

# Ohio Secretary of State Jennifer Brunner

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Of the Committee on House Administration

Good afternoon Chair Lofgren, Ranking Member McCarthy, and distinguished members of the House Subcommittee on Elections. Thank you for the opportunity to offer testimony on Election Day contingency plans. I am Laurel Beatty, Director of Legislative Affairs and General Counsel to the Voting Rights Institute for Ohio Secretary of State Jennifer Brunner.

The advent of electronic voting machines and the passage and implementation of the Help America Vote Act of 2002 (HAVA) drastically changed the landscape of election administration. How election administrators plan for emergency situations also changed with the adjustment to these innovations. Ohio currently uses optical scan and direct electronic recording (DRE) voting machine technology, and has found that careful planning and quick adjustments have enabled our election administrators using this equipment to protect against potential disasters.

The March 2008 primary election in Ohio is an example of prudent planning and quick on-the-spot thinking which helped our state carry out the election process. Leading up to that election, Secretary Brunner began making preparations by removing some of the impediments that plagued Ohio in previous elections. To reduce long lines, she streamlined the process by which voters are required to vote provisionally; our office worked with local boards of elections to educate voters about residual votes; and Secretary Brunner hired several election law attorneys to assist the boards of elections before and on Election Day.

In September of 2007, Secretary Brunner commissioned a risk assessment study of the three voting machine systems used in Ohio (Premiere, formerly Diebold, ES&S, and Hart Intercivic). The purpose of the study was to provide a comprehensive, independent, balanced, and objective assessment of the risks to election integrity associated with Ohio's voting systems (which also are used across the country). This also encompassed election-related equipment, testing, standards, and associated internal controls, including the extent to which integrity violations are possible, preventable, detectable, and correctable. We completed the EVEREST study in December 2007. The results were crucial to evaluate the integrity of Ohio's election systems before the March 2008 primary election and future elections.

The EVEREST study contained scientific and industrial findings that Ohio's voting systems, specifically DRE voting systems, lack basic security safeguards required throughout the computer industry. They are prone to deterioration in performance and software operation and need reengineering and improved procedures for operation. With these disturbing findings in hand before the March 2008 primary election, Secretary Brunner embarked on a campaign to implement several initiatives that would give

boards of elections the tools necessary to deal with emergency situations should they arise – and should funding not be available to replace the electronic voting machines. It is important to note that the Election Assistance Commission (EAC) recently signaled its intent to undertake a similar study, which would require a review and utilization of our work as appropriate.

Secretary Brunner required Ohio county boards of elections to provide our office with security plans that detail chain of custody procedures for electronic voting machines. County boards of elections used this mandate as an opportunity to assess the integrity of their processes in handling voting equipment.

Secretary Brunner also required all county boards of elections that utilize DRE voting machines as their primary voting system to print backup paper ballots in the amount of at least 10% of the number of voters who voted in a similar, previous election. Secretary Brunner's directive effectively accomplished its intended purpose. When machines were not working properly in Lucas County, voters cast their votes on paper ballots. Voters also used paper ballots during power outages in Darke and Knox County.

Increasing the legal staff also paid off, as the office was able to field calls from county boards of elections continuously throughout the day and address legal concerns in real-time. All counties were instructed by directive to notify their assigned attorney in the Secretary of State's office of machine failure or ballot shortage. Communications between county boards of elections and the Secretary of State's office were optimal. We worked with boards, developing contingency plans to use ballot on demand machines, and as a last result, county board of elections were instructed to hand count photocopies of ballots to deal with shortages. We also established a well-devised partnership with the Attorney General's office, where several attorneys from that office were stationed in the field and were able to seamlessly obtain court orders when and where they were needed.

The 16 full-time regional liaisons from our office were onsite throughout the state at boards of elections responding to questions and dealing with concerns. In one case, the regional liaison from Franklin County assisted in delivering provisional ballots to individual precincts when those ballots ran low.

Further, the Secretary alerted law enforcement throughout the state of its legal responsibilities in assisting election officials on Election Day. County sheriffs assisted in Cuyahoga, Franklin, Darke and other counties as needed to ensure the safe delivery of voted ballots to the boards of elections. In Darke County, the State Highway Patrol assisted local law enforcement, providing great aid to the local sheriff's deputies that were assisting the county board of elections during a Level 3 weather emergency.

The Voting Rights Institute within the Secretary of State's Office also played a significant role. The Institute fielded hundreds of phone calls throughout the day in response to 4 million cards that were distributed at polling places as a means for voters to call with questions and concerns. These phone calls allowed the secretary of state's office to be proactive in mitigating several situations.

Following up on some the concerns about pollworkers, Secretary Brunner obtained a grant from PEW Charitable Trusts to develop an online pollworker training program (available at [www.ohioelectiontraining.com](http://www.ohioelectiontraining.com)). This site serves as a supplemental resource for current pollworkers, providing flowcharts and other tools that can be printed out and used on Election Day.

The Secretary's office, county boards of elections, and voters dealt with significant and unforeseen challenges. Election officials performed extremely well given unpreventable circumstances, including machine malfunction, power outages due to ice storms, bomb threats and ballots shortages. The

secretary of state's office supported the boards administratively in dealing with these issues and obtained court orders to allow voters in the affected areas to vote provisionally at their county board of elections.

The November 2008 general election is approaching. With the EVEREST study in mind, and Ohio's inability to replace electronic voting machines due to lack of funding, Secretary Brunner is pursuing every available option to ensure a smooth election. First, Secretary Brunner will require all county boards of elections to provide backup paper ballots to all voters who request one. Accordingly, Secretary supports the passage of Chair Lofgren's bill, HR 5803. Second, Secretary Brunner will continue to require county boards of elections to follow their established chain of custody plans for voting equipment. Finally, Secretary Brunner convened a security work group consisting of staff from our office and a diverse group of election officials from around the state to form guidelines for best practices and procedures for securing the voting systems used in Ohio. Some changes have already occurred as a result of these meetings, such as requiring more stringent security checks for personnel with access to the voting machines.

Although Ohio cannot plan for every emergency situation, Secretary Brunner understands the importance of contingency planning and being prepared. She is working diligently to this end.

Thank you again for the opportunity to offer my testimony before this committee. I am happy to answer any questions at this time.