

Exhibits

**IN SUPPORT OF INTERVENOR-PLAINTIFFS OHIO ELECTION JUSTICE
CAMPAIGN AND NAMED PLAINTIFFS' MOTION PURSUANT TO 18 U.S.C.
§§ 401-402 AND 18 U.S.C. §§ 3331-3334 FOR CRIMINAL CONTEMPT AND
SPECIAL GRAND JURY PROCEEDINGS**

Submitted by Intervenor-Plaintiffs OEJC, *et al.* in KING LINCOLN, ET AL., Civil Action No. C2 06 745 (S.D. Ohio, Marbley, J.)

ARNHECK LAW OFFICE
341 S. 3rd St., Suite 10
Columbus, OH 43215
614-224-8777
Fax: 614-224-8052

August 21, 2006

ATTORNEY GENERAL'S OFFICE

Richard N. Coglianese, Esq.
Assistant Ohio Attorney General
30 E. Broad St., 17th Floor
Columbus, OH 43215

AUG 21 2006
RECEIVED
CONSTITUTIONAL OFFICES

By Fax and Hand Delivery

RE: Preservation of 2004 Election Records and King Lincoln v. Blackwell, Case No. C2 06 745

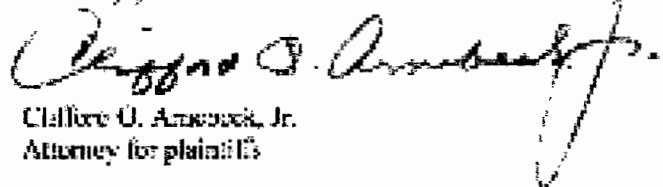
Dear Richard:

This is to confirm my call of earlier this afternoon that we believe it is necessary for the Secretary of State to issue a formal directive to the Boards of Elections to preserve the records of the 2004 election. Please let me know at your earliest convenience if you agree that this is the appropriate and necessary means for the Secretary to best assure that this happens. We would appreciate hearing from you by tomorrow morning at 10 AM, so that we may seek the assistance of the court tomorrow in this matter, if we do not have your agreement.

Personnel at some boards had indicated their intention to begin destroying ballots on September 1, 2006

Enclosed is a copy of my document held letter of last week and a copy of the complaint we filed earlier today.

Sincerely yours,


Clifford O. Arnheek, Jr.
Attorney for plaintiffs

Ex. B

ARNEBECK LAW OFFICE
341 S. 3RD ST., SUITE 10
COLUMBUS, OH 43215
614-224-8771
FAX: 614-224-8082
Arnebeck@aol.com

RECEIVED
SECRETARY OF STATE
ELECTIONS

2005 AUG 23 PM 1:08

August 23, 2006

VIA HAND AND FACSIMILE DELIVERY

The Honorable J. Kenneth Blackwell
Secretary of State
Borden Building
180 East Broad Street
Columbus, Ohio 43215

Re: **Document Hold Notice – 2004 Election Ballots**

Dear Mr. Blackwell:

We represent several individuals and public interest groups who intend to file an action in Federal District Court in the Southern District of Ohio alleging that you, in your official capacity as Ohio Secretary of State, violated the United States Constitution and federal and state law by, *inter alia*, inequitably distributing voting resources, suppressing votes, and spoiling ballots. That action will seek declaratory and injunctive relief.

In connection with this action we intend to file, it is vital that you, in your capacity as Ohio Secretary of State and the state official in charge of elections in Ohio, preserve all ballots, however recorded or maintained, from the November 2, 2004 election. Most importantly, we have received extremely disconcerting reports that unused ballots, which under Ohio law are required to be preserved along with used ballots, are being destroyed. These unused ballots relate directly to plaintiffs' allegations that punch card ballots were "pre-punched," thereby creating an overvote condition if the voter also voted for Senator John Kerry. Therefore, it is imperative that all evidence, as itemized below in part, be preserved pending the filing of this action. Specifically, "ballots" shall include, but not be limited to, (1) unused ballots, and (2) ballots cast in any manner by any person in the November 2, 2004 election, for any office or candidate, whether cast by a machine, absentee ballot, or via any other manner.

Electronic records of ballots must be maintained, as well. In addition, you must preserve all documents related to the issues in this litigation, including but not limited to, all documents (whether maintained in hardcopy or electronic form) relating to:

- How voting machines and voting resources were allocated to voting districts;
- The decisions made by Ohio concerning the November 2, 2004 election;
- All claims or allegations of voter fraud, vote tampering, or restrictions upon or violations of Ohio citizens' right to vote (regardless of whether the allegations were made by Ohio, citizens of Ohio, or third parties);
- The results of the November 2, 2004 election and how those results were tabulated;
- Ohio's recount of the November 2, 2004 results; and
- The programming of Ohio's voting machines that electronically recorded votes.

These documents must be preserved by you as well as by the 88 voting-districts in Ohio, which are being copied on this letter.

Do not discard, destroy, or alter in any way any of the documents described above. Failure to preserve these materials will severely prejudice plaintiffs in their lawsuit, and could result in the imposition of harsh penalties and sanctions on you.

Please confirm to us, within three business days of your receipt of this letter, whether you intend to retain these documents, so that in the event you do not intend to preserve these documents, we may seek immediate relief from the Court. **In any event, cease and desist from the destruction of any evidence until either we have reached an agreement on this issue or the Court has had an opportunity to rule on this issue.**

Sincerely,



Clifford O. Arnebeck Jr.

cc: Ohio County Boards of Election
(via facsimile and electronic mail)

McCoy, Lynn

From: Ockerman, Aaron [aockerman@statesreeleohio.com]
Sent: Friday, September 01, 2006 9:25 AM
To: boardofelections@co.fairfield.oh.us; Betty McGary; Beverly Marker; Beverly Moore; Bryan Williams; Cenny White; Ida Kay Keller; Jan Clair; Jan Commers (home); Jane Saddler; Janet Brennan; Janet Commers; joffmatthews@prodigy.net; jwilkinson@richlandcountyoh.us; JoAnn Frar; John Myers; Keith Cunningham (Keith Cunningham); Linda Hlsbak; McCoy, Lynn; Lois Entow; Marilyn Jacobek; Mike Vu; Pam Swafford; Patty Johns; Penny Brooks; Rocky Suleman; Rose Wallers; Sharon Fisher; Shirley Davis; Steve Harsmann; Gwen Cillingham; Jody O'Brien; steininger@ashlandcounty.org; Beth Ann Snyder; Bob Wasko; snookchuck@adelphia.net; Craig Boser; chairman@starkgop.org; Dennis Harter; Fred Strawser; Jane Frymyer; Jim Nathanson; Karen Simmonds; Kevin Cushing; Matt Daneschneider; Patrick Hennessy; Susan Gwinn; Susan Hughes; Vicki Reed
Subject: FW: Attached is the Arnebeck case filed today in the Southern District
Attachments: Document.pdf

FYI

As you are aware, I met yesterday with the House and Senate legal counsels as well as representatives from the AG's office. So far the only HB 3 lawsuits filed are the naturalization case and the voter registration case (there is a hearing on that one today). Everyone expects a challenge to the voter ID statute at some point. I'll keep you posted as I get more info from this group. Please let me know if you have any questions.

Aaron

Ex. D

ARNEBECK LAW OFFICE

341 S. 3RD ST., SUITE 110

COLUMBUS, OH 43215

614-224-6771

FAX: 614-224-6082

Arnebeck@aol.com

RECEIVED
COLUMBUS STAFF
ELECTIONS

26 AUG 20 P 1:09

August 23, 2006

VIA HAND AND FACSIMILE DELIVERY

The Honorable J. Kenneth Blackwell
Secretary of State
Borden Building
180 East Broad Street
Columbus, Ohio 43215

Re: Document Hold Notice - 2004 Election Ballots

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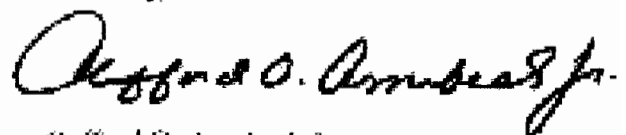
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Sincerely,



Clifford G. Amick Jr.

cc: Ohio County Boards of Election
(via facsimile and electronic mail)

ARNHEIM LAW OFFICE
341 S. 3rd St., Suite 10
Columbus, OH 43215
614-224-8777
Fax: 614-224-8052

August 31, 2006

ATTORNEY GENERAL'S OFFICE

Richard N. Coglianesse, Esq.
Assistant Ohio Attorney General
30 E. Broad St., 17th Floor
Columbus, OH 43215

AUG 31 2006
RECEIVED
CONSTITUTIONAL OFFICE

By Fax and Hand Delivery

RE: Preservation of 2004 Election Records and King Lincoln v. Blackwell, Case No. C2 06 745

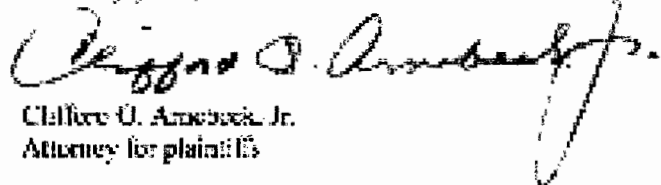
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Personnel at some boards had indicated their intention to begin destroying ballots on September 3, 2006.

Enclosed is a copy of my document hold letter of last week and a copy of the complaint we filed earlier today.

Sincerely yours,


Clifford O. Arnheim, Jr.
Attorney for plaintiffs

McCoy, Lynn

From: Ockerman, Aaron [aockerman@statestreetohio.com]
Sent: Monday, September 12, 2005 10:11 AM
To: board@elections@co.fairfield.oh.us; Betty McGary; Beverly Marker; Bill Thompson; Bryan Williams; Chris Heiser; Dan Bare; Ida Kay Keller; Jan Clair; Jan Commers (home); Jane Saddler; Janet Brenneman; Janet Commers; jaffmatthews@prodigy.net; jallinson@mansfieldohio.net; JoAnn Frier; John Myers; Linda Hrabak; Lynn McCoy; Lois Erlow; Marilyn Jacobek; Mike Hackell; mikes@dauidengler.com; maelorlino@manassingcounty.org; Mike Vu; Pam Swafford; Pally Johns; Penny Brooks; Rocky Sullivan; Rose Walters; Sharon Fisher; Shirley Davis; Steve Harsmann; Tim Steinemart; Gwan Dillingham; Jody O'Brien; Kathy Jones (E-mail); Keith Cunningham; Becky Kirkbride; Beth Ann Snyder; Bob Wasko; snockchuck@adelphia.net; Craig Bonar; paintvoc@comh.net; Donna Harter; Fred Strawear; Jana Frymyer; Jim Nathansen; Karen Simmons; Karin Gushing; Matt Camachroder; Patrick Hennessey; Shannon Lehniger; Susan Gwinn; Susan Hughes; Vicki Reed
Subject: FW: News release and report
Attachments: Election Forum Rpt 9-05.doc; Election forum rpt release 9-05.doc

Have fun, y'all!

From: Peg and Al Rosenfield [mailto:alanpeg@alum.mit.edu]
Sent: Saturday, September 17, 2005 1:06 PM
To: Woods, Bill; Turner, Catherine; Travis, Jocelyn; Tolls, Lea; Tokaji, Dan; Talley, Pierrette; SMYTH, JULIA CARA; Ockerman, Aaron; Norman; Noragon, Jack; Mendenhall, Mike; McTigue, Don; Lortz, Karla; Lestini, Greg
Subject: Fw: News release and report

Here at last is the report on the HHS forums, plus the news release. Sorry it took so long.

Peg Rosenfield

McCoy, Lynn

From: Cackerman Aaron [aackerman@statesinecchio.com]
Sent: Monday, February 28, 2006 5:05 PM
To: board@elections@cs.kiwi.pc.ch.us; Beverly Markert; Bill Thompson; Bryan Williams; Chris Heizer; Dan Bare; Ida Kay Keller; Jan Clair; Jan Commers (home); Jane Saddler; Janet Cornman; jeffmatthews@prodigy.net; jwilkinson@mansfieldcho.net; JoAnn Fier; John Myers; Linda Hiebak; Lynn McCoy; Lois Enlow; Marilyn Jacobcik; Mike Hackett; mikes@dev.dangler.com; mediortino@mahoningcounty.org; Mike Vu; Pam Swafford; Patsann Zinn; Pally Johns; Penny Brooks; Robert Moskatik; Rose Walters; Sharon Fisher; Shirley Davis; Steve Harshman; Tim Steineman; Gwen Dillingham; Jody O'Brien; Kathy Jones (E-mail); Keith Cunningham; Lynne King (Lynne King); Becky Kirkbride; Bob Wasko; snookchuck@adelphia.net; painlvoc@comh.net; Dale Graham; David Staley; Gary Cobary; Karer Simmons; Mary Fluk; Matt Damschroder; Patrick Hennessey; Shannon Leininger; Susan Gwin; Susan Hughes; Vicki Reed
Subject: FW: Election Accountability Act
Attachments: Ohio Election Accountability Act Cover.doc; Letter of Welcome to packet.doc; Election Accountability Act.doc; Apporliament Board Constitutional Resolution.doc

These items were given to us as a heads up on upcoming legislation.

Aaron

McCoy, Lynn

From: Cackerman, Aaron [aackerman@statestreetohio.com]
Sent: Wednesday, October 11, 2006 12:31 PM
To: Betty McGary; Beverly Marker; Beverly Moore; Bryan Williams; Denny White; Ida Kay Kellar; Jan Clair; Jan Commers (home); Jane Saddler; Janet Brenneman; Janet Commers; jeffmatthews@prodigy.net; wilkinson@richlandcountyoh.us; JoAnn Friar; John Myers; Keith Cunningham (Keith Cunningham); Linda Hiebak; McCoy, Lynn; Lois Enlow; Marilyn Jacobcik; Mike Vu; Pam Swafford; Patty Johns; Penny Brooks; Rocky Suleman; Rose Walters; Sharon Fisher; Shirley Davis; Steve Haremann; Gwen Dillingham; Jody O'Brien; steininger@ashlandcounty.org; Beth Ann Snyder; Bob Wasko; snodochuck@adelphia.net; Craig Sorer; chairman@starkgov.org; Donna Harler; Fred Strawser; Jane Frymyer; Jim Nathanson; Karen Simmons; Kevin Gushing; Matt Demachroder; Patrick Hennessey; Susan Swinn; Susan Hughes; Vicki Reed

Subject: filing deadlines

Attachments: petition deadlines.doc

Attached is a cover letter that will accompany the Dispatch editorial in favor of moving the filing deadlines for statewide petitions. Let me know if you have questions or concerns.

Aaron

1/30/2008

October 12, 2006

The Honorable XXXX
Address
City, State, Zip

Dear XXXX:

By now, I am sure you have heard from your local boards of elections regarding the difficulties they have had in finalizing their ballots for the fall election. This stems in large part from the litigation and uncertainty surrounding the five potential statewide ballot issues.

A primary concern of the Ohio Association of Election Officials (OAE) is the 75 day filing deadline for petitions for statewide ballot issues which is written in the Ohio Constitution. This year, that deadline and subsequent lawsuits over the validity of the petitions caused great uncertainty for board of elections as they tried to finalize their ballots. This in turn caused many county boards to delay the mailing of their absentee ballots while they waited for the litigation to end.

Attached is an editorial from the Columbus Dispatch favoring moving those filing deadlines to 150 days. This change would ensure adequate time for interested parties to resolve conflicts and questions about petitions and at the same time allow election boards to finalize their ballots in time for absentee voting. In the 127th General Assembly, the OAE will be pushing for a resolution to change the filing deadlines in order to avoid the problems and confusion that this antiquated requirement has caused. We hope you will join your local boards of elections in supporting this measure.

