Voter Registration Investigation One Of Largest In Recent Years*, THE ASSOCIATED PRESS, 9/24/04. (Exhibit B.)

By Election Day, *thousands* of false and fraudulent voter registration cards had been discovered and became the subject of numerous investigations by boards of elections, actions by local law enforcement and many media reports. Overwhelmingly, these problems were reportedly traced primarily to these four organizations: ACORN, ACT, AFL-CIO and the NAACP National Voter Fund. Examples of those reports follow:

(a) **ACORN - Association of Community Organizations for Reform Now** (Exhibit C.)

- **ACORN Submits "Blatantly False" Voter Registration Cards in Franklin County.** In June 2004, a group paying individuals to register new Ohio voters fired two employees for filing false registration forms and forging signatures. The two employees of ACORN claimed to be registering voters in Franklin County. Board of Election officials reviewed the forms and determined that the registrations contained "blatantly false" information. The election officials referred the matter to the Franklin County Sheriff's Office for investigation. Registration cards submitted by ACORN, and its partner group, Project Vote, contained fake first names, incorrect birth dates and Social Security numbers, forged voter signatures when compared to information on file with the Franklin County Board of Elections.

  Two Fired Over Bogus Voter Registration Forms, Robert Vitale, COLUMBUS DISPATCH, June 3, 2004. *Made Up People*, Robert Vitale, COLUMBUS DISPATCH, June 2, 2004.

- **ACORN Registrations Include Dead Person, 25 Addresses For The Same Man, And Suspected Terrorist.** In Franklin County, hundreds of cases of suspected election fraud were reviewed. Among the applications reviewed were: One application signed in the name of a man who passed away in February 25; applications showing different addresses for the same man; One registration purported from Nuradin Abdi, an illegal alien and suspected terrorist charged with plotting to blow up a Columbus mall. The Franklin County Prosecutor reviewed hundreds of cases of suspected election fraud in the days leading up to the November 2004 Presidential election. Prosecutor Ron O'Brien stated that, "what causes some of this to

happen is that people are being paid to register new voters." Some of the suspected cases of fraud were submitted by the Columbus Urban League, while others came from ACORN.

Election Fraud Cases Under Review, WBNS-TV, October 22, 2004. (*"Suspected Terrorist Registered To Vote In Franklin County,"* WBNS-TV, http:/www.10tv.com, Accessed 10/23/04)

- **Similar Handwriting And False Addresses Found On ACORN Cards In Hamilton County.** In October 2004, the Hamilton County Board of Elections requested the head organizer for the Association of Community Organizations for Reform Now (ACORN) to appear before the Board to discuss fraudulent registrations submitted by a paid ACORN staffer. The employee submitted approximately 19 registration cards for individuals that did not exist after Board of Election officials noticed that the registration cards all had similar handwriting and false addresses. The Hamilton County Sheriff's Department could not find the individuals and the Board of Elections subpoenaed the individuals.

  Voting Organizer Discusses Fraud, Mark Hansel, CINCINNATI POST, October 16, 2004; *Alleged Fraudulent Voter Cards Scrutinized,* Cindi Andrews, THE CINCINNATI ENQUIRER, October 8, 2004.

- **ACORN Turned In Registration Cards Past Deadline.** Other improprieties by ACORN workers were investigated in Franklin County when ACORN delivered 526 new voter registrations to the board of elections three days after the statutory deadline. ACORN explained that the registrations were found "in a mismarked box."

  Alleged Fraudulent Voter Cards Scrutinized, Cindi Andrews, CINCINNATI ENQUIRER, 10/8/04.

(b) <u>America Coming Together – ACT</u> (Exhibit D.)

- **1,000 Registration Cards Investigated in Summit and Lake Counties.** Election officials in Lake and Summit Counties investigated irregularities in some 1,000 voter registration forms and absentee ballot requests. In Lake County, one group attempted to register a dead person. Other potentially fraudulent documents were referred to the Lake County Sheriff's Office by the Board of Elections. The investigation centered on registration efforts by the NAACP National Voter Fund and the group, Americans Coming Together (ACT).

  1,000 Cases of Suspicious Voter Registrations, Steve Luttner and Michael Scott, CLEVELAND PLAIN DEALER, September 24, 2004; *Possible Election Fraud is Probed,* John Arthur Hutchinson, LAKE COUNTY NEW HERALD, September 22, 2004.

- **Jive Turkey Sr. Registers To Vote.** The Cuyahoga County Board of Elections received some 1,284 suspicious voter applications that were turned over to prosecutors to investigate for potential fraud. Among those registered was a Jive Turkey, Sr., who included an off-color middle name on the form. Most forms were submitted by America Coming Together and Project Vote, which led massive voter-registration campaigns in Ohio.

  Fowl Play, Scott Hiaasen, CLEVELAND PLAIN DEALER, 10/22/04.

- **ACT Accused of Falsified Registration from Nursing Home Resident.** In Lake County, a woman in the nursing home was registered by the group Americans Coming Together (ACT) and purportedly signed the card in a firm cursive signature. Upon investigation, it was learned that the registrant was not able to sign her name, but used a shaky "X" as her signature.

  Dead Man On Voter Rolls Sparks Inquiry, Michael Scott, CLEVELAND PLAIN DEALER, 9/23/04.

- **Trumbull County Investigating Possible ACT Voter Fraud.** The Trumbull County Board of Elections asked its county prosecutor to investigate possible fraud on a registration card submitted by ACT. Upon investigation, the Board found that the voter did not fill out a voter registration card, the address, birth date and telephone number on the card were wrong and the signature was not his.

  Elections Chief Fears Scheme, Lisa A. Abraham, THE AKRON BEACON JOURNAL, 8/19/04.

(c) **NAACP National Voter Fund** (Exhibit E.)

- **NAACP National Voter Fund Investigated In Cleveland.** County Board of Election officials flagged 17 registration cards submitted by the NAACP state director all bearing signatures that looked alike. The Board of Elections asked the Cuyahoga County Prosecutors Office to investigate the potential forged signatures arising from a registration drive where volunteers were paid $2.00 per signature collected. Most of these registrations contained fake addresses, some fake names, and vulgarities.

  Voter Registration Drive Raises Some Questions, Mark Naymik, CLEVELAND PLAIN DEALER, March 18, 2004.

- **NAACP National Voter Fund Worker Paid Crack Cocaine In Exchange For Fraudulent Cards.** Boards of Elections across northern Ohio received registration cards for Mary Poppins, Dick Tracy, Michael Jordan, George Foreman and a host of fictional characters, sports heroes

and celebrities. After investigation the Defiance County sheriff arrested Chad Staton on a felony charge of submitting phony voter registration forms. Mr. Staton eventually pled guilty and admitted that he was paid with cocaine in exchange for his efforts. (See discussion of criminal prosecution below at Section 3.3.)

Man Arrested After Voter Forms Turned In For Mary Poppins, Michael Jordan, Ohio Officials Say, THE ASSOCIATED PRESS, 10/19/04. See, also copy of police report attached at Exhibit H.

- **48 Forged Voter Registration Cards Submitted by NAACP.** In Mahoning County, 48 voter registration cards were flagged as part of a group of cards submitted by the NAACP in Cleveland. The registration cards were originally misfiled by the NAACP with the Cuyahoga County Board of Elections which forwarded them to Mahoning County. Many appeared to be in the same handwriting, and as the Board attempted to verify them, voters repeatedly the board that they did not sign new registration cards.

  Suspicious Voter Cards Are Piling Up, Lisa A. Abraham, AKRON BEACON JOURNAL, 9/29/04

- **NAACP National Voter Fraud Registers Man Dead For Two Decades.** In Lake County a gentleman who was dead for more than two decades was registered on a card submitted by the NAACP.

  Dead Man On Voter Rolls Sparks Inquiry, Michael Scott, CLEVELAND PLAIN DEALER, 9/23/04

3.3 *Litigation and Criminal Prosecution*

- **Warrant Issued For ACORN Employee Who Forged Signature On Voter Registration Form.** A Franklin County Grand Jury issued a warrant for a parolee accused of forging a signature on a voter registration form on behalf of ACORN. Kevin Dooley, a Columbus resident working for ACORN was indicted on felony counts of false election registration and submitting false election signatures.

  Warrant Issued For False Registration, THE ASSOCIATED PRESS, 9/7/04 (Exhibit F.)

- **ACORN Employee Indicted.** A prior employee of ACORN was indicted on two felony counts of election violations by a Franklin County grand jury in early 2004. The employee falsified and forged new voter registration cards submitted to the Franklin County Board of Elections.

  Election Fraud Cases Under Review, WBNS-TV, October 22, 2004. (Exhibit G.)

- **Rampant Registration Fraud leads to RICO Complaint**: Hundreds, if not thousands, of forged and falsified registrations are the subject of a civil racketeering complaint brought against several organizations who are charged with working in concert with the Democratic Party. Defendants ACORN, ACT, the NAACP Voter Fund, and the Ohio AFL-CIO coordinated with the "America Votes" project to increase voter registration and voter turn out in Ohio. All are alleged to have engaged in conduct facilitating the submission of fraudulent voter registration. The complaint includes some 14 paragraphs detailing over 200 separate criminal violations by the Defendants. Among the allegations that serve as the foundation for the racketeering complaint are:

  - Numerous registration cards submitted in Franklin County by ACORN for numerous individuals who did not exist between Fall 2003 and June 2004.

  - Seventeen forged registration cards submitted in Cuyahoga County by Thaddeus Jackson, the Assistant Ohio Director of the NAACP National Voter Fund prior to March 18, 2004.

  - A series of fraudulent voter registration cards submitted to the Franklin County Board of Elections by two ACORN agents prior to June 3, 2004.

  - 19 false voter registration cards submitted to the Franklin County Board of Elections by ACORN prior to October 8, 2004.

  - A voter registration card submitted to the Lake County Board of Elections prior to September 23, 2004 by the NAACP National Voter Fund on behalf of an individual who had been deceased for more than twenty years.

  - A voter registration card submitted to the Lake County Board of Elections prior to September 23, 2004 on behalf of a nursing home resident who was not able to sign the registration card as submitted.

  - Over 50 registration cards submitted by the Ohio AFL-CIO to the Summit County Board of Elections, some for individuals who were already registered, many in the same handwriting.

- A falsified registration card submitted by ACT to the Trumbull County Board of Elections by a resident whose address and social security were wrong and whose signature was forged prior to August 20, 2004.

- 19 voter registration cards submitted to the Hamilton County Board of Elections by ACORN prior to October 8, 2004 with similar handwriting, false addresses and for people who could not be located by the Sheriff's Department.

- A forged registration card submitted to the Franklin County Board of Elections by ACORN employee, Kevin Eugene Dooley prior to September 7, 2004. A felony warrant has been issued for Mr. Dooley.

- Hundreds of falsified voter registration forms submitted by Chad Staten in exchange for crack cocaine provided by Georgianna Pitts of the NAACP National Voter Fund.

  The case is currently pending in the Wood County Court of Common Pleas. See *Rubick et al v. America Coming Together, et al.* Case No 04: CV 650. (Exhibit H.)

- **Crack Cocaine Paid for Registrations** Perhaps the most outrageous example of voter registration fraud occurred in Defiance County, where Chad Staton pled guilty to submitting hundreds of fraudulent voter registration forms for the NAACP National Voter Fund in exchange for crack cocaine. Mr. Staton filled out and submitted voter registration forms in the name of cartoon characters, action figures, celebrities and other fictitious residents of Lucas, Cuyahoga and other counties.

  Elections officials throughout northern Ohio received registration forms from Mary Poppins, Jeffrey Dahmer, George Foreman, Michael Jordan, Dick Tracy and a host of other individuals. After investigation into the matter, Defiance County Sheriff, David Westrick learned that Mr. Staton was responsible for completing some of these forms and arrested him.

  Mr. Staton provided a taped admission regarding these crimes, was indicted and subsequently pled guilty. Mr. Staton admitted being paid for his efforts in crack cocaine by an NAACP National Voter Fund employee, Georgianna Pitts. Ms. Pitts, a Toledo native, was reported to be an employee of the NAACP and paid Mr. Staton with crack cocaine for the falsified forms. Ms. Pitts died suddenly of a drug overdose before being prosecuted for her crimes. Sheriff Westrick was able to trace the falsified registration forms and learned that they were submitted to the Cuyahoga County Board by NAACP Voter Protection Project, which is located in Cleveland, Ohio.

See *State v. Staton,* Defiance County Court Case No. 04-CR-09070. (Exhibit I.)

- **Project Vote Worker Indicted in Lucas County for Fake Registration.** A Toledo woman employed by Project Vote and paid $5 per registration card was charged with submitting a fraudulent registration card to the Lucas County Board of Elections. The election board received a registration card for a woman who was already registered, with a different birth date and signature. The woman advised authorities she had not filled out a registration card. The investigation into other possible fraudulent activity by Project Vote is continuing.

  Voter Aide Indicted in Fake Registration, TOLEDO BLADE January 6, 2005. (Exhibit J.)

IV. Coordinated National Litigation Strategy Seeking to Eliminate the Safeguards Against Vote Fraud

A coalition of organizations – including those associated with fraudulent voter registration efforts - filed lawsuits in virtually every battleground state, including Ohio. These lawsuits had the object of eliminating the very safeguards that would prevent Dick Tracy and other fraudulent voters from casting ballots. Taken together the litigation strategy sought to compel election authorities to allow individuals without identification to appear at any polling place and cast a ballot that the election authorities would be compelled to count. Additionally, this litigation sought to exclude any observers or challengers from the polling place. Fortunately for voters in Ohio and other states, this litigation strategy failed.

In Ohio, cases were filed in an attempt to bar observers from polling places, to suspend the voter ID requirement and to compel election authorities to count ballots cast in the wrong precinct by someone not on the voter roll. In fact, during the month preceding the election, Ohio election officials were involved in no less than a dozen major lawsuits filed by at least fifty different Plaintiffs. These lawsuits sought to eliminate the safeguards which, in the words of District Judge Carr, were "an important, indeed, perhaps essential bulwark against voter misconduct and fraud."[3] Fortunately for Ohio voters, these lawsuits were unsuccessful.

Nonetheless, third party groups continue to pursue these actions both in the courts and in the legislature. If successful, these organizations will effectively open the doors to unfettered and widespread voter registration fraud. A brief summary of these cases follows:

4.1 Suspending Voter Identification Requirements

Two challenges were brought in Ohio in an attempt to eliminate voter identification requirements. In the first case, ACORN together with the People for the American Way, Ohio Association of Public School Employees, AFSCME Local 4 AFL/CIO, Brennen Center, Ohio AFL/CIO, Ohio Council 8 of American Federation of State, County and Municipal Employees, OAAPSE/AFSCEM Local 4 AFL/CIO, People for the American Way Foundation, Coalition of Black Trade Unionists, A. Philip Randolph Institute and the Coalition of Homelessness and Housing in Ohio brought suit advocating removal of voter identification requirements.

The plaintiffs argued that the minimal requirement of establishing the identity of these first time voters who had registered by mail and whose identity had never been verified by any election official was excessive and a burden on the right to vote. The Secretary of State and intervenors countered, arguing that this ID requirement was necessary to prevent wholesale voter fraud in Ohio.

In a decision that was later affirmed by the Sixth Circuit, Judge Carr of the Northern District of Ohio dismissed ACORN and its co-litigants' claim and noted:

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[3] *League of Women Voters v. Blackwell*, 340 F.Supp.2d 823, 831 (N.D. Ohio 2004), aff'd on 10/27/04, decision not published per Sixth Circuit Rule 28(g). (Exhibit K.)

> The state's interest in requiring some form of commonly available identification from first time voters who registered by mail is clear: namely to prevent voter fraud. If elections are not substantially free from fraud and other irregularities, public confidence in their integrity and the validity of their results, which is essential to the maintenance of ordered liberty is threatened. Few can doubt that deterrence, detection, and avoidance of election fraud are fundamentally important state and public concerns and interests.

League of Women Voters v. Blackwell, 340 F.Supp.2d 823, 829 (N.D. Ohio 2004) aff'd on 10/27/04, decision not published per Sixth Circuit Rule 28(g). (Exhibit K.)

Judge Carr continued: "The [requirement of voter] identification *** [is] an important, indeed, perhaps essential bulwark against voter misconduct and fraud." *League of Women Voters v. Blackwell*, 340 F.Supp.2d at 831.

In a second attack on the identification requirements, brought eighteen days before the 2004 Presidential election, the Lucas County Democratic Party and the Ohio Democratic Party filed suit in U.S. District Court for the Northern District of Ohio in Toledo challenging a section of the Ohio voter registration form. Box 10 of the form requires voters to supply a Driver's License number or the last four digits of their Social Security number to properly be registered.

