

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS & CIVIL LIBERTIES**

**HEARING ON “LESSONS LEARNED FROM THE 2004 ELECTION”
THURSDAY, JULY 24, 2008**

**PREPARED STATEMENT OF THE
HONORABLE J. KENNETH BLACKWELL**

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3 Good afternoon, Mr. Chairman. I am here today at the Committee’s request to speak to the
4 issue of “Lessons Learned in the 2004 Election.” I testify today in my capacity as a private
5 citizen.

6 The subject of this hearing is, as I understand it, the future. Although my service as Ohio’s
7 chief elections officer from 1999-2007 puts me in a good position describe the lessons we
8 learned in Ohio before and after the 2004 election, the person who has the constitutional
9 responsibility to put those lessons into practice in 2008 is my successor as Secretary of State,
10 Jennifer Brunner. Any questions the Committee or its Members have about Ohio’s current
11 policies should be directed to Secretary Brunner.

12 Ohio received more than its fair share of attention during the long campaign leading to the
13 election held on November 2, 2004. The prospect of a close contest for the state's 20 Electoral
14 votes focused worldwide media attention on Ohio before, during, and after the election.
15 Attorneys for the media, the political parties, independent candidates, and a variety of local,
16 state, and national interest groups kept Ohio’s state and federal courts (and one in New Jersey)
17 busy both before and during the election. Disappointed partisans who know little to nothing
18 about the bipartisan political safeguards built into Ohio election laws have sought to discredit the
19 outcome by making baseless charges that have been thoroughly refuted by Ohio’ major
20 newspapers, by the Democratic Chairman of the Franklin County Board of Elections, and by and
21 a variety of independent researchers.

22 In my estimation – and in that of most independent observers, Ohioans were well-served by
23 their state and local elections officials in 2004. I thank each of them here for their service.

24 Running an election is democracy in action. Just as in any other setting, perfection is
25 impossible. It takes thousands volunteers to get the polls open and closed on time. Although
26 Ohio’s eighty-eight boards of county commissioners appropriate the money to pay most of the
27 costs of running elections, the “hands on” work of making elections clean, efficient, *and*

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28 *auditable* is the responsibility of Ohio’s bipartisan county boards of election. Our eighty-eight
29 bipartisan county boards of election provide the checks and balances that make it virtually
30 impossible for either party to rig an Ohio election “from the inside.” They decide on the
31 distribution ratios for voting equipment; they decide the location of polling stations; and they
32 select the voting equipment used in their counties from lists of equipment certified by the
33 secretary of state’s office. They also count the ballots, validate provisional votes, and certify the
34 vote tallies. County board of elections’ staff members work hard together and with their
35 counterparts around the state into the wee hours of the “mornings after” every election to run an
36 honest election.

37 All of these local safeguards ensure that local concerns about access to polling stations and
38 equipment are handled locally, and that *both* political parties have a say in the final decisions.
39 The secretary of state’s office collects and certifies the final outcome.

40 The dedicated professionals of the secretary of state’s office also deserve special mention.
41 The eyes of the world were on my office in Columbus on November 2, 2004. Observers from the
42 United Nations visited our offices in Columbus to see us in action. From the precinct level to the
43 solid wall of satellite trucks gathered in front of the Ohio State Capitol, the media were out in
44 force and made no secret about their willingness to sue if they felt that access was too limited.
45 Some did¹. Internet users from around the world hit our website at a rate of more than 50,000 hits
46 per hour at some of the peak hours after the polls closed.

47 And then there were the lawyers. Each candidate and party had teams of them around the
48 state. So did the media, the Department of Justice, and just about every interest group that had a
49 stake in that election. The Ohio Attorney General’s Office and its Special Counsel litigated all
50 around the state on my behalf to preserve the integrity of the voting process and to ensure voter
51 access to the polls. At one point, I even went so far as to instruct my lawyer, then-Attorney
52 General Jim Petro, to settle a case in which the Summit County Democratic Party had challenged
53 a state law allowing challengers to question a voter’s credentials at the polling station. He

¹ See, e.g., *American Broadcasting Companies, Inc. et al. v J. Kenneth Blackwell*, No. 1:04CV750, (U.S.D.C., S.D. Ohio) (media access to polling place within 100 feet of the flags at the entrance to the polling place); (Akron) *Beacon Journal Publishing Co., Inc. v Blackwell*, et al., No. 04-4313 (6th Circuit)(vacating order of the District Court allowing Beacon Journal reporters to be inside polling stations).

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54 refused, arguing that his obligation was to defend the state's laws. Though I too thought the law
55 was constitutional, I had to run an election to run and there was no way to resolve the important
56 issues involved in that case on the eve of the election.²

57 In sum, I do not believe it is a good use of either the Committee's time, or my own, to
58 rehash the details of the most thoroughly-vetted election held in recent memory, but I did want to
59 take the time to give credit to the more than 50,000 Ohioans who worked hard to make the 2004
60 election one of the most fair and accessible in the state's history.

61 I will focus the remainder of my comments – as the Committee has requested – on the
62 “lessons learned” during the 2004 election cycle that can be applied to the future. I have attached
63 copies of additional studies, news articles, and other materials for the Committee's information.

64 LESSONS LEARNED IN OHIO -- 2004

65 1. **Close elections and hotly-contested issues mean big turnout. *Boards of Election***
66 ***around the country should use the record turnout figures from 2004 to better***
67 ***anticipate precinct-by-precinct demands on voting equipment.*** We learned a lot from
68 the 2004 election. One of those lessons is that the length of lines is a function of the type
69 of voting equipment used; the number of voting machines per precinct (which
70 determines the maximum number of voters, per precinct, per machine); the availability
71 of early voting and “no-fault” absentee ballots (which I discuss later in this statement);
72 the political mood of the voters; voter interest in the candidates and ballot issues; and
73 environmental factors like the weather. The Ohio Legislature, following my lead,
74 imposed a ceiling on the maximum number of voters per machine statewide (1:175)³.

75 To put this number into context, let's consider the facts from the 2004 election⁴. In
76 Cuyahoga County, Ohio's largest, voting machines were allocated on a uniform basis of
77 one machine to 117 voters (1:117). Election Day figures showed that the average

² Ted Wedling, Blackwell tries to ban challengers at polls; Petro refuses,” *Cleveland Plain Dealer*, Saturday, October 30, 2004.

³ Section 514.03, Amended Substitute House Bill 66, 126th Ohio Legislature (June 30, 2005)

⁴ Mark Naymik, “Delays at Polls Weren't a Scheme: Voting Machines Distributed Evenly,” *Cleveland Plain Dealer*, Monday, January 17, 2005. Mr. Naymik's article includes a very useful – and informative – map of Cuyahoga County, and includes details concerning the precincts having the greatest number of voters per machine.

78 utilization of the machines was 70.5 votes per machine countywide.

79 The number of voters per machine in the City of Cleveland was actually lower than
80 average than in the outlying suburbs (64 voters per machine in the City of Cleveland and
81 74 voters per machine in the outlying suburbs). The highest number of voters per
82 machine in Cuyahoga County was 173 voters per machine.