If you have any questions about this proposal, please do not hesitate to contact me at (614) 221-3600.

Sincerely,

Aaron Dickerman
Legislative Agent
Ohio Association of Election Officials

McCoy, Lynn

From: Ockerman, Aaron [aockerman@statestreetohio.com]

Sent: Wednesday, November 21, 2007 9:03 AM

To: Betty Smith; Beverly Marker; Beverly Moore; Bryan Williams; Carolyn Carmichael; snookchuck@roadrunner.com; Debbie Quivey; Denny White; Gary Smith; Ida Kay Keller; Jan Clair; Jan Commers; Jan Commers; Jane Platten; Janet Brennenman; Janie DePinto; Jaqueline Neuhart; Jay Morrow; Jeannette Mullane; jwilkinson@richlandcountyoh.us; Jim Milliken; Jo Friar; John Williams; Lenore Pikus; McCoy, Lynn; Lois Enlow; Marilyn Jacobcik; Pam Swafford; Pat McDonald; Patty Johns; Rokey Suleman; rokey@tcvote.com; Sarah Kneuss; Scott Dalshe; Sharon Fisher; Steve Harsmann; Jody O'Brien; mmdamsch@franklincountyohio.gov; Penny Brooks; sleininger@ashlandcounty.org; Arch Kimbrow; Beth Ann Snyder; Bob Rousseau; Craig Bonar; chairman@starkgop.org; Donna Harter; Fred Strawser; George Bringman; Ginger Price; Jan Clair; Jane Frymyer; jeffmatthews@prodigy.net; Jim Nathanson; Karla Herron; Keith Cunningham (Keith Cunningham); Kerrin Cushing; Susan Hughes; Tom Tagliamonte

Subject: Happy Thanksgiving!

ATTORNEY SEEKS STATE INVESTIGATION OF ALLEGED VOTER FRAUD DURING 2004 PRESIDENTIAL ELECTION.

A lawyer whose pending federal court suit led to the impoundment of Ohio ballots cast in the 2004 presidential election asked Attorney General Marc Dann on Tuesday to open a criminal investigation into allegations of fraud.

Attorney Clifford Arnebeck said he submitted a variety of material to Mr. Dann's office alleging fraudulent activity, exit poll discrepancies, and voter suppression intended to benefit the re-election of President George Bush.

"We have a variety of confidential sources, people who came forward, described things that they did not want to come out publicly with, but evidence and testimony that they're prepared to offer upon subpoena," Mr. Arnebeck said.

"What we're saying is that there's probable cause to believe that a crime has been committed and it needs to be investigated. And with the powers of the public authorities we think that they can determine exactly how this was done, who did it, and hold them accountable," he said at a news conference.

The attorney general's office indicated the request would be taken under consideration.

"We will review the allegations and determine whether we will open an investigation," said Ted Hart, a spokesman for Mr. Dann. "We take citizen complaints seriously and will take Mr. Arnebeck's just as seriously as we take any other complaint."

Mr. Arnebeck filed a lawsuit Aug. 31, 2006 in U.S. District Court against former Secretary of State Ken Blackwell. The complaint sought preservation of the ballots cast for president, and security procedures for future elections. (See Gongwer Ohio Report, August 31, 2006).

Attorney Robert Fittrakis, who joined Mr. Arnebeck at Tuesday's briefing, said the remaining issue in the underlying federal case would involve a civil rights claim. He questioned policies under which some counties periodically purge voter rolls of persons who have not cast ballots over a specific period, while others do not.

"Why would you allow the Republican rural counties to be no-purge counties and the urban counties, which essentially purged about 300,000 people ... that's the remaining claim, in part the civil rights claim," Mr. Fittrakis said.

"Are they again going to allow black and poor citizens in the urban centers to be purged? It's unacceptable in Ohio," he said.

Mr. Fittrakis said a single standard for purging voter registration records should apply statewide.

"The more play you allow the professional political operatives at the county level, Democrat and Republican ... in controlling these lists and purging these lists, the more you're going to get an election system that isn't fair to all the people and one that discriminates by political creed, by race, by class," he said.

U.S. District Judge Algenon Marbley told county election boards Sept. 2, 2006 to preserve the 2004 ballots, most of which now are in custody of Secretary of State Jennifer Brunner's office. However, an estimated 1.5 million were destroyed at the county level.

11/30/2008

McCoy, Lynn

From: Ockerman, Aaron [aockerman@statestreetohio.com]
Sent: Tuesday, December 11, 2007 1:07 PM
To: Betsy Smith; Beverly Marker; Beverly Moore; Bryan Williams; Carolyn Carmichael; snookchuck@broadrunner.com; Debbie Quivey; Denny White; Gary Smith; Ida Kay Keller; Jan Clair; Jan Commers; Jan Commers; Jane Platten; Janet Brennenman; Janis DePinto; Jacqueline Neuhart; Jay Morrow; Jeannette Mullane; [wilkinson@hollandcountyoh.us]; Jim Miliken; Jo Enar; John Williams; Lanore Pitkus; McCoy, Lynn; Lois Enlow; Marilyn Jacobcik; Pam Swafford; Pat McDonald; Patty Johns; Rakey St. Leiman; rakey@ecovote.com; Sarah Krauss; Scott Dasher; Sharon Fisher; Steve Harsmann; Jody O'Brien; mncamesch@franklincountyohio.gov; Penny Brooks; steninge@ashlandcounty.org; Arch Kintanow; Beth Ann Snyder; Bob Rousseau; Craig Bonar; chairman@starkgop.org; Donna Harler; Fred Strawser; George Bringman; Ginger Price; Jan Clair; Jane Frymyer; jeffmthews@prodigy.net; Jim Nathanson; Karla Herron; Keith Cunningham (Keith Cunningham); Kerin Cushing; Susan Hughes; Tom Tagliamonte
Co: Beatty, Laurel; don@mcguirelaw.us; csullivan@ccao.org; Nye, Gretchen; Alderson, Mitch
Subject: HJR 3 update
Importance: High
Attachments: HJR 3 one pager.doc; Sponsor Testimony.doc

HJR 3 received its first hearing in the House State Government and Elections Committee today. Reps. Jon Peterson and Dar Stewart presented sponsor testimony, which I have attached. Several committee members praised the efforts of the sponsors and indicated strong support for the measure. Much was made of the burden that this places on local boards, poll workers, and voters, not to mention the expense associated with inward issues appearing on the ballot. The sponsors did a great job of presenting the bill and answering questions.

I continue to meet with committee members here in Columbus, and after the first of the year, we will begin to fire up our grassroots network. I have also attached a one page document that I am handing out to members as I meet with them. I am meeting with the chairman of the committee tomorrow, so should have a better feel for how he wants to proceed with hearings after that meeting.

In the meantime, I'll keep you posted on the developments in Columbus.

Aaron

1/30/2008

McCoy, Llyn

From: Ockerman, Aaron [aockerman@statestreetohio.com]
Sent: Friday, January 18, 2008 4:36 PM
To: Betty Smith; Bev Moore; Bryan Williams; Carolyn Carmichael; snookchuck@roadrunner.com; Debbie Quivey; Denny White; Gary Smith; Ida Kay Keller; Jan Clair; Jan Commers; Jan Commers; Jane Platten; Janet Brennenman; Janie DePinto; Jay Morrow; Jeannette Mullane; jwilkinson@richlandcountyoh.us; Jim Milliken; Jo Friar; John Williams; Lenore Pikus; McCoy, Llyn; Lois Enlow; Marilyn Jacobcik; Pam Swafford; Pat McDonald; Patty Johns; Rokey Suleman; rokey@tcvote.com; Sarah Kneuss; Scott Daisher; Sharon Fisher; Steve Harsmann; Tom Ritchie; Jody O'Brien; mmdamsch@franklincountyohio.gov; Penny Brooks; sleininger@ashlandcounty.org; Arch Kimbrew; Beth Ann Snyder; Bob Rousseau; Craig Bonar; chairman@starkgop.org; Donna Harter; Fred Strawser; George Bringman; Jan Clair; jeffmatthews@prodigy.net; Jim Nathanson; Karla Herron; Keith Cunningham (Keith Cunningham); Kerrin Cushing; Susan Hughes; Tom Tagliamonte
Subject: testimony on EVEREST
Importance: High

After speaking to Shannon and Marilyn, we would like to suggest the following.

- 1) Any county wishing to submit written or oral testimony on EVEREST at Tuesday's hearing is welcome to do so, provided it is made clear that they are testifying as an individual and not on behalf of OAEO as an organization.
- 2) Shannon and Marilyn have asked that the trustees participate on a conference call on Monday to develop a position paper to be reviewed and approved by the legislative committee prior to its release.
- 3) The document will be emailed to the committee Monday afternoon, and comments will need to be submitted back by midnight on Monday in order to be incorporated into the testimony on Tuesday.

I know these are tight deadlines, but if we are to effectively represent the position of the association as a whole, they must be met. The underlying thought is that if this group can agree to principles and positions, we will greatly increase our clout and credibility in dealing with the Secretary of State, the legislature, the governor and the media. Now that we have shared many ideas over the last week, it is time to unite behind them and move the association forward. If we are unable to unite behind common principles and suggestions, then we are free to take our own opinions to policy makers and hope for the best. If we cannot come to an agreement then that is a position we will submit to those same policy makers.

Please let us know if you have any questions or concerns.

Aaron

Memo

To: OAEQ Members, Officers, Legislative Committee Members, and Trustees
From: Aaron Dickman, State Street Consultants
CC:
Date: 1/30/2008
Re: Monthly legislative update

New Projects:

- > **Absentee voting.** Secretary Brunner has solicited our legislative committee's ideas for a bill on absentee voting. We are submitting ideas to her office.
- > **Public Notice.** A legislative committee tasked with looking at the public notice statutes has asked for our perspective on the issue. A member of the association will be presenting testimony next week to the committee. I have heard that a bill that would allow local governments to advertise public notices on their website rather than by newspaper is being drafted, but have yet to see a bill.

Continuing Projects:

- > **Petition filing deadline resolution.** The OAEQ is seeking passage of a constitutional amendment to change the filing deadline to 150 days for constitutional amendments, referendums and initiated statutes. We have identified bipartisan sponsorship in Reps. Jon Peterson and Dan Stewart. A meeting with all interested parties has been held, and future meetings are in the works. We believe legislation will be introduced on election day with hearings beginning shortly thereafter. Once a draft is finalized we will circulate it to you all for your information.
- > **Attorney General Opinion on public records redaction.** Matt Dameschroder participated in a meeting hosted by the Attorney General with regard to an opinion on how local governments should handle the redaction of certain information for police officers and other protected classes of citizens. It is unclear what the next steps may be, although they are likely to include a legislative remedy. We will keep you up to date on any developments.
- > **Legislative agenda.** The OAEQ legislative committee was voted to accept our legislative agenda for the 127th Ohio General Assembly.
- > **HR 811.** The OAEQ continues to work with the County Commissioners Association and other allies at the federal level to substantially alter or stop the passage of HR 811. This federal bill would have far reaching and devastating effects on the elections system.

Monitoring of legislation:

I declare under penalty of perjury that the e-mails and attachments sent to Lyn McCay, Greene County Board of Elections that are attached to this exhibit are true copies of what was delivered to me pursuant to a public records request I made to the Greene County Board of Elections.

Executed this 8th day of July, 2008, in Greene County, Ohio.

Jennifer E. Alexander

Signature

Jennifer E. Alexander

1191 Cottingham Court

Ballbrook, Ohio 45305

7/8/08



J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
e-mail: blackwell@sos.state.oh.us
www.sos.state.oh.us

September 1, 2006

Directive 2006-59

TO: County Boards for Elections

CC: County Prosecutors
Betty Montgomery, State Auditor

RE: Record Retention Policies Governing Ballots and Pollbooks

I have received several inquiries from Boards of Elections regarding access to and retention of ballots and pollbooks from the 2004 general election. This Directive is issued pursuant to R.C. §3 501.05 as a means of providing guidance to the Boards regarding retention and disposal of ballots and pollbooks.

In December 2004, opinion 2004-50 was issued by the Attorney General on the Right of Access to Public Records under R.C. 149.43. The opinion answered the following question: Are ballots that have been cast in a public election, as well as pollbooks, that are held by a county board of election public records that must be made available to the public for inspection under R.C. 149.43.

The Attorney General's opinion on this question provides important direction for the Boards of Election to follow, in consultation with their county prosecuting attorney, on general issues regarding public access to ballots and pollbooks. The opinion concluded that "a board of elections remains under a duty to 'carefully preserve' ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31."

In addition to the Attorney General Opinion 2004-50, further guidance regarding the retention and disposal of county records, including ballots and pollbooks, is provided in R.C. §149.38 which states:

(B) The functions of the county records commission shall be to provide rules for retention and disposal of records of the county and to review applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to division (D) of this section. (Emphasis added)

Ex, E

(C) When the county records commission has approved county records for disposal, a copy of a list of those records shall be sent to the auditor of state. If the auditor of state disapproves the action by the commission in whole or in part, the auditor of state shall so inform the commission within a period of sixty days, and those records shall not be destroyed. Before public records are to be disposed of, the commission shall inform the Ohio historical society and give the society the opportunity for a period of sixty days to select for its custody such records as it considers to be of continuing historical value. When the Ohio historical society is so informed that public records are to be disposed of, the county records commission also shall notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Ohio historical society has been so informed and may select records of continuing historical value, including records that may be distributed to any of the notified entities under section 149.31 of the Revised Code. (Emphasis added)

I am instructing all county Boards of Elections:

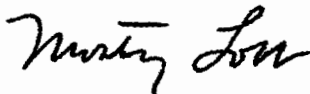
1. to comply with the public record laws of Ohio under §149.38,
2. to report on its (or the County's) website the "rules for retention and disposal of records of the county" adopted by its County Records Commission that are applicable to access, retention, and disposal of ballots and pollbooks that are subject to R.C. §149.38; and
3. to provide a copy of the rules adopted by the County Records Commission regarding access, retention, disposal of ballots and pollbooks subject to R.C. §149.38 to the Secretary of State and to the Auditor of State at least ten days before their effective date.

I am providing a copy of this directive to the Prosecuting Attorney of your respective counties for consultation as necessary with you on measures necessary to comply with this directive and the applicable laws.

If you are notified that the Auditor of State has disapproved the disposal of the records under your custody and control related to an election, you are also directed to comply with that notification. Since it is the County Records Commission that is ultimately responsible for formulating and enforcing a records retention and access policy, be advised that no records can be destroyed without the consent of the County Records Commission.

If you have any questions regarding this directive, please call the Elections Division at (614) 466-2585.

Sincerely,



Monty Lobb
Assistance Secretary of State

December 27, 2004

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

SYLLABUS:

2004-050

1. Except as provided by R.C. 3505.31 or R.C. 3505.32 and absent a valid court order to the contrary, a board of elections has a duty to preserve ballots in sealed containers until any possible recount or election contest is completed. The release of ballots during the time a board of elections is required to preserve them under seal is, therefore, prohibited by state law within the meaning of R.C. 149.43(A)(1)(v). Such ballots are not, therefore, "public records" for purposes of R.C. 149.43 while they remain under seal or where they are subject to a court order prohibiting their release. Similarly, for purposes of R.C. 3501.13, the right of the public to inspect such ballots prior to the completion of any recount or election contest has been "otherwise provided by state or federal law." R.C. 3501.13 does not, therefore, entitle the public to inspect ballots cast in an election until after any possible recount or election contest is completed.
2. Once the time within which a possible recount or election contest may occur has passed, a board of elections remains under a duty to "carefully preserve" ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31. Pursuant to R.C. 3501.13, such ballots are subject to public inspection "under such reasonable regulations as shall be established by the board."
3. Following the completion of the canvass of election returns under R.C. 3505.32, pollbooks used in an election are public records of a board of elections and are subject to public inspection in accordance with any reasonable regulations the custodian board of elections has established under R.C. 3501.13, except as may be provided by a proper order of a court.