Plaintiffs argued that requiring this information contravened HAVA and the National Voter Registration Act (NVRA) and asked the court to rule that the information in Box 10 was unnecessary for proper voter registration. Three Intervenors, all registered voters, fought this request arguing that Box 10 was absolutely necessary to protect the integrity of the voting process, to prevent fraudulent voter registration, and to prevent the dilution of their votes from ineligible voters who could otherwise cast ballots.

The Court found that the information required to be supplied in Box 10 had been known by the Plaintiffs since December 2003. Thus, waiting until eighteen days before the election to challenge this provision was inappropriate. The Court stated that "it would be entirely improper, and substantially disruptive of the election process and its orderly administration. . . to order Ohio's County Boards to re-open in-person registration." The requirement under Ohio law that voters must properly register thirty days prior to an election promotes orderly administration of elections, enables election officials to verify information, including driver's license and Social Security numbers of person who have registered, thereby avoiding fraud. *Lucas Co. Democratic Party v. Blackwell*, 341 F. Supp. 2d 861 at 864-865. (Exhibit L.)

4.2 Banning Bipartisan Observers From the Polling Place

Ohio law allows observers who have been properly registered and credentialed by the boards of election to be present at polling locations to observe the conduct of elections. The observers are supervised by election officials. Ohio law allows each party, as well as candidates and issue campaigns, to appoint these observers, denominated as "challengers" in the statutes. However, around 4 p.m. on the Thursday before Election Day, the Summit County Democratic and Executive Committee, along with individual Summit County, Ohio residents (Marco

Sommerville, Karen Doty, Timothy Gorbach, and James B. McCarthy) filed a Complaint in the United States District Court for the Northern District of Ohio. The Complaint named as Defendants the Ohio Secretary of State, Kenneth Blackwell, Patricia Wolfe, the Ohio Director of Elections, the Summit County Election Board Members (Alex Arshinkoff, Bryan Williams, John N. Schmidt, Wayne Jones, Joseph Hutchinson, and Russell Pry), as well as "Unknown Challengers 1-475" and "Unknown Government Officials 1-475". The Complaint sought to circumvent Ohio law by way of an injunctive order barring all challengers from the polling places.

On the day before the election, the trial court granted a Temporary Restraining Order (TRO) barring challengers from the polls statewide, without a hearing, based solely on affidavits attached to the Plaintiffs' Complaint, which the court accepted as true. In an emergency action, the United States Sixth Circuit Court of Appeals reversed the District Court and lifted the TRO just hours before the polls opened. *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547 (6th Cir., 2004). (Exhibit M.)

The Plaintiffs appealed the stay to the United States Supreme Court, but were unsuccessful. In reviewing the matter, Supreme Court Justice Stevens found that practical considerations weighed heavily against granting the requested relief. Justice Stevens' observations in the wee hours of Election morning proved to be prophetic: "Moreovoer, I have faith that the elected officials and numerous election volunteers on the ground will carry out their responsibilities in a way that will enable qualified voters to cast their ballots." *Spencer v. Pugh*, 543 U.S. ____ , 125 S.Ct. 305, 160 L.Ed.2d 213 (2004). (Exhibit N.)

4.3 Restricting Election Day Witnesses' Ability to Observe

Ohio law provides that individuals, who are properly appointed and credentialed by boards of elections, may observe Election Day activities within a given election precinct. The opportunity for observers to be present in polling places allows a level of transparency to the election process that reduces fraud and increases voter confidence in the process.

A suit was commenced in the Cuyahoga County Court of Common Pleas by a named individual and numerous John and/or Jane Doe Plaintiffs to prohibit or reduce the ability of witnesses to observe the conduct of the election. The Cuyahoga County Court of Common Pleas granted Plaintiff's request to prohibit the appointment of witnesses. Three individual Relators, who sought to be witnesses and challengers brought action in the Ohio Supreme Court to overturn the Cuyahoga court's decision and protect the safeguards established in Ohio law to assure integrity in the election process. The Ohio Supreme Court overturned the lower court and authorized the appointment of Election Day witnesses and challengers as provided by Ohio law. See, *Thompson v. Blackwell*, Cuyahoga County Common Pleas Court, Case No. CV 04-546530, Journal Entry and Order of Oct. 30, 2004 (O'Donnell, J.) and *State ex rel. Wolf v. Blackwell* 105 Ohio St. 3d 1204 (November 1, 2004) (Exhibit O.)

4.4 Allowing Voters To Cast Ballots Outside Their Precincts

Ohio law requires voters to cast ballots in the precinct in which they reside. This requirement of precinct voting facilitates the orderly conduct of an election with adequate supplies for voting by the number of voters in that precinct and reduces opportunity for vote fraud. Precinct voting also assures that voters cast a ballot for the correct candidates. Several virtually identical cases were filed in both Michigan and Ohio seeking to suspend identification requirement and eliminate the precinct-based voting requirement. In a pair of consolidated cases from Michigan, the NAACP, ACORN and Project Vote sought a court order that "instruct([ed] election officials to count the provisional ballots cast in the wrong polling place" *** to count as a validly cast vote the provisional ballot cast by a first-time voters (sic) who registered by mail and did not provide identification." See *Bay County Democratic Party, et al. v. Land, et al.;* 347 F.Supp. 2d 404 (E.D. Mich. 2004). (Exhibit P.)

This identical challenge was also filed by the Sandusky County Democratic Party, The Ohio State Democratic Party and three who all argued for "Stop-n-Shop" voting. The Sixth Circuit flatly rejected the plaintiff's argument and affirmed the state's authority to require precinct voting as a means to provide for an orderly and honest election. *Sandusky Co. Democratic Party v. Blackwell*, 387 F3d 585 (6th Cir. 2004). (Exhibit Q.)

In this case, the Sandusky County Democratic Party, together with, the Ohio Democratic Party, the Farm Labor Organizing Committee, the North Central Ohio Building and Construction Trades Council, and, Local 245 of the International Brotherhood of Electrical Workers challenged the requirement that provisional ballots would only be valid if cast in the voters precinct of residence.

Although Judge Carr of the Northern District of Ohio accepted plaintiffs' argument, the Sixth Circuit Court of Appeals did not. The Sixth Circuit held that Ohio law controlled on the issue of where a voter must vote and that precinct-based voting was an appropriate requirement.

In reaching this conclusion, the Sixth Circuit stated: "We therefore hold that HAVA does not require that any particular ballot, whether provisional or "regular," must be counted as valid. States remain free, of course, to count such votes as valid, but remain equally free to mandate, as Ohio does, that only ballots cast in the correct precinct will be counted. *Sandusky Co. Democratic Party v. Blackwell*, 387 F.3d at 578.

4.5 Suspending Voter Registration Requirements

On October 25, 2004, a suit was filed in United States District Court for the Northern District of Ohio in Cleveland by a group of organizations engaged in voter registration activities and more than 14,000 residents who purported to be eligible to vote. The plaintiffs alleged that they had properly registered to vote with the Cuyahoga County Board of Elections, but their names did not appear on the list of eligible voters. Plaintiff's attempted to circumvent Ohio law requiring timely and complete voter registration and sought to have thousands of potentially ineligible voters cast regular ballots on Election Day. Doing so would have created the potential for voter fraud unprecedented in American history.

An evidentiary hearing was held before U.S. District Judge Paul R. Matia on the plaintiff's request that each voter be added to the Cuyahoga County voting rolls. Defendant, Cuyahoga County Board of Elections, and several Intervenors, individual voters whose votes would be diluted by allowing unregistered voters to cast regular ballots on November 2, strenuously objected, noting that to prevent fraud and to preserve Ohio's voter registration law, these individuals who were not qualified voters should not be added to the voter rolls. Rather, under HAVA, the plaintiffs all would be permitted to cast provisional ballots, and, if determined to be properly registered, their votes would count.

Judge Matia considered the following evidence: 812 individuals filled out voter registration cards without a date of birth (a key component to proving the identity of a voter); 40 individuals were not United States citizens; 715 individuals were not of legal voting age; 6,400 voter registration cards did not have a valid address in Cuyahoga County; and 5,100 voter registration cards were not signed by the potential voter. Judge Matia refused to grant plaintiff's request holding that, under Ohio law and HAVA, provisional voting would allow voters whose names do not appear on the final voting list to cast ballots and have those ballots counted if later determined that they were properly registered. *Citizens Alliance for Secure Elections v. Vu*, N.D. Ohio, Case No. 1:04CV2147, Order of Oct. 27, 2004 (Matia, J.). (Exhibit R.)

V. Intimidation and Voter Harassment

5.1 Overview

Ohio's election laws, which describe the standards of conduct to be observed at polling places, are designed to ensure that voting is conducted in an orderly and lawfully manner and voters have opportunity to peaceably and fairly participate in the election. These legal standards of conduct govern the behavior of every person at, or in the vicinity of a polling location during an election. The purpose of these rules of conduct is to protect the fundamental right of Ohio voters to cast their ballots without being verbally or physically threatened, attacked, or intimidated.

Essentially, Ohio law creates a 100 foot buffer zone around the polling places during elections, within which no loitering, electioneering or other similar conduct is permitted. This buffer zone protects the dignity of the polling place and provides a protected environment for voters to exercise their right to vote.

The importance of a buffer zone, or "campaign-free" zone in the voting process is so important that the U.S. Supreme Court has held that interests underlying the protection of this buffer zone are more important than exercise of First Amendment rights. *Burson v. Freeman*, 504 U.S. 191 (1992).

Unfortunately, on November 2, 2004, activists from these third party organizations violated this voter protection law and harassed Ohio citizens seeking to exercise their right to vote. Many of the individuals engaged in this harassment of voters were representatives of "independent" third party organizations such as MoveOn.org. Some of these individuals – including individuals associated with political campaigns - misrepresented themselves as "non-partisan" resources for voters. These individuals were cloaked under innocent sounding names such as the "Voter Protection Project," the "Ohio Election Protection Project," and other similar pseudonyms.

In countless Ohio polling places, representatives of these groups interfered with the rights of Ohioans to peaceably cast their ballots. Specific examples of this harassing behavior are described below.

5.2 Incidents Of Voter Harassment

Across Ohio, instances of illegal electioneering within 100 feet of the polling location were reported. The organizations most responsible for sponsoring this activity were MoveOn.org, America Coming Together, Voter Protection Project, and the Election Protection Squad and similar so called "non-partisan" groups. A few examples of those incidents, among thousands collected, follow:

(a) **Electioneering Activity**– During the November general election individual Ohio voters reported numerous incidents of intimidation, harassment or interference with their effort to participate in the election process. Some of these incidents have been the

subject of litigation and resulted in courts issuing injunctions against the offenders or election officials taking other appropriate action. Other reports have yet to be fully investigated. The following is a summary of the reports that have been received. Not all these have been fully investigated. All suggest potential serious concern.

- In dozens of precincts in Hamilton County, individuals working for MoveOn.org were observed throughout the day within the polling places distributing Kerry campaign literature, and encouraging the illegal use of regular ballots, and "flushing" the voter lists. In one instance MoveOn.Org had a table inside the 100' limit with up to 16 people conducting political activity for Kerry/Edwards campaign throughout the day.

- In Lucas County, so-called "Right To Vote" workers were wearing Kerry/Edwards bumper stickers and so-called "Voter Protection" workers advocated for the election of a democratic candidate in the Lucas County Board of Elections. And in numerous precincts, "Voter Rights Advocates" and "Election Protection" workers displayed Kerry bumper stickers, handed out democratic campaign literature, walked behind the polling tables, and walked near optical scan machines and voting booths. In many instances, the individuals were asked by poll workers to leave repeatedly and either refused or returned throughout the day. United Auto Workers, Teamsters and the AFL-CIO also engaged in this activity at numerous precincts.

- In Franklin County, individuals were handing out slate cards captioned "Ohio Democratic Party Official Ballot well within the 100 foot area. The slate card read, "You CAN take this into the voting booth on Election Day." Democratic Party volunteers were approaching voters and were requesting voters' names and precincts. The Democratic volunteers were moving freely within the polling area, well within 100 feet of the polling location.

- In Greene, Montgomery, and Summit Counties, among others, Kerry supporters blatantly violated the 100 foot barrier and distributed literature near polling places throughout the day.

- In several counties, Democrat observers and members of various third party groups went into the line of waiting voters and told individuals how to vote, passed out literature on took other actions in violation of the law.

(b) <u>Harassment and Intimidation</u>

- In the Toledo area, so-called "Right to Vote" and MoveOn operatives reportedly harassed several observers. Similar activity was reported in Hamilton County, where observers in a half a dozen different locations reported being threatened and intimidated, or menaced, stalked by ACLU

and "voter rights" operatives, photographed and intimidated by individuals associated with these organizations.

- In Montgomery County, an observer reported being harassed and intimidated by a MoveOn.Org "Right to Vote" worker who claimed that she had a "protective bubble" around her which allowed her to travel freely within the polling place and hand out Kerry literature and prevented Republican volunteer observers from watching their activities. Individuals with the "Right to Vote" group also intimidated and threatened a "Right to Life" voter and tried to get her to leave the polling place.

- In other counties, observers were being yelled at or followed by individuals from the ACLU and "Voter Right" group. When observers went to their cars, individuals who the observer believed to be from these organizations surrounded their cars and intimidated observers

(c) Move-On.Org Enjoined by Court for Voter Intimidation and Harassment

On Election Day, two individuals in Franklin County were threatened and harassed at the polling place by agents of MoveOn.org after being asked about their voting preference and revealing their intention to vote Republican. Similar situations occurred in virtually every county around the state and prompted a lawsuit filed in the Franklin County Common Pleas Court. Voters were intimidated by MoveOn.org in an attempt to dissuade them from voting for George W. Bush or in an attempt to harass them after they voted.

Examples of such intimidation include one Plaintiff who arrived at his polling place and was called over to a table operated by MoveOn.Org that promised "Free Coffee." The Plaintiff asked for a cup of coffee, was asked if he would voter for Kerry, and responded that he would not. The person at the table refused him a cup of coffee. The Plaintiff then noticed that individual and others were standing near the Plaintiff's car. When he exited the polling place, the MoveOn.Org table was placed in front of his car, blocking his exit. When he asked them to move, the individuals harassed him, took his picture and recorded his license plate.

Another voter noticed a loud and boisterous gentleman at her polling place wearing a "Voting Rights Staff" badge and standing well within 100 feet of the polling place. In fact, he stood right outside one Plaintiff's voting booth and told her that she only had a few seconds left and needed to make her final vote. These Plaintiffs sought, and received, a temporary restraining order against MoveOn.Org. The complaint has subsequently been amended to include similar acts by agent of MoveOn.org that occurred elsewhere in the state. See *Timms et al. v. MoveOn.Org*, Franklin County Court of Common Pleas, Case No. 04 CVH11 011533. (Exhibit S.)

(d) Ohio Court Enjoins Deceptive Phone Scheme To Disenfranchise Ohio Voters

Ohio voters across the state who had identified themselves as Republican received telephone calls telling them that the election was to be held a day later than Election Day, that their polling locations had been changed and that they could only vote if they brought four

separate pieces of identification to the poll. This information was intentionally deceptive and intended to direct voters to a polling place where they would not be able to cast a ballot. Marion County Common Pleas Court issued a temporary restraining order against the Marion and Greene County Democratic Parties, the Ohio Democratic Party and ACT enjoining them from this deceptive practice.

The Judge originally assigned to the case had to recuse himself from this case because he personally received such a telephone call, a point he noted in the Judgment Entry he signed effectuating his recusal. (A copy is attached at Exhibit T.) The Ohio Supreme Court appointed a visiting judge to hear the case who then issued a temporary restraining order against ACT, the county and state Democrat parties.

The Marion County Democratic Party provided an affidavit in this case that explains its role in the matter. The affidavit (See Exhibit T.), is completed by Cathy Chaffin, Chair of the Marion County Democratic Party, and explains that:

- The Marion County Democratic Party provided space to the Kerry/Edwards campaign for use as its campaign headquarters;
- Ms. Chaffin became aware that Kerry/Edwards staff was placing telephone calls to voters and giving out voting locations and "that the wrong polling location was being given."
- Ms. Chaffin called Kerry/Edwards campaign staffer, Jim Secreto, and told him the activity must stop. She was assured that it would stop.
- A few days later. Ms. Chaffin learned that the phone calls were continuing. She again told Mr. Secreto to stop and again was told that the activity would cease.
- Finally, on Election Day, Ms. Chaffin learned that the telephone calls were still being made. At that time, she told Mr. Secreto that if the calls did not stop, he would have to leave Marion County Democratic Headquarters.

The case is still pending before the Marion County Court of Common Pleas. See *Ohio Republican Party v. Marion County Democratic Party et al.*, Marion County Court of Common Pleas, Case No. 04 CV 0791. (Exhibit T.)