83 The long lines in parts of Columbus that got so much attention were caused by a
84 combination of unprecedented population growth in the City of Columbus and
85 unprecedented voter turnout. Even those problems did not stop the Franklin County
86 Democratic Party from taking control of the Board of County Commissioners for the
87 first time in twenty years.⁵ Late registrations by students in the Kenyon College precinct
88 after the Knox County machines were allocated and programmed caused the long lines
89 there.⁶

90 2. **It pays to be proactive and to use all available technologies to ensure that voters**
91 **will know where and how to vote.** From October 27-October 29, 2004, I arranged for
92 an unprecedented, and to my knowledge, unique effort to ensure that Ohioans knew
93 where and how to vote in the 2004 elections. Using a recorded, interactive phone survey,
94 I called 953,641 *urban* households. I asked whether the person who answered knew
95 where there were supposed to vote. Depending on their answers, I gave them
96 information about where get the information they needed. (The script is attached as an
97 exhibit to this testimony.) The call ended with the following message:

98 AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL REGISTERED
99 VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND
100 AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT
101 VOTING LOCATION. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN
102 BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE.

⁵ Editorial, "A Fair – but Improvable – Election", *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004.

⁶ See discussion at footnote 9 on pages 7-8 below.

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103 a. Because most concerns that voters might not know their correct precinct are
 104 focused on Ohio’s large, urban areas, we specifically targeted the following cities
 105 in this urban outreach effort:

Akron	75,840	homes called
Cleveland	186,042	homes called
Columbus	204,823	homes called
Cincinnati	221,390	homes called
Dayton	134,971	homes called
Toledo	82,213	homes called
Youngstown	48,362	homes called

Statewide 953,641 homes called

106 b. The response rates were significant and coverage far surpassed anything we
 107 could have accomplished with standard PSAs. Please consider the following.

Persons who:	Message will reach:
<i>Watch 1- minute of TV in the targeted market in a day.</i>	12% of all homes that have televisions or 10% of the entire targeted market’s population.
<i>Listen to 1-minute of the most popular radio station in the targeted market.</i>	5.4% of all those that listen to radio that day or 3% of the entire targeted market’s population
<i>Read one article in the targeted market’s largest newspaper.</i>	6% of all the people who live in the targeted market or 4% of the entire targeted market’s population

108 c. Now, please consider the *personalized* response rates our survey produced:

City	Number of homes answering	Percentage of all homes targeted.
Akron.....	15,714 -homes answered one or more questions with a “Yes” or “No” response.	This is 20.72% of all homes targeted.
Cleveland.....	35,372 -homes answered one or more questions with a “Yes” or “No” response.	This is 19.01% of all homes targeted.
Columbus.....	36,448 -homes answered one or more questions with a “Yes” or “No” response.	This is 17.79% of all homes targeted.
Cincinnati.....	43,771 -homes answered one or more questions with a “Yes” or “No” response.	This is 19.77% of all homes targeted.
Dayton.....	29,720 -homes answered one or more questions with a “Yes” or “No” response.	This is 22.02% of all homes targeted.
Toledo.....	16,761 -homes answered one or more questions with a “Yes” or “No” response.	This is 20.39% of all homes targeted.
Youngstown....	11,918 -homes answered one or more questions with a “Yes” or “No” response.	This is 24.64% of all homes targeted.

109 3. **Provisional voting works!** Ohio requires voters to vote in the precinct in which they are
 110 registered. Those who were unsure about their registration or who had moved used

111 provisional ballots. According to *Electionline.org*'s April 2005 Briefing Paper: *Solution*
112 *or Problem? Provisional Ballots in 2004*, the national average for counting
113 ("converting") provisional ballots into votes was 68%:

114 Alaska had the highest percentage of provisional ballots cast with 97 percent and
115 five other states counted more than three-quarters of their provisional ballots –
116 Oregon (85%), Washington (80%), Nebraska (78%), Ohio (78%), and Colorado
117 (76%).⁷

118 Though election experts warn against trying to compare state-by-state percentages, it
119 seems clear to me that provisional ballot requirements are not only fair and easily
120 administered they are not nearly as confusing to voters as some have argued. Ohioans
121 have been using provisional ballots since 1990. We know they work.

122 **4. Consider adopting "no-fault" absentee ballots.** One good way to avoid long lines at
123 the polls on election days is to institute "no-fault" absentee balloting. Allowing a voter to
124 cast an absentee ballot without having to justify his or her reasons for doing so is good
125 policy. I was able to convince the Ohio Legislature to adopt no-fault absentee balloting,
126 which began statewide with the 2006 May primary. This is one good way to increase
127 voter turnout while taking much stress off busy local election officials. It is also a way
128 for voters wary of electronic voting machines to use a paper ballot!

129 **5. Pay attention to what the lawyers are doing! *Secretaries of State are responsible for***
130 ***ensuring the integrity and uniformity of statewide voting procedures, and lawsuits by***
131 ***"watchdog" groups are now an integral part of the process by which elections are***
132 ***administered.***

133 All persons having an interest in the integrity and uniformity of elections should
134 therefore pay very close attention to the relief demanded in lawsuits against elections
135 officials. In 2004, the secretary of state's office litigated forty (40) cases in the months
136 *before* Election Day and several while the election was going on. *None* of the issues
137 involved in these cases was particularly "novel," or unanticipated. Those involving
138 challenges to state laws or voting equipment could have been litigated during the four-
139 year hiatus between elections. Those that involve administrative details (like the size

⁷ *Electionline.org*, Briefing Paper: *Solution or Problem? Provisional Ballots in 2004*, April 2005 at pp. 11 (Table 2) and p. 7 (discussion).

140 and weight of paper or the burden of filing papers in a specific location, discussed
141 below) are both expensive and burdensome.

142 The point I am making here is that state election officials, not judges, are supposed to
143 administer elections. We have the resources, the staff, and the control to ensure that rules
144 and procedures are uniform throughout the state. A good example is the controversy
145 over the paper size and weight allowed for voter registration forms. I inherited those
146 rules from my predecessor as Ohio's secretary of state. They were based on years of
147 experience with the Post Office, which believed that lighter, smaller forms would be
148 shredded by automated, postal sorting equipment. When we learned that groups running
149 voter registration drives were going to drop off the forms at local boards of election, we
150 changed the rules. The goal *in both cases* was to ensure that properly-attested voter
151 registration forms get to the board of elections. When technologies change, so do the
152 times. Rules should change too.

153 6. **The most effective form of “voter suppression” results from *unfounded attacks on***
154 **the integrity of those who administer elections**⁸. A vibrant, pluralistic, and
155 participatory democracy depends on trust. Voters who have a stake in the outcome of an
156 election will go to the polls and make themselves heard when they are confident that
157 their friends and neighbors who staff the polls and tally the ballots will process them
158 fairly with reliable, state-of-the-art voting technology.