3. Following the completion of the canvass of election returns under R.C. 3505.32, pollbooks used in an election are public records of a board of elections and are subject to public inspection in accordance with any reasonable regulations the custodian board of elections has established under R.C. 3501.13, except as may be provided by a proper order of a court.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", with a stylized flourish at the end.

JIM PETRO
Attorney General



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

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Columbus, OH 43215-3428
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December 27, 2004

OPINION NO. 2004-050

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary of State Blackwell:

You have submitted an opinion request in which you ask whether ballots that have been cast in a public election, as well as pollbooks, that are held by a county board of elections, are public records that must be made available to the public for inspection under R.C. 149.43.

Right of Access to Public Records under R.C. 149.43

The fundamental requirement of Ohio's public records law is set forth in R.C. 149.43(B)(1), which requires, with limited exceptions, a public office to promptly prepare its public records and make them available for inspection to any person "at all reasonable times during regular business hours." R.C. 149.43(B)(1) further requires a public office to make copies of its public records available at cost within a reasonable time. R.C. 149.43(A)(1) defines the term "public record," as used in R.C. 149.43, as meaning, with numerous exceptions set forth therein, "records kept by any public office."¹

Records of Boards of Elections

The General Assembly has specifically provided for public access to records of boards of elections. As stated in R.C. 3501.13, "[e]xcept as otherwise provided by state or federal law, the records of the board and papers and books filed in its office are public records and open to inspection under such reasonable regulations as shall be established by the board," (emphasis

¹ R.C. 149.43(A)(1) creates exceptions from the definition of "public record" for various types of information, including, among others, medical records, peace officer, firefighter, or EMT residential and familial information, and records the release of which is prohibited by state or federal law.

added).² R.C. Title 35 does not contain separate definitions of the terms “records” or “public records,” as used therein. We will presume, therefore, that the General Assembly intends that these terms be read in accordance with the general public records law established by R.C. 149.43. *See generally Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900) (“[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject. Therefore acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts”).

Ballots and Pollbooks as Records for Purposes of R.C. 149.43 and R.C. 3501.13

The next part of our analysis requires us to determine whether ballots and pollbooks³ constitute “records,” as that term is used in R.C. 149.43 and R.C. 3501.13. As used in R.C. 149.43, the word “records” “includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01],⁴ created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G) (footnote and emphasis added). In order to determine whether ballots and pollbooks are “records” for purposes of R.C. 149.43, we must examine the statutory scheme for the use, preservation, and disposition of ballots and pollbooks.

Ballots in Various Forms

Turning first to ballots, we note that R.C. 3505.08(A) imposes upon each county board of elections a duty to provide ballots for all general and special elections.⁵ As used in R.C. Title 35,

² *See generally* R.C. 3599.161(B) (in part, establishing the offense of preventing the inspection, “under reasonable regulations established and posted by the board of elections,” of “the public records filed in the office of the board of elections”).

³ Your question refers to “pollbooks.” For ease of discussion, this opinion will use the term “pollbooks” to refer to pollbooks and poll lists in which voters place their signatures prior to voting. *See generally* R.C. 3501.30(A) (stating, in pertinent part, “[t]he pollbooks or poll lists shall have certificates appropriately printed on them for the signatures of all the precinct officials, by which they shall certify that, to the best of their knowledge and belief, the pollbooks or poll lists correctly show the names of all electors who voted in the polling place at the election indicated in the pollbook or poll list”).

⁴ *See* R.C. 1306.01(G) (defining “electronic record” as meaning “a record created, generated, sent, communicated, received, or stored by electronic means”).

⁵ As used in sections of the Ohio Revised Code relating to elections and political communications, “general election” means “the election held on the first Tuesday after the first

Because votes may be cast through use of paper, punch cards, or mechanical or electronic means, the term “ballots” includes any forms in which a record of a vote exists. *See generally State ex rel. Automatic Registering Machine Co. v. Green*, 121 Ohio St. 301, 308, 168 N.E. 131 (1929) (“the word ‘ballot,’ as used in the Constitution, the statutes, and in political literature generally, means secret voting in contradistinction to *viva voce*, or open voting”). For purposes of R.C. 149.43, because “ballots” serve as the record of the votes in a public election, and are used by election officials and boards of elections in determining the outcome of elections, *see, e.g.*, R.C. 3505.26(E) (counting voted ballots); R.C. 3505.32 (canvass of returns), they constitute “records” of boards of elections.

Pollbooks

Let us now consider whether pollbooks are “records” of a board of elections for purposes of R.C. 149.43 and R.C. 3501.13. Pursuant to R.C. 3505.18, an elector who wishes to vote at a polling place must first write his name or mark and address in the pollbook. The signature is then compared with the voter’s signature on his voter registration card for identification purposes. R.C. 3505.18. The voter’s receipt of a ballot is then indicated in the pollbook. *Id.* After the polling place is closed, the pollbook is then used as part of the process of reconciling the number of ballots issued with the number of ballots cast. R.C. 3505.26. Because pollbooks serve to document a board of elections’ conduct of an election, they constitute “records” of the board for purposes of R.C. 149.43.

Exceptions to the Term “Public Records” for Purposes of R.C. 149.43 and R.C. 3501.13

Because ballots that have been cast in an election and pollbooks used in an election are “records” of a board of elections for purposes of R.C. 3501.13, they are: (1) “public records” for purposes of R.C. 3501.13, “[e]xcept as otherwise provided by state or federal law,” R.C. 3501.13,⁹ and (2) “public records” for purposes of R.C. 149.43, unless they are excepted from the definition of “public records” set forth in R.C. 149.43(A)(1). One exception to the latter definition is set forth in R.C. 149.43(A)(1)(v), *i.e.*, “[r]ecords the release of which is prohibited by state or federal law.” In order to determine whether ballots that have been cast in a public election and pollbooks used in such an election fit within either exception we must examine the statutory scheme governing the use and custody of ballots and pollbooks.

Use, Disposition, and Preservation of Ballots

According to R.C. 3505.23, “[n]o elector shall leave the polling place until the elector returns to the precinct election officials every ballot issued to the elector ..., whether the elector

⁹ R.C. 3599.161(B) lists certain records that are not public records of a board of elections, *i.e.*, “[r]ecords relating to the declination of a person to register to vote and to the identity of a voter registration agency through which any particular person registered to vote.”

has or has not placed any marks upon the ballot.”¹⁰ Once the polls are closed, the precinct officials must, among other things, count the voted ballots and then count and tally the votes in accordance with the procedure prescribed by R.C. 3505.27 or as otherwise provided by the Secretary of State or the board of elections. R.C. 3505.26; R.C. 3505.27.¹¹ After determining the results of the ballots, the precinct polling place judges are to prepare a summary of the results for the board of elections, which then transmits the results to the Secretary of State “or to the board of the most populous county of the district which is authorized to canvass the returns.” R.C. 3505.30.

R.C. 3505.31 provides for the disposition of ballots after they have been counted and the results have been certified by precinct officials, in part, as follows:

[The precinct officials], before leaving the polling place, *shall place all ballots that they have counted in containers* provided for that purpose by the board of elections, and *shall seal* each container in a manner that it cannot be opened without breaking the seal or the material of which the container is made. They *shall also seal the pollbook, poll list or signature pollbook*, and tally sheet in a manner that the data contained in these items cannot be seen without breaking the seals. On the outside of these items shall be a plain indication that they are to be filed with the board. The presiding judge shall then deliver to the board the containers of ballots and the sealed pollbook, poll list, and tally sheet, together with all other election reports, materials, and supplies required to be delivered to the board. (Emphasis added.)

Thus, after the polls have closed, R.C. 3505.31 requires precinct officials to place all counted ballots in containers under seal.

The containers of sealed ballots delivered to a board of elections remain sealed until the board, not earlier than the eleventh day or later than the fifteenth day after a general election, begins the canvass of election returns, which must be completed by the day prescribed by the Secretary of State under R.C. 3501.05(U). R.C. 3505.32. In conducting the canvass, the board

¹⁰ Pursuant to R.C. 3505.23, should a voter tear, soil, deface, or erroneously mark a ballot, the voter may return the ballot to the precinct election officials who may issue the voter a new ballot; the returned ballot is then marked as “Defaced.” No more than three ballots may be issued to any voter. R.C. 3505.23. *See generally* R.C. 3599.20 (making it a fifth degree felony to mishandle a ballot in specific ways, including “remov[ing] from the polling place or be[ing] found in unlawful possession of a lawful ballot outside the enclosure provided for voting”).

¹¹ *See generally* R.C. 3505.27 (providing, in part, for the segregation of disputed ballots, to be placed in an envelope marked “Disputed Ballots”); R.C. 3505.28 (prohibiting the counting of any ballot that is “marked contrary to law” and requiring any such ballot to be marked “Fraudulent” and placed in an envelope marked “Not Counted” with the reasons for such finding).

of elections “shall first open all envelopes containing uncounted ballots and shall count and tally them.” R.C. 3505.32(C). *See generally* note 11, *supra*. Then, “the board shall open the sealed container containing the ballots that were counted in the polling place at the election and count those ballots.” *Id.* Upon completion of the canvass, “the board shall promptly certify abstracts of the results of such elections within its county, in such forms as the secretary of state prescribes.” R.C. 3505.33. It is clear, therefore, that until a board of elections conducts its canvass of election returns under R.C. 3505.32, the ballots from that election are sealed, and cannot be opened by anyone other than the board of elections, and then only in accordance with the procedures set forth in R.C. 3505.32.¹²

Although the General Assembly has not expressly addressed the resealing of ballot containers after a board of elections has completed its canvass, R.C. Chapter 3515 clearly indicates the General Assembly’s intent that a board of elections maintain the ballots under seal until any possible recount or election contest is completed. For example, R.C. 3515.04, concerning election recounts, states, in part, that at the time of a recount, “the board of elections, in the presence of all witnesses who may be in attendance, shall open the *sealed* containers containing the ballots to be recounted, and shall recount them.” (Emphasis added.) Because a “recount” occurs only after a board of elections has completed its canvass,¹³ the board must reseal the containers after the canvass in order that the containers be sealed in the event of a recount. Similarly, a contest to an election, which may be filed later than a request for a recount,¹⁴ may require that ballots be recounted. R.C. 3515.13. While R.C. 3515.13 does not mention the opening of sealed containers in which the ballots are contained, I believe that R.C. 3515.13 must be read *in pari materia* with R.C. 3515.04, which establishes the manner in which a recount is to be conducted, to require that ballots subject to such a recount, whether pursuant to a request for recount or in the process of an election contest, be presented for recount in sealed containers as is required by R.C. 3515.04. During the period in which ballots are under seal, (1)

¹² *See generally, e.g.*, R.C. 3599.19(A) (prohibiting a judge or clerk of elections from, among other things, knowingly and unlawfully opening or permitting to be opened “the sealed package containing registration lists, *ballots*, blanks, pollbooks, and other papers and material to be used in an election” (emphasis added)); R.C. 3599.23(A)(1) (prohibiting certain persons from, among other things, knowingly and unlawfully opening or permitting to be opened a sealed package containing ballots).

¹³ R.C. 3515.02 (stating, in part, that an “application for recount shall be filed within five days after the day upon which the board of elections of such county declares the results of such election”).

¹⁴ *See* R.C. 3515.09 (stating, in part, “[a] contest of election shall be commenced by the filing of a petition with the clerk of the appropriate court ... within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority, or if there is a recount, within ten days after the results of the recount of such nomination or election have been ascertained and announced by the proper authority”).

the release of such ballots is prohibited by state law for purposes of R.C. 149.43, and (2) the public's right of inspection is otherwise provided for in state law for purposes of R.C. 3501.13. Thus, neither R.C. 149.43 nor R.C. 3501.13 authorizes the public to inspect such ballots while they remain under seal.

In addition to the procedure for the sealing and unsealing of ballot containers under R.C. 3505.31 and R.C. 3505.32, R.C. 3505.31 imposes upon a board of elections a broader duty to "carefully preserve" ballots provided by the board for use in an election.¹⁵ According to *The American Heritage Dictionary* 980 (2d college ed. 1985), the transitive verb "preserve" means, in part: "1. To keep safe from injury, peril, or other adversity; protect. 2. To keep in perfect or unaltered condition; maintain unchanged. 3. To keep or maintain intact." See generally R.C. 1.42 (unless a word has acquired a technical or particular meaning, it shall be construed according to

¹⁵ R.C. 3505.31, in part, describes the board's duty to preserve ballots, as follows:

The board shall *carefully preserve* all ballots prepared and provided by it for use in an election, whether used or unused, for *sixty days* after the day of the election, *except* that, if an election includes the nomination or election of candidates for any of the offices of president, vice-president, presidential elector, member of the senate of the congress of the United States, or member of the house of representatives of the congress of the United States, the board shall carefully preserve all ballots prepared and provided by it for use in that election, whether used or unused, for *twenty-two months* after the day of the election. *If an election is held within that sixty-day period, the board shall have authority to transfer those ballots to other containers to preserve them until the sixty-day period has expired.* After that sixty-day period, the ballots shall be disposed of by the board in a manner that the board orders, or where voting machines have been used the counters may be turned back to zero; provided that the secretary of state, within that sixty-day period, may order the board to preserve the ballots or any part of the ballots for a longer period of time, in which event the board shall preserve those ballots for that longer period of time.

In counties where voting machines are used, if an election is to be held within the sixty days immediately following a primary, general, or special election or within any period of time within which the ballots have been ordered preserved by the secretary of state or a court of competent jurisdiction, the board, after giving notice to all interested parties and affording them an opportunity to have a representative present, shall open the compartments of the machines and, without unlocking the machines, shall recanvass the vote cast in them as if a recount were being held. The results shall be certified by the board, and this certification shall be filed in the board's office and retained for the remainder of the period for which ballots must be kept. After preparation of the certificate, the counters may be turned back to zero, and the machines may be used for the election. (Emphasis added.)

its common usage). The reason ballots are kept for a certain period of time following an election is to ensure that, should the ballots need to be recounted or otherwise examined, the manner in which the ballots were voted can be accurately discerned. See *Portis v. Summit County Bd. of Elections*, 67 Ohio St. 3d 590, 591-92, 621 N.E.2d 1202 (1993) (“[a]n election contest, under the statute, is to ascertain and decide which candidate received the highest number of legal votes.’ Election contests are ‘the exclusive remedy for a recounting of the votes, or a correction of all errors, frauds, and mistakes which may occur at an election’” (citations omitted)).¹⁶ Thus, although ballots used in an election will not necessarily remain under seal throughout the entire period for which a board of elections must carefully preserve them, the board’s duty to “carefully preserve” the ballots requires the board to keep such ballots safe, in an unaltered condition, as they were voted for the entire period of preservation.¹⁷ R.C. 3501.13, which makes board of elections records “open to inspection under such reasonable regulations as shall be established by the board [of elections],” provides the means by which a board of elections may ensure that ballots will be carefully preserved, *i.e.*, unaltered, even during their inspection by the public.