(e) **Temporary Restraining Order Issued Against Democratic Challengers Interfering with Voters**

On Election Day, several Lucas County voters brought suit against the Lucas County Board of Elections and Democratic challengers in the polling place who were wearing are wearing armbands and/or badges identifying them as "Voter Protection Staff", "Voting Rights Staff", or other similar terms. The Lucas County Court of Common Please granted the temporary restraining order. See *Metzger v. Doe,* Lucas County Common Pleas Court, Case No. 04-1540. (Exhibit U.)

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March 21, 2005

Honorable Robert Ney
Chaiman, Administration Committee
House of Representatives
2438 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Ney:

Thank you for bringing the House Administration Committee to Ohio to examine the issues that arose from the 2004 presidential elections as they relate to this state. I read with interest the "report" prepared and published by Congressman John Conyers and his Democratic staff attorneys.

The Conyers "report" struck me as a partisan document lacking fact and foundation in nearly every respect. However, there were three references to statements I made during the campaign (as Legal Counsel for the Ohio Republican Party) that must be corrected publicly because they are outright fabrications that have no place in responsible public discourse.

The first falsehood is stated in the "report's" executive summary. The following quotation comes exactly from that summary:

> *"Mark Weaver, a lawyer for the Ohio Republican Party, admitted the challenges 'can't help but create chaos, longer lines and frustration'"*

Along the same lines, footnote 203 quotes me as allegedly saying :

> *"[challengers at the polls] were "bound to slow things down. This will lead to long lines."*

Simply put, I never made such a statement. I did, however, in several interviews, (including one made on ABC's *Nightline*) address the issue of why Democrats were challenging the Ohio law that allows citizens to report evidence of voter fraud to the local Board of Elections in the weeks before an election. In that case, Federal Judge Susan Dlott erroneously opined that the aforementioned voter fraud protections were unconstitutional. The effect of her last-minute ruling meant that the voter fraud evidence that should have been evaluated and resolved in the week <u>before</u> the election had to be resolved on the day of the election. Thus, my comments

about "chaos, longer lines and frustration" were not related to the issue of observers or challengers in the polling place but, rather, to a legal ruling that had been made on a different topic the week before. My remarks sought to make clear our desire that any issues about any voter's eligibility be resolved before Election Day, so that all voters could participate on Election Day.

With respect to the footnote, those brackets seek to hide a bold-faced lie. The quote in question (from the 10/28/05 edition of the Akron *Beacon Journal*) referred to the aforementioned Federal Judge's erroneous decision ending the inquiries of potential voter fraud. It was that Judge's decision that was "bound to slow things down. This will lead to long lines." To suggest that the quote about long lines was about the separate issue of the Ohio law that allows observers within a polling place is inaccurate and disingenuous.

Later in the Conyers "report," there was a paraphrase of me that attempts to suggest that the Ohio Republican Party sent "registered letters" to voters in a "caging" attempt to identify those who did not live at the address listed on their voter registration. Again, I never said such a thing and no such thing ever occurred.

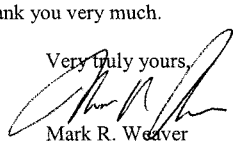
Here is the quote from the report (found on page 40):

> "*The Ohio Republican Party attempted to engage in "caging," whereby it sent registered letters to newly registered voters in minority and urban areas, and then sought to challenge 35,000 individuals who refused to sign for the letters or the mail otherwise came back as undeliverable (this includes voters who were homeless, serving abroad, or simply did not want to sign for something concerning the Republican Party). Mark Weaver, an attorney for the Ohio Republican Party, acknowledged the Party used this technique.*

First of all, to suggest that a political party would send out 35,000 registered letters (at a cost of about $4.50 each) defies logic and shows the Conyers staff's naiveté and/or willingness to write fiction. There was never a registered letter mailing. There was, however a bulk rate mailing to new voters encouraging them to vote Republican. No one ever has to sign for a bulk rate mailing.

It is my sincere hope that this letter will allow the Committee to understand events in Ohio in a more accurate light and that the inaccurate statements of the Conyers "report" be regarded as such. I respectfully request that this letter be included in the official transcript of your hearings. Thank you very much.

Very truly yours,



Mark R. Weaver

MRW/df

STATEMENT OF MR. EDWARD FOLEY

Mr. FOLEY. Mr. Chairman and members of the Committee, thank you for inviting me here today. My name is Edward Foley. I am a professor at the Moritz College of Law at the Ohio State University where I also serve as the Director of the Election Law program at Moritz.

I ask that my full testimony be made part of the record which I understand it can be at this hour. I apologize again on behalf of my colleague, Dan Tokaji. If it is appropriate, can I ask that his written testimony be made part of the record as well?

The CHAIRMAN. Without objection. Please give our apologies to him.

Mr. FOLEY. Thank you. The basic point of my testimony is to say that the election system in Ohio is not sufficiently well designed to withstand a close election. That was true in 2004. It is true currently the way the legislative drafting of Ohio law is today.

Ms. MILLENDER-MCDONALD. Say that again, sir.

Mr. FOLEY. The election laws in Ohio are not sufficiently well designed to withstand a close election. This is a point that applies to lots of other states besides Ohio. The Governor's race in the state of Washington is an illustration of what can happen in a very close election so I don't mean to single out Ohio in this regard.

The reason in my judgement why Ohio did not have a severe crisis in November of 2004 was simply that the outcome was not close enough to sufficiently test the system. A well designed election system in my judgement would be one that can withstand a close election. It is like building skyscrapers to prevent earthquakes. You want to build the skyscraper so that it can withstand a 7.0 on the Richter Scale or whatever.

I do think we have a better system than we had in 2000. I think HAVA helped in that regard. It was a necessary piece of legislation but, in my judgement, it is not sufficient. We have improved our ability to withstand closer elections. If the margin of victory, so to speak, on election night in 2004 in the presidential race in Ohio had been 1 percent or half a percent, i.e., around 30,000 votes or 60,000 votes, I think we would have had a terrible situation and we wouldn't be able to say that the state withstood the pressures.

Ms. MILLENDER-MCDONALD. Mr. Chairman, Mr. Foley, notwithstanding your statement, irrespective of the number of votes, and this is why I said earlier we were not looking at overturning an election. We are talking about when one voter is disenfranchised and that is questionable irrespective because we cannot have one voter disenfranchised in any state, California, Ohio, or whatever. When you have a multitude of folks saying they were disenfranchised, it becomes an issue.

Mr. FOLEY. I agree completely. We had significant problems in the state of Ohio in terms of disenfranchisement of individual voters. I think a well crafted election system would provide remedies and redress to individual voters for those denial of fundamental civil rights. I also think that there is a social and civic statewide interest that the system be able to measure whether or not a close election was accurately held and accurately counted.

The problem in Ohio is that we don't have the rules yet in place to do that. Representative DeWine mentioned some pending legis-

lation in Ohio which hopefully will address many of these issues. I was pleased that he itemized some matters that would go to that. As current law stands, that is not true and it primarily relates not exclusively but primarily relates to the issue of provisional voting. Provisional voting is very important.

It is a necessary piece of the electoral system. We do not have in Ohio the laws for determining as enacted by the general assembly for determining when to count provisional votes and how to avoid the necessity of too many provisional votes because when you have over 2 percent of all ballots casts provisional ballots, that means that if the margin of victory is within 2 percent, say a half a percent or 1 percent, that means the outcome of the election is going to be in doubt because of all the number of provisional ballots that are left to be counted.

When you combine this fact with the electoral college time table, the so-called safe harbor date which is five weeks after election day, there is not the time table to handle the counting of provisional ballots, the evaluation of provisional ballots in the month of November in such time to resolve that and to handle any contest action so that there could be——

Ms. MILLENDER-MCDONALD. How do you find too many provisional ballots? How do you find that? Most of the time provisional ballots are given to the minority population.

Mr. FOLEY. Well, every voter—I agree with statements made earlier today by a number of people that every individual who comes to the polling place should have the opportunity to receive a provisional ballot. That is an essential safety net in the process.

I also think it is important to figure out how they could have received a regular ballot if they are, indeed, a registered voter qualified to vote because it would be better for the voter and better for the election system as a whole if they had been able to vote a regular ballot rather than a provisional ballot.

Ms. MILLENDER-MCDONALD. That is true but that is in the aftermath, not during an election time.

Mr. FOLEY. Correct, but a well designed system would be one that avoided the problems ahead of time. Provisional ballots are like a fire extinguisher some have said. You want to have one in your house and you use it if you need to but it would be better to avoid the fire in the first place. This should probably be done as a matter of state legislation as opposed to new federal legislation but we do need new legislation to come up with a system before election day that will verify voter registration lists and give voters the opportunity to see why their names are not on the voter legislation list when they should be because they are registered, because they are qualified.

There needs to be a process in the months of September and October that gives them a fair opportunity to say, "Yeah, I belong on the list. I was wrongly removed from the list as occurred in 2000." That should happen in September and October. That should not happen in November as part of the evaluation of the provisional voting process. All the issues that were teed up to have huge litigation in Ohio in '04 if it had been—if the margin of victory had been within the margin of litigation, all of those issues about eligibility could actually be handled ahead of time.

They are the same set of questions that could be addressed in September and October and it would be better for everybody if they were addressed then rather than after election day when people know the number of votes that they need to fight over to flip the election. That is the situation that I have heard in the Governor's race in Washington where we see both sides saying, "We know what numbers we need to make up in order to flip the result."

The CHAIRMAN. Let me interrupt. The gentlelady has to leave for a flight. I want to thank our Ranking Member for being here.

[The statements of Mr. Foley and Mr. Tokaji follow:]

Testimony of
Edward B. Foley
Before the Committee on House Administration
U.S. House of Representatives
March 21, 2005 (Columbus, Ohio)

Chairman Ney and Members of the Committee:

Thank you for inviting me to appear before you today. My name is Edward B. Foley, and I am the Robert M. Duncan/Jones Day Designated Professor of Law at the Ohio State University. I also serve as Director of *Election Law @ Moritz*, a non-partisan program established by the University's Moritz College of Law to provide information and analysis to the public on legal issues affecting the electoral process.

As part of its mission, *Election Law @ Moritz* closely monitored developments concerning the general election of 2004, especially the presidential race as it occurred in Ohio. In the aftermath of the election, we have begun the process of analyzing what occurred, with the view of identifying possible reforms that would improve the process for future elections.

Based on our work so far, I would offer the Committee the following observations:

First, perhaps the most important problem in need of attention is the incompatibility of state mechanisms for resolving disputes over election results, particularly with respect to the evaluation of provisional ballots, with the timetable established by Congress for the operation of the Election College, particularly the

safe-harbor deadline that occurs five weeks after Election Day, pursuant to 3 U.S.C. § 5.[1]

Second, and related, the standards and procedures for evaluating the eligibility of provisional ballots are too indeterminate and take too long, which is a significant factor in causing states to be unable to resolve the outcome of a close election before the safe-harbor deadline.

Third, and also related, currently in many states there are inadequate procedures for verifying the accuracy of voter registration lists, thereby causing undue reliance on provisional ballots on Election Day: the more provisional ballots are cast on Election Day, the greater the likelihood of uncertainty in a close election – and the greater the chances that the outcome will turn on the evaluation of disputed provisional ballots.[2]

All three of these problems could be substantially alleviated by the creation of fair procedures for verifying the accuracy of registration lists in advance of Election Day. If registered voters whose names should be on the lists, but erroneously are not for one reason or another, are given the opportunity before Election Day to rectify this error, then on Election Day they can cast regular ballots rather than provisional ballots – an outcome that is better for the voters themselves and better

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[1] My *Election Law @ Moritz* colleagues Steven Huefner and Peter Shane have addressed this problem in detail, offering different potential solutions for consideration. See Steven F. Huefner, *Reforming the Timetable for the Electoral College Process*, (Nov. 30, 2004), available at http://moritzlaw.osu.edu/electionlaw/comment1130.html, and Peter M. Shane, *Meshing State and Federal Presidential Election Law: The Need for Reform* (Nov. 30, 2004), available at http://moritzlaw.osu.edu/electionlaw/analysis/041130a.htm.

[2] I address this point in *Minimizing the Need for Provisional Ballots: A Reform Worth Wishing For* (Dec. 21, 2004), available at http://moritzlaw.osu.edu/electionlaw/analysis/041130a.htm, as well as in *The Promise and Problems of Provisional Voting*, ___ GEO.WASH. L. REV. ____ (forthcoming 2005).

for the process as a whole. There will be no occasion to dispute after Election Day whether these voters' provisional ballots should be ruled eligible or ineligible, a determination that might affect the outcome of a close election (and therefore give rise to a situation in which competing candidates have an incentive to advance any colorable argument that support their respective positions). Moreover, to the extent that the number of provisional ballots is reduced, and the process of evaluating provisional ballots is streamlined, so that it requires little more than checking the ballots against the registration lists that have been properly verified in advance of Election Day, then the ability of states to complete all their post-election procedures in advance of the safe-harbor deadline increases significantly.

To understand the significance of the deadline problem, it is useful to consider what happened in Ohio this past election, as well as the ongoing controversy over the Governor's race in the State of Washington, a situation that could happen in close presidential races in other states in future years. Recall that Ohio did not certify statewide results until Monday, December 6, one day before the safe-harbor deadline of Tuesday, December 7. That's because it took the counties the entire month of November to go through their stacks of provisional ballots in order to determine the eligibility of each ballot. While Secretary of State Blackwell has said that he might have been able to order the counties to expedite the evaluation of these provisional ballots if the margin of victory among regular ballots on Election Night had been significantly closer, so that the provisional ballots were potentially outcome-determinative, it is unclear how much Secretary Blackwell

could have accelerated this process, given the large number of provisional ballots – over 150,000 statewide – and the need to check each one against available voter registration information in a county's possession.

Cuyahoga County, for example, had 25,309 provisional ballots to evaluate.[3] At a rate of 1,000 ballots a day, it would take 25 working days. To complete the process within 10 days, the time allotted for overseas absentee ballots, it would require a rate of 2,500 provisional ballots per day.

In any event, Ohio did not certify its statewide result until one day before the safe-harbor deadline. This means there was no opportunity whatsoever to challenge the evaluation of provisional ballots as erroneous or unlawful. Under the Supreme Court's ruling in *Bush v. Gore*, the state's procedures for reviewing the accuracy of its election results – through recounts, contests, or otherwise – must come to a halt by the safe-harbor deadline, even if those procedures are still under way and incomplete. Therefore, even if there were serious allegations of impropriety with respect to the evaluations of provisional ballots in a particular state – some counties wrongly included some provisional ballots that they should have excluded, or other counties wrongly excluded provisional ballots that they should have included – those allegations could not be considered if the state did not certify the counties' determinations regarding these provisional ballots until one day before the safe-harbor deadline.

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[3] See Ohio Secretary of State's Website, *Official Results for Provisional Ballots in Nov. 2, 2002 Election*, available at http://moritzlaw.osu.edu/electionlaw/analysis/041130a.htm.

In this regard, if we turn now to the still-pending dispute over the Governor's race in the State of Washington, we can immediately see the consequence of an inability to resolve controversies over the evaluation of provisional ballots. If that race had been subject to the safe-harbor deadline of December 7, the Republican candidate Dino Rossi would have been inaugurated Governor instead of the Democrat Christine Gregoire. Rossi was certified the winner on November 28, based on the results of the machine recount. It wasn't until December 31 – New Year's Eve – that the new certification occurred based on the hand recount, and Gregoire was declared the winner. And, of course, the pro-Rossi contest action is still pending. The key point here is that there is considerable uncertainty about who actually won that election, based on questionable ballots being included and excluded, and to arbitrarily cut off the process of evaluating these ballots on a particular date, when the review of the questionable ballots is still under consideration, may cause a candidate to be installed into office under a heavy cloud of questionable legitimacy.

Americans don't like their important elections to take weeks or months to be resolved. But they also don't like it when the process for determining the accuracy of the election gets short-circuited while that process is still underway and there is considerable reason to believe that the real result remains in doubt.

The best way to avoid a short-circuited review of election results is to avoid the basis for contesting those results in the first place. If the losing candidate has no plausible basis to complain, then it is easy to meet the safe-harbor deadline

without having to terminate a post-election contest procedure before it's resolved. The problem, however, as the 2004 election revealed, is that there are too many readily available means for challenging the results in a close election, principal among these being the various ways in which states, and counties within states, go about evaluating provisional ballots. For example, waiting to be litigated in Ohio if the presidential race had been close enough is the significant question whether provisional ballots should count if a voter's registration card is incomplete but the voter is capable of supplying the missing information at the time of casting the provisional ballot or shortly thereafter. Tens of thousands of provisional ballots in Ohio may have fallen into this uncertain category: many were likely excluded on the ground that the voter was never properly registered, but others were included when the voters were given the opportunity to rectify the defect, and there was a *Bush v. Gore* issue simply in the differential treatment of voters in the same situation.

There is widespread consensus among commentators that it is necessary to clarify the standards for evaluating provisional ballots and to do so in advance of the election, so that there is no uncertainty about when they count and when the do not, and thus little or no chance for variation in the treatment of provisional ballots that might raise a new *Bush v. Gore* issue.