159 Ohioans trusted the system in 2004 – and it worked for them! Turnout in the African-
160 American community and among young people was record-breaking around the state⁹.

⁸ See *A Fair – but Improvable – Election*, *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004:

Certainty we can make the process better. But let's not throw out the baby with the bath water. *Creating a cynicism among African Americans that their votes somehow did not count because the ultimate result was not in the favor of the national Democrats is not the best way to create confidence among Black voters – or to ensure that voter turnout and interest among African Americans remains high.* (emphasis added)

⁹ See, e.g., Editorial, “A Fair – but Improvable – Election”, *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004:

But even as we fight to improve the voting process, we should not underestimate the impact that *enfranchised* African-American voters had in this election. Black voters came out in near-record numbers, and were responsible for a major shift in Franklin County government, including the election of a Democrat-controlled Board of County Commissioners for the first time in 20 years. (emphasis added)

The same problem occurred in Knox County, the home of Kenyon College and Mount Vernon Nazarene University. According to the *Cleveland Plain Dealer*

161 In most cases, the technology served them well, but in some cases local officials, basing
162 their judgments on data from the 2000 election, did not anticipate the record turnout.
163 Long lines were the result¹⁰.

164 7. **Technology is only one part of the solution. *Technology is important, but so is the***
165 ***considered judgment of people whom the states entrust with the responsibility to run***
166 ***elections.*** Those who study voting technology know that *paper ballots* are the most
167 reliable. We also know what *technologies* are most reliable: ***Precinct Count Optical***
168 ***Scanners (PCOS).***

169 This is why I directed in January 2005 that Ohio should use its HAVA funds to buy and
170 install PCOS systems s in all of Ohio’s 88 counties¹¹. Voting machine manufacturers and
171 a state judge did not like that.

172 8. **Follow the money! *Congress and the states have spent billions of dollars to “improve”***
173 ***voting equipment function and reliability. We need to ensure that the money actually***
174 ***buys “real” improvements.*** I chose PCOS machines for Ohio because they are reliable
175 and time-tested. They provide a voter-verifiable, paper audit trail (VVPAT). PCOS
176 machines are comparatively inexpensive, and completely avoid all of the reliability
177 concerns associated with either electronic (DRE) machines or the ballot security issues
178 associated with central-count optical scan (CCOS) machines.

179 Unfortunately, I was overruled by a state judge who acted at the behest of voting
180 machine vendors who wanted to sell other equipment and some county boards of
181 elections who wanted to exercise their pre-HAVA local options to select equipment and

A late registration drive at Kenyon meant many names were added in the two weeks before Election Day, after voting machines had been assigned and programmed. Election workers had no way of predicting that the Kenyon precinct would have one of the highest turnouts in the county – almost 73 percent – said Rita Yarman, deputy director of the Knox County Board of Elections and a Democrat.

Bill Lubinger, “Untangling the voting controversies,” *Cleveland Plain Dealer*, Sunday, January 9, 2005.

¹⁰ See Bill Lubinger, “Untangling the voting controversies”, *Cleveland Plain Dealer*, Sunday, January 9, 2005.

¹¹ Ohio Secretary of State, Directive 2005-01 (January 2005), available online at: <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2005/Dir2005-01.pdf> and attached; Directive 2005-07 (April 14, 2005), available online at: <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2005/Dir2005-07.pdf> and attached.

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182 choose their vendors¹². It simply did not matter to the judge that the machines were
183 neither fully tested nor certified, or that the VVPATs were only in the pre-production
184 testing phase. Nor did it matter that the now widely-reviled, touch-screen systems I had
185 rejected in favor of PCOS machines were already being questioned in the press by
186 voting rights groups. At least to some extent, local control prevailed¹³.

187 In sum, I did my job on the technology and reliability issues. Thankfully, whatever story
188 there is to tell about Ohio's current voting technology does not involve me!

189 CONCLUSION

190 I hope that these remarks have given the Committee the benefit of my experience as Ohio's
191 Chief Elections Officer. Election administration is not for the faint-of-heart or the thin-skinned.
192 It is an important job on which the future of our American democracy depends.

193 Thank you, Mr. Chairman. I will be pleased to answer questions. I have attached a number
194 of additional documents for the record, and ask that they be admitted at this time.

¹² See, e.g., *Election Systems & Software, Inc. v. J. Kenneth Blackwell, Ohio Secretary of State*, Case No. 05-CVH-004855 (Common Pleas, Franklin County, Ohio); *Hart Intercivic, Inc. v. Ohio Secretary of State*, Case No. 2005-06651 (Ohio Court of Claims). The Franklin County Board of Elections also sued, asserting its right to select the voting equipment of its choice. For a summary of the procedural aspects of the litigation with Elections Systems & Software, Inc. (ES&S) and Hart Intercivic (Hart) over the certification of DRE machines and their VVPATs, see *State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 835 N.E.2d 1232 (2005) (*per curiam* opinion, O'Connell, J., dissenting). The Chief Justice of Ohio later disqualified the trial judge in the *ES&S* case because

The judge was not satisfied ... with this court's decision denying Blackwell's requested writ. He has instead-with vitriolic language-taken the affirmative step of asking this court to impose financial sanctions against Blackwell's attorneys, describing their arguments as baseless and frivolous. Judge Crawford's quest to see that Blackwell's attorneys are punished financially for pursuing the prohibition case in this court would be apt to cause the reasonable and uninvolved observer to question the judge's ability to preside fairly and impartially over further trial proceedings involving defendant Blackwell.

In re *Disqualification of Crawford*, 110 Ohio St.3d 1223, 850 N.E.2d 724 (per Moyer, C.J.)

¹³ I did prevail in the Ohio Legislature on the maximum permissible ratio of voters per electronic voting machine (175:1). See footnote 3 above.

Plain Dealer | Saturday, October 30, 2004

Ohio election bombshell

Blackwell tries to ban challengers at polls; Petro refuses order

TED WENDLING
Plain Dealer Bureau

COLUMBUS — Going against his own party, Republican Secretary of State Ken Blackwell sought Friday to prevent battalions of political party activists from challenging Ohio voters at polling

places on Tuesday. Blackwell's stunning announcement, intended to settle federal lawsuits in Cincinnati and Akron, brought him into immediate conflict with the Ohio Republican Party and one of his 2006 gubernatorial rivals, Republican Attorney General Jim Petro.

Blackwell gave a perfunctory notice to Petro, faxed his recommendation to the judges and then rocked the state GOP by publicly instructing Petro, his lawyer, to formally present the settlement offer in both courts.

Petro said he would not. "Neither the secretary of

state nor I can negotiate away the legal rights of Ohio's citizens," Petro said in a statement released by his office. "Thus, I cannot submit to the federal courts the secretary's unlawful proposal to ban all challengers for all parties, candidates or issues on Election Day."

SEE BLACKWELL | A8



Blackwell



Petro

BLACKWELL

FROM A1

Blackwell's order stuns Ohio GOP

The clash between the state's chief elections officer and its chief lawyer threatens to throw into further turmoil an election that is already quivering, with partisan rage as President Bush, Sen. John Kerry and their surrogates crisscross this key battleground state.