We also note that there have been instances in which the preservation or inspection of ballots, as well as pollbooks, used in an election has been otherwise provided for by court order. See, *e.g.*, *In re Election of June 2, 1992*, 64 Ohio St. 3d 1215, 597 N.E.2d 516 (1992) (ordering certain boards of elections, in the course of an election contest, to allow inspection of pollbooks); *In re Election of November 6, 1990*, 57 Ohio St. 3d 605, 565 N.E.2d 824 (1991) (ordering, in great detail, the manner in which ballots and pollbooks from particular election were to be preserved by boards of elections for purposes of election contest). See generally R.C. 3515.12 (stating, in part, “[t]he court with which a petition to contest an election is filed may summon and compel the attendance of witnesses, including officers of such election, and compel the production of all ballot boxes, marking devices, lists, books, ballots, tally sheets, and other records, papers, documents, and materials which may be required at the hearing”). Thus, there may be circumstances in which the preservation or inspection of ballots, as well as pollbooks,

¹⁶ See generally, *e.g.*, R.C. 3515.13 (stating in part, “[i]f any contest of election involves a recount of the ballots in any precincts, the court shall immediately order the ballots of the precincts in which the recount is demanded to be sent to the court in such manner as the court designates; and such court may appoint two master commissioners of opposite political parties to supervise the making of the recount”); *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68 (2004), at ¶ 36 (finding that the purpose of the prohibitions established by R.C. 3599.20, see n.10, *supra*, is “to serve the broader purpose of protecting electors from any treatment of the ballot inconsistent with the right to vote”).

¹⁷ R.C. 3505.31 has not prescribed a uniform method of preservation for all ballots in the event that an election occurs prior to the expiration of the preservation period for those ballots. See n.15, *supra*. Although the General Assembly has provided preservation alternatives for ballots that must be preserved for sixty days, there is no similar preservation alternative for those ballots that must be preserved for twenty-two months.

will be governed by court order, rather than by statute. *See generally* 1993 Op. Att’y Gen. No. 93-080 at 2-401 (“[i]t is a well-settled principle of law in Ohio that when an agency of the state is the subject of a court order, the agency may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril”).

Summary of Board of Elections’ Duties Concerning Public Inspection of Ballots

Based upon the foregoing, we conclude that, except as provided by R.C. 3505.31 or R.C. 3505.32 and absent a valid court order to the contrary, a board of elections has a duty to preserve ballots in sealed containers until any possible recount or election contest is completed. The release of ballots during the time a board of elections is required to preserve them under seal is, therefore, prohibited by state law within the meaning of R.C. 149.43(A)(1)(v). Such ballots are not, therefore, “public records” for purposes of R.C. 149.43 while they remain under seal or where they are subject to a court order prohibiting their release. Similarly, for purposes of R.C. 3501.13, the right of the public to inspect such ballots prior to the completion of any recount or election contest has been “otherwise provided by state or federal law.” R.C. 3501.13 does not, therefore, entitle the public to inspect ballots cast in an election until after any possible recount or election contest is completed.

Once the time within which a possible recount or election contest may occur has passed, a board of elections remains under a duty to “carefully preserve” ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31, *see* note 15, *supra*. Pursuant to R.C. 3501.13, such ballots are subject to public inspection during the remainder of the preservation period “under such reasonable regulations as shall be established by the board.”

Disposition and Preservation of Pollbooks

Turning now to the question whether the release of information in the pollbooks is prohibited by state or federal law for purposes of R.C. 149.43(A)(1)(v) or whether public inspection of pollbooks that have been used in an election has been otherwise provided for by law for purposes of R.C. 3501.13, we begin by noting that R.C. 3505.31, in part, requires precinct officials, after determining the polling place’s election results, to “seal the pollbook, poll list or signature pollbook, and tally sheet in a manner that the data contained in these items cannot be seen without breaking the seals.... The presiding judge shall then deliver to the board [of elections] the ... sealed pollbook, poll list, and tally sheet.” Once a sealed pollbook has been delivered to a board of elections, R.C. 3505.32(D) authorizes the board, prior to the tenth day following an election, to examine the pollbook and other records and to make certain corrections in them.¹⁸ No other statute provides for the unsealing of pollbooks or for the resealing of

¹⁸ R.C. 3505.32(D) states:

Prior to the tenth day after a primary, general, or special election, the board may examine the pollbooks, poll lists, and tally sheets received from each polling place for its files and may compare the results of the voting in any polling

pollbooks after their use under R.C. 3505.32. Thus, following the canvass of election returns, a board of elections may be in possession of both sealed and unsealed pollbooks.

In addition to the statutory provisions concerning the sealing of pollbooks and the use of pollbooks by boards of elections in the ten-day period immediately following the election in which they were used, the General Assembly has imposed upon boards of elections additional duties concerning the safeguarding of pollbooks. As described, in part, by R.C. 3505.31:

The board *shall carefully preserve* the pollbook, poll list or signature pollbook, and tally sheet delivered to it from each polling place *until it has completed the official canvass of the election* returns from all precincts in which electors were entitled to vote at an election, and has prepared and certified the abstracts of election returns, as required by law. The board *shall not break*, or permit anyone to break, *the seals upon the pollbook*, poll list or signature pollbook, and tally sheet, *or make*, or permit any one to make, *any changes or notations in these items, while they are in its custody*, except as provided by [R.C. 3505.32].

....

Pollbooks, poll lists or signature pollbooks, tally sheets, summary statements, and other records and returns of an election delivered to it from polling places shall be *carefully preserved by the board for two years* after the day of the election in which they were used, and shall then be disposed of by the board in a manner that the board orders. (Emphasis added.)

Thus, R.C. 3505.31 requires a board of elections to “carefully preserve” pollbooks delivered to it, not only until “it has completed the official canvass of the election returns from all precincts in which electors were entitled to vote at an election, and has prepared and certified the abstracts of election returns,” but for two years from the date of the election in which they were used.

In determining the scope of the public’s right to inspect pollbooks used in an election, we must consider the effect of the prohibition in R.C. 3505.31 against breaking the seal on a pollbook. By its terms, this prohibition applies to the period in which sealed pollbooks are in the “custody” of a board of elections. R.C. 3505.31 does not define the word “custody” as used

place with the summary statement received from the polling place. If the board finds that any of these records or any portion of them is missing, or that they are incomplete, not properly certified, or ambiguous, or that the results of the voting in the polling place as shown on the summary statement from the polling place are different from the results of the voting in the polling place as shown by the pollbook, poll list, or tally sheet from the polling place, or that there is any other defect in the records, *the board may make whatever changes to the pollbook, poll list, or tally sheet it determines to be proper in order to correct the errors or defects*. (Emphasis added.)

therein. The common meaning of the word “custody,” however, is set forth in *Black’s Law Dictionary* 384 (6th ed. 1990), in part, as follows:

The care and control of a thing or person. The keeping, guarding, care, watch, inspection, *preservation* or security of a thing, carrying with it the idea of the thing being within the *immediate personal care and control* of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the *protection and preservation* of the thing in custody. (Emphasis added.)

See generally R.C. 1.42 (common meaning of language used in statute).

Although the General Assembly has imposed upon boards of elections the duty to “carefully preserve” pollbooks used in an election for two years thereafter, the General Assembly could not reasonably have intended that the board members maintain “immediate personal care and control,” *Black’s Law Dictionary* 384 (defining “custody”), and thus “custody,” of such pollbooks for the entire two-year preservation period.

Rather, the statutory scheme governing the use of pollbooks in an election provides for a board of elections’ use of pollbooks in executing its duties under R.C. 3505.32, *i.e.*, correcting certain errors and canvassing election returns. During such process, a board of elections may actually correct or use information contained in the pollbooks. The election process does not, thereafter, require a board of elections otherwise to make use of such pollbooks. Thus, following the canvass of election returns, a board of elections retains the duty to “carefully preserve” the pollbooks under such reasonable regulations that the board must adopt.¹⁹ This duty does not, however, require the board members to retain personal care and control, *i.e.*, “custody,” of such pollbooks, but merely to keep such pollbooks safe, in an unaltered condition, as they were used in the election process. We conclude, therefore, that the prohibition in R.C. 3501.31 against breaking the seal on a pollbook applies only to the period in which a board of elections has custody of the pollbooks for purposes of carrying out its duties under R.C. 3505.32, and not to the entire two-year period following the election in which the pollbooks were used.

Following the completion of the canvass of election returns, R.C. 3505.31 does not prohibit the release of, or otherwise provide for the inspection of, pollbooks, whether sealed or unsealed, for purposes of R.C. 149.43 and R.C. 3501.13. Therefore, once a board of elections has completed the canvass of election returns, pollbooks used in an election are subject to public inspection under any reasonable regulations adopted by the board of elections in accordance with R.C. 3501.13.

¹⁹ As with the safeguarding of ballots, the safeguarding of the contents of a pollbook is a matter that should be addressed by each board of elections in the rules of inspection they must adopt under R.C. 3501.13. We strongly advise, therefore, that boards of elections include in such regulations reasonable safeguards to protect against the destruction, loss, or alteration of pollbooks throughout the entire period the board must preserve them.

As a final matter, we note that, as is the case with ballots used in an election, the use, disposition, and preservation of pollbooks used in an election may, in certain instances, be governed by a court order rather than by statute. *See, e.g.*, R.C. 3515.12 (in the event of an election contest, a court may order the production of, among other things, pollbooks); *In re Election of June 2, 1992*, 64 Ohio St. 3d 1215, 597 N.E.2d 516 (1992); *In re Election of November 6, 1990*, 57 Ohio St. 3d 605, 565 N.E.2d 824 (1991).

Summary of Board of Elections' Duties Concerning Public Inspection of Pollbooks

Following the completion of the canvass of election returns under R.C. 3505.32, pollbooks used in an election are public records of a board of elections and are subject to public inspection in accordance with any reasonable regulations the custodian board of elections has established under R.C. 3501.13, except as may be provided by a proper order of a court.

Conclusions

In answer to your questions, we conclude that:

1. Except as provided by R.C. 3505.31 or R.C. 3505.32 and absent a valid court order to the contrary, a board of elections has a duty to preserve ballots in sealed containers until any possible recount or election contest is completed. The release of ballots during the time a board of elections is required to preserve them under seal is, therefore, prohibited by state law within the meaning of R.C. 149.43(A)(1)(v). Such ballots are not, therefore, "public records" for purposes of R.C. 149.43 while they remain under seal or where they are subject to a court order prohibiting their release. Similarly, for purposes of R.C. 3501.13, the right of the public to inspect such ballots prior to the completion of any recount or election contest has been "otherwise provided by state or federal law." R.C. 3501.13 does not, therefore, entitle the public to inspect ballots cast in an election until after any possible recount or election contest is completed.
2. Once the time within which a possible recount or election contest may occur has passed, a board of elections remains under a duty to "carefully preserve" ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31. Pursuant to R.C. 3501.13, such ballots are subject to public inspection "under such reasonable regulations as shall be established by the board."



MONROE COUNTY BOARD OF ELECTIONS

BETTY ROUSENBERG

Director

TRACY CURTIS

Deputy Director

101 North Main Street

Courthouse Room 15

Woodsfield, OH 43793

Phone: 740-472-0929

Fax: 740-472-2517

MANFRED KEYLOR

Chairman

RITA MC CASLIN

MITCHELL SCHUMACHER

ROGER W. CLAUS

DECEMBER 12, 2007

PADDY SHAFFER

THE OHIO ELECTION JUSTICE CAMPAIGN

2408 SONNINGTON DRIVE

DUBLIN, OHIO 43016

(614) 761-0621

DEAR PADDY,

WE HAD SPOKE ON THE PHONE IN REFERENCE TO MONROE COUNTY, OHIO RETENTION SCHEDULE. IT SEEMED AS IF THERE WAS A LITTLE MISS UNDERSTANDING SOMEWHERE. I HAVE ENCLOSED A COPY OF THE RETENTION SCHEDULE THAT WE ARE FOLLOWING HERE IN MONROE COUNTY. I STARTED AS THE ACTING DIRECTOR ON JUNE 1, 2007. I FIND IT MY JOB OF PUTTING OUT LITTLE FIRES AND RUNNING OUR OFFICE BY THE CODE AND TO THE TEE.

I AM SO HAPPY THAT YOU HAVE BROUGHT THIS TO MY ATTENTION AND I HOPE THAT WE GET EVERYTHING FIGURED OUT. IF YOU NEED ANYTHING, PLEASE FEEL FREE TO CONTACT ME.

THANK YOU,

A handwritten signature in cursive script that reads "Betty J. Rousenberg".

BETTY J. ROUSENBERG,
DIRECTOR

ENCLOSURE

Ex F

**Records Retention Schedule
County Boards of Elections - CBE
Revised 1996**

This record of retention has been established for county boards of elections. No records shall be retained, transferred or destroyed in violation of this schedule. No record shall be destroyed if it pertains to any pending case, claim or action.

<i>Schedule Number</i>	<i>Description of Records</i>	<i>Retention Period</i>
CBE-1 (050-031)	ABSENTEE BALLOT APPLICATIONS: CIVILIAN AND MILITARY	RETAIN 4 YEARS THEN DESTROY
CBE-2 (050-032)	ABSENTEE VOTER REGISTER: CIVILIAN (record of absentee voters)	RETAIN PERMANENTLY
CBE-3 (050-033)	ABSENTEE VOTER REGISTER: MILITARY (record of absentee voters)	RETAIN PERMANENTLY
CBE-4 (050-034)	ABSTRACT OF VOTES (abstract of votes cast in all elections)	RETAIN PERMANENTLY
CBE-5 (050-035)	AUDIT REPORT (report of the state examiner)	RETAIN 1 COPY PERMANENTLY
CBE-6 (050-036)	BALLOTS CAST (actual ballots: non-partisan, primary, absentee, questions and issues, etc.) (Special Note: Federal ballots must be retained for 22 months)	RETAIN UNTIL 60 DAYS AFTER ELECTION THEN DESTROY PRO- VIDED ELECTION IS NOT CONTEST- TED



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
Columbus, Ohio 43215-3726 USA
Tel.: 1-614-466-2655
Fax: 1-614-644-0649
www.sos.state.oh.us

DIRECTIVE 2007-07
April 9, 2007

To: ALL COUNTY BOARDS OF ELECTIONS

Re: ALL BALLOTS FROM THE 2004 PRESIDENTIAL ELECTION

This directive concerns the secretary of state's efforts to address the boards of elections' continued court-ordered obligation to maintain all ballots from the 2004 presidential election.

On September 11, 2006, the U.S. District Court for the Southern District of Ohio ordered all boards of elections "to preserve all ballots from the 2004 Presidential election, on paper or in any other format, including electronic data, unless and until such time otherwise instructed by this Court." (*King Lincoln Bronzeville Neighborhood Assn. v. Brunner*, Case. No. C-1-06-0745).

It has come to the attention of our office that the ongoing expense and space limitations of maintaining all ballots from the 2004 presidential election have created hardships for many boards of elections. In order to alleviate this hardship and to insure the ballots remain secure until the resolution of the court proceeding, our office has obtained permission from the federal district court to take custody of the ballots and remove them to a secure location in Columbus. A copy of the April 6, 2007 court order is attached to this directive.

The purpose of this directive is to provide the procedure for the Secretary of State's office to take custody of the ballots and to insure that a proper chain of custody is maintained. The boards of elections are to use the attached inventory sheet to account for the ballots from the 2004 election, including voted ballots, unvoted ballots, and soiled ballots. For the purposes of this directive, "ballots" includes ballots contained "on paper or in any other format, including electronic data." For boards who used punch card voting systems in the 2004 general election, "ballots" must also include the punch card ballot pages. For boards who transferred electronic ballot data to CD-ROM format in accordance with Advisory No. 2005-04, the ballots turned over will be the CD-ROMs. Additionally, in order to anticipate the storage requirements needed for the Secretary of State to take custody of and maintain these ballots, boards must describe the amount of storage space they have utilized to store these ballots.