An equally compelling point, however, is that the clear standards regarding voter eligibility should be applied before Election Day rather than afterwards. Why wait until November to decide whether tens of thousands of voters should be eligible to cast ballots that count if they are substantively qualified as electors – they are

citizens, over 18, not felons, and so forth – but they made a procedural mistake in filling out their voter registration form? Wouldn't it be better to use the month of October, rather than the month of November, to make the same eligibility determination?

Consequently, the problems exposed in the provisional ballot system in 2004 should lead to the following reform: the creation of a fair procedure whereby voters, and the groups that represent them, can check to see if their names are on the state's registration list and, if not although they should be, then this omission can be corrected during the month of October, before Election Day. Likewise, there needs to be a fair procedure for groups to challenge names on the list that they believe are erroneously included. In 2004, Ohio saw that it lacked an adequate procedure for this sort of pre-election challenge. The creation of this fair mechanism of verifying voter registration lists in October will significantly avoid the need to evaluate the eligibility of provisional ballots in November, making it easier for states to wrap up their post-election review processes before the safe-harbor deadline.

We could call this fair mechanism of verifying registration lists Fail-Safe Registration, and that's a goal very much worth striving for. Provisional ballots have sometimes been called "fail-safe voting" but that phrase can be potentially misunderstood. Provisional voting, at least as mandated by HAVA, does not guarantee that everyone who could have registered to vote, but did not, is able to show up at the polls anyway and cast a ballot that counts. Provisional voting, in

other words, is not a back-door mechanism for requiring states to adopt Election Day, or same-day, registration laws. Instead, provisional voting is a guarantee that anyone who is indeed registered to vote is in fact able to vote on Election Day – and that there are no administrative glitches that deprive a registered voter of the right to cast a ballot that counts.

This fact means that provisional voting, as important as it is, is only as good as the registration system itself. If there are administrative defects that prevent a voter from getting registered in the first place, there is no guarantee that a provisional ballot will do this voter any good. Thus, we should make sure that we have a system of Fail-Safe Registration in place, one that protects the ability of a qualified voter to become registered and likewise guarantees that only the names of qualified voters make it onto the registration lists.

Even with a system of Fail-Safe Registration in place, there will be the need for an ancillary system of provisional voting. Some registered voters will need to receive a provisional ballot when they go to polls, even if their names are correctly included on the verified list. For a variety of reasons, in the heat of the moment on Election Day, poll workers will be unable to locate the names of registered voters, and these voters will cast provisional ballots, which will be counted when their names are subsequently found on the verified list.

But with a system of Fail-Safe Registration in place, the need for provisional ballots will be greatly reduced. That is a good thing. Provisional voting is like a spare tire. You are certainly glad to have it if you have a flat. But you'd rather

avoid the flat tire in the first place, and if there is a way to reduce your risk of a flat, by installing better regular tires, you should do that as well as carrying a spare. Fail-Safe Registration is the better set of regular tires, and we should equip our electoral system with this improvement. Otherwise, if we get a flat tire – as occurred in Washington Governor's race and almost occurred in the Ohio presidential election – then, even though we're carrying a spare tire, we may not have the time to install it properly, at least not before the Electoral College deadlines we must meet.

Thank you very much. I'd be happy to answer any questions.

TESTIMONY OF DANIEL P. TOKAJI
HOUSE ADMINISTRATION COMMITTEE
MARCH 21, 2005

Thank you for inviting me to appear before you today. My name is Daniel Tokaji, and I am an Assistant Professor at the Ohio State University's Moritz College of Law, as well as the Associate Director of the Election Law @ Moritz project. In my remarks today, I will focus on the election administration problems that arose in the course of Ohio's 2004 presidential election, especially those relating to implementation of the Help America Vote Act of 2002 ("HAVA"). I will then draw a few broader lessons from Ohio's experience during the 2004 election.

Background

Let me begin by laying out the near-miss that Ohio experienced. On the morning of November 3, 2004, President George W. Bush led Senator John Kerry by approximately 136,483 votes out of some 5.6 million cast in Ohio, the state upon which the presidential race ultimately turned. This margin was sufficient to overcome any legal challenges that might have arisen from uncounted provisional votes, ambiguously marked punch card ballots, and lengthy lines that may have discouraged many citizens from voting. But had President Bush's morning-after lead been half of what it was, a replay of the legal battles that culminated in *Bush v. Gore* – with the Buckeye State rather than the Sunshine State as the backdrop, Ken Blackwell playing the role of Katherine Harris, and provisional ballots joining punch-card ballots as the dominant props – would have been almost certain.

Despite the fact that there was no post-election meltdown this year, there remains significant room for improvement in the functioning of our election system. Yet there is one thing that I would like to make clear at the outset: The fact that this state and others experienced problems, and very significant ones, in 2004 does not mean that HAVA was a failure or that the law should be amended. To the contrary, I believe that HAVA's reforms have already made our election system better in important respects, and that other aspects of the law still to be implemented will improve the system further in years to come.

What is clear, however, is that any major change to the ecology of our elections system will initially cause some disruption in the short run – and the changes that occurred with HAVA were no exception. It follows that Congress should be extremely cautious in amending HAVA's requirements, at least until all of its core provisions have gone into effect. Put another way, HAVA should be given a chance to work before new federal requirements are imposed.

It is also clear that state election officials, in Ohio and elsewhere, could have done a much better job at implementing some of HAVA's existing requirements. In my opinion, the most important changes between now and 2008 should occur at the state rather than the federal level. Although the high level of attention to Ohio's election made the problems that occurred here particularly conspicuous, we were not the only state that had problems. I thus hope that election officials both throughout the country may learn from the mistakes that Ohio made in 2004.

Trouble Spots in Ohio's 2004 Election

Five major areas generated controversy during the most recent election cycle in Ohio: (1) voting technology, (2) provisional voting, (3) the handling of registration forms, (4) challenges to voter eligibility, and (5) long lines at the polling place. I will discuss each of these trouble spots in turn.

1. *Voting Technology.* The first problem was the state's failure to replace its outdated and unreliable voting equipment. Studies conducted in the wake of the 2000 election demonstrated significant problems in the machinery used to cast votes. Most notable among these is the punch-card ballot, which became so famous during the post-election controversy in Florida four years ago.

Approximately 72% of Ohio's voters continued to use the very same punch card voting equipment in 2004. My estimate is that between 48,000 and 64,000 Ohioans who voted in November 2004 did not have their votes counted due to the use of punch card voting equipment. These are votes that would have been counted, if better equipment had been in place.

The good news is that Ohio is something of an anomaly in this respect. Nationwide, the usage of punch cards declined significantly between 2000 and 2004, going from about 30% to 13% of registered voters. Those states that did eliminate punch cards saw a significant

improvement. One recent report by Charles Stewart of MIT estimates that one million votes were saved nationwide, due to improvements in voting equipment and other areas of election administration. This is one area in which HAVA really has worked.

After all the scrutiny that this equipment has received, and the significant improvements shown in places where voting equipment was replaced, one might well ask why Ohio failed to replace its equipment. Among the most significant features of HAVA was its provision of $325 million for the replacement of outdated voting equipment through Title I, and the implementation of standards for voting systems in Title III. States that received money under Title I of HAVA are required to replace their punch card and lever voting equipment. Ohio has received over $30 million under HAVA's punch-card buyout provision, and a total of over $130 million in HAVA funds overall.

For states accepting Title I money, HAVA set a deadline of 2004 for the replacement of punch card ballots and lever voting machines. But Ohio was among the 24 states that requested a waiver extending the replacement date until 2006. By this date, Ohio must replace its punch card equipment, or face the prospect of having to repay Title I funds it received. In addition, Title III of HAVA requires that every polling place have at least one electronic or other disability accessible voting unit in place by 2006. It is not clear, at this date, whether Ohio will meet either of these deadlines.

The replacement of punch card voting equipment has been complicated by a law enacted by the state legislature last year, requiring that electronic voting machines generate a contemporaneous paper record (more commonly known as the voter-verified paper audit trail or "VVPAT"). The enactment of this law, H.B. 262, made counties understandably nervous about replacing their punch cards with electronic voting machines, given the lack of certified equipment that meets this requirement and the uncertainty as to whether existing electronic equipment can be retrofitted to comply with it.

Compounding matters is the ongoing controversy over what type of equipment – electronic or optical scan – should be adopted to replace punch cards. Some counties have quite strongly opposed Secretary of State Blackwell's recent decision to require counties to adopt

optical scan equipment, instead favoring electronic voting machines. There is also some question about the Secretary of State's legal authority to make this decision, with Ohio's Attorney General having expressed the view that the Secretary of State was without power to force counties to choose optical scan equipment. The bottom line is that Ohio lags behind the rest of the country in terms of voting technology, and the future remains very much up in the air.

2. *Provisional Voting*. The implementation of provisional voting was arguably *the* story of the 2004 election. Title III of HAVA requires provisional ballots to for those eligible voters who, due to administrative error or for some other reason, appear at the polls on election day to find their names not on the official registration list.

Ohio saw significant controversy over provisional voting in 2004. The issue that garnered the most attention is whether provisional ballots may be cast or counted if the voter appears in the "wrong precinct." In at least seven states (Ohio, Michigan, Missouri, Colorado, Florida, North Carolina, and Arizona), this issue has resulted in litigation. In Ohio, Secretary of State Ken Blackwell issued a directive on September 2004, providing that voters would not be issued a provisional ballot, unless the pollworkers were able to confirm that the voter was eligible to vote at the precinct at which he or she appeared. A federal district court issued an injunction against this order, on the ground that Secretary of State Blackwell's directive failed to comply with the requirements of HAVA. This injunction was affirmed in part and reversed in part on appeal. The Sixth Circuit upheld the district court's order, insofar as it found that the Secretary of State had not fully complied with HAVA by requiring pollworkers to determine "on the spot" whether a voter resided within the precinct and by denying those not determined to reside within the precinct a provisional ballot altogether. But the Sixth Circuit concluded that HAVA did not require provisional ballots to be counted if cast in the wrong precinct.

Although the "wrong precinct" issue received the most attention, it was one of a number of issues surrounding provisional voting that emerged in 2004. Among the others was the question of whether voters should be allowed to cast a provisional ballot, if they had requested but had not received or voted absentee ballots. This also led to litigation, with a federal court in Lucas County ordering that these voters must receive provisional ballots.

Finally, there is ongoing litigation over Ohio's lack of clear and uniform standards for determining which provisional votes should be counted. HAVA requires that provisional ballots be counted, if the voters is determined "eligible under state law" to vote. Unfortunately, the Ohio legislature failed to enact any legislation prescribing the standards and procedures according to which such eligibility determinations should be made. Just four days before the election, Secretary of State Blackwell issued a two-page directive providing some very general guidance on the counting of provisional ballots. A case now pending in federal district court challenges this directive as overly vague, in violation of the Supreme Court's interpretation of the Equal Protection Clause in *Bush v. Gore*.

Whether or not one agrees with this legal claim, it is very clear that the State of Ohio needs to do better, in terms of providing specific and uniform standards for the counting of provisional ballots. If possible, these standards should be set by the legislature, rather than issued through ad hoc administrative directives – particularly ones that come just weeks or even days before the election. State legislation will enhance public confidence that the rules regarding provisional voting are the product of a reasoned debate and bipartisan consensus, rather than last-minute orders designed to favor one side or the other.

3. *The Handling of Registration Forms*. In the weeks leading up to November 2, several issues arose relating to the handling of registration forms. Among the issues was what to do with registration forms in which boxes had been left unchecked, or in which certain identifying information had been omitted. But the most intense controversy concerned Secretary of State Blackwell's September 2004 directive requiring that Ohio registration forms be printed on "white, uncoated paper of not less than 80 lb. text weight" (i.e., the heavy stock paper). Under this directive, forms on lesser paper weight were to be considered mere *applications* for a registration form, rather than a valid voter registration.

Although HAVA is silent on the question of the paper-weight of registration forms, voting rights advocates argued that the directive violated the Voting Rights Act, which requires that "[n]o person acting under color of law" may deny a person the right to vote "because of an error or omission on any . . . paper relating to any . . . registration . . . if such error or omission is

not material in determining whether such individual is qualified under State law to vote in such election." Some local election officials stated their intent to accept registration forms regardless of the paper weight on which they were printed, despite Blackwell's directive.

In the face of these objections, Secretary Blackwell's office backed down and, in late September, announced that registration forms on lighter-weight paper should still be processed. Still unknown is whether any registration forms were left unprocessed in reliance on Blackwell's original directive, and whether any voters were discouraged from voting by the initial rejection of their registration forms on this ground.

4. *Challenges to Voter Eligibility*. Another major issue that emerged in the weeks preceding the 2004 general election was the challenge process for questioning voter eligibility. Many people, particularly in communities of color, saw these challenges as part of a concerted strategy of voter intimidation. Some were also concerned that these challenges would be used to tie up polling places, particularly in heavily populated urban areas.

In Ohio, civil rights advocates and the Democratic Party went to court to challenge the challenges. A federal district court issued an injunction barring pre-election challenges of some 23,000 voters. In addition, there were four separate lawsuits concerning challenges to voter eligibility on election day. These cases produced a dizzying series of court orders and appellate proceedings, leading up to and even extending into election day. Four different trial judges issued orders limiting the challenges, yet each of these court orders was reversed on appeal – one of them on the afternoon of November 2, election day.

There was an undeniably partisan dimension to much of the disagreement over challenges to voter eligibility, with Republicans asserting the need to prevent voter fraud and Democrats generally urging limitations on challengers to ensure access. One thing on which there should be agreement on both sides, however, is that there is a pressing need for states to reexamine their challenge laws. A number of states, including Ohio, have statutes that are so broadly written that they could conceivably be used to challenge voters without good cause. While it is clearly important to discourage fraud, it is also important to clearly specify the standards and procedures

for making challenges, to ensure an orderly process that will not tie up polling places or consume the time of already overburdened local election officials and poll workers.

5. *Long Lines at the Polling Place*. Many Ohio voters waited for hours on or before November 2, 2004 in order to exercise their right to vote. The problems appear to have been particularly acute in some urban precincts here in Franklin County, where voters reported waiting for up to four or five hours. And at one polling place near Kenyon College in Knox County, Ohio, voters waited as long as ten hours. These lines posed a special difficulty for working people who could not be away from their jobs for that long, and for parents of younger children. It will probably never be known how many people were discouraged from voting, either because they arrived at the polling place to find lines stretching around the block or because they heard about how bad the lines were and thus never went to the polls in the first place.

On the day of the election, a lawsuit was brought on behalf of voters in Franklin and Knox counties seeking relief from the long lines. That evening, a federal district judge issued a temporary restraining order requiring that voters waiting in line be provided with "paper ballots or another mechanism to provide an adequate opportunity to vote," and directing that polls be kept open waiting in line. Despite the requirement to provide paper ballots to voters waiting in line, some voters in these counties waited in line for several hours after the polls closed before casting their vote.

There is reason for hoping that some of the not-yet-implemented requirements of HAVA will result in improvements. Although HAVA did not directly address the problem of long lines at the polling place, its authorization of funds for the replacement of outdated voting equipment may help address this concern. The failure to move forward with the planned purchase of new voting technology in time for the 2004 election was likely a contributing factor in the long lines that some Ohio voters experienced on election day. In many precincts, there were more than 200 voters for every machine, a ratio that would not allow voters to complete the process during the polling day. The bottom line is that we need to have more machines in place by 2004.

Preliminary Lessons from the 2004 Election

I close with three preliminary lessons drawn from Ohio's experience during the 2004 election.

Lesson 1: *States should set clear standards well in advance of election day, preferably through legislation rather than administrative directive.*

Truly speaking, we have not a single election system in this country nor even 50, but roughly 13,000 election systems – the approximate number of local entities with responsibility for the conduct of elections. Perhaps the most important lesson to emerge from both the 2000 and 2004 elections is the need for each state to provide specific and uniform guidance to its local jurisdictions, to ensure some semblance of consistency among counties. Seven justices of the Supreme Court expressed the need for such clear and uniform rules in the *Bush v. Gore* decision, as it relates to the conduct of manual recounts. Whether or not one agrees with the holding in this case, such rules are undeniably important for purposes of promoting consistent and equal treatment of voters across counties within a state.