Both the Akron and Cincinnati lawsuits remain unresolved.

Blackwell's announcement in Columbus briefly halted a hearing before U.S. District Judge Susan Dlott in Cincinnati, where civil rights activists are seeking to have the state law that allows polling place challengers overturned as unconstitutional. After Dlott read Blackwell's news release, the room quickly emptied as nearly a dozen lawyers — some appearing perplexed — huddled in the hallways or dialed their cell phones to find out what was happening.

Just days earlier, Blackwell had directed county elections boards to allow a challenger in each precinct.

When court resumed, Assistant Attorney General Richard Coglianesse told the judge he represented Petro but would no longer represent Blackwell.

"We are defending the statute and the rights of Ohioans," he said.

Later, Dlott announced that she had received word that the Justice Department planned to file a friend-of-the-court brief in the case.

Erie Holland, a spokesman for the Justice Department in Washington, would not comment Friday evening on the possibility of interceding. The department does plan to send civil rights division attorneys and staff to monitor the election in dozens of jurisdictions, including Cuyahoga, Franklin and Hamilton counties in Ohio.

Outside the courtroom, Hamilton County Republican Chairman Mike Barrett said GOP officials would not back off plans to place challengers in 251 precincts in Cincinnati and its suburbs that voted for Al Gore in 2000.

Those precincts are in predominantly black neighborhoods. In some, Gore got up to 99 percent of the votes, he said.

He said up to 20 percent of the precincts in Cincinnati are staffed entirely by Democrats who work for the board of elections.

"We need to observe," Barrett said.

Legal wrangling over challenges in voting precincts dominated by poor and black voters has left some Ohioans unsure whether or where to vote. But David Sullivan, Democratic voter protection coordinator in Ohio,

said the challenges have galvanized minority voters.

Steven Huefner, an associate professor of law at Ohio State University, said Blackwell would have difficulty keeping challengers out of polling areas, but he said legal arguments that the law "is a holdover from Jim Crow-era statutes" might be persuasive.

"We've never had challengers in every precinct, or if not in every precinct, in so many predominantly African-American precincts," he said. "It does raise the specter both of some constitutional rights being violated, as well as violations of the Voting Rights Act."

Blackwell and Petro, who are both involved in the Bush-Cheney campaign, clashed earlier this week when Petro, against Blackwell's wishes, appealed an order in another case before Dlott in Cincinnati. Petro lost his appeal of Dlott's decision to halt GOP voter challenges in six Ohio counties. On Friday, Dlott expanded her order to cover all 88 Ohio counties.

Blackwell proposed the ban on challengers, but not witnesses, from polling places after the Summit County Democratic Party sued in federal court in Akron, seeking to overturn the law that permits challengers, and the Cincinnati challenge was filed by activists Marian and Don Spencer, who claimed that the challengers could intimidate and harass voters.

"It has no sensible application in today's democratic process," said Andrew Padrutt, executive director of the Summit County party. He said challenges would create delays at the polls and discourage people from voting and would not give disqualified voters ample time to appeal.

Blackwell said he disagreed that the law was discriminatory, but said he proposed the settlement in the interest of promoting a smooth election.

"While I do not agree there is any discriminatory intent or result from these statutes, I do believe a full airing of the issues cannot be completed prior to Tuesday's election," he said.

Democrats cheered Blackwell's proposal.

"It is now abundantly clear that the entire Republican voter-suppression effort is backfiring," Sullivan said.

George Forbes, president of the Cleveland chapter of the NAACP, agreed.

"I think it's great," Forbes said. "The Republicans are the ones who want the challenges. . . . If they withdraw, we can abide by that."

Mark Weaver, legal counsel for the Ohio GOP, tempered his comments.

"We have challengers ready to go to the polls, but we're going to abide by whatever the law is and we're going to allow elections officials to resolve what the rules are," he said. "The state party's position is whatever the law permits should be allowed, and right now the law allows" challengers.

In the short term, the Blackwell-Petro clash will only "sow more confusion," said John Green, director of the University of Akron's Ray C. Bliss Institute of Applied Politics.

"It sounds like Secretary Blackwell's position would probably be fairly popular among a wide spectrum of voters — let's set all this aside until after the election," Green said. "Of course, Petro is saying this shouldn't prevent him from doing his job, which is to represent the state of Ohio in court. . . . There seems to be a struggle for advantage going on."

Plain Dealer Reporters Sandy Theis, Bill Sloat, Steve Luttner, Elizabeth Auster and Joseph L. Wagner contributed to this story. To reach this Plain Dealer reporter: twending@plafnd.com; 1-800-228-8272

THE PLAIN DEALER

Monday, January 17, 2005

Delays at polls weren't a scheme

Voting machines
distributed evenly

MARK NAYMIK
Plain Dealer Politics Writer

When they stood on the floor of Congress recently to protest the results of Ohio's presidential vote, Democrats told a national audience about their suspicious hunch: People in Democratic strongholds were short-changed on voting machines on Election Day.

Voter groups and activists have lobbed the same accusation for weeks. Long lines in urban areas, such as Cleveland, kept John Kerry supporters from voting, they say.

But a Plain Dealer analysis shows that, in Cuyahoga County at least, the elections board distributed machines equally to city and suburban polling locations.

The long lines at some locations appear to be more the result of timing, new voters and overwhelmed poll workers, not necessarily a shortage of machines.

Before the Nov. 2 election, the elections board allotted each Cleveland precinct one machine for every 117 registered voters within its boundaries — the same ratio of machines that suburban precincts received.

In other words, the more registered voters a particular precinct had, the more machines it received, regardless of where that precinct was.

And in the end, the busiest precincts — when measured by the number of ballots cast per machine — were actually in the suburbs, not Cleveland, according to a Plain Dealer analysis of records from the Cuyahoga County Board of Elections.

Countywide, voters cast an average of nearly 71 ballots on each of the county's 8,000 machines. In Cleveland alone, voters cast an average of 62 ballots per machine. In the suburbs, the average was 74.

Brook Park's Precinct 3A had the most ballots cast per machine, with 163. Voters in that precinct were among those casting ballots at City Hall.

SEE VOTE | A6

VOTE

FROM A1

Machine records show even distribution

In Strongsville's Precinct 3C (at Edna Surrarer School), voters cast 149 ballots per machine.

The busiest machines in Cleveland were on the West Side, in Ward 15's Precinct I, where voters at the YMCA on Pearl Road cast 101 ballots per machine.

The analysis does not include the more than 200 machines that the board distributed across the county on Election Day to replace broken machines or supplement precincts with higher-than-expected turnout. It also does not factor in voters who, facing long lines, walked away without voting. Neither election officials nor voting groups can pinpoint how many people left polls.

Despite charges that election officials failed to properly prepare for Election Day, it appears those in Cuyahoga County tried. In deciding how to distribute machines, the board used a liberal formula that included not only active voters but also inactive voters — those who had not shown up to the polls in years.