To enable the Secretary of State to take custody of the 2004 general election ballots in adequate time so as not to cause disruption with any municipal primary or special elections to be held May 8, 2007, boards must complete the attached inventory form within three (3) days and fax it to the Elections Division at 614-752-4360. Your regional liaison or a designated employee of the Columbus office who will be identified to you in advance will then contact you to make arrangements to take custody of the ballots and thereafter transport them to Columbus.

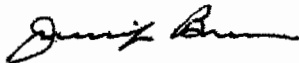
Once you have received a date and time of transferring custody of the 2004 general election ballots, please prepare the ballots for transport by packaging or bundling and clearly labeling them according to precinct. A list of precincts for your county should accompany the packaged or bundled and labeled ballots. We request that packaging be secure to prevent damage to ballots in transportation or their disorganization during transport. This packaging will aid in secure and organized storage of the ballots as we await further order of the court.

On the date and at the time arranged, the regional liaison or designated employee of our office will review your board's completed inventory form with the director and deputy director, and all three must sign the form to acknowledge that the regional liaison or designated employee of our office has received the ballots as accounted for on the inventory form and taken physical custody of the ballots. The board must keep a copy of the signed inventory form for its records, fax a copy to the Secretary of State's office at the fax number listed above, and tender the original to the regional liaison or designated employee of our office along with the ballots and listing of precincts in the county for the 2004 election.

Once the regional liaison or designated employee of the Secretary of State's office signs the inventory form and takes physical custody of the ballots and list, the regional liaison or designated employee will directly and promptly deliver the ballots and list to our secure location in Columbus. Chief of security for the Secretary of State's office, will receive the ballots and lists on behalf of the Secretary of State and verify that the accounting of ballots on the completed inventory form comports with the number and descriptions of actual ballots delivered, along with the list of precincts. The chief of security will then sign the inventory form and take physical possession of the inventory form, the ballots, and the lists on behalf of the Secretary of State. Thereafter, the Secretary of State will maintain the ballots and lists at a single secure location until further order of the court as to their final disposition.

We believe that these actions will assist you in preparing for elections you must administer this year and next and provide you with needed space for carrying out your duties. Thank you for your cooperation and patience in complying with the court's orders. If you have any questions or need additional information then please contact the Elections Division legal staff assigned to your board at 614-466-2585.

Sincerely,



Jennifer Brunner
Secretary of State

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KING LINCOLN BRONZEVILLE	:	
NEIGHBORHOOD ASSOCIATION, <i>et al.</i>	:	
	:	
Plaintiffs,	:	Case No. C2-06-745
	:	
v.	:	JUDGE ALGENON L. MARBLEY
	:	
JENNIFER BRUNNER, <i>et al.</i>,	:	Magistrate Judge Abel
	:	
Defendants.	:	

AGREED ORDER

This matter came before the Court upon the Joint Motion Regarding Disposition of All Ballots From 2004 Presidential Election. The Court finds the Joint Motion to be well-taken and it is hereby Ordered that

The Secretary of State of Ohio, Jennifer Brunner, shall prepare a directive pursuant to R.C. 3501.05 requiring the 88 county boards of elections to transfer to the custody of the Secretary of State of Ohio all ballots from the 2004 Presidential election, on paper or in any other form, including electronic data, previously preserved in accordance with the Court's September 11, 2006 Opinion and Order. It is further ordered that

The 88 county boards of elections shall comply with the Secretary's directive requiring the transfer of all ballots from the 2004 presidential election to the custody of the Secretary of State. It is further ordered that

The stay in this matter shall be lifted for the sole purpose of entering this Order, and upon entry of this Order and by agreement of the parties, this Order shall serve to reimpose the stay previously entered in this matter. It is further ordered that

The Secretary of State shall maintain all ballots from the 2004 presidential election in a secure location pending the final resolution of this matter.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATED: April 6, 2007

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County _____

Voting System Used In Precinct(s) For 2004 Presidential Election

Voting System Used By Disabled Voters For 2004 Presidential Election

Voting System Used For Absentee Ballots For 2004 Presidential Election

Total Number Of Voted Ballots _____

Total Number Of Unvoted Ballots _____

Total Number Of Absentee Ballots _____

Total Number Of Provisional Ballots _____

Total Number Of Soiled Ballots _____

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

For Electronic Systems, Total Number Of CD-Roms _____

**List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee** _____

(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Director

Deputy Director

Date and time: _____

Date and time: _____

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____
_____ County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the _____ County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Employee of Secretary of State

Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____ from the _____ County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
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April 18, 2007

TO: All Ohio Boards of Elections

FR: David M. Farrell, Deputy Assistant Secretary of State and Director of Elections
Eleanor Speelman, General Counsel

RE: Collection of 2004 General Election Ballots

If your Board of Elections is no longer in possession of all the 2004 General Election ballots and other materials that federal court Judge Marbley's order and SOS Directive 2007-07 require to be transferred to this office, then the Board must submit a "Letter of Explanation" that contains the information described below:

1. A description of the ballots and material described in Directive 2007-07 that the Board is unable to transfer to this office. The description should identify the categories of ballots, i.e., voted, unvoted, absentee, provisional, soiled, etc., that are unavailable
2. As to ballots and other materials described in Directive 2007-07 that you are unable to transfer, a statement describing the following:
 - a. whether steps were taken following the 2004 general election to preserve the ballots, and if so, what those steps were;
 - b. whether the ballots were **intentionally destroyed**, pursuant to a retention schedule or otherwise and, if so, the date of that occurrence;
 - c. whether the ballots were **accidentally destroyed** and, if so, the date and circumstances of that occurrence;
 - d. whether the **ballots exist in any form at the current time**, or are capable of being replicated.
3. A statement indicating whether the Board received notice, either written or otherwise, of Judge Marbley's order of September 11, 2006, and:
 - a. if so, the circumstances, including the date and manner, surrounding receipt of the notice;
 - b. if not, a description of the Board's efforts, if any, to determine why the Board had not received the notice.
4. Please provide **any other information** you believe will explain your inability to comply with Judge Marbley's order and Directive 2007-07.

Your responses to the above must be provided to David Farrell, Deputy Assistant Secretary of State and Director of Elections, on or before **5:00 p.m., Wednesday, May 16, 2007**.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

30 E. Broad St., 17th Fl.
Columbus, OH 43215-3428
Telephone: (614) 466-2872
Facsimile: (614) 728-7592
www.ag.state.oh.us

July 10, 2007

Clifford O. Arnebeck, Jr.
Arnebeck Law Office
1000 E Main St
Columbus, OH 43205

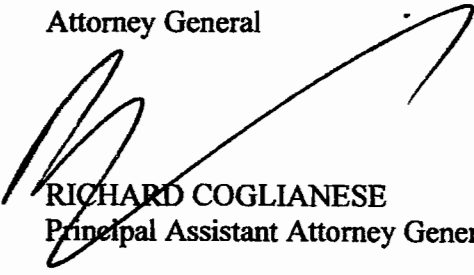
RE: Ballots

Dear Mr. Arnebeck:

The Secretary of State has checked with the various boards of elections to determine whether they have preserved all ballots from the 2004 general election. The various boards have responded. In case a board's production was deficient, that board was to inform the Secretary of the reason for the decision. Enclosed, is a copy of the responses the Boards of Elections gave the Secretary of State on missing ballots.

Very truly yours,

MARC DANN
Attorney General



RICHARD COGLIANESE
Principal Assistant Attorney General

RC:am
Enclosure

EX. I

County	Inventory Sheet	Bullets Received	Signed Inventory Sheet	Indication of Bullets Missing	Letter of Explanation (missing some bullets) (missing all bullets)
Adams	X	X	X	Y	X
Allen	X	X	X	Y	X
Ashland	X	X	X	Y	X
Ashtabula	X			Y	X
Athens	X	X	X	Y	X
Auglaize	X	X	X		
Belmont	X	X	X		
Brown	X	X	X	Y	X
Butler	X	X	X	Y	X
Carroll	X	X	X		
Champaign	X	X	X	Y	X
Clark	X	X	X	Y	X
Clermont	X	X	X	Y	X
Clinton	X	X	X	Y	X
Columbiana	X	X	X	Y	
Coshocton	X	X	X	Y	
Crawford	X	X	X		
Cuyahoga	X	X	X	Y	
Darke	X	X	X		
Defiance	X	X	X		
Delaware	X	X	X		
Erie	X	X	X	Y	X
Fairfield	X	X	X	Y	X
Fayette	X	X	X	Y	X
Franklin	X	X	X		
Fulton	X	X	X		
Gallia	X	X	X		
Geauga	X	X	X		
Greene	X	X	X	Y	X
Guemsey	X	X	X		
Hamilton	X	X	X	Y	X
Hancock	X	X	X	Y	X
Hardin	X	X	X		
Harrison	X	X	X		
Henry	X	X	X		
Highland	X	X	X		
Hocking	X	X	X		
Holmes	X	X	X	Y	X
Huron	X	X	X		
Jackson	X	X	X	Y	X
Jefferson	X	X	X		
Knox	X	X	X		
Lake	X	X	X		
Lawrence	X	X	X	Y	

County	Inventor Sheet	Ballots Received	Signed Inventory Sheet	Indication of Ballots Missing	Letter of Explanation (missing some ballots) (missing all ballots)
Licking	X	X	X	Y	
Logan	X	X	X	Y	X
Lorain	X	X	X	Y	
Lucas	X	X	X		
Madison	X	X	X	Y	
Mahoning	X	X	X	Y	X
Marion	X			Y	X
Medina	X			Y	X
Meigs	X	X	X		
Mercer	X	X	X	Y	X
Miami	X	X	X	Y	
Monroe	X	X	X	Y	X
Montgomery	X			Y	X
Morgan	X	X	X	Y	
Morrow	X	X	X	Y	X
Muskingum	X	X	X	Y	
Noble	X	X	X	Y	
Ottawa	X	X	X		
Paulding	X	X	X	Y	X
Perry	X	X	X	Y	X
Pickaway	X	X	X		
Pike	X	X	X		
Portage	X	X	X		
Preble	X			Y	X
Putnam	X	X	X	Y	X
Richland	X	X	X	Y	X
Ross	X	X	X	Y	X
Sandusky	X			Y	X
Scioto	X	X	X	Y	X
Seneca	X			Y	X
Shelby	X	X	X	Y	X
Stark	X	X	X	Y	X
Summit	X	X	X	Y	
Trumbull	X	X	X		
Tuscarawas	X	X	X	Y	
Union	X	X	X		
Van Wert	X	X	X	Y	X
Vinton	X	X	X		
Warren	X	X	X	Y	X
Washington	X	X	X	Y	
Wayne	X	X	X		
Williams	X	X	X	Y	
Wood	X	X	X	Y	
Wyandot	X	X	X	Y	

Voting Rights Institute
Advisory Council Meeting
August 21, 2007
Shaker Heights, Ohio

In Attendance

Shaun Tucker	Stuart Wright	Peg Rosenfield
Chris Nance	Judy Gallo	Ron Olson
Cynthia Stewart	Debbie Barksdale	Greg Moore
Matt Damschroder	Rene Klco	Gladys Harrison
Jane McMeekin	Suzanne Helmick	Bo Shuff
Donita Judge	Norman Robbins	Pete Johnson
Vernon Sykes	Kathy Spinelli	Kellye Pinkleton
Chris Hughes	Adele Eisner	Jocelyn Travis
Candice Hoke	Chris Hughes	Laurel Beatty
Dave Klein	Leslye Huff	Ann Block

Guests: Ed Monroe, Regional Liaison, Ohio Secretary of State
Lela Mason, intern accompanying Judy Gallo

Kellye Pinkleton called the meeting to order at 1:45. She introduced council member Greg Moore from NAACP. This was his first meeting of the full council. Also introduced was Lela Mason, Judy Gallo's new intern. The new email address for VRI was announced; vri@sos.state.oh.us. This is available for the general public. Kellye called attention to the handout representing the VRI highlights for the first seven months, and thanked the group for their contributions to these accomplishments. The new black and white version of the council directory was also mentioned.

Kellye introduced our newest VRI staff member, Chris Hughes, Programs and Outreach Coordinator. Chris made a few comments concerning his background and vision for VRI. Chris came from the Columbus AIDS Task Force where he used his background in social science, behavioral science, and marketing to raise awareness of the AIDS issues in Columbus and statewide through various groups. He feels VRI speaks to Secretary Brunner's vision and is positioned to rebuild trust in Ohio elections. He is looking forward to working with and learning from all the members of the Advisory Council.

Guest Ed Monroe was introduced. He is the Regional Liaison for the Secretary of State. Ed works in Cuyahoga, Lake and Lorain counties.

Gladys Harrison, Cleveland Regional Director, gave an update on the opening of the Cleveland office of the Secretary of State. She is working full time to open office space, hire staff, and begin serving a 13-14 county area in Northern Ohio. The office will offer Business Services as well as Election Services. She can be reached at the number in the directory until the office telephone number is established.

Ex. K

The Elections division is also currently interviewing for the position of Training and Curriculum Development Manager. This person will begin work on a statewide Poll worker training manual as well as online training. The poll worker work group will hand over their work to this new staff member and help them hit the ground running. The next project will be Board Training and Certification with our workgroup again supporting this project.

Secretary Brunner reported that there are about 20 directives in the pipeline, covering many aspects of elections. The goal is provide direction and uniformity of voter rights across the state. (Directives are posted on the SOS website) Secretary Brunner also plans to visit all 88 counties in the first two years of her term in office.

Kellye reported that the VRI and Secretary Brunner presented in Portland at the NASS conference. Other states were interested in how we were able to bring many diverse groups together.

In response to the differing opinions regarding provisional ballots and the question of voter privacy vs. public disclosure, Secretary Brunner announced a meeting of interested parties to be held on Sept 11th. The location will be announced at a later date. The Secretary asked interested Council members to send a one-page memo with their thoughts and concerns for consideration. Please submit these to Kellye as soon as possible. Follow up information will be sent to all Council members.

The subject turned to the complete review of all systems in Ohio, Optical Scan and DRE. (Project EVEREST). Secretary Brunner reported that permission to let contracts for testing must go through the controlling board. Testing will begin Sept 11 with a report due to the Secretary on November 30. The Secretary will then present a report to the legislature on December 7th.

The Secretary of State's office is in possession of the source code from all three machine systems used in Ohio – ES&S, Diebold (Now Premier Election Solutions) and Hart. The recent RFP had resulted in five proposals from corporate entities.

Machines and software will also be reviewed by University scientists and professors to do some of the same type of work that was done in California, but expanding upon it, not duplicating it.

In reviewing the California reports, Secretary Brunner reported that she has been in phone contact with Secretary of State Bowen. California had a very short time frame for their testing due to legislative changes that moved their primary forward. She decertified Sequoia, Hart and Diebold DRE's and recertified them for people with disabilities and early voting ONLY. She also imposed limitations including that the machines may only be operated by BOE employees, must be secured every evening, and there must be a 100% audit of the paper trails. ES&S did not submit source code in time for California's review. Other voting will be done by optical scan, but all counting will be done at the Board office, not the precincts. The State will support this effort with high-speed scanners at each county office.

Norman raised the issue of operational safeguards as important to the security issue as well. Secretary Brunner assured him that operational aspects would be looked at as well in Ohio.

The Secretary also reported that vendors are supplying hardware and software that has not yet been certified. This is to eliminate the argument that security lapses found in current software will be fixed in newer versions. We will test the newer versions as well. The question arises of what will Ohio do if the decision is that machines are not trustworthy? The Secretary is working to build bi-partisan support for the work. If any funding is necessary it can only come from the county, state or federal (HAVA) sources. Secretary Brunner is strongly aware of the problem of unfunded mandates and is working to avoid that situation both on a state and national level.