In the area of provisional voting, for example, there ought to be consistent procedures and standards for determining voter eligibility across the state. It does not appear that this occurred in 2004. While 77.9% of provisional ballots were counted overall, the percentage of provisional votes counted varied dramatically among Ohio counties, from a low of 60.5% to a high of 98.5%. Such discrepancies in the percentage of provisional ballots counted tend to support an equal protection claim under *Bush v. Gore*, by suggesting that there is an unconstitutional lack of uniformity among counties

It is equally vital that the rules governing the administration of elections be transparent. Regrettably, transparency has been an area in which the Ohio Secretary of State's office has been sorely lacking. That office does not even post its directives to the counties governing the administration of elections on its website, even though these directives are obviously matters of public interest. In the controversy over whether voters who had requested an absentee ballot should be allowed to vote provisionally, the Secretary of State's office guidance came in the form of a private email just days before the election. And in some cases, such as the standards for counting provisional votes, it was not until shortly before the election that the directive was

actually made public. This can only lend the appearance that the election is being run according to secret (or at least semi-secret) rules. It is absolutely vital that the rules of the game be made public and be made available to all citizens well in advance of elections.

While the Secretary of State's office bears some responsibility in this area, the state legislature should also shoulder some blame. For example, in the area of provisional voting, the legislature should have enacted rules governing the process for counting provisional ballots after HAVA's enactment. This might well have avoided some of the litigation that transpired. Enacting legislation to set clear rules will, moreover, help prevent the public perception that ad hoc rules are being created by partisan election officials, to benefit their own party or preferred candidate. Whether or not these perceptions are accurate, they can only fuel public distrust of the process by which our elections are conducted.

Lesson 2: *The Election Assistance Commission has a vital role to play in the ongoing process of election reform.*

Congress' decision to create the Election Assistance Commission to assist with these and other issues was a wise one. Unfortunately, the EAC got off to a slow start due to the delay in appointing the four commissioners and to a shortage of funds. However, the Commission is now engaged in some very important work. It promulgated best practices for the implementation of different voting technologies and is presently at work on the HAVA-required improvements to the testing and certification of voting equipment. These remains a great deal of research that needs to be done in such areas as the usability and accessibility of voting technology, the implementation or provisional voting, methods of registering voters, and means by which to discourage fraud. Moreover, state and local election administrators are sorely in need of guidance on how to implement the provisions of HAVA.

The EAC's ongoing work is clearly essential to the success of HAVA. I would therefore urge that the EAC be given the funding it needs to continue its vital work.

3. Lesson 3: *Precipitous federal legislation should be avoided at least until HAVA's voting systems and registration requirements are fully implemented.*

If the 2004 election should teach us anything, it is that election reform is a process, not a destination. That process is not complete now, nor will it likely be complete in 2006 or even 2008. To the contrary, much of the most important work still remains to be done. In Ohio and other states, this means replacing present voting equipment with technology that is more reliable and accessible to people with disabilities. It also means finishing the massive task of implementing the statewide registration databases required by Title III, which must be in place by 2006. Many states implemented provisional voting for the first time in 2004 and will have to refine their process in response to problems that occurred in this election cycle. Even states like Ohio, which had some type of provisional voting in place before 2004 – although a much more limited one that is now required by HAVA – have considerable work to do in refining and improving their process.

There is reason to be optimistic that these ongoing changes will serve the goals of expanding access while promoting integrity, particularly if the EAC is given the resources it needs to provide assistance to the state and local entities that are principally responsible for implementing HAVA's mandates. It is my recommendation, however, that Congress be extremely cautious in enacting new legislation before HAVA is fully implemented. We should give HAVA's key provisions a chance to work and then measure their performance objectively, before rushing to enact new federal legislation.

A case in point is the proposal to require a contemporaneous paper record, or "voter verified paper audit trail" ("VVPAT") for electronic voting technology. While there are certainly legitimate concerns regarding the possibility of fraud and error with electronic voting, it is a mistake to equate paper with security or to mandate any particular technological fix until that fix has proven workable, effective, and superior to other alternatives. That is particularly true, given that the EAC and associated bodies are still in the process of making improvements to testing and certification procedures as prescribed by HAVA. States should be free to experiment with the VVPAT, as Nevada did in the most recent election. This state's experience is worthy of careful examination. For example, did voters actually check the paper records? Should all or some significant percentage of the paper records actually be recounted in every election to check

the accuracy of the electronic county? What happens in the event of paper jams? Are disabled and non-English speaking voters adequately accommodated? Is the voter's privacy protected? How much will it cost, not only to purchase this technology but to administer it properly on an ongoing basis?

These and other questions ought to be asked and answered before new federal requirements in the area of voting technology are enacted. One of the great advantages provided by our federalist system in general, and our decentralized system of elections in particular, is that it allows different jurisdictions to experiment. To mandate any particular technological fix, let alone one that has yet to be proven workable and effective, would not only short-circuit this process but would stifle innovation by requiring a particular device that may not turn out to be the best one – or even a satisfactory one. In fact, the headaches that Ohio is now experiencing in trying to conform to its VVPAT statute enacted last year demonstrate the dangers of legislating specific requirements that have not yet proven workable.

These thoughts one the VVPAT are just one example of a broader point: that Congress should be very reluctant to impose new federal requirements until HAVA is fully implemented. State and local entities should instead be given some breathing room that will allow them to comply with HAVA's key provisions, with guidance from the EAC. That is the approach that you most wisely took when you enacted HAVA more than two years ago, and I would urge you to stay that course today.

Thank you for your consideration.

Ms. MILLENDER-MCDONALD. I have two minutes to listen to Mr. Robbins.

STATEMENT OF MR. NORMAN ROBBINS

Mr. ROBBINS. What I have to say gives information that says that Professor Foley is right. We have data that show that of the 30,000 provisional ballots that were rejected in Ohio, in 2004, thousands could have been prevented, first by proper registration procedures, as detailed in my written testimony.

Second, the exercise of Ohio law requiring voters to go only to their home precinct led to numerous mistakes where people were denied their ballot. We have the data for that from Cuyahoga County. We polled 16 other counties and they have about the same type of rejection rates. Two-thirds of rejections were on registration issues, and nearly one-third were due to wrong precinct.

Election fraud keeps coming up here. Two legal associates went to their databases and found that in all the elections of 2000 and 2002 there was not a single relevant conviction in Ohio that went to the appeals level. Not a single one.

In the election of 2004 I understand from data just obtained today there are only two cases under investigation in Cuyahoga County. In 10 years there were all of five cases that went to the appeals court level in Ohio, so do not tell us that election fraud is rampant unless you have got the facts to prove it.

I wanted to say some other things but that is my two-minute part for you before you leave.

Ms. MILLENDER-MCDONALD. Well, I did not come here with the intent of telling you that there was election fraud.

Mr. ROBBINS. No. Many other people here mentioned that. That is why I wanted to get this out.

Ms. MILLENDER-MCDONALD. You have to recognize that we came here to get the facts.

Mr. ROBBINS. Right.

Ms. MILLENDER-MCDONALD. And you have outlined those to us affably. Mr. Chairman, thank you so much. If I didn't have to catch this last flight out trying to get to California, I would stay here.

The CHAIRMAN. I was just told by the sergeant of arms—actually, your staff told me this is the first congressional hearing in the Ohio State House on record since 1803.

Ms. MILLENDER-MCDONALD. Oh, for Heaven's sake. Should you not applaud this man or what?

The CHAIRMAN. I want to thank the gentlelady for traveling here and for your genuine interest in our election system.

Ms. MILLENDER-MCDONALD. We have a bipartisan kiss for you.

The CHAIRMAN. We will continue on.

Mr. ROBBINS. Thank you, Mr. Chairman, and thank you for inviting me. I just had to get out those two points before the Congresswoman left. I wanted to give you the good news which is that thanks to HAVA 120,000 Ohioans successfully voted provisional ballots. I think that is a credit to Congress and to HAVA. I am not just the bearer of bad news. I do think we need to focus as well on what we still can do, as you have said, to address the 30,000 Ohio of provisional ballots that were rejected.

In the interest of time, I will simply enumerate very briefly, (this is laid out in the written testimony) that thousands of registrations (estimated Ohio-wide) were either never entered—we certainly have this data for Cuyahoga County—or were entered incorrectly because of clerical or voter errors. We point out voter errors as well as clerical administrative errors. Also, we have evidence in Cuyahoga County that voters who were legitimately on the rolls were suddenly dropped by the time of election.

By the way, everything I say is not imputing any ill intent. I believe these were purely administrative kind of normal errors. As Professor Foley pointed out, when you have an election as in Ohio that was decided by a little over 2 percent of the vote between the two candidates, we need to talk about errors that we have studied (projected Ohio-wide) which come to about 1 percent.

In other words, had the election been closer, as Professor Foley said, to a 1 percent level, we would have been in the world of Florida 2000. We do need to make changes in these registration procedures. We do need to have more opportunity for voters to get educated ahead of time.

As Professor Foley said, again, every election official will tell you that it is far better to prevent provisional ballots by proper notification procedures, corrections, etc., than it is to wait until the day of election. That issue, I think, should be addressed and the suggested reforms are there. I won't go through them in the interest of time. Also, as I mentioned before, we estimate that about 5,000 provisional ballots Ohio-wide were unnecessarily rejected because of the home precinct rule.

We estimate based on what we have learned in Cuyahoga County, and as I mentioned earlier, the reasons for rejection of provisional ballots are about two-thirds because of registration issues. They were said not to be registered. Almost one-third were rejected because of wrong precinct.

The CHAIRMAN. You mean the voter ended up in the wrong precinct?

Mr. FOLEY. They were disqualified because the provisional ballot was found to be in the wrong precinct, yes. And then there are a bunch of other smaller percentage reasons. They don't add up to 100 but you know what I mean. So are the two that are worthy of major focus. What was interesting is that the 21 other counties that we polled had about total-wise the same percentage as Cuyahoga did so we think our studies in Cuyahoga do, indeed, apply to the rest of Ohio.

We know, for instance, that voters were in—in Cuyahoga one study, not by me but by another person, found that voters were in their correct polling place. Many, half of those rejected, must have been directed to the wrong precinct table. Whether they went there or the poll workers sent them there is another matter. Others received incorrect precinct location information. This can be fixed. Then others voted provisionally in despair because they simply didn't have time to go to a different precinct.

I would like to say, and I have presented you a graph in the written testimony, that shows that the percentage of rejected ballots in the 88 counties is about the same in counties that voted more for

Bush than for Kerry as they are in the counties that voted, the percentage of rejections.

If you look at across that graph that I present to you, you will see by I that if the county was more than 50 percent, say, for Bush, their rejection rates county by county were about the same as those counties that were more than 50 percent for Kerry. In other words, this issue of rejection of provisional ballots is a bipartisan issue. Voters of both sides have been affected.

That is not to say that it is equal across the population, however, and that is a longer story. I don't have time but it is laid out. It is common sense but it also fits with census data that there are certain subpopulations that move a lot. We all know that.

Those are youth, people—this is just U.S. Government Census data—youth, people who earn less than $25,000 a year whether they live in Appalachia or Cleveland probably, and minorities, African-American and Hispanic. Those communities move more and we made an estimate that every time you move you are at a 6 percent risk—that is just a broad number—of not getting registered correctly because of everything you have to go through.

The bottom line of everything I have to say, though, is that we still have practices that tend to disenfranchise legitimate voters. Reasonable and often inexpensive solutions are available. This is not rocket science. There are good solutions out there. Thirdly, fair-minded Americans want to include every eligible voter. All we need is the political will. Thank you.

The CHAIRMAN. Thank you.

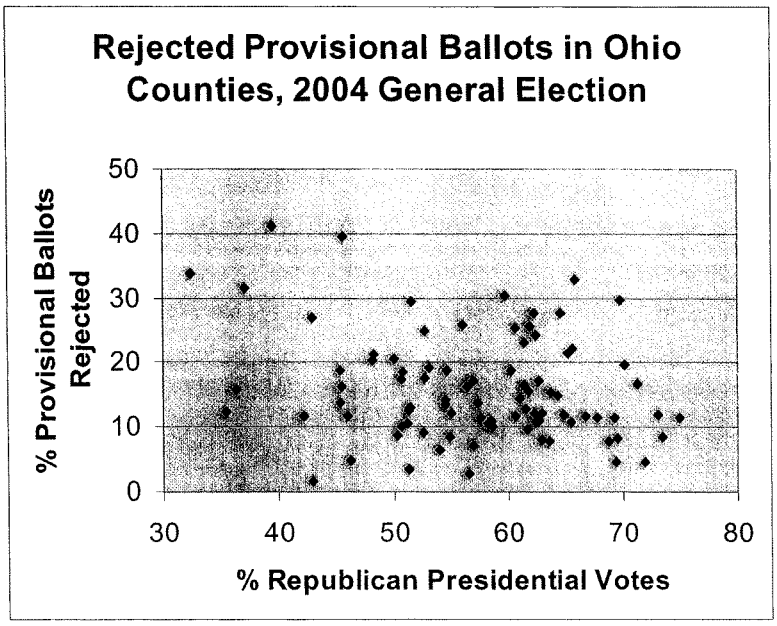
[The statement of Mr. Robbins follows:]

WRITTEN STATEMENT BY NORMAN ROBBINS*, MD, PHD
TESTIMONY FOR HOUSE ADMINISTRATION COMMITTEE,
MONDAY ,MARCH 21, 2005
***Representing The Greater Cleveland Voter Coalition**

I. PROVISIONAL BALLOTS

A. Overview

- The good news: HAVA has enabled legitimate voters, who would formerly have been denied the right to vote, to cast provisional ballots which were counted (e.g. in Ohio, almost 120,000 voters; nationally, over 1 million)
- The problems: The provisional ballot of many voters were rejected (almost 30,000 in the Ohio 2004 General Election). Of these 30,000, our studies in Cuyahoga County[1] indicate that about 40% or about 12,000 provisional ballots statewide in Ohio, were fully legitimate but were **unnecessarily** rejected (for reasons to be discussed).
- In Ohio, the percentage of rejected provisional ballots was no different in predominantly Republican or Democratic counties[2] (graph below). Therefore, all members of Congress are likely to have voters in their district who were unnecessarily disenfranchised because of provisional ballot problems.



[1] (attached) "Analyses of Voter Disqualification, Cuyahoga County, Ohio, November 2004",pp. 6-7; full report at: http://www.clevelandvotes.org/news/reports/Analyses_Full_Report.pdf
[2] Data computed from that supplied by the Ohio Secretary of State.

- As explained in the attached study[3], certain sub-groups in the American population are more likely to be disenfranchised by current provisional ballot provisions than others, simply because they change residence more frequently. These groups include youth (ages 18-29), those earning less than $25,000 household income per year, Hispanics, and Minorities. As you know, many of these groups span party lines.
- **These un-necessary rejections can be greatly reduced in the future by Congressional legislation, but different reforms are required for different types of problems**
- An excellent review of some of these problems on the national level has just been completed by Electionline.org[4].

B. Reasons for unnecessary rejection of Provisional ballots

- **Problems with becoming properly registered:**

1. Getting registered properly: In Cuyahoga County alone, Board of Elections ("BOE") omissions or errors in entering new registrations or updating address changes put more than 12,500 voters at risk of disenfranchisement. Another 3,300 voters made registration errors which put them at risk[5]. This amounts to about 15,000 voters in Cuyahoga County, or a projected 54,000 votes statewide. Many of these were unnecessarily and unfairly required to vote by provisional ballot, thereby introducing an unnecessary risk of rejection for several unrelated reasons (e.g. leaving out signature or birthdate).

2. Inadvertent or arbitrary purging or dropping of existing legitimate voters: Example: we found nearly 1,000 legitimate registered voters in Cuyahoga County that were dropped from the rolls in the 3 months before the election **for no apparent reason AND who had their Provisional ballots rejected!**[6]

3. Many legitimate or new registrants were unaware they were either not on the rolls or were entered incorrectly (see point 1), so they didn't know they needed to make corrections or re-register: Many legitimate voters showed up at the polls because they wereunaware that their registrations had been purged, incorrectly entered, or not entered at all by BOE. For the same reasons, their provisional ballots were often rejected.

Reforms

1. All BOE's must have a website with a look-up site so that every voter can check to see if they are registered and that their name, address and birth date are correctly recorded. Voters who do not receive written notification from the BOE should be **warned in time to take corrective action** by intensive media publicity. The

[3] "Analyses…" Pp. 8-9
[4] http://www.electionline.org/site/docs/pdf/ERB.10.Provisional.Voting.3.17.2005.a.pdf
[5] "Analyses…" pp. 3-5
[6] "Analyses…" pp. 6-7. As pointed out in this study, we were never able to get feedback on these numbers from the Board of Elections despite our requests.

message should be that if they have not received written notification from their Board of Election, they may not be registered or may not be registered correctly, and they must call to find out and take corrective action.

2. To ensure that there is no "digital divide" that prevents voters without computer skills from getting this information, public librarians should receive paid training and time to offer voters registration assistance that includes looking up their registration status and precinct. Again, HAVA funds and EAC assistance should be available to assist in this effort.

3. All BOE's must be required to have double-checking systems to avoid incorrect transcription of information from registration forms, and also to avoid inadvertent purging of legitimate voters. Statewide databases must have similar checks against inadvertent purging.