In Franklin County, which had some of the longest lines in Ohio on Election Day, officials distributed machines using a ratio based only on active voters.

Long lines did form at some of Cuyahoga's 584 polling loca-

tions. And those on Cleveland's East Side — where problems were most anticipated — received the most attention from politicians, voter groups and reporters on the lookout for glitches.

The lines formed for a number of reasons: waves of new voters; inexperienced or overwhelmed poll workers; a crush of voters during peak hours; and general confusion at larger polling sites that host multiple precincts.

Michael Vu, director of the Cuyahoga elections board, admits his office needs to improve some of its "process and procedures," but he said election workers and voters "should applaud themselves" for how Election Day unfolded.

One of the moves the board may study is better preparation for peak voting times. Unlike restaurants, which schedule staff size to accommodate their busiest hours, the elections board did not assign additional staff or machines specifically for peak times.

Each precinct had four poll workers, typically two Democrats and two Republicans. The board added a fifth poll worker to precincts it believed would be busy. Also, each polling location had an inspector to help direct voters.

That was not enough, however, to avoid lines at Woodbury Elementary School in Shaker Heights.

The polling location, which served voters from both Shaker Heights and Cleveland, housed tables and machines for six pre-

cincts.

Some voters complained of waits reaching 2½ hours.

An early morning crowd overwhelmed at least one precinct at Woodbury — Cleveland Precinct 4D — which led the chief poll worker to quit. That created a "domino effect" of problems, Vu said.

One problem pointed out by Zeola Mitchell, who worked her first presidential election on Nov. 2, was that the precinct didn't have enough machines to handle the morning rush, starting at 6:30 a.m. Woodbury was assigned nine machines for Precinct 4D, but the board sent an additional eight by early afternoon.

"After we got more machines, things were smoother after that," Mitchell said.

Still, Vu said predicting exactly where and when a surge of voters will appear is akin to "picking winning lottery numbers."

As it does in every election, the Cuyahoga board set up six offices across the county from which extra machines could be delivered quickly to crowded polling locations.

In contrast to Woodbury, Precinct 3A in Brook Park had a smooth Election Day despite heavy turnout. Voters had relatively few problems, said poll worker Sam Siverd.

"We had a crowd when we first opened, but it remained steady throughout the day," he said.

He attributed the precinct's success in part to experienced voters who needed little assist-

ance and to a consistent flow of voters, as opposed to a sudden crush at peak hours.

The board is examining ways to reduce the congestion at some polling places, including reducing the number of precincts at certain locations. But that will take cooperation from public and private institutions that have become increasingly unwilling to host Election Day voting, Vu said.

He also said the board will consider ways to improve training of poll workers.

Other groups are planning more analysis. Last week, two senior Democratic lawmakers — U.S. Reps. Henry Waxman of California and John Conyers of Michigan — asked the Government Accountability Office, the investigative arm of Congress, to find what caused the long lines in Ohio.

Sharon McGraw, executive director of the League of Women Voters of Cleveland Educational Fund, has already done her analysis. She said "logjams" at some locations were partly the result of first-time voters relying on poorly trained or confused poll workers. She recently reviewed the Nov. 2 problems with other representatives of the league.

"It should move smoother, and part of it comes down to human errors, and part of that was confusion created by all the lawyers and everybody involved," she said.

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CIVIL-RIGHTS PANEL

No major election problems found

Justice Department says voting devices weren't distributed unfairly in '04 vote

By Kevin Mayhood and Robert Vitale
THE COLUMBUS DISPATCH

The Franklin County Board of Elections made mistakes last November, the U.S. Department of Justice said yesterday, but it did not discriminate when it allocated voting machines.

Too few voting machines, bad data on how many voters were eligible, a sharp increase in voters from the 2000 election and a lengthy ballot in Columbus caused long lines at some polls, the Department of Justice's Civil Rights Division concluded.

But contrary to complaints that predominately black precincts had fewer voting machines than in 2000 and suffered the longest lines last November, "The allocation of voting machines actually favored black voters," voting section chief John Tanner said in a letter to Assistant Franklin County Prosecutor Nick Soulas this week. The prosecutor's office represented the elections board during the inquiry, which began last winter.

Tanner said that while the Franklin County Board of Elections allocated fewer voting machines overall to 54 predominantly black precincts than it had in 2000, blacks did not suffer. He said that predominantly white districts averaged 172 voters per machine versus 159 voters per machine in the predominantly black districts.

Turnout was nearly 9 percentage points lower in predominantly black districts, Tanner said.

After last-minute court action on Election Day, some polls were ordered to stay open beyond the traditional 7:30 p.m. close. Tanner said the predominantly black precincts were open an average of 1 hour and 15 minutes longer than the predominantly white precincts.

Matthew Damschroder, director of the elections board, said the Department of Justice contacted Franklin County elections officials early this year because of what he called "this low rumble out there" that the presidential election wasn't conducted honestly and impartially.

Primarily fueled by Internet bloggers and a post-election report by U.S. Rep. John Conyers Jr., of Michigan, the top Democrat on the House Judiciary Committee, critics charged that long lines to vote in Columbus were the result of an election-stealing strategy to discourage black voters who overwhelmingly backed Democrat John Kerry.

Conyers blasted the Justice Department findings in a letter yesterday to U.S. Attorney General Alberto Gonzales:

"I am flabbergasted," he wrote. "In four pages of somewhat convoluted logic, you tend to focus on specific and largely irrelevant details regarding the black and white voting tendencies with regard to the issue of machine allocations, while missing the main point that tens of thousands of individuals were effectively denied their precious right to vote in the critical state in the entire election."

Election critics Bob Fittrakis and Clifford O. Arnebeck said testimony by voters clashes with the findings. They want a close look at how Tanner came up with the figures he cites to back his assertions.

Damschroder has said the bipartisan board decided how machines would be distributed based on past voting trends and current registration numbers. He said Tanner's conclusions were "very heartening for us."

"We're concerned, too, that there were people who thought we did this in a discriminatory manner."

The elections board has vowed to have more voting machines in place for the 2006 statewide elections.

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Democrats keep leveling charges at Blackwell they can't back up

Secretary of State J. Kenneth Blackwell is flypaper for controversy.

By sticking his nose into fights and poking his finger in eyes, he has become a well-known political maverick, a trait in this year of the anti-Republican incumbent that led him to the GOP gubernatorial nomination.

Last week, Blackwell stirred a new firestorm by writing rules to implement House Bill 3, the election-reform law that took effect May 2.

One rule requires people who are paid for registering voters to personally take forms signed by new voters to boards of election offices or face a fifth-degree felony. Typically, signature-collectors turn over the forms to groups sponsoring voter-registration drives that then deliver them en masse to



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election officials.

Democrats were outraged, complaining that the rule could shut down efforts to register new voters. Who in Westerville, for example, would want to collect new-voter signatures and risk becoming a felon for not personally driving them the 15 miles to the county election board in Downtown Columbus? The Ohio League of Women Voters called the rule goofy and said it would imperil voter-registration drives using volunteers.