Secretary Brunner then chose to speak to the issue of the 2004 ballots. The 22-month retention requirement for these ballots was over on Sept 2, 2006. The boards were sent an email from a paralegal on Sept 8th with a copy of Judge Marbley's Sept 7th order attached, but no instructions were provided. On April 9th, Secretary Brunner sent a directive instructing all Boards of Election to send their 2004 ballots to Columbus for safe storage. The regional liaisons assisted in transporting these ballots. In all, 7 counties had no ballots to return. Due to glitches, erroneous information, and accidents, some counties had only partial records. Every county sent an inventory and a letter of explanation to Columbus with the ballots. A major concern was unused ballots. Many of these were destroyed, while voted ballots were kept. This information was all turned over to Judge Marbley. We have had no updates from his court as of today. Secretary Brunner highlighted the importance of her office focusing on the 2008 election.

Ron Olson asked about security procedures. Secretary Brunner said that this was being considered, and we are reviewing all operational processes.

Donita Judge asked to clarify that all signatories to a petition must be treated equally. Secretary Brunner agreed.

Norman Robbins suggested that the VRI Advisory Council be consulted on policy changes in addition to Boards of Elections, as some points of view may be different. The Secretary agreed that she seeks input whenever possible. Policy work is reviewed in a meeting with legal and legislative staff each week.

Candice Hoke reported that the Cleveland Plain Dealer reported the Cuyahoga Board of Elections meetings had become boring. A round of applause erupted.

Adele Eisner posed two questions. First was a concern that if we chose to go with new software, a security problem would exist as vendors would be installing patches. Secretary Brunner said that they were looking at totally new systems, software and hardware packages together. The second was concerning cost, that the county commissioners often fell hostage to the vendors. Secretary Brunner agreed that price plays into any decision, and there must be a plan B.

Adele expressed concern that poll workers will implement changes, and that safeguarding the ballots has not been a vital area of concern up until now. Secretary Brunner responded that a communication to the boards was in the pipeline surrounding those issues.

Greg Moore asked about the Holt Bill, due back on the floor in September. He was concerned about the present 2008 and 2010 audit deadlines currently in the bill. Secretary Brunner answered that we are waiting for audit procedures. One possibility considered for Ohio is for counties to audit one another. Other questions remain around certification before or after an audit. Pete Johnson asked for feedback on his suggestion that the date for the state to finalize results be moved back to provide more time for audits. Kathy responded that it was a good suggestion, but we needed to first get our audit procedures established, look at the timeline required, and then decide what additional time we might propose to the legislature.

There was \$300 million for the states in the house version of Holt that was stricken from the Senate version. Secretary Brunner has lobbied Ohio's congressmen and senators to put this back. Letters from the Council members in support would be welcome.

Secretary Brunner announced her appointment of 3 people to the Board of Voting Examiners. This group determines the certification of voting machines in Ohio. The new members are: Keith Cunningham, from Allen County, David Moots, from Union County, and Inajo Davis Chappell, from Cuyahoga County.

Candice Hoke asked for an update on pending litigation. Secretary Brunner responded that there are about 20 lawsuits left over from the previous administration that are being worked on right now. We are looking to settle what we can without incurring large attorney fees. The League of Women Voters lawsuit is stayed, and the League is generally happy with the changes that Secretary Brunner has made on her own. However, the issue is the existing approximately \$5 million in attorney fees.

Laurel Beatty handed out the latest legislative update. (Attached) Adele Eisner asked Laurel about the REAL ID act, and whether states were successfully avoiding it. Laurel responded that there was real discussion among the states, and that Ohio reports a \$55 million dollar price tag to implement it here.

Workgroup reports were given to the group. Individual presentations are attached.

Voter Outreach and Education Workgroup /A.J. Powell

A.J. reported that the first effort of the group is a communication piece; a "one size fits all" that will educate current and potential voters. It has been edited down to manageable size. Currently being reviewed by Brad Corso (copy editor) then will go to Public Affairs for design work, then to the Secretary for final approval.

Norm Robbins asked if it should not go to the entire council for comment. He proposes a 48 hours turn around for comment on items presented to the group. Chris Nance assured the group that Secretary Brunner personally reviews all items before printing. Leslye Huff suggested we give one-week notice to alert a document is being sent for review.

Candice related a concern about voter's understanding the importance of consistency in their signature, so that nicknames or initials do not disqualify their vote because signatures don't match. Jocelyn urged that instructions on provisional voting be included.

A.J. also reported that a VRI toll free number with an easy to remember name was in the works.

Poll Worker Group/ Ann Block, Rene Klco (presentation attached)

Ann reported that the work so far has been on developing best practices for poll worker recruitment and training. This will be turned over to the new training/curriculum staff when he or she arrives.

Stuart Wright asked about evaluation of how the workers perform their tasks and was told this would be part of the work ahead. Rene noted that Franklin County is piloting a program to train poll workers in depth on specific issues, such as one will handle machine issues, one will be an expert on provisional rules. Donita urged better use of precinct statistics to judge poll worker performance, such as the number of provisionals in wrong precinct but correct location.

Ann closed by saying that the next few meetings will be focused on an outline for training manuals, noting that the discovery of the group is that it is necessary to have a separate training manual for counties with different machines, the tasks are too closely intertwined to separate the subjects.

Voter Registration/ Norm Robbins and Donita Judge (presentation attached)

Norm highlighted the problems with NVRA (1993) compliance in Ohio. ODJFS is a major target. He also advocated for a system where voters are able to check their registration in many different ways, and that they be educated to do so.

Donita spoke to the need to reduce provisional voting in Ohio. One recurring problem is people who come to the correct voting place but go to the wrong precinct (or table.) One solution is to give the jurisdiction to the county instead of the precinct. If this were the case, a vote would be counted, on applicable issues and candidates, as long as the voter was in the correct county. The federal government leaves jurisdiction issues to the state. HB3 codified the jurisdiction to the precinct. Any change would have to be at the state legislative level. Donita suggested reopening HAVA on a federal level.

Chris Nance added a note, saying voter registration issues significantly interface with voting rules and feeds into provisional issues. This, as is the case with many issues, is a many-headed creature that needs cooperation from several divisions to conquer.

Youth/Suzanne Helmick (presentation attached)

Suzanne highlighted Youth at the Booth success, and reported contact with 50+ counties who are interested in the program. She also reported that Kids Voting has developed curriculum for grades 1-12 and is actively working with teachers to help coordinate it with current curriculum requirements. Bo Shuff suggested a more adult sounding name for older students, thinking "Kids" voting might turn them off. Kellye reported we are working on a college outreach program to educate these "youth"

Board Certification and Training/ Kellye Pinkleton

Kellye reported that this group has not ramped up to full steam but are waiting on the staff Training and Curriculum development position to be filled at the Secretary's office. They have held two meetings and reviewed existing elections training models. They will turn over any materials they have gathered and work as a team to support this position.

Voting Technology (presentations attached)

Due to the enormous complexity and abundance of work to do in this area, the group has divided and is currently working on 3 major issues.

Election Audits – Pete Johnson

Pete reviewed the many documents he has reviewed in conjunction with this topic. Defining terms is a first step that must be taken before moving forward. Defining "ballots" and "random" are just a few. Procedures and time frame are also difficulties to be discussed. The need for a secure communication site was emphasized, and he reports the SOS office is currently working on that system. David Klein is currently putting audit suggestions into a proposal for the Secretary's review.

Costs Analysis – Adele Eisner and Stuart Wright

The questions surrounding true costs of voting systems have become a high priority for our team. After reviewing reports from all counties, the problem of apples to apples became apparent. Counties name and report things very differently. Stuart presented a spreadsheet representing a "median" county, but the detail level is not sufficient for the audit we need to do. Stuart has developed an excel spreadsheet for poll worker expenses that instructs counties as to what the fields mean, and does the calculations for them. He is working on expanding that to cover all expenses, as he and Adele would like to see them reported. We will then meet with Pat Wolfe to review, make any needed adjustments, the pilot a program with a few counties. Once we have a cost comparison we can develop a risk/benefit analysis around these voting systems. The entire voting tech group is planning an all day working meeting to develop details of their work in the very near future.

In closing the meeting, Kellye mentioned that there were two ad hoc workgroups formed for short, specific tasks. One is working on rules for poll observers; the other is looking at rules to govern the database administration. She reported that the workgroup format seems to work very well in getting input representing diverse opinion, and providing flexibility to meet the needs of constantly changing election administration. Chris Nance added that the work the VRI and Council are doing is important to Ohio and our efforts "matter" for all voters. Again, we thank everyone for the effort to come to the meeting, for their hard work on workgroups, Gladys for securing the space for us, and especially Jocelyn for the wonderful sandwiches and snacks she provided.

Paddy Shaffer

From: "Green, Brian" <bgreen@sos.state.oh.us>
To: "Paddy Shaffer" <paddy@columbus.rr.com>
Sent: Tuesday, August 28, 2007 10:39 AM
Subject: RE: Record Request for letters of explanation 8-28-07 Ohio Secretary of State

Ms. Shaffer:

I have received your public records request and will begin processing it. I will let you know by email when I am ready to send the response. The response will come to you by mail.

Kindest regards,

- bg

Brian P. Green
Elections Counsel
Office of Jennifer Brunner
Ohio Secretary of State
180 East Broad Street, 15th Floor
Columbus, Ohio 43215
Phone: 614.995.4541
Fax: 614.485.7515
Email: bgreen@sos.state.oh.us <<mailto:bgreen@sos.state.oh.us>>

-----Original Message-----

From: Paddy Shaffer [<mailto:paddy@columbus.rr.com>]
Sent: Tuesday, August 28, 2007 10:31 AM
To: Green, Brian
Subject: Record Request for letters of explanation 8-28-07 Ohio Secretary of State

Ohio Secretary of State
Brian Green, Elections Council
(614) 995-4541
bgreen@sos.state.oh.us

August 28, 2007

Re: County BOE Letters of Explanation

Dear Brian,

I request as per ORC 149.43 copies of the "letters of explanation" as to why the following County Boards of Elections did not provide the election records that Judge Algenon Marbley requested they send to the Ohio Secretary of State in 2007.

Letters of explanation requested for the following counties:

Ex. M

7/7/2008

Columbiana, Coshocton, Darke, Lawrence, Licking, Lorain, Madison, Miami, Morgan, Noble, Summit, Tuscarawas, Wayne, Wood, Wyandot

Thank You,

Patricia "Paddy" Shaffer
2408 Sonnington Drive
Dublin, Ohio 43016
paddy@columbus.rr.com
(614) 761-0621

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:55 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Guernsey County BOE
To: All Counties
Sent: Monday, August 07, 2006 10:03 AM
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Ex. M

7/8/2008

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:55 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Lorain Co. Board of Elections
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 10:30 AM
Subject: Re: save the ballots

Someone should tell them to give it up. The election is over. They lost.

----- Original Message -----

From: Guernsey County BOE
To: All Counties
Sent: Monday, August 07, 2006 10:03 AM
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:55 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Brown County BOE
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 10:32 AM
Subject: RE: save the ballots

YES BROWN COUNTY HAS HEARD ABOUT IT.

-----Original Message-----

From: Guernsey County BOE [mailto:guernsey@sos.state.oh.us]
Sent: Monday, August 07, 2006 10:03 AM
To: All Counties
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:55 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Allen County BOE
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 12:08 PM
Subject: RE: save the ballots

I'm sorry, I'm just a little too busy trying to figure out how the government killed John Kennedy to deal with this.
KC

-----Original Message-----

From: Guernsey County BOE [mailto:guernsey@sos.state.oh.us]
Sent: Monday, August 07, 2006 10:03 AM
To: All Counties
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:55 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Allen County BOE
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 12:12 PM
Subject: RE: save the ballots

And by the way...where does the government have those aliens from space hidden?
KC

-----Original Message-----

From: Guernsey County BOE [mailto:guernsey@sos.state.oh.us]
Sent: Monday, August 07, 2006 10:03 AM
To: All Counties
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:56 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Lorain Co. Board of Elections
To: Allen County BOE ; Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 12:46 PM
Subject: Re: save the ballots

The Trilateral Commission did it.

----- Original Message -----

From: Allen County BOE
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 12:08 PM
Subject: RE: save the ballots

I'm sorry, I'm just a little too busy trying to figure out how the government killed John Kennedy to deal with this.
KC

-----Original Message-----

From: Guernsey County BOE [mailto:guernsey@sos.state.oh.us]
Sent: Monday, August 07, 2006 10:03 AM
To: All Counties
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Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:56 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Lorain Co. Board of Elections
To: All Counties
Sent: Monday, August 07, 2006 12:50 PM
Subject: Fw: save the ballots

----- Original Message -----

From: Lorain Co. Board of Elections
To: Allen County BOE
Sent: Monday, August 07, 2006 12:47 PM
Subject: Re: save the ballots

Tom Cruise's garage.

----- Original Message -----

From: Allen County BOE
To: Guernsey County BOE ; All Counties
Sent: Monday, August 07, 2006 12:12 PM
Subject: RE: save the ballots

And by the way...where does the government have those aliens from space hidden?
KC

-----Original Message-----

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Sent: Monday, August 07, 2006 10:03 AM
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To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:56 AM
Subject: Fw: save the ballots

—— Original Message ——

From: Lorain Co. Board of Elections
To: Lorain Co. Board of Elections ; All Counties
Sent: Monday, August 07, 2006 12:56 PM
Subject: Re: save the ballots

Keith and I give our regards to all the counties who are conducting elections tomorrow. We dodged the bullet on this one. How about you, Keith.....

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From: Lorain Co. Board of Elections
To: All Counties
Sent: Monday, August 07, 2006 12:50 PM
Subject: Fw: save the ballots

—— Original Message ——

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Sent: Monday, August 07, 2006 10:03 AM
To: All Counties
Subject: save the ballots

Good morning, everyone. Has anyone else heard about this? I wonder how far it will go.

Jacqueline

<http://savetheballots.org/>

Paddy Shaffer

From: "Franklin County BOE" <franklin@sos.state.oh.us>
To: "Damschroder, Matthew M." <mmdamsch@franklincountyohio.gov>
Sent: Tuesday, August 07, 2007 7:56 AM
Subject: Fw: save the ballots

----- Original Message -----

From: Allen County BOE
To: Lorain Co. Board of Elections ; All Counties
Sent: Monday, August 07, 2006 1:45 PM
Subject: RE: save the ballots

Yes!

-----Original Message-----

From: Lorain Co. Board of Elections [mailto:lorain@sos.state.oh.us]
Sent: Monday, August 07, 2006 12:57 PM
To: Lorain Co. Board of Elections; All Counties
Subject: Re: save the ballots

Keith and I give our regards to all the counties who are conducting elections tomorrow. We dodged the bullet on this one. How about you, Keith.....

----- Original Message -----

From: Lorain Co. Board of Elections
To: All Counties
Sent: Monday, August 07, 2006 12:50 PM
Subject: Fw: save the ballots

----- Original Message -----

From: Lorain Co. Board of Elections
To: Allen County BOE
Sent: Monday, August 07, 2006 12:47 PM
Subject: Re: save the ballots

Tom Cruise's garage.