4. There should be consistent national standards and calendar (for general elections) for legitimate purging of voters (e.g. when they move out of state or are incarcerated for felony).

5. To prevent legitimate voters from improper rejection of their provisional ballot, there needs to be a nationally consistent standard for automatically notifying those voters whose provisional ballots have been rejected, including information on how they can appeal the rejection (process, and evidence required) so their vote can be reinstated, if appropriate.

6. No provisional ballot should be rejected by a BOE unless it is first checked against the original (voter-submitted) application, to ensure that the BOE has not made errors in transcribing the voter's information.

Rejection of Provisional ballots because voter is in "wrong precinct"

- In Cuyahoga County, one-third of provisional ballot rejections (about 2,200 voters) were for this reason. If the same proportion held statewide, then about 10,000 legitimate Ohio voters were denied their vote for this reason.

- A high proportion of provisional ballots were unnecessarily rejected for "wrong precinct", for several reasons: (A) Another study[7] showed that more than half of these voters were in the **correct** polling place (which could include several precincts), having been sent to the wrong precinct table by the poll workers. (B) We know of other individuals who were given incorrect voting precinct information on the BOE website. (C) We also have many reports of people who simply could not take the time to go to a different ("correct") precinct to vote because of jobs, child care, or long lines at the polls.

[7] http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyWrongPrecinctSummary.pdf

Reforms

1. Most important: HAVA must specify that "jurisdiction" of casting a vote at least for federal offices must be the widest possible geographic area, with the correct county as the smallest "jurisdiction" in which a registered elector can cast a provisional ballot without automatic denial. As in several states already, voters who choose to cast their provisional ballots outside their regular precinct, would not have their votes counted on those local candidates or issues that pertain only to the different precinct where they cast their vote.

2. No provisional voters who cast their vote in the correct polling place (regardless of precinct) or who were directed by a BOE website or pollworker to an incorrect polling place, should have their provisional votes rejected (with the proviso in item 1).

3. Voters whose provisional ballot was rejected for any cause, should be automatically notified and have a timely appeals mechanism (see item 4 above).

4. BOE's should have well publicized web sites where voters can look up their correct precinct. HAVA funds and EAC assistance should be available to assist all counties in the state to ensure that their web sites for this purpose do not provide incorrect information.

II. POLL WORKER TRAINING

A. Overview and problems

Inadequate poll worker training is universally acknowledged as a key problem by election officials, members of both major political parties, and voter reform groups. Yet it keeps sinking below the radar screen. HAVA funds for Ohio, for instance, provided $132 million dollars for voting machines, but only about $5 million for both voter and poll worker education for the entire state, and this in turn was divided between 2004 and 2005. Budget-strapped BOE's generally pay close to minimum hourly wages to poll workers, and prepare them with just a few hours of mostly lecture-oriented training to cover a complex set of voting rules and contingencies. In addition, poll workers typically work exhausting 14+-hour days from 6:00 a.m. to after 8:00 p.m. As a result, it is no surprise that there are numerous reports of voter confusion and disenfranchisement as a result of poor or misinformed guidance by poorly trained poll workers. Change of election rules at the last minute added to this confusion.

Examples:

- As noted above, half of the provisional ballots rejected in Cuyahoga County because of "wrong precinct" were actually cast in the correct polling place. Poorly trained poll workers are to blame;
- In several precincts, poll workers directed voters to the wrong punch card ballot and voting machine for their particular precinct, so that their votes were incorrectly punched in the "wrong" positions because of rotation of candidate order on the ballot books. In some cases, this resulted in large numbers of erroneous unintended votes for 3rd party candidates;

- In many cases, poll workers incorrectly demanded picture ID's or other special identification such as utility bills from fully registered long-term voters;
- Provisional ballots were some times not even offered to eligible voters;
- Rules for Absentee voters who showed up at the polling place were changing as late as 3 p.m. on election day;
- 540 provisional ballot voters in Cuyahoga County alone were disqualified because of innocent and avoidable omissions in filling out the provisional ballot forms – e.g. omitting signature—which a trained poll worker could easily have prevented.

Reforms

The following reforms could be required by HAVA as a condition of providing to states annual federal funds ear-marked for poll-worker training:

1. Extend time allotted to train and test poll workers over at least two sessions.

2. Use creative, interactive teaching methods.

3. Use statewide standard testing of all poll workers to determine if they can **demonstrate** a **working** knowledge of presented material. They also must show that they can trouble shoot voting machine or polling problems, and can assist voters in the more frequent problems they encounter. Those who do not pass the test should receive additional training, and tested once again. If they are still unable to pass, they should not be hired.

4. Poll workers must be trained to recognize the limits of their knowledge, so that they will know when to seek expert or BOE advice, and have rapid communication facilities to do so.

5. Divide election day into at least 2 poll worker shifts.

6. Raise pay of poll workers to a living wage (based on reasonable community standards).

7. Require that the preparatory session for poll workers on the evening before election provide sufficient time to thoroughly update and train poll workers on any changes in rules that may have occurred since their full training sessions.

ANALYSES OF VOTER DISQUALIFICATION, CUYAHOGA COUNTY, OHIO, NOVEMBER 2004

Norman Robbins, Study Leader, nxr@cwru.edu
Greater Cleveland Voter Registration Coalition (GCVRC)
Feb. 26, 2005

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Overview:

In a time when elections are decided by small margins and when the integrity of the electoral process is often questioned, avoidable voter disqualification is not acceptable. Quantitative studies in Cuyahoga County of the 2004 general election, summarized here, help to define some of the sources of disqualification. Taken in conjunction with other reported data, these studies lead to conservative estimates of votes that were avoidably lost or put at risk. Statewide extrapolation indicates that about 44,000 votes may have been lost and 31,000 put at risk – that is, over 1% of votes in a Presidential election that was decided by about a 2% margin. We believe that the vast majority of these errors (on the part of voters, Board of Elections, or voter registration groups) were unintentional. Several reforms could greatly reduce these flaws in the future. Results similar to those reported here would be expected in many urbanized counties in the United States.

Summary of key findings:

(Non-technical summary given in underlined statements)

- In 2004, the registration/change of address applications of large numbers of voters in Cuyahoga County are projected to have been lost or put at risk through errors on the part of voters or the Board of Elections. Based on the findings of our studies of both Board of Elections (BOE) and voter entry errors in about 9,600 applications for registration or change of address, we project that up to 7,100 Cuyahoga County voters were probably disqualified and another 13,100 voters were put at varying degrees of risk of disqualification.

- Large numbers of applications arrived after the deadline. The applications of another 6,000 voters were lost because the applications were handed in after the October 4 deadline.
- The BOE list of disqualified applications was even larger than our projections. About 15,000 names (not including minor special categories) were on the BOE list of disqualified or "at risk" voters. This number is greater than the projections of our studies on BOE or voter error, possibly because our volunteers exercised careful oversight of the voters we registered. About half of BOE categories of faulty application were totally disqualifying unless corrected before the election, and the other half potentially so unless corrected at the time of voting.
- Almost 1,000 provisional ballots may have been wrongfully rejected because of registration problems alone. At least 944 rejected provisional ballots, mostly classified as "not registered", were apparently mistakenly purged from the registration lists. Since this error was detected by only one type of search, which did not detect other voters who claimed similar errors, the true number of provisional ballots wrongfully rejected is likely to be higher.
- We estimate that 2 out of every 5 provisional ballots that were rejected should have been accepted as legitimate. If we combine incorrectly purged provisional votes, projected votes rejected because of initial registration errors, provisional ballots lost through polling place misinformation and innocent errors filling out the provisional application, it appears that over 41% of rejected provisional ballots (or 14% of all provisional votes) may have been unnecessarily rejected.
- We estimate that simply changing residence exposes voters to a 6% chance of being disenfranchised. Youth, the poor, and minorities are disproportionately affected. In fact, with respect to just provisional ballots, we found a two-fold increase in rejection rate in predominantly African-American compared to predominantly Caucasian precincts. As noted in national studies, those Americans who move more frequently are more likely to be subject to registration errors (and also provisional ballot rejection). These include youth, those who rent rather than own homes, African Americans and Hispanics, and the poor. In Cuyahoga County, we estimate that each move brings about a 6% chance of disenfranchisement through registration error. The national data on groups that move more frequently is consistent with our findings of a nearly twofold rate of provisional ballot rejection in precincts with over 90% black populations compared to those that are 10% black or less. There is also a clear pattern of higher provisional ballot rejection rate in predominantly African American wards of the city of Cleveland.
- Avoidable errors and problems such as we studied amounted to over half the percent margin of victory in Ohio's close 2004 Presidential election."Ballpark" extrapolation of our results to big cities statewide lead to the conclusion that in 2004 about 1.3% (range 0.9 to 1.6%) of votes (44,000 lost, 31,000 at risk) could have been lost statewide in a Presidential election decided by a 2.1% difference of votes cast (and our numbers probably understate the problem).
- Election reforms – itemized here only for illustration -- would reduce the disenfranchising errors discussed in this report. The Greater Cleveland Voter Coalition is developing recommendations which will be presented later.

REPORT

1. Registration errors

In the course of registration drives in the spring of 2004, some recently registered voters complained that they had not received confirmation notices from the Cuyahoga County Board of Elections (BOE) many weeks later. In order to determine what had happened to their applications, the Greater Cleveland Voter Registration Coalition (GCVRC) carried out two studies (completed mid-September and mid-October) tracking the fates of individual new registration or change of address applications by checking copies of these applications against the BOE's data base. The GCVRC had made a copy of every application submitted to the BOE, and beginning in spring of 2004, had submitted all new applications to the BOE once a week.

The summary results of the two studies combined (Table 1), based on the detail in Table 3 (attached at the end), are expressed in terms of projected numbers of votes at risk. These are derived from the numbers actually found under each category of error (Table 3) within our sample of about 9600 applications, followed by extrapolation to the 312,900 non-duplicate applications received by the BOE in 2004. For the combined projected numbers the uncertainty is about 20% -- i.e. the numbers could be up to 20% higher or lower than those given.

BOE errors: We project (Table 1) that the BOE totally failed to enter 2743 submitted new registrations and made serious errors (e.g. omitting voter's date of birth) in entering another 1404 projected applications, for a total of 4,147 votes disqualified or at high risk of disqualification. Other types of entry errors, with low to possibly high risk of disqualification (numbering 8,359 + 4,310, Table 1) amounted to another 12,669 projected votes. About 40% of these 12,669 were address updates never entered, so that such voters would not receive information from the Board, might be purged for not having voted in 2 general elections, and would have to vote provisionally, with a 14% risk of rejection (see section 2, below). Errors in transcribing the voter's name (especially last name) could lead to lack of successful BOE confirmation of registration by mail, erroneous BOE information to voters that they were not registered (unintentionally discouraging them from voting), or poll workers not readily finding voters on the rolls, and requiring vote by provisional ballot. The availability of provisional ballots undoubtedly "rescued" many registered voters with address entry errors, but in turn subjected them to greater risk of rejection (see below) than voters who used regular ballots.

Many problems of erroneous BOE or voter entries after Sept. 1, 2005 (and possibly before) may also be attributed to failings of the DIMS Voter Registration system now in use by the BOE, according to a recent report[1].

[1] htt Problem://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm

Table 1:
[PROJECTED] OR ACTUAL POTENTIAL VOTES PUT AT RISK* THROUGH REGISTRATION ERRORS, FALL 2004, CUYAHOGA COUNTY, OHIO

Type of Error	Number of applications likely to be disqualified	Number of applications at higher risk of loss	Number of applications at low to high risk of disqualification	Number of applications at low risk of disqualification	Source of information
Apparent Board Error	[2743] #1	[1404] #5 + #6	[8359] #2 + #4	[4310] #3	**Table 3**
Apparent Voter Error	[2906] #7 + #9 + #10		[424] #8		**Table 3**
Applications missed deadline date	~6,000				**BOE**
Subtotal: Potential votes affected	**11,649**	**1,404**	**8,783**	**4,310**	
BOE List of Completely or partly Disqualified Voters**	**10,971**		**3645**		**BOE**

*Since turnout on election day was about 65%, actual votes lost from disqualified or compromised registrations would be 65% of the numbers given. The term "application" includes both new registrations and change of address applications, which many registrants treated identically (not specifying their former address).
#1,#2, etc. below projected numbers (in brackets) refer to items as numbered in Table 3, from which the projected numbers are derived
**Overlaps some of the data of Apparent Voter and BOE errors in rows 1 and 2

Voter errors: Voters failed to enter vital information or gave addresses deemed not to exist for a projected total of 2,906 disqualified registrations. Other voter errors put 424 projected registrations at low to high risk.

Late applications (combination of Voter and Registration Group errors): According to Michael Vu, Director of the Cuyahoga County BOE, about 6,000 applications were handed in to the BOE after the Oct. 4 application deadline, and were thus disqualified. About 2500 were due to errors made by one registration group, and the remainder were a mixture of errors made by voters, Bureau of Motor Vehicles, and unspecified other sources.

Based on studies of both BOE and voter entry errors in about 9,600 applications for registration or change of address, we project that up to 7,100 Cuyahoga County voters were probably disqualified and another 13,100 voters were put at varying degrees of

risk of disqualification[2]. The applications of another 6,000 voters were lost because the applications were handed in after the deadline.

2. BOE lists of disqualified applications.

The BOE published a list of 15,253 "fatal pending" or faulty applications, as updated Dec. 1, 2004 (Information from[3]). Two of the largest categories -- invalid address (6,203) and missing signature (4,768) -- totally disqualify the voter. The names of voters in the next two largest categories -- missing important information (1,987) or birth date (1,658) -- are flagged on the polling books, and requested when the voter signs in, in which case the vote is accepted. Where the address is invalid, the Board takes no further measures to notify the voter, but in the other 3 categories, it sends a non-forwardable notification and asks the voter to supply the missing item. We were told by a BOE staff member that only about 20% of those notified actually supply the missing information by mail, although many with missing birth date or incomplete information, may do so at the polling place (No data available on this). Other smaller categories on the BOE "fatal pending" list, such as being under age or not being a citizen, are legitimately invalidating or very small.

We can attempt to relate the numbers of voters on this "fatal pending" list to those in the GCVRC studies described above. We exclude applications which were apparently submitted but never entered or had only errors in transcribing the name of the vote Reform: neither of these categories of error would cause the voter to appear on the "fatal pending" list. After this exclusion, the GCVRC study predicts that about 6,000-8,000 faulty applications[4] would appear in the 4 major categories on the BOE's "fatal pending" list: the actual number is 14,616. We suspect that part of the difference is due to the fact that the projected numbers in Table 3 derive from applications overseen by highly motivated unpaid GCVRC volunteer registrars, who were trained to spot and prevent errors of omission.

About 15,000 names (not including minor special categories) were on the BOE list of disqualified or "at risk" voters. This number is greater than the projections of our studies on BOE or voter error, possibly because of the careful oversight of our volunteers in registering voters. About half of BOE categories of faulty application are totally disqualifying unless corrected before the election, and the other half potentially so unless corrected at the time of voting.

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[2] From Table 1, probably disqualified, those "likely to be disqualified" or at "higher risk of disqualification" (2,743 + 1404 + 2,906 = 7,053; at varying degrees of risk of disqualification, those "at low to high risk" and "at low risk" (8,359 + 4,310 + 424 = 13,093)

[3] httProblem://ohiovigilance.org/Analysis/CountyCuyahoga.html, then click on link to "Fatal Pending" voters...

[4] Those given explanatory code letters E or F in Table 3. Mis-entry of addresses, if trivial, might not put the voter on the "fatal pending list", so we give a possible range of errors (6,000-8,000) rather than one number.

3. Provisional ballots

8,559 of 25,309 provisional ballots cast in Cuyahoga County were rejected[5], because of BOE findings that the voter was not registered (5760), had not voted in the correct precinct (2164) or (for 618, most of the remainder) had not been on the polling books and had made a disqualifying error in filling out the provisional ballot application (main categories: missing information, no signature, bad address).

We asked whether some of those rejected provisional ballots might have been erroneously purged from the BOE's list of duly registered voters. We used matching of last names and date of birth[6], using the BOE's list of provisional voters rejected for all reasons (except "wrong precinct"), and the BOE-supplied list of all registered voters as of Aug. 17, 2004 or as of Oct. 22, 2004:

1. Legitimate voters who had been on the BOE rolls of registered voters as of Aug. 17, 2004, but were absent from the rolls on Oct. 22 (293 found in this category);

2. Legitimate voters who were on the BOE rolls of registered voters as of Oct. 22, 2004 but were nonetheless found on the list of rejected provisional ballots (651 found in this category), presumably because they had not been found on the rolls on election day, so that a provisional ballot was necessary and also because subsequent BOE investigation did not find the voter on the registered list (or because the voter had made an error in filling out the provisional application form).rejected nor at the voter's proper pol either because they had been accidentally purged between Oct. 22 and election day, or because a clerical error caused their names not to appear on the rolls.