Lee Fisher, the Democratic nominee for lieutenant governor, said the rule adds to the "ample evidence that Ken Blackwell has manipulated the election system to disenfranchise voters." Echoing an editorial in *The New York Times*, Fisher called upon Blackwell to relinquish his Nov. 7 election-oversight duties.

But Blackwell has a strong counter-argument: The rule he wrote simply follows the law. Indeed, it does appear to do that. Critics might more appropriately aim their ire at the GOP-con-

trolled legislature and demand that it change the law.

Doing that, however, would deny Democrats a new opportunity to use Blackwell as a scapegoat. They haven't stopped blaming him for Sen. John Kerry's loss to President Bush in the 2004 presidential election, never mind that Kerry told *The Dispatch* just a month ago that he did not lose the election because of fraud. Still frothing, Democrats nationally are flooding the state with foot soldiers and cash to exact revenge against Blackwell in November.

The latest to enter the fray is Robert F. Kennedy Jr., who authored a long story in the June 3 issue of *Rolling Stone* titled: "Was the 2004 election stolen?" Kennedy's conclusion: "I've become convinced that the president's party mounted a massive, coordinated campaign to subvert the will of the people in 2004." Kennedy's chief villain is Blackwell.

If you read Kennedy's story, make sure to go to Salon.com and read the

rebuttal by Farhad Manjoo, a Salon staff writer, who spent a year exhaustively studying the Ohio election rather than, a la Kennedy, dipping his toe into it 19 months later. Writes Manjoo, "If you do read Kennedy's article, be prepared to machete your way through numerous errors of interpretation and his deliberate omission of key bits of data."

That warning is echoed by my colleague Mark Niquette, who closely covered and dissected the election aftermath. Cutting through the swirl of conspiracy theories about how Blackwell helped Republicans steal the election, Niquette told me that the critics conveniently neglect one crucial fact: Stealing the Ohio election for Bush would have required widespread complicity by Democrats.

Ohio has a bipartisan election system with an equal number of Democrats and Republicans at the county level, where elections are actually run, Niquette said. For the massive fraud outlined in stories such as Kennedy's to have occurred without being exposed

at the time, scores of Democratic election officials and hundreds of lawyers for Kerry in Ohio would have had to have been bought off, incompetent or both.

Kennedy rails about the woefully inadequate number of voting machines in Franklin County's inner-city precincts, but with bipartisan approval, a Democrat decided where the machines would be placed. Kennedy accuses Blackwell of twisting the rules on provisional ballots to help Bush block Democratic votes but neglects to mention that 32 other states have the same rules for counting such ballots — and that Ohio's rate for counting them was 77 percent, the third highest in the nation.

Blackwell invited criticism by agreeing to serve as Bush's Ohio co-chairman, but Democrats still haven't met the burden of proof that he stole the 2004 election.

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Department of Justice finds no racial disparities in voting

COLUMBUS — The U.S. Department of Justice found no evidence of discrimination in the distribution of Franklin County's voting machines in the 2004 presidential election, according to a report.

The four-page report released Wednesday followed last week's Democratic National Committee investigation into Ohio's contested election. The department's data refute DNC claims that black voters were placed at a disadvantage because voting machines were distributed disproportionately among precincts.

The DNC report found racial disparities between the number of registered voters allocated per machine in predominantly black and white precincts, but, using turnout rather than registration numbers, the Justice Department said the distribution narrowly favored black voters.

Walter Mebane, a Cornell University professor who worked on the DNC report, said voters in predominantly black precincts who showed up early in the morning to vote found fewer machines than those who voted later, which could explain some of the differences between the two reports.

Blackwell easy target for Democrats

But the big picture isn't as clear as some suggest

Martin Gottlieb

COMMENTARY



Democrats are primed to turn Ohio Secretary of State J. Kenneth Blackwell into the Katherine Harris of 2004. He is making their job easy. And

yet his overall record doesn't sustain the charge.

Harris was the secretary of state in Florida in 2000 who, in the eyes of Democrats, made every possible decision in favor of the Republicans in the post-election dispute. Whether she is really the shameless hyperpartisan that Democrats portray is beside the point. Each party has its folklore. Her name is now Democratic shorthand for shameless hyperpartisan.

So here comes 2004, sooner than anybody expected, judging from all the unresolved issues about how to administer the election. And Ohio is presumed to be as central as Florida. And the secretary of state is a self-promoting ideological warrior who is trying to become governor in 2006 by out-Republicanizing his Republican competitors, thus winning favor with primary voters.

He's the candidate who's making a big deal out of being against a recent temporary sales tax hike

enacted by less Republican Republicans. And he's big for the ban on gay marriage.

So he's just the kind of person Democrats instinctively distrust most.

Moreover, he is impossible to defend against the charge of self-promotion. He is using government money to tattoo himself on your television screen, in the guise of an ad advising you to make sure you punch the punch card all the way through.

He made himself a particularly easy target for Democrats last month by making a fuss for a while about the thickness of voter registration forms. He said the thin ones that many voters and organizations were using could not be processed well by machines. He had to back off that, finally telling county election boards to accept them. But the political damage was done.

Now there is, among other things, his relatively hard-line stance on "provisional" ballots.

A primer: After 2000, the feds decided that too many voters had been illegitimately turned away from the polls for allegedly not having registered. So Congress passed a law pushing states to allow voters to cast "provisional" ballots if their registration was in doubt, with those ballots to be counted later if the voter turned out to have been registered.

Specifically, the new federal law says voters should get such

ballots if they are in the right "jurisdiction." Some people interpret that to mean county, because the county level is where voter records are kept. However, Ohio law says a voter must be in the right "precinct." Blackwell insists this means that the vaguer word "jurisdiction" means precinct in Ohio.

Democrats want the county standard to apply, because they think any possibility for confusion about who is registered tends to hurt people of lower education levels most, meaning a disproportionate number of Democrats. And the Democrats see special potential for confusion this year, because many people are newly registered and because the intensity of the year may bring out voters who haven't voted since their precinct boundaries were changed.

A federal judge in Toledo — a Clinton appointee — has sided with the Democrats. But a judge in Missouri heard a similar case and adopted something more like the Blackwell standard. And the head of the bipartisan U.S. Election Assistance Commission, created after 2000, agrees with Blackwell.

Blackwell does seem to have a respectable legal case. But to Democrats, he seems to be applying the strictest standard he can get away with.

So perhaps it should be noted in his defense that, ideological warrior though he is, he has not

generally used his current job to win favor with the political right. Rather, he has used it to demonstrate to others that he is capable of being a nonpartisan reformer when that's what the situation demands.

Most specifically, he's the Ohio Republican who pushed hardest for adoption of high-tech electronic voting systems to replace the old punch card system. He did that at a time when Democrats were complaining that the punch cards hurt Democrats, by resulting in more ruined ballots in low-income areas.