----- Original Message -----

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Subject: save the ballots

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Jacqueline

<http://savetheballots.org/>

OHIO ASSOCIATION OF ELECTION OFFICIALS (OAE) Presidents

2004: Michael Sciortino

<http://www.cantonrep.com/printable.php?ID=178656>

2004: Keith Cunningham, "incoming"

<http://www.cantonrep.com/index.php?Category=13&ID=194110&r=0>

2005: Keith Cunningham

http://www.accessmylibrary.com/coms2/summary_0286-8203789_ITM

2006: Steve Harsman

<http://www.electioncenter.org/events/Cleveland%20Program%20Final.pdf>

2007: Matt Damschroder

<http://vote.franklincountyohio.gov/boe/assets/pdf/press-releases/PR-03092007.pdf>

2008: Shannon Leininger

<http://www.nfavotes.com/NFABK?action=viewNewsArticle&documentId=2c9e4f691a8d9855011a91dcb2f00435&issueId=>

ALLEN COUNTY BOARD OF ELECTIONS

204 N. Main Street • Lima, Ohio 45801
Phone (419) 223-8530 • Fax (419) 222-0311

RECEIVED

MAY 11 2007

Secretary of State

Gary Frueh, Chairman
Charles A. Rossfeld
Beverly O. McCoy
Keith A. Cheney

Keith A. Cunningham, Director
Ida Kay Keller, Deputy Director

May 10, 2007

Mr. David M. Farrell
Deputy Assistant Secretary of State
Ohio Secretary of State
180 E. Broad Street, 15th Floor
Columbus, OH 43215-3726

Dear M. Farrell,

Following the 2004 General Election the Allen County Board of Elections boxed and labeled all voted ballots and placed them in our vault for the required 22 months of storage.

Throughout the latter part of 2004 and into 2005 the Allen County Board of Elections began to experience problems with storm water migrating and subsequently penetrating our primary storage areas including our vault. In 2005, after several significant rain events, the County Commission approved the necessary funds for county maintenance personnel to begin addressing the problem.

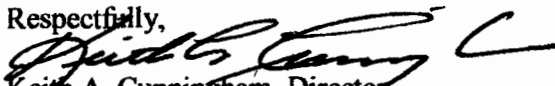
In the spring of 2006, county maintenance crews along with private contractors performed a series of tasks designed to remediate the migrating water as well as the subsequent mold and mildew resulting from the water damage. Beginning with repairing the gutters and downspouts, directing water away from the foundation of the building and installing a sump pump, to removing drywall, replacement of floor and ceiling tiles, and installation of a commercial dehumidifier, these crews worked throughout the summer of 2006 getting the problems under control.

As a result of these events, much of what was stored in our vault, including the 2004 General Election ballots, was compromised by water damage and subsequently destroyed on or about August 20, 2006. Pursuant to the recommendations of the Allen County Health Department, the boxes displaying mold or mildew were set aside to be discarded. Unfortunately, the contractor hired to remove the damaged boxes also accidentally removed the undamaged boxes as well. Some items relating to the 2004 General Election were salvaged. Those items include; Poll Books, Clerks Books and a box containing 498 write-in ballots.

The Allen County Board of Elections State computer indicates that Judge Marbley's order was sent via e mail on September 8, 2006 at 2:28 P.M. however it is not known exactly when it was read. It is safe to assume that it was opened somewhere between the time it was sent and Monday September 9th. The Allen County Board of elections is also in receipt of Secretary of State Directive 2007-07.

Please do not hesitate to contact me with any questions or concerns regarding this matter.

Respectfully,


Keith A. Cunningham, Director

Enclosures:

Ex. P

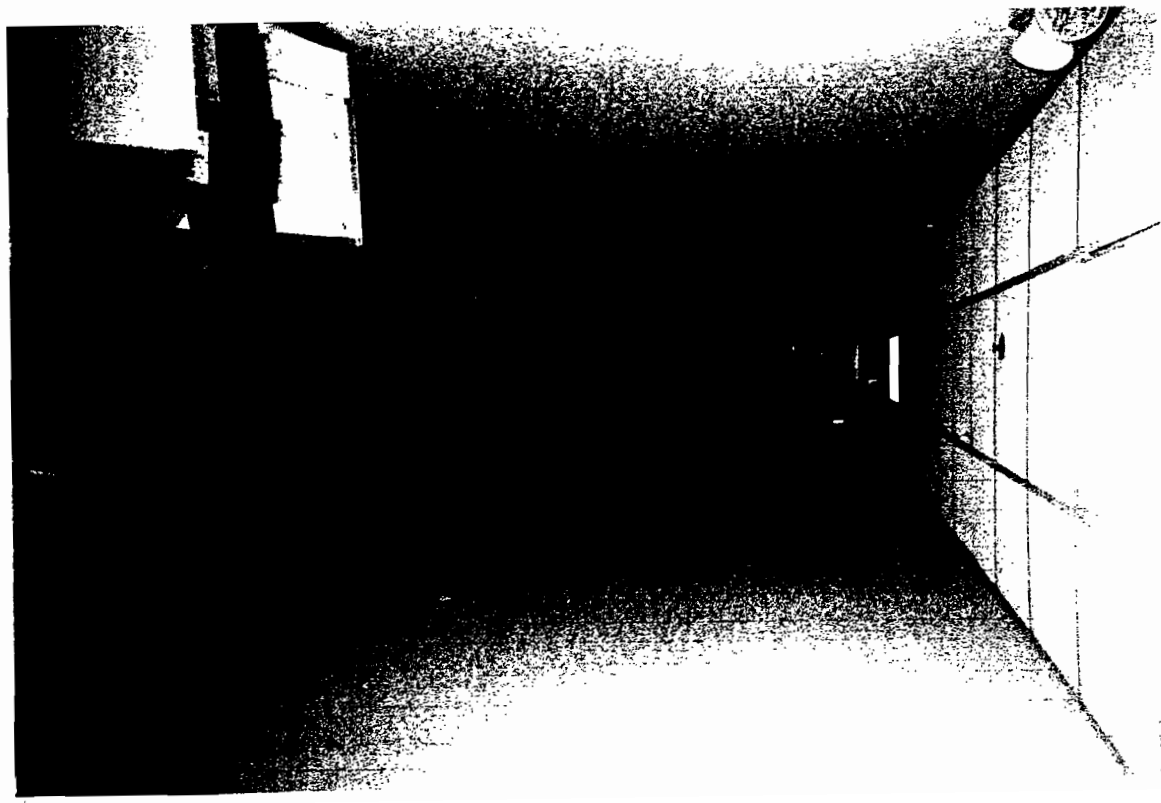
Allen County Board of Elections auxilliary storage area flooding 2005/2006



Allen County Board of Elections vault flooding 2005/2006



Allen County Board of Elections vault & storage area flooding 2005/2006





**DEPARTMENT OF
PUBLIC HEALTH**

219 East Market Street
P.O. Box 1503
Lima, Ohio 45802-1503
Phone (419) 228-4457
Fax (419) 224-4161

www.allencountyhealthdepartment.org

November 16, 2005

Mr. Keith Cunningham
Board of Elections
204 N. Main Street
Lima, Ohio 45801

RE: Indoor Air Quality

Dear Mr. Cunningham:

On November 9, 2005 we met and discussed moisture and mold issues in your office space located in the basement of the Court of Appeals building at 204 N. Main Street.

Evidence of water damage and mold/mildew growth was observed. As you may be aware, there are no regulatory standards to apply when dealing with this kind of issue. The Ohio Department of Health recommendations are:

- Although mold spores are everywhere around us, no one should live or work where mold growth is visible
- First response should be to prevent water leaks and excess moisture in an indoor environment
- Clean surfaces with mold growth, with soap and water and to discard items that cannot be cleaned
- Ensure area has adequate ventilation and that humidity levels are maintained in the comfort zone, see enclosed information

I recommend the county pursue the installation of a sump pit in the west end of the building properly installed to collect soil water before it enters the building.

Removal of the wall to wall carpeting is recommended. Area rugs over the tile will allow for a quick clean-up, should water leak into the basement areas.

Ensure all HVAC systems are running properly and were sized correctly for the office space. Use a hygrometer to measure relative humidity and install de-humidification devices if necessary.

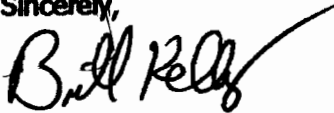
Mr. Keith Cunningham
November 16, 2006
Page 2

Remove damaged drywall and remove kick plate on shelf bottoms to promote ventilation. We normally recommend an area of 4 to 6 inches be kept open under shelves for cleaning and ventilation purposes.

Boxes on shelving should not be pushed up against the outside walls. A few inches of space will allow air circulation.

A common sense approach to improve workers comfort and safety is needed and I believe a combination of remedies will accomplish this goal. If you have any questions regarding this letter, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Kelly", with a long, sweeping horizontal stroke extending to the right.

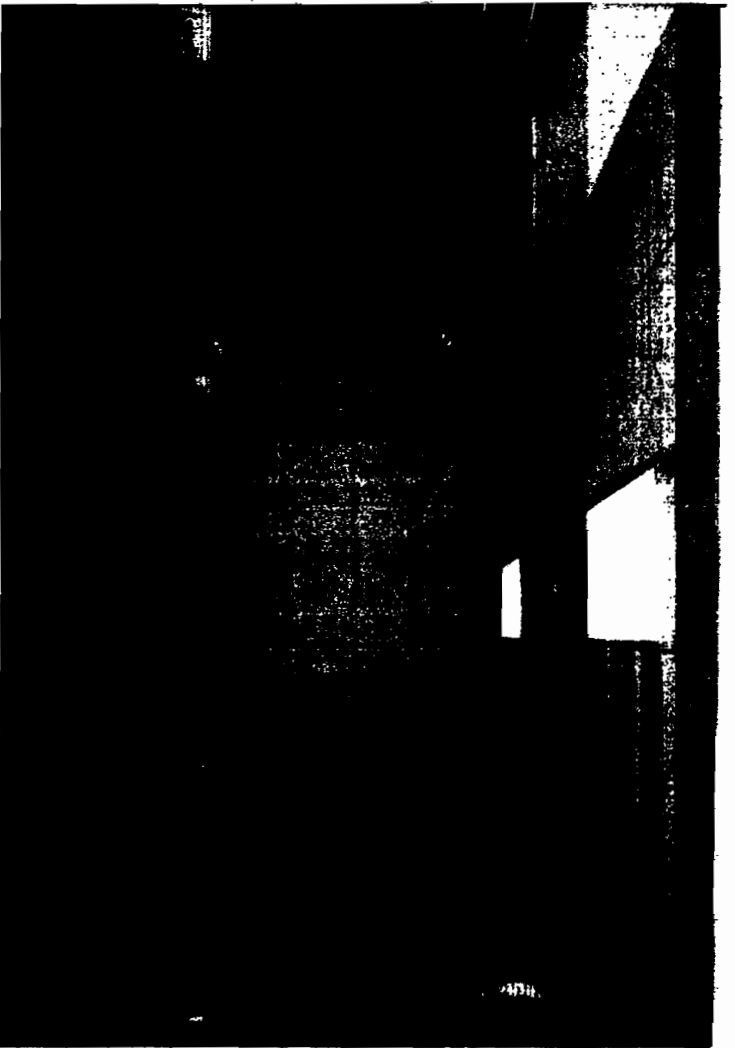
Bill Kelly, BS, RS
Director
Environmental Health Division

BK:mbs

Enclosures: (2)

copy: Dana Sterling, Building and Grounds
Sam Bassitt, County Commissioner

Allen County Board of Elections renovated vault and external drainage system. 2007



**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County Lorain

Voting System Used In Precinct(s) For 2004 Presidential Election

PC Ballot Tab with Triad Software

Voting System Used By Disabled Voters For 2004 Presidential Election

Same

Voting System Used For Absentee Ballots For 2004 Presidential Election

Same

Total Number Of Voted Ballots 143,043

~~Total Number Of Unvoted Ballots~~ ~~Unable to locate / or verify retention~~

Total Number Of Absentee Ballots 14,595

Total Number Of Provisional Ballots 3,186

Total Number Of Soiled Ballots 12

~~For Punch Card Systems, Total Number Of Punch Card Ballot Pages~~

~~Unable to locate / or verify retention~~

For Electronic Systems, Total Number Of CD-Roms N/A

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee

(Use check mark here)

Ex. Q

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

10 boxes 16 x 13 x 11
17M dm

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Director

Date and time: 4/30/07 11:49a

Deputy Director

Date and time: 4/30/07 11:49a

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____

Lorain County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the Lorain County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

[Signature]
Employee of Secretary of State

4/30/07 11:43 am
Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____ from the _____ County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County Lorain

Voting System Used In Precinct(s) For 2004 Presidential Election

PC Ballot Tab with Triad Software

Voting System Used By Disabled Voters For 2004 Presidential Election

Same

Voting System Used For Absentee Ballots For 2004 Presidential Election

Same

Total Number Of Voted Ballots 143,043

Total Number Of Unvoted Ballots Unable to locate / or verify retention

Total Number Of Absentee Ballots 14,595

Total Number Of Provisional Ballots 3,186

Total Number Of Soiled Ballots 12

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

Unable to locate / or verify retention

For Electronic Systems, Total Number Of CD-Roms N/A

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated Secretary Of State Employee

(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

20 boxes 16 x 13 x 11

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Director

Deputy Director

Date and time: _____

Date and time: _____

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____

_____ County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the _____ County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Employee of Secretary of State

Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____
_____ from the _____ County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody

**MONTGOMERY COUNTY
BOARD OF ELECTIONS**

481 W. Third St.
PO Box 8705
Dayton, Ohio 45481-8705

Steven P. Harsman, Director
Betsy J. Smith, Deputy Director

(937) 225-6856
Fax: (937) 486-7798

Sue A. Finley - Chairperson
Donnie A. Lieberman
James S. Nathanson
Thomas J. Ritchie, Sr.

DATE 5/16/07
TO DAVE Farrell
LOCATION SOS
FAX NUMBER 1 614 485-7060
FROM Steve Harsman
REMARKS _____

Number of pages 3 (includes this sheet)

Call (937) 225-6856 if you do not receive all pages

NOTICE OF CONFIDENTIALITY

This message is confidential and intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return original message to us at the above address via the United States Postal Service. Thank you.

Visit our web site at: WWW.MCBOE.ORG

Ex R

**CERTIFICATE OF
ORDS DISPOSAL**

COUNTY RECORDS COMMISSION

Section 149.36 R.C.

DATE 8/31/2006

**MONTGOMERY COUNTY
AGENCY: BOARD OF ELECTIONS**

(OPTIONAL) REGISTRATION DEPT.

**LOCATION
OF
RECORDS**

451 W. 3RD ST.
DAYTON, OH 45422-3880
(ADMINISTRATION BLDG.)

SECRETARY, COUNTY RECORDS COMMISSION, STATE AUDITOR, & STATE ARCHIVES

RECORD SERIES TITLE (Do Not Include Full Description)	AUTHORIZATION FOR DISPOSAL		INCLUSIVE DATES OF RECORDS		VOLUME DISPOSED Specify Qty. & Title, Fl.	DATE OF DISPOSAL	METHOD OF DISPOSAL			
	SCHEM NO.	R.C. APPROVAL DATE	FROM	TO			BURNED	SHRED	ARCHIVE	RECYCLE
1 Ballots Cast (actual ballots: non partisan, primary absentee, questions and issues, etc.) (Special Note: Federal ballots must be retained for 22 months Transfer of Registrations Absentee Identification Envelopes Absentee Identification Envelopes Confirmation Notice Responses: (Information indicating whether a person has responded to a confirmation notice.)	CBE-6	80 days 9/2/06	11/2/04	12/05 9/1/06	18 boxes					
2	CBE-34	2 Yrs	1998	2003	5 Boxes	8/31/2003				
3	CBE-38	60 days	11/2/04	12/05	28 Boxes					
4	CBE-38	80 days	3/14/06	5/14/08	1 Box					
5	CBE-45	2 Yrs	2001	2003	8 Boxes					
6	87-12	2 Yrs	1995	1998	2 boxes					
7	87-12	2 Yrs	2000	2002	1 Box					
8	87-12	2 Yrs	2001	2003	2 Boxes					
9	Felt-Officials	2 Yrs	11/02	11/03	2 Boxes					
10	Roll Officials	2 Yrs	11/02	8/04	1 Box					
11	Roll Officials	2 Yrs	11/02	11/03	1 Box					

TO:

COUNTY RECORDS COMMISSION - I hereby certify that the records listed have been disposed of according to
Time periods established by approved schedules of retention and destruction or General Schedule Authorizing Disposal of
Records. No record has been destroyed which in our opinion pertains to any pending case, claim, or action.