In all, a total of 944 voters were purged from the BOE lists. As a result, their provisional ballots were either rejected outright as "not registered" or were rejected due to disqualifying errors in completing the application form. Some or all of the 293 voters in the first "purged" group may have been dropped when the BOE changed its database to the DIMS system on Sept. 1, 2004. We can only speculate (on the second group of 651 voters) that after Oct. 22nd, glitches in using the data base somehow deleted legitimate voters. Unfortunately, we received no response from the BOE Director when we submitted these names for his review and comment.

We know that the number of purged and rejected provisional voters (944) is probably an underestimate. From a variety of non-BOE sources, we learned of 13 voters who insisted that they had voted repeatedly or had confirmed their registration with the BOE and yet were told they were not on rolls, were forced to vote provisional ballots on Nov. 2 and were rejected. Of these 13, the search for purged voters in our studies picked up only 3 of these. Therefore, we believe that using other types of search (e.g. voters incorrectly purged before Aug. 17, use of variations in name or address as well as date of

[5] Information from Ohio Secretary of State, officially certified list of provisional ballots, for overall accept and reject values; information from Cuyahoga BOE for subcategories (with very slightly different totals than state certified numbers).

[6] Computer searches carried out by Dan Kozminski, volunteer, Greater Cleveland Voter Registration Coalition.

birth, etc.), the total number of erroneously disqualified provisional ballots would be greater than the 944 we found. According to another report, errors in the DIMS data base could also contribute to cases where provisional voters had been purged, rendered unfindable, or otherwise rejected[7].

How many provisional ballots voters may have been rejected because the BOE failed to enter registration applications or entered them incorrectly (see item 1)? We could not use the registrations analyzed in September, 2004, because we had taken vigorous measures to get these registration failures or errors corrected before the registration deadline of Oct. 4. However, using data from the other study subgroup of about 7400 applications submitted to the BOE before the deadline but analyzed after the deadline, we found 30 individuals whose provisional ballots had been rejected, mostly listed as "not being registered" but some as "wrong precinct". Since the BOE received 312,900 applications in 2004, we project that with a voter turnout of 65%, about 825 rejected provisional ballots may have been rejected directly or indirectly because of BOE errors.

What is the risk of any legitimate voter being forced to vote a provisional ballot and being disenfranchised? From the above, about 944 such ballots may have been rejected due to purging errors and 825 due to BOE registration entry errors (unknown to the voter). Another 540 voters made errors of omission (e.g. missing signature, incomplete information) on the provisional ballot form that alert poll workers could have prevented. Finally, another investigative group found that 1201 provisional ballots were rejected for being cast in the "wrong precinct" when the voters were actually at the correct polling place[8]. These voters received incorrect information from the poll workers or were not properly directed by them to the proper precinct table (Additional voters arrived at the wrong polling place because of software errors in the poll place finder on the BOE web site[9], or because they failed to receive information because of address errors in their listing, but we don't have any numbers on this type of error). In all, these 4 sources of known error add up to 3510 or 41% of rejected provisional ballots, or 14 % of all provisional ballots cast (accepted and rejected) in Cuyahoga County.

944 rejected provisional ballots, mostly classified as "not registered", were apparently mistakenly purged from the registration lists. The true number incorrectly rejected for this reason is likely to be higher.

If we combine incorrectly purged provisional votes, projected votes rejected because of initial registration errors, provisional ballots lost through polling place misinformation and innocent provisional application errors, it appears that over 41% of rejected provisional ballots (or 14% of all provisional votes) may have been unnecessarily rejected.

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[7] httProblem://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm
[8] http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyWrongPrecinctSummary.pdf
[9] personal communication from Cheryl Kufta, a software expert who personally encountered and analyzed these problems. Also, see:
httProblem://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm

4. Population sectors at greater risk for disenfranchisement

Americans who move more frequently are more often subject to the kind of registration errors described in this report because they need to re-register to avoid voting provisional ballot[10]. Those disproportionately affected include youth, home-renters (vs. home owners), the poor, African-Americans and Hispanics (Table 2). Fortunately, the provisional ballot mechanism partly prevents disenfranchisement due to lack of re-registration, BOE address entry errors (in some cases), or BOE failure to enter address updates.

Table 2.
Comparison of residential mobility in different pairs of American subpopulations

Percent who move in the space of one year[11]								
	Age	%	Housing	%	Race	%	Household income	%
Comparison Of pairs	20-29	28-30%	Rent	31	Black or Hispanic	18	<$25,000	19
	Over 55	3.5-6%	Own	7	White	12	>=$100,000	10

What is the risk in Cuyahoga County of being disenfranchised by registration errors with each new move and new registration? Given 14,616 voters in the major categories of the BOE's disqualified list (due to voter or BOE error) plus 2,743 projected new registrations never entered, and a total of 312,900 new registrations or changes of address submitted to the BOE in 2004, we estimate the chance of error is about ((14,616+2,743)/312,900)) or nearly 6% with each move.

We investigated the consequence of this disproportionate effect of registration error, specifically with regard to race, in two ways:

1. Precinct by precinct comparison of the provisional ballot rejection as a percent of all votes cast in each Cuyahoga County precinct as a function of black/white percentages in the precinct population. Selecting precincts where there were at least 100 persons 18 and older, we found that the average rejection rate (as % of all votes cast) was 1.8% in precincts with 90% or more black residents, and 1.1% in precincts with less than 10% black residents. This result was highly statistically significant.

2. Evaluation of percentage of provisional ballots rejected as percent of provisional ballots cast in the 21 wards of Cleveland, graphed below by % black population.

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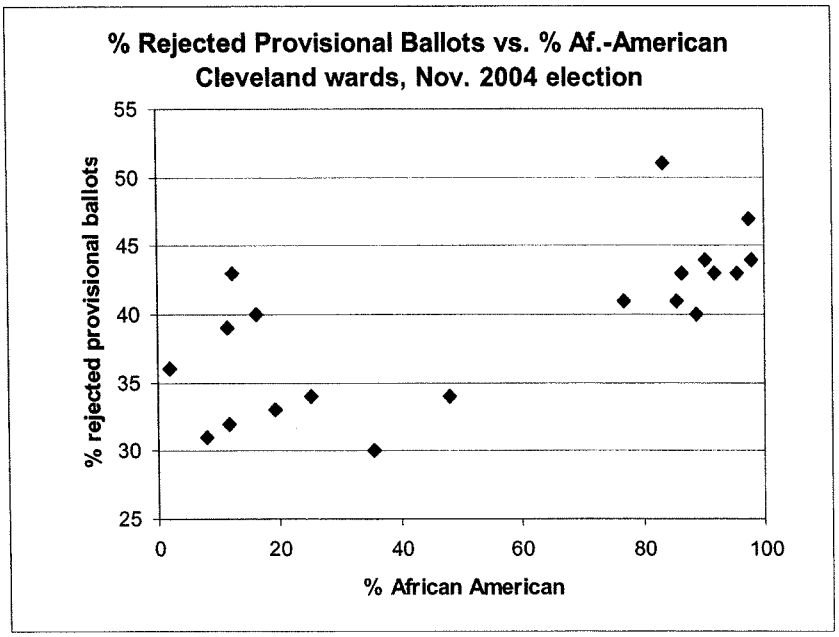
[10] Task Force on the Federal Election System, 2001 (attached to the National Commission on Federal Election Reform, 2001), httProblem://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf

[11] Table 8 in U.S. Census Report, Geographical Mobility: 2002 to 2003. httProblem://www.census.gov/prod/2000pubs/p20-549.pdf



It is obvious by eye (and valid statistically) that wards with over 80% black populations had higher rejection rates (as % of provisional ballots cast) than those with 50% or less black populations. In one predominantly black ward, the rejection rate reached 51%.

As noted in national studies, those Americans who move more frequently are more likely to be subject to registration errors (and also provisional ballot rejection). These include youth, those who rent rather than own homes, African Americans and Hispanics, and the poor. In Cuyahoga County, we estimate that each move brings about a 6% chance of disenfranchisement through registration error. The national data on groups that move more frequently is consistent with our findings of a nearly twofold rate of provisional ballot rejection in precincts with over 90% black populations compared to those that are 10% black or less. There is also a clear pattern of higher provisional ballot rejection rate in predominantly African American wards of the city of Cleveland.

5. "Ballpark" estimate of registration/provisional ballot errors on a statewide basis

By what factor should the errors in Cuyahoga County be multiplied in order to estimate their occurrence statewide in 2004? The majority of errors appeared to be concentrated in the most urbanized areas of the County where the most intense registration drives occurred. Therefore, one approach to extrapolation is to find the combined populations of the 10 largest Ohio cities (1.72 million, assuming that about half of Columbus is urbanized) and to divide that by the population of Cleveland (478,000) to yield a factor of

about 3.6. Using this factor and data cited or derived above[12], these cities together would have experienced 25,400 disqualifications due to BOE or voter error, 47,100 registrations or change of address at varying degree of risk because of BOE or voter error, up to 21,600 because of applications handed in after the deadline, 6,500 provisional ballots rejected due to inadequate poll worker information or oversight and up to 6,400 provisional ballots rejected because of registration list purging or errors. With an average turnout of 65%, this amounts to a "ballpark" projection of about 31,000 final votes actually lost, and 31,000 at risk of loss, in addition to 13,000 provisional ballots lost. Because of the assumptions involved, these numbers could easily be off by 20-30% in either direction. However, the key point is that the sum of these avoidably lost votes or votes put at e risk add up to 75,000 votes or about 1.3% (range 0.9-1.6%) of votes cast in a (2004) Presidential election decided by a difference of 2.1% of Ohio's votes[13]. Therefore, despite the range of uncertainty, there is no doubt that these sources of error must be addressed by election reforms.

Are these estimates "conservative", i.e. likely to be understatements of the magnitude of the problem? We believe they are, because:

- we derived our numbers of voter and Board just from applications submitted by the Greater Cleveland Voter Registration Coalition, whereas twice as many voters were on the BOE's "fatal pending list" of voters disqualified for wrong or missing information;
- we did not include estimates of voters who did not even attempt to vote a provisional ballot because they called the Board of Elections after the registration deadline only to find they were apparently not listed (either because of registration or data base errors that were not the fault of the voter); and
- we did not include voters who might have voted provisionally but were directed by poll workers or the BOE's "precinct finder" to the wrong precinct, and did not have the time or energy to correct these errors.

"Ballpark" extrapolation to big cities statewide lead to the conclusion that in 2004 about 1.3% (range 0.9 to 1.6%) of votes (44,000 lost, 31,000 at risk) could have been lost statewide in a Presidential election decided by a 2.1% difference of votes cast (and our numbers probably understate the problem).

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[12] After using the factor 3.6 multiplied by the following numbers: 7,053 voters at high risk and 13,093 at low to high risk (footnote 2), 6,000 applications submitted after the deadline (see "Late applications", Section 1). Note that these were applications, not votes cast, so we multiply them again by .65, assuming a 65% turnout, to arrive at expected actual voters encountering these difficulties on election day. Avoidable provisional ballot rejections found in Cuyahoga County (see section 2) were multiplied by 3.6 (but not also by .65 because they are actual, not potential). These included avoidable "wrong precinct" designation and preventable voter provisional application error (1201 + 540) and various list purging or registration listing errors (944 + 825).

[13] According to the "Amended Official Results" at http://www.sos.state.oh.us/sos/results/index.html, where it is reported that there were 5,627,903 votes cast, of which 50.81% were for Bush, 48.71% for Kerry.

6. Some of the election reforms which would reduce the disenfranchising errors discussed in this report (P=problem; R=reform): Incomplete List supplied only for Illustration.

The following reforms are sketched rather than detailed, and do not include all good options. Rather, they are intended to illustrate that for each problem, there are workable solutions if there is the will at the appropriate level of agency or government. The Greater Cleveland Voter Coalition is developing a set of reforms which will be presented at a later time.

A. Registration errors

PROBLEM: New registration or change of address submitted to BOE but never entered.
REFORM: BOE provides some form of receipt on receiving an application from voter or registration group (see also next item), so that timely submission can be proven.

PROBLEM: Voter or BOE error in filling out or transcribing application.
REFORM. BOE checks all registrations on disqualified ("fatal pending") list against original written application to correct clerical errors (BOE already notifies voters with missing information or birth date to supply same, but this unfortunately is not sufficient).
REFORM. If BOE notification to voter of error or omission is returned, it should be re-sent as a forwardable letter.
REFORM: At a point in time sufficiently before the registration deadline, BOE supplies all fully registered voters with prominent notification that they are registered (e.g. repeat large-size flyer to all registered voters, website list of all registered voters, available on internet, public libraries, etc.), including address for checking **plus** intensive public outreach to everyone to check their registration status, correct faulty registrations or re-register if necessary before the deadline.
REFORM: Major overhaul of DIMS data base so that it warns of input errors as they occur[14]

PROBLEM. Applications missing important information (e.g. signature, birthdate, Social Security or Driver's License number) in submissions by registration organizations or individuals.
REFORM. The Board should check periodically and randomly for the number of such omissions, and warn the offending registration organization that unless the problem is immediately corrected (to a certain percent of error), further applications will not be accepted.
REFORM. More graphic and literacy-sensitive flyers, explaining and warning against potential voter errors and omissions, should accompany all blank registration forms distributed publicly.

PROBLEM: Applications handed in huge batches or late by registration or other organizations.
REFORM: BOE requires that all applications be submitted within 5 working days of signature date, with penalty of losing future right of registration for organizations that fail

[14] http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm

to do so. All organizations that routinely submit applications (including BMV) should receive special administrative reminders of the deadline for receipt.

B. Provisional ballot problems (other than Registration problems as above)

PROBLEM: BOE inadvertently purges voters from list.
REFORM: BOE keeps list of registered voters as of each month, and routinely checks that those that are dropped from the list in subsequent months are done so for legitimate reasons.

PROBLEM: Provisional Ballots rejected because voter is in wrong precinct.
REFORM: At the very least, accept ballots cast in the correct polling place (even if wrong precinct) as prima facie evidence of poll worker mistake;
REFORM: Change state interpretation of HAVA so that voter can cast provisional ballot anywhere in the correct county (with loss of vote only on precinct-specific offices or issues).

PROBLEM: Provisional Ballot rejected as "not registered" because original voter application was disqualified
REFORM: Check all such individuals against a copy or scan of the original voter application, to be sure the voter was not disqualified because of clerical error or omission in the original entry on to the data base

PROBLEM: Provisional Ballot rejected because of voter omission (on the provisional application form) of signature, date of birth, or other required identifying information.
REFORM: Accompany provisional application form with graphic, low-literacy sensitive flyer explaining most common errors.
REFORM: Make poll workers responsible for voter omissions (e.g. discharge worker if over a certain number of provisional ballots OK'd by this worker contains omissions)

C. Disproportionate risk of disenfranchisement in certain subpopulations

REFORM: Reforms as above, plus proportionately more intensive public outreach directed at those subpopulations with higher percentage of those who move (Table 2) – e.g. at youth, minorities and the poor

D. Election Day Registration would reduce disenfranchisement due to most errors reported here:

REFORM: Election Day Registration, as practiced successfully in 6 states, would eliminate most of the errors discussed in this report much more effectively than many of the reforms suggested above. Furthermore, according to national studies, election day registration also significantly increases voter turnout. Any added administrative costs of election day registration should be balanced against the costs of correcting the errors reported here, as well as the reduction in avoidable disenfranchisement.

The CHAIRMAN. I have a question. I will ask one and then I will defer to the gentlelady. Provisional ballots. Not to beat a dead horse, but provisional ballots were the most important mechanism to stop disenfranchisement. Now I think what I am hearing today is that the Help America Vote Act, for the most part, by instituting this policy, did its job to make provisional ballots national.

I know that a newspaper called me from Texas and said, "Aren't you worried you are going to hold up an election and it will take a few days to decide?" You know what? I am going to take a few days to decide, and people want to know that their votes count, especially in a close election. I don't think it has to be decided by that evening at midnight that you have to have your winner. It is more important to take as long as you need to make sure that the winner is the proper winner, and it is done as fairly as possible.

The goals of HAVA remain the same in Ohio as they are across the nation. It is the chief objective of HAVA to have provisional ballots work. What you are saying is that either there needs to be some fine tuning here within the state or do we need to have fine tuning federally within the state of Ohio and the other states? Both Mr. Robbins and Mr. Foley raised this issue.

Mr. FOLEY. Mr. Chairman, yes. Thank you. I think we certainly need state legislation. There could be some fine tuning at the federal level for the following reason. HAVA uses the term eligibility under state law. In other words, states must count a provisional ballot towards the certified result if the voter is eligible under state law. That is subsection A.4 of section 302.

It does not use the term registered. That same section 302 uses the word registered elsewhere so what we were seeing in Ohio in terms of the 6,000 lawyers who were coming to the state on both sides in preparation for possible litigation was to attempt to develop an argument, and there are arguments on both sides, as to whether eligible was different from registered or the same as registered as a matter of federal law.