Republican state Sen. Jeff Jacobson of Montgomery County fought Blackwell tooth and nail, insisting that the whole issue was just a bunch of Democratic sour grapes over 2000.

In fact, however, almost 100,000 punch cards in Ohio didn't get counted in 2000 (when the gap between the presidential candidates was about 140,000). And, as a new study by *The Columbus Dispatch* shows, predominantly black precincts had three times as many ruined ballots as the average.

Blackwell might have dug his partisan heels in like Jacobson. If he has now decided to go partisan on election-administration issues, it's a new tack.

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CALL & POST

CALL AND POST THURSDAY, DECEMBER 2, 2004

A fair – but improvable – election

The Rev. Jesse Jackson has a problem with the Ohio election process. The fact that there were long lines on Election Day in predominantly-Black neighborhoods; that the rules governing provisional ballots forced voters using them to go to their correct precincts, which seemed to work against the newly-enfranchised voters who were pouring out to the polls; even that some exit polls did not match with the final results on Election Day – all point to a serious problem that must be addressed by a recount of the votes and a suit against the system.

"We can live with winning and losing. We cannot live with fraud and stealing," Jackson said in a press conference at Mt. Hermon Baptist Church in Columbus.

But was there fraud and stealing? Was the election really unfair? Or were there simply problems with the operation of the system that in fact are correctable?

Secretary of State J. Kenneth Blackwell said

that the election went well. He accused Jackson of grandstanding, and of calling into question the entire process – a process, in Ohio, noted for its bipartisanship.

And he said that Jackson's charges could create the kind of cynicism among new voters that will work against the process.

But between these two voices – both Black, one a key Kerry supporter, the other a major backer of Bush – there is another voice that must be heard. It is the voice of Franklin County Democratic Party Chairman Bill Anthony. He is Black. Obviously, a Democrat. And the chair of the Franklin County Board of Elections.

Were there problems in the election? Certainly, Anthony said. But he argued that these were not problems of fraud or intimidation or vote suppression; they were problems of too few machines, too few resources.

From his position inside the process of Franklin County elections, Anthony could see what was happening. He pointed out that the

county's growth – growth that demanded 29 new precincts – coupled with a stagnant number of voting machines, meant that the scarce machines would have to be allocated over more precincts. And the formula the county used to decide where the machines should go was based on 2000 voting patterns, and did not take into account the massive increase in registrations in inner-city neighborhoods.

In hindsight, we might argue over how voting machines were allocated. But that argument is not the same as arguing that Black voters were intentionally denied the opportunity to vote through various stratagems. In order to make that argument, as Blackwell – and Anthony – rightly point out, it would take the complicity of Anthony himself.

Can Ohio improve the way it handles elections? It certainly can – and must. We need new voting technology in all our precincts. We need more machines, especially in inner-city communities. We need more poll workers. And there

needs to be bipartisan effort to bring all these changes to pass in Ohio before the 2006 election.

But even as we fight to improve the voting process, we should not underestimate the impact that enfranchised African-American voters had in this election. Black voters came out in near-record numbers, and were responsible for a major shift in Franklin County government, including the election of a Democrat-controlled Board of County Commissioners for the first time in 20 years.

Certainly we can make the process better. But let's not throw out the baby with the bath water. Creating a cynicism among African Americans that their votes somehow did not count because the ultimate result was not in the favor of national Democrats is not the best way to create confidence among Black voters – or to ensure that voter turnout and interest among African Americans remains high.

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MoveOn.Now

The zealots who refuse to accept Ohio's vote count risk undermining confidence in the system itself

Most Americans, including the vast majority of those who supported John Kerry for president, have grasped the most basic reality of Election Day 2004:

George W. Bush was re-elected. He won roughly 60.7 million votes and carried 31 states with 286 electoral votes. Ohio's 20 Electoral College members formally cast ballots for the president Monday in the Statehouse.

Unfortunately, there is a small, but very vocal, group of Americans who refuse to accept this reality. They argue that what appear to be routine technical glitches and human errors were in fact an elaborate conspiracy to skew the election results. They claim that long lines at a few polling places, the rather unsurprising result of high voter interest, were evidence of a systematic campaign to discourage participation. In short, having failed to get the outcome they wanted at the polls, they have decided to mount an irresponsible campaign aimed at undermining public confidence in the electoral system itself.

Ohio, arguably the most intensive battleground for Bush and Kerry, has been the No. 1 target of these diehards.

Since Election Day, they have seized on isolated problems in a relative handful of this state's 11,366 precincts as proof of greater ills or even criminal activity.

One speaker in Columbus over the weekend likened Ohio to Ukraine. The Rev. Jesse Jackson has complained of widespread "fraud and stealing."

The Green and Libertarian parties, whose presidential candidates got a combined *threenths of one percent* of the vote in Ohio on Nov. 2, have demanded a recount of the state's 5.7 million ballots. That will cost taxpayers about \$1.4 million. A coalition of critics, led by a former Ohio organizer for Ross Perot, has asked the Ohio Supreme Court to overturn the presidential election, as well as the outcome in the race for chief justice. The Kerry campaign, re-

flecting its leader's maddening desire to have everything both ways, has said it does not expect a recount to change anything — yet has also issued a list of things it wants local elections officials to double-check.

Obviously, there were problems on Election Day. There always are. Elections are run by imperfect humans. Many individual polling places are in the hands of civic-minded neighbors with a few hours of training. Machines malfunction. Voters mess up ballots.

But Ohio has already done its usual intensive post-election audit and reconciliation, a process designed to spot mistakes. That canvass resulted in Bush's unofficial 136,000-vote margin being reduced to the 119,000-vote edge that Secretary of State Kenneth Blackwell certified last week.

Ohio's bipartisan elections system makes the kind of GOP conspiracy that some allege all but impossible to execute. Every county board of elections consists of two Democrats and two Republicans. So when Jackson and other national Democrats question Ohio's outcome, they demean their own allies. William Anthony Jr., the African-American who chairs both the Franklin County Democratic Party and its elections board, has been personally stung by Jackson's slander: "Why would I sit there and disenfranchise my own community?" he asks.

The recount will go forward because by law it must; history suggests few votes will change. But it is time to focus on how to make future elections more efficient.

Clearly it would help if groups that register new voters did not deliver thousands of applications at the last minute. Ohio also needs an early voting system to relieve at least some of the pressure on Election Day. And rather than retreating from electronic voting machines, the state needs to find a secure system and back it up with a paper record.

Common-sense solutions can make a difference. Endless sour grapes will not.

Opinions

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OUR VIEW

Robert Kennedy Jr. fails to carry Ohio for John Kerry

For decades after the 1960 presidential election, a certain myth was repeated ad nauseam and accepted widely — that John F. Kennedy won the presidency because Chicago Mayor Richard J. Daley's "machine" cheated.

There was a certain problem: Sen. Kennedy would have won the election even without Illinois; the Electoral College vote wasn't so close.

No matter. When the myth started to fade, it wasn't because people had become enlightened. It was because 1960 faded into history.