Signature of Authorized Official
Director

(PLEASE SEE INSTRUCTIONS ON REVERSE SIDE)

**MONTGOMERY COUNTY
BOARD OF ELECTIONS**

451 W. Third St.
PO Box 8705
Dayton, Ohio 45481-8705

Steven P. Harsman, Director
Betsy J. Smith, Deputy Director

(937) 225-5656
Fax: (937) 498-7798

Sue A. Finley - Chairperson
Dennis A. Lieberman
James S. Nathanson
Thomas J. Ritchie, Sr.

May 15, 2007

Mr. David M. Farrell, Deputy Assistant Secretary of State
Ohio Secretary of State
30 E. Broad St., 14th Floor
Columbus, OH 43266-0418

Dear Mr. Farrell,

Per your request, our Board is responding to your inquiry of our 2004 General Election materials. As you are aware, in accordance to Ohio Revised Code the retention schedule for a Federal Election is 22 months.

We prepared the certificate of destruction in preparation of destroying the materials from the Presidential Election and we received the signed copy of Certificate of Destruction from the county records to proceed with destruction according to the retention schedule. In addition, we contacted our county prosecutor for further authorization.


In addition, we experienced an extra ordinary situation having 4 elections during a 90 day period. We literally ran out of space to prepare, stage, and retain material for those elections. It was imperative we process the 2004 materials for destruction under the guidelines of the 22 month retention.

Therefore, all materials were properly destroyed in a timely manner and we are unable to comply due to those circumstances.

We did not receive formal notice from the courts prior to preparing the certificate of destruction.

I am enclosing a copy of our record disposal for your convenience. Please do not hesitate to contact me if you have any further questions regarding the collection of 2004 General Election material.

Sincerely,



Steven P. Harsman
Director

451 W. Third St.
P.O. Box 8705
Dayton, Ohio, 45481
Fax number 496-7798
Telephone number 225-5669

Montgomery County Board of Elections

Fax

To: Election Division From: Betty Smith
Fax: (614) 752-4360 Pages: 3
Phone: _____ Date: 4-10-2007
Ref: _____ CC: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

NOTICE OF CONFIDENTIALITY

This message is confidential and intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the United States Postal Service. Thank You.

RECORDS DISPOSAL

COUNTY RECORDS COMMISSION

Section 149.38 R.C.

DATE 8/31/2008

FROM:

MONTGOMERY COUNTY
(AGENCY) BOARD OF ELECTIONS

(PERSON) REGISTRATION DEPT.

LOCATION
OF
RECORDS

451 W. 3RD ST.
DAYTON, OH 45422-3080
(ADMINISTRATION BLDG.)

TO: SECRETARY, COUNTY RECORDS COMMISSION; STATE AUDITOR; & STATE ARCHIVES

RECORD SERIES TITLE
(Do Not Include File Descriptions)

AUTHORIZATION
FOR DISPOSAL

INCLUSIVE DATES
OF RECORDS

VOLUME
DISPOSED
(Specify by Date, File)

DATE
OF
DISPOSAL

METHOD OF DISPOSAL

BURNED
SHRED
ARCHIVE
RECYCLE

1 Ballots Cast (actual ballots: non partisan, primary absentee, questions and issues, etc.) (Special Note: Federal ballots must be retained for 22 months)

2 Transfer of Registrations

3 Absentee Identification Envelopes

4 Absentee Identification Envelopes

5 Confirmation Notice Responses;
(Information indicating whether a person has responded to a confirmation notice.)

6 Payroll Forms and Time Off Slips

7 Payroll Forms and Time Off Slips

8 Payroll Forms and Time Off Slips

9 Roll Officials Record/Receipt Record

10 Roll Officials Record/Receipt Record

11 Roll Officials Record/Receipt Record

SCHED NO.	R.C. APPROVAL DATE	FROM	TO	VOLUME DISPOSED	DATE OF DISPOSAL
CBE-6	80 days	11/2/04	1/2/05	16 boxes	
CBE-34	2 Yrs	1998	2000	5 Boxes	
CBE-36	60 days	11/2/04	1/2/05	26 Boxes	
CBE-36	60 days	3/14/08	5/14/08	1 Box	
CBE-45	2 Yrs	2001	2003	8 Boxes	
87-12	2 Yrs	1995	1998	2 boxes	
87-12	2 Yrs	2000	2002	1 Box	
87-12	2 Yrs	2001	2003	2 Boxes	
CBE-21	2 Yrs	11/02	11/04	2 Boxes	
CBE-21	2 Yrs	11/02	8/04	1 Box	
CBE-21	2 Yrs	11/02	11/03	1 Box	

BY SECRETARY, COUNTY RECORDS COMMISSION

TO:

COUNTY RECORDS COMMISSION - I hereby certify that the records listed have been disposed of according to the time periods established by approved schedules of retention and destruction or General Schedules Authorizing Disposal of Records. No record has been destroyed which in our opinion pertains to any pending case, claim, or action.

Signature of Authorized Official

Director

(PLEASE SEE INSTRUCTIONS ON REVERSE SIDE)

APR-10-07

08:18AM

FROM-Mont Co BD Of Elections

+102106538451

T-577 P.003/003 F-656

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County MONTGOMERY

Voting System Used In Precinct(s) For 2004 Presidential Election

Punch Cards

Voting System Used By Disabled Voters For 2004 Presidential Election

Punch Cards

Voting System Used For Absentee Ballots For 2004 Presidential Election

Punch Cards

Total Number Of Voted Ballots

Ballots were destroyed in accordance with

Total Number Of Unvoted Ballots

record retention schedule and procedures.

Total Number Of Absentee Ballots

See attachment

Total Number Of Provisional Ballots


Total Number Of Soiled Ballots

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

For Electronic Systems, Total Number Of CD-Roms

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated Secretary Of State Employee

(Use check mark here)


Director,

Page 1 of 3


Deputy Director

4/10/07

OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS

County FRANKLIN

Voting System Used In Precinct(s) For 2004 Presidential Election

DRE - DANAWER

Voting System Used By Disabled Voters For 2004 Presidential Election

N/A

Voting System Used For Absentee Ballots For 2004 Presidential Election

ESS/PUNCHCARD

Total Number Of Voted Ballots SEE PREVIOUS FAX

Total Number Of Unvoted Ballots SEE PREVIOUS FAX

Total Number Of Absentee Ballots SEE PREVIOUS FAX

Total Number Of Provisional Ballots SEE PREVIOUS FAX

Total Number Of Soiled Ballots SEE PREVIOUS FAX

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

SEE PREVIOUS FAX

For Electronic Systems, Total Number Of CD-Roms SEE PREVIOUS FAX

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee

(Use check mark here)

SEE PREVIOUS FAX

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

2 PALLET - SEE PREVIOUS FAX
FOR DETAIL

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Matthew McDonald
Director

Date and time: 5/8/07 1:34pm

[Signature]
Deputy Director

Date and time: 5-8-07 1:35pm

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____

FRANKLIN County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the FRANKLIN County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Kell M. Hoyle
Employee of Secretary of State

5/8/07 1:34 pm
Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____ from the FRANKLIN County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody

OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS

County FRANKLIN

Voting System Used In Precinct(s) For 2004 Presidential Election

DANAHER 1242 DIES

Voting System Used By Disabled Voters For 2004 Presidential Election

Voting System Used For Absentee Ballots For 2004 Presidential Election

ES&S punchcards

Total Number Of Voted Ballots see below

Total Number Of Unvoted Ballots see below

Total Number Of Absentee Ballots see below

Total Number Of Provisional Ballots see below

Total Number Of Soiled Ballots see below

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

see below

For Electronic Systems, Total Number Of CD-Roms 1

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee

(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

17 boxes, rejected absentee/provisional ballots; 22
trays (shrink-wrapped pallet), voted absentee/provisional
ballots by ballot style; 2 trays, absentee ballot booklets,
2 boxes, voting ^(faces) machine ballots; 6 trays, voting
machine zero & results tape summaries; TOTAL: 3 pallets

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

 Director

 Deputy Director

 Date and time:

 Date and time:

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYER:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the FRANKLIN
 _____ County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the FRANKLIN County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Employee of Secretary of State

Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____ from the FRANKLIN County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody

To: David Farrell, Deputy Assistant Secretary of State
Eleanor Speelman, General Counsel

From: Thomas P. McCabe
Director, Mahoning County Board of Elections

Re: Collection/disposal of 2004 Election Ballots

In response to Correspondence received at our office on April 18, 2007 from David Farrell of the Secretary of State's office, this communication should be considered the official "Letter of Explanation" that is required from counties that are unable to fully comply with Directive 2007-07. To fully comply with above mentioned correspondence the below responses shall be in order requested by Mr. David Farrell.

1. A description of the ballots and materials described in Directive 2007-07 that the Board is unable to transfer to this office.

Upon review of materials requested by the Secretary of State office regarding directive 2007-07 the Mahoning County Board of Elections will be able to comply with all records requested except for the 2004 Absentee ballots- both voted and un-voted.

2a. Steps taken after the 2004 election to preserve the ballots and what those steps were.

All ballots were placed in ballot cans and locked in the records room of the Board. The ballot cans were subsequently marked with the court order barring their disposal of after the 22 month expiration for discarding.

2b/c. Whether the ballots were intentionally destroyed or were accidentally destroyed and date and circumstances that it occurred.

The ballots were accidentally disposed of on Friday, March 23rd of 2007. On Wednesday the 21st the warehouse supervisor asked the Director, Thomas P. McCabe, if it was acceptable to have the Mahoning County Green Team pick up all recyclables in the storage room for disposal pursuant to the retention schedule. The Director gave the affirmative that it was acceptable. Lost in the communication was the previous memorandum between said two of the September court order to retain all 2004 materials past the retention date.

2d. Do the ballots exist in any form at this time or are they capable of being replicated.

The answer is no and no.

3a. A statement indicating whether the Board received notification of the court order of September 11, 2006 and the circumstances surrounding receipt of notice.

The Mahoning County Board of Elections never received timely nor official notice of Judge Marbley's order of September 11, 2006. We were made aware of the fact by phone conversations with other Board of Elections. That being said, our Board did retain those records through March of this year based on our knowledge of the Court order.

4. Provide any other information:

Any records destroyed were done unintentionally and without malice. Chain of custody for future retention of records will be better supervised and documented. We apologize for any inconvenience or difficulty this may have caused the Secretary of State's office. If there may be any additional questions or concerns regarding this matter please feel free to contact this office at any time.

Sincerely,

Thomas P. McCabe
Director
Mahoning County Board of Elections



ASHLAND COUNTY BOARD OF ELECTIONS

110 Cottage Street • Ashland, Ohio 44805 • (419) 282-4224 • Fax: (419) 282-4260
Email: khowman@ashlandcounty.org www.ashlandboe.com

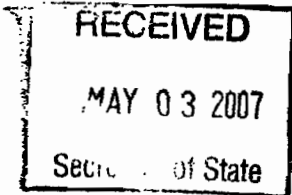
Kathy J. Howman
Director
(419) 282-4224



Shannon Leininger
Deputy Director
(419) 282-4321

April 30, 2007

David Farrell
Deputy Assistant Secretary of State,
Director of Elections
180 E. Broad St., 15th Floor
Columbus, Oh 43215-3726



Dear Mr. Farrell:

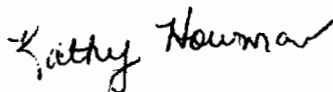
The Ashland County Board of Elections is unable to transfer the unvoted ballots from the 2004 General Election. All other ballots were transferred to your staff April 23, 2007.

The ballots were mistakenly destroyed by the staff after looking at the retention schedule. The retention schedule states we must retain cast ballots for 22 months if a Federal Election, it does not state unvoted ballots must be saved. The staff states that after 60 days passed they discarded the unused ballots from the 2004 General Election.

We were an optical scan county in 2004 and have the ability to produce ballots for each ballot face in that 2004 General election. We also have copies of each of those ballots saved in our 2004 General Election file.

We received notice by email of the court order from Lisa Brooks at the request of Cassandra Hicks, General Counsel of the Secretary of State's Office on September 8, 2006. By the date we received the first notice to save all ballots they had already been destroyed. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Howman".

Kathy Howman, Director
Ashland Co. Board of Elections
110 Cottage St.
Ashland, Oh 44805

Ex. V

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County COSHOCTON COUNTY

Voting System Used In Precinct(s) For 2004 Presidential Election

E.S. & S. OPTICAL SCAN PAPER BALLOTS

Voting System Used By Disabled Voters For 2004 Presidential Election

E.S. & S. OPTICAL SCAN PAPER BALLOTS

Voting System Used For Absentee Ballots For 2004 Presidential Election

E.S. & S. OPTICAL SCAN PAPER BALLOTS

Total Number Of Voted Ballots 17, 636

Total Number Of Unvoted Ballots (WE ORDERED 24,760 - THE UNVOTED
ARE NO LONGER ON-SITE)

Total Number Of Absentee Ballots 2,343 INCLUDED IN PRECINCT TOTALS, COUNTED
TOGETHER)

Total Number Of Provisional Ballots 269 READ & COUNTED AND INCLUDED
IN THIS INVENTORY)

Total Number Of Soiled Ballots _____

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

N/A

For Electronic Systems, Total Number Of CD-Roms N/A

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee

(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

WE HAVE HAD THEM STORED IN 24IN X 24IN CUBICLES- WE HAVE 12 OF THESE.

THEY ARE IN METAL BALLOT BOXES.

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Director

Deputy Director

Date and time: _____

Date and time: _____

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____
_____ County Board of Elections. I have reviewed and confirmed that the accounting listed

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County Morgan

Voting System Used In Precinct(s) For 2004 Presidential Election

Punch Card

Voting System Used By Disabled Voters For 2004 Presidential Election

Punch Card

Voting System Used For Absentee Ballots For 2004 Presidential Election

Punch Card

Total Number Of Voted Ballots 6901

~~Total Number Of Unvoted Ballots~~ None

Total Number Of Absentee Ballots Included

Total Number Of Provisional Ballots Included

Total Number Of Soiled Ballots 8

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

38

For Electronic Systems, Total Number Of CD-Roms n/a

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated Secretary Of State Employee

(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

Our ballots are in one box that weighs about 35-40 lbs. The box is 15"

wide X 10 1/4" high X 24" long.

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Miranda Mullen
Director

Date and time: 4-18-07 8:30 p.m.

[Signature]
Deputy Director

Date and time: 4/18/07 8:30 PM

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the MORGAN

County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the MORGAN County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Paul Block
Employee of Secretary of State

4/18/07 8:30pm
Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____ from the _____ County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County Morgan

Voting System Used In Precinct(s) For 2004 Presidential Election

Punch Card

Voting System Used By Disabled Voters For 2004 Presidential Election

Punch Card

Voting System Used For Absentee Ballots For 2004 Presidential Election

Punch Card

Total Number Of Voted Ballots 6901

Total Number Of Unvoted Ballots None

Total Number Of Absentee Ballots Included

Total Number Of Provisional Ballots Included

Total Number Of Soiled Ballots 8

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

38

For Electronic Systems, Total Number Of CD-Roms n/a

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee

(Use check mark here)