The most significant issue that we were lucky enough to avoid but we might have had was tens of thousands of ballots, provisional ballots, were in the category of individuals whose registration forms, these were new registrants who had submitted incomplete registration forms for one reason or another so they were not on the registration rolls.

They had not been given an opportunity to correct or supplement the missing information but they were qualified voters under state law in the sense that they were citizens. They were not felons. They were over the age of 18. On one theory they were eligible to vote but they weren't registered so there are arguments on both sides of this issue and, frankly, plausible arguments.

I could make a judgement as to which was the better argument but we were going to see litigation on both sides of that. That issue is out there for the next election as to how to interpret federal law. It is analogous to the question of meaning of jurisdiction. We did get the 6th Circuit decision on jurisdiction.

We don't yet have case law on the meaning of eligibility because that just didn't come up. It didn't need to be tested. If there was a desire on the part of Congress to avoid possible litigation over

HAVA, I would point to this language as a way to clarify the meaning of HAVA to avoid a potential litigation on that.

The other point, if I might quickly say, I agree very much with the Chair that we can take more than just election night. It seems to me that the concept of certification is going to occur of necessity at least two or three weeks after an election. We have to wait for the overseas ballots to come in. What we saw in Ohio with over 150,000 provisional ballots statewide was a process that took more than just a couple of weeks.

We didn't have the counties reporting to the states until Monday, December 3rd. We didn't have statewide certification until—I am sorry, Friday, December 3rd. We had statewide certification Monday, December 6th. Safe harbor date this year was Tuesday, December 7th. There would have been no time whatsoever to have a recount or a contest had one been a necessity in terms of a close election.

It took all of that five-week period simply to evaluate provisional ballot eligibility. If we, again, use the analogy of the Washington Governor's race, if the Washington Governor's race had been shut down on safe harbor date, December 7th, the Republican candidate Rossi would have been inaugurated because on that date he was still ahead after the first machine recount. Washington is still working through their process. They didn't finish their recount until New Year's Eve so we got a different inauguration as a result of that and——

The CHAIRMAN. I think we have been through three recounts.

Mr. FOLEY. So it is true that we can take more than a day or two but in a presidential race we have only got a total of five weeks and then Bush v. Gore tells us that the process has to stop because of the safe harbor.

Mr. ROBBINS. I would like to respond to your question about federal versus state handling of provisional ballots. I do have detailed in my written testimony several suggestions that I do believe are more general. That is, they don't give specifics, which states could supply, but they would give general and uniform requirements across states for at least federal elections, such as that voters should really know whether or not they are registered properly.

There should be websites and public instructors, for instance, at public libraries or elsewhere that would get out to voters long before the registration deadline whether or not they are effectively registered. If they are not, voters can take corrective action. That should be a general requirement and there should be a certain time limit so that this gets done, perhaps with assistance from HAVA for this. Secondly, for instance——

The CHAIRMAN. I am sorry. Assistance in?

Mr. ROBBINS. I think that there could be, for instance, advertisements, television ads, radio ads that would be generic, that could be adapted to states, that the federal funds could help supply and then at the local level would help get out the word. The EAC, for instance, could help states or counties devise websites to check registration or precinct. That way, each county would not have to reinvent the wheel to have an excellent website.

The voter could go to the websites or to public libraries where noncomputer literate type people could go. The librarians could be

trained to help people answer, "Am I registered correctly?" We did this in Cuyahoga County. We also put out radio ads when we found out that people's registrations sometimes were accidentally not even entered after they were handed into the Board of Elections.

Our organization kept careful records of our registrations. Some never got on the rolls through clerical error, or were entered incorrectly, we found. We have all the numbers and data on this for Cuyahoga County. I am not saying that Cuyahoga County was any worse than the rest of the counties in Ohio. I don't believe so.

I think those election officials in general were excellent, and did their job as well as they could. There should be federal assistance and a requirement that there be this kind of notification and voter education. There should be uniform standards. For instance, we found that voters were getting dropped, as I mentioned before.

We checked through computer tracing and found that some people who were on the rolls as of August or in October or November, ended up with rejected provisional ballots because of being not registered. They had been on the rolls.

The CHAIRMAN. They were rejected provisional ballots?

Mr. ROBBINS. Yes. That is how we located them. We did a computer search starting with ballots that had been rejected for the reason of not being registered. We started with those names in Cuyahoga County. We just used the Cuyahoga County database. Then we asked, had those people, the same people, been on the roll proviously. In one case we had a registration list from August. In another case a registration list from late October.

We asked had they been on the regular registration list that was given to us by the County Board of Elections. The answer was that we discovered over 900 people just within Cuyahoga County who fit this category. That is, they had been on the rolls in August or October and for no reason we could understand were rejected—they weren't dead if they showed up on election day and they weren't incarcerated.

The CHAIRMAN. Just for my information, they were given a provisional ballot but it wasn't counted.

Mr. ROBBINS. It was rejected.

The CHAIRMAN. They were given the actual——

Mr. ROBBINS. They had voted provisionally thinking that they were registered because they understood that they were registered. They had no reason to believe they were not. Over 900 people that we found had been on the rolls at these earlier times. I can go into more detail on this if you would like but the bottom line is that we submitted all these names and addresses to the County Board of Elections at Cuyahoga County.

We never got an answer. We wanted them to check our information. We submitted them in November, early November. We have not received an answer from them. We presented this to the Board of Elections and they did nothing with it.

The CHAIRMAN. Due to the time, I would like to follow up with you.

Mr. ROBBINS. By all means, sir.

The CHAIRMAN. Gentlelady.

Ms. TUBBS-JONES. Mr. Chairman, I just want to again echo my colleagues' thanks for us having this hearing today. I have to say

for the record, Mr. Robbins and I worked very, very hard before the election trying to get as many people legitimately registered, legitimately at the right voting place. We did radio and we did all kinds of things working with Mr. Michael Vu at the Board of Elections trying to cure. There are accusations flying that we weren't trying to get people to do legitimate things. We were really working very hard and I just want to compliment Mr. Robbins for all the work that he did, he and his organization, The Greater Cleveland Voter Registration Coalition, as well as Mr. Vu, the Director of the Board of Elections.

Our claims, our efforts have been nothing but above ground in an effort to assure that every vote counted and I just want to thank him for his testimony. I am not going to ask anymore questions because Mr. Robbins and I have been in so many meetings together that I have no questions for him. I would offer him or Mr. Foley or Mr. Hearme—I am sorry. I don't have my glasses on.

Mr. HEARNE. Hearne.

Ms. TUBBS-JONES. Hearne. I am sorry, Mr. Hearne—an opportunity to offer anything. In view of the time constraints I would hope that it would be limited. Then I am going to give it back to you, Mr. Chairman.

Mr. ROBBINS. Can I just say one 30-second thing as a follow-up to what you have asked and then I am going to yield to everybody else. I am a scientist and from another field but, nonetheless, that is why I ask these questions. That is why I ended up doing these studies this year because that is how I think.

What struck me today and all through the last few months is that there have been a ton of anecdotes and almost no research. I think there is a desperate need. This research we did was done on a shoestring with volunteers and minimum resources. This is not NIH research yet and look what we found. Nobody else seems to have been doing this kind of work. We desperately need research on all of these many issues that have been raised today.

For instance, what are the real causes and effects of long lines, how many voters were actually disenfranchised, how long did they take to vote. That would be one set of questions. Does showing an ID increase the reliability of a vote or does it disenfranchise people? Those are answerable questions. How many people truly have been convicted of election fraud? What do we really know about this in terms of cases and convictions? Not anecdotes because, of course, there will always be outrageous things. My appeal is that you fund research on these topics so you are not making legislation on the basis of allegations and anecdotes.

The CHAIRMAN. Which comes to my question. In politics that is called, at least in Washington, there is indeed a need to research our legislation.

Mr. Hearne, you reference about the calls about the date and place of the election. Do you reference it in your testimony?

Mr. Hearne. Yes, I do. Let me first address your question, Mr. Chairman. The report that we submitted is exactly what Mr. Robbins suggested. It is facts. It is not anecdotes. It is absolute factual document. It has first-hand news accounts. It has different court cases. It has different affidavits of different people. It is all first-hand accounts of what happened during this presidential election

in Ohio in 2004 dealing with the role of a third-party organization trying to influence the result. In answer to your question, Mr. Chairman——

Ms. TUBBS-JONES. Can I just ask one quick question? Those are parties on both the Republican and Democratic side?

Mr. HEARNE. This report concerns all the litigation. It comes from, as I mentioned, 12 different lawyers participated in this. Multiple different law firms were involved in an overview of the conduct of the litigation.

Mr. Chairman, to your question, the Ranking Minority Member this afternoon asked, and there was some discussion, back and forth with Secretary Blackwell about phone calls in which somebody was directed to the wrong polling place and people were told that the election would be on the 3rd of November instead of the 2nd. Obviously an official effort to misinform voters with the intention that they not vote is a great concern. That actually is a factual account.

If some people didn't know about that we have provided in this report the court documents documenting that situation. What actually happened is that there was an organization in Marion County, it was actually the Kerry campaign, that was involved in making these telephone calls. This involved litigation in Common Pleas Court in Marion County. Phone calls were made by the compaign and others. A local Democrat Party official in Marion County said that they shouldn't be making those calls. We have an affidavit from an official of that party attesting to this process. The judge, in fact, when the case was first decided was one who received the call. The fact that this was going on isn't just an anecdote.

One of these deceptive phone calls was received by the judge who was first set to hear the case. He assigned it to another judge because he received the call. Then that second judge entered an injunction against the Kerry Campaign and others to prevent that kind of activity. These are the kind of things that are documented. That is something that did, in fact, happen. That is not just an urban legend here in Ohio.

Ms. TUBBS-JONES. And you have that document from someone verifying that the Kerry Campaign paid for those calls?

Mr. HEARNE. Congresswoman, it is an affidavit of the Marion County Chairman of the Democrat Party that is part of that court litigation as well as the people who received the calls. All those documents are in the report as exhibits.

The CHAIRMAN. I don't have any additional questions.

Ms. TUBBS-JONES. Mr. Foley, you look like you want to say something so go right ahead.

Mr. FOLEY. If that is okay. As an academic I would have to echo the notion that more research would be good. Specifically on the notion of what I referred to as the usage rates on provisional ballots. Of all the ballots in a particular state, absentee, regular ballots, etc., what percentage of the total vote ballots were provisionals?

That is the information that has not been studied very well. Electionline.org did a great report that just came out a few days ago but they focused on some other matters. It seems to me that one thing that Congress may want to encourage the EAC to look

at is why did Ohio have almost 3 percent of its ballots be provisional whereas other states like New Mexico and so forth were well under 1 percent. Pennsylvania is higher. In other words, the rate at which states needed to rely on provisional ballots varied widely across the country. It seems to me that is something worthy of more research.

Ms. TUBBS-JONES. Some real quick ones. What is your position, Mr. Hearne, on early voting?

Mr. HEARNE. I think that is——

Ms. TUBBS-JONES. Maybe I better not give you the opportunity. Do you support early voting?

Mr. HEARNE. I support whatever makes voting easier and also——

Ms. TUBBS-JONES. No-excuse registration, absentee ballots?

Mr. HEARNE. In the words of Kit Bond, it should be easy to vote and tough to cheat. We need to balance those two factors. I think that you can craft a way to respond to it.

Ms. TUBBS-JONES. Mr. Foley, what about you?

Mr. FOLEY. On early voting, yes. I would support early voting.

Ms. TUBBS-JONES. I would——

Mr. FOLEY. Not necessarily two weeks but some form of it.

Ms. TUBBS-JONES. It was stated earlier that the opportunity that people should not—they did not support early voting because voters were not educated enough until the last 30 days of an election to be able to make a decision. You are an academic. What is your position on that?

Mr. FOLEY. My thought is to start Saturday morning and run through Tuesday night. Again, I would need some more empirical data to support that intuition but my thought is that if you had four days, that would be a good balance between not doing it too early but giving enough people ample time to pick their——

Ms. TUBBS-JONES. The question was do you think that voters are not educated enough to vote earlier?

Mr. FOLEY. No, I do not. I think they are informed.

Ms. TUBBS-JONES. Mr. Robbins, I know your answer.

Mr. ROBBINS. Yes, I am for early voting. I do want to point out that absentee voters who vote from home or a nursing home, can't get to either an optical scanner that gives them feedback or a DRE that gives them feedback. Those voters are at a disadvantage. In Cuyahoga County in 2000 absentee voters had a 4 percent over/under vote rate versus the overall county rate of about 2 percent. Absentee voters who vote from home don't have the advantage of a machine with feedback of any kind, and are at a disadvantage and need extra education. That is a recommendation.

The CHAIRMAN. Thank you.

Mr. FOLEY. Two very quick points. One is as the centralized statewide registration database goes forward and it is implemented in '06, I think both Congress and EAC should look at how those lists get verified. My understanding is that states are in different places on this and some are in better place than others but however well they are doing, there has to be a process by which voters can say, "Hey, a mistake was made. I should be on that list. I am not on that list." I don't see that yet in legislation either at the federal or state level. Secondly——

The CHAIRMAN. You don't see that in legislation. You have verification.

Mr. FOLEY. I understand the HAVA mandate is to create the database. I have not seen in HAVA, and correct me if I am wrong, a requirement that states have a process for giving voters the opportunity to correct mistakes in that database. I don't also see the states themselves putting those processes into place as they assemble their database.

What I have in mind, and I would be happy to do this in any form that would be helpful to the Committee, is a procedure for notifying local boards saying, "I think I am a registered voter. I submitted a form but I don't see my name on your list." If that can be done again in September and October, I think that would be helpful but I don't see those procedures in state law or in federal law.

The CHAIRMAN. We researched some of this with Democrat and Republican staff. We went over and talked to seasoned voters and found out, some interesting things. For example, the state of Virginia sends you an e-mail, if you have e-mail which contains a ballot.

Then you print it out in your office or the American Embassy. You fill it out and then mail it back. We can look towards the scientific side, the research side, the statistical side. Even though today we can't go over every aspect, I think it is well worth it to look at the database and how it is going to be implemented, which I believe addresses your point. We can put it in place under the law but how is it actually carried out? The centralized database is probably the more statistical part of the bill.

Mr. FOLEY. Correct. Related to that, as I understand it, the provisional voting idea was an important idea in response to inaccurate purging. What we saw, unfortunately, in Ohio was uncertainty as to what list local officials should go back to to make sure people weren't purged. Some counties were simply going to their most current list and saying, "If you are not on that list, your provisional ballot doesn't count."

In other words, there was lack of clarity as to what mechanism needed to take place when you took in that provisional ballot. How do you check to see whether a purge had occurred or not? Again, as we implement the databases, I think technologically one thing that can happen is there could be a requirement that the database preserve all historical records so that if you were ever on the list, that is maintained so even if subsequently someone is removed from the roles, there is an historical electronic archive of previous iterations of the statewide database. That would be a good measure.

The CHAIRMAN. We seek the advice of the community. Tomorrow morning, if you use your ATM, you can bet that your bank knows your transaction amount to the penny. Not two cents or three. They know to the penny, and eventually you can do it with the voters to make sure that they know it is fair and accurate.

Ms. TUBBS-JONES. All you have to do is send this one little e-mail to Iraq and Afghanistan to guarantee folks.

The CHAIRMAN. One point on that. I can remember people saying, "You've got to be kidding. $3.9 billion is too much money." For

example, we spent $5 billion on overseas democracy. I have no quibble with that and my colleague doesn't either. It helps build democracy.

If we can spend $5 billion over there, we can spend $3.9 billion here. I don't think it is too much. People down the road will feel good about this, and have the confidence that their vote was fair and counted. As Kit Bond said, easier to vote and harder to cheat.

With that I want to thank our——

Ms. TUBBS-JONES. Before we close, Mr. Chairman, again, on behalf of both the Republican and Democratic side, we want to thank you for hosting this hearing and giving us an opportunity to begin query and having fun with us but being serious as well so thank you, Mr. Chairman. We really appreciate it.

The CHAIRMAN. I want to thank our Ranking Member, but also my colleague from Cuyahoga County, Stephanie Tubbs Jones, who has also participated in D.C. with us on these issues. I think it is a good healthy thing that has happened here today. I appreciate all of your time. I ask for unanimous consent that members and witnesses have seven legislative days to submit material to the record, for those statements and materials to be entered in the appropriate place in the record. Without objection, the material will be entered.

I asked for unanimous consent that the staff be authorized to make technical and confirming changes on all matters considered by the Committee for this hearing without objection. So ordered. Having completed our business for today, I want to thank you again, the last panel, for being so patient. This hearing is adjourned. Thank you.

[Whereupon, at 6:35 p.m. the committee adjourned.]

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