Well, now Ohio is developing into the Illinois of 2004. Although Sen. John Kerry never questioned the victory of President George W. Bush here, some people did. And still do.

Let's not even talk about blogs. Last summer, *Harper's* magazine's cover story was "None dare call it stolen: Ohio, the election, and America's servile press."

Now *Rolling Stone* magazine chimes in with a long story "Was the 2004 Election Stolen?" Covering much of the same territory, it leads with the big-print claim that "Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted — enough to have put John Kerry in the White House."

The writer is Robert F. Kennedy Jr. So the family has now seen the election-rewrite business from both sides.

The article is too long to be dealt with here point-by-point (it's online), but let's look at passages of local interest. The following is about some counties centered on Dayton, stretching north and south:

RFK Jr. says: "The worst theft in Ohio may have quietly taken place in rural counties. An examination of election data suggests widespread fraud — and even good old-fashioned stuffing of ballot boxes — in 12 sparsely populated counties scattered across southern and western Ohio: Auglaize, Brown, Butler, Clermont, Darke, Highland, Mercer, Miami, Putnam, Shelby, Van Wert and Warren. ... John Kerry's numbers were suspiciously low in each of the 12 — and George Bush's were unusually high.

"Take the case of Ellen Connally, a Democrat who lost her race for chief justice of the state Supreme Court. ... Kerry should have drawn far more votes than Connally — a liberal black judge who supports gay rights and campaigned on a shoestring budget. ...

"Yet in these 12 off-the-radar counties, Connally somehow managed to outperform the best-funded Democrat in history, thumping Kerry by a grand total of 19,621 votes (or) 10 percent.

"(Congressman Dennis) Kucinich ... (says) 'Down-ticket candidates shouldn't outperform presidential candidates like that. That just doesn't happen. The question is: Where did the votes for Kerry go?' ...

"The ... likely explanation is that they were fraudulently shifted to Bush. ...

"Says (one analyst), 'By itself, without anything else, what happened in these 12 counties turns Ohio into a Kerry state. To me, this provides every indication of fraud.'"

The truth is: There's a simple, innocent explanation:

In judicial races in Ohio, including Supreme Court races, the ballot does not mention a candidate's party. That's an ideal situation for a Democrat in Republican territory in a low-profile race. Ms. Connally simply got the votes of people who didn't know that she is a Democrat.

(Moreover, the article doesn't mention a central fact: Votes are counted at the county level, where election boards have equal numbers of Democrats and Republicans. A multicounty conspiracy would be remarkable.)

Warren County in spotlight

RFK Jr. says: "The most transparently crooked incident took place in Warren County. (Officials devised) a way to count the vote in secret. Immediately after the polls closed, ... GOP officials — citing the FBI — declared that the county was facing a terrorist threat that ranked 10 on a scale of ... 10. The county administration building was hastily locked down."

The truth is: Well, that was certainly bizarre. The distrust is entirely appropriate. But it turns out that a Kerry campaign representative was present for the vote count and saw nothing suspicious. And the election board has as many Democrats as Republicans. They reported nothing hinky in the counting.

And the event was reported immediately, resulting in much attention for Warren County, even nationally. And, later, a (public) recount found nothing unusual in sampled precincts.

Bush vs. marriage ban

RFK Jr. says: "Ohio... had an initiative on the ballot... to outlaw gay marriage. State-wide, the measure proved far more popular than Bush, besting (him) by 470,000 votes. But in six of the 12 suspect counties (mentioned above) — as well as in six other small counties in central Ohio — Bush out-pollled the ban ... by 16,132. To trust the official tally, in other words, you must believe that thousands of rural Ohioans voted for both Bush and gay marriage."

The truth is: Nothing of the sort. In 11 of the 12 counties the article names, more people voted in the presidential contest than on the gay-marriage issue. Therefore, President Bush got more votes than the ban. This is not rocket science. Sen. Kerry also got more votes than opposition to the ban. (The numbers are at the secretary of state's Web site.)

As for the fact that the gay marriage ban got more votes statewide than President Bush: elementary. A lot of Kerry people in the cities (including blacks) supported the ban.

Much of the *Rolling Stone* article is about Secretary of State Kenneth Blackwell. It says he did a lot of things to decrease turnout, such as insisting (briefly) that registration cards must be on paper of a certain thickness. But, as the article notes, Mr. Blackwell lost some battles in court. The article insists that he nevertheless sowed confusion and kept some people from voting for fear they'd be hassled.

But his impact must have been minimal. After all, the election had an amazing million more voters than in 2000. Mr. Kennedy's article doesn't mention that.

The Kennedy piece, like the one in *Harper's*, makes charge after charge after charge. They shouldn't all be rejected out of hand. Clearly, something went wrong in counties where people had to stand in line to vote for hours.

Again, though, decisions about distribution of voting machines were made by evenly divided election boards. Republicans alone can't be blamed.

Among the 350,000 people *Rolling Stone* says were "prevented" from voting by Republicans, 174,000 were allegedly discouraged by long lines. The other main impediments were errors made by voting machines and avoidable errors made during registration. All are attributed to Republicans.

If these numbers were derived with the same sophistication used to analyze the judicial race and the gay-rights issue, they aren't worth much.

Even if every point in Mr. Kennedy's piece were wrong, though, there'd be no point in trying to put them all to rest. As the long-lived 1960 myth suggests, complaints about Ohio in 2004 will never, never go away, no matter what the facts show — until 2004 is history.



Robert F. Kennedy Jr.

**BLACKWELL - CORRECT VOTING LOCATION SURVEY –
OCTOBER 23, 2004**

KEY:

Y = YES

N = NO

? = UNDECIDED

S = SKIP

U = UNKNOWN (DNU MESSAGE PLAYS ONCE AND IF THERE IS NO INTELLIGIBLE RESPONSE THE CALL TERMINATES.)

DNU = DID NOT UNDERSTAND MESSAGE

= NEXT SEGMENT THAT DISPLAYS UPON RECEIVING A PARTICULAR RESPONSE. FOR EXAMPLE, Y = 3 MEANS ON YES GO TO SEGMENT 3.

1 Voting? - (YES, NO)

HI THIS IS SECRETARY OF STATE KEN BLACKWELL WITH A 30-SECOND VOTER SURVEY AND TIPS. ARE YOU VOTING IN THE NOVEMBER 2ND ELECTION? (THIS NEEDS TO BE SHORT TO ENGAGE THE RESPONDENT. THIS ALSO SETS THE FLOW FOR THE REST OF THE SURVEY. PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 2. ALL OTHER RESPONSES SKIP TO SEGMENT 3)

Y: 2
N: 3
U: 3
DNU1: 8

2 Know Where to Vote? - (YES, NO)

THANK YOU FOR VOTING. IN ORDER TO MAKE SURE YOUR VOTE COUNTS ON ALL ISSUES IMPORTANT TO YOU AND YOUR COMMUNITY, YOU MUST VOTE AT YOUR CORRECT VOTING LOCATION. DO YOU KNOW the precinct where you vote? (AGAIN, WE NEED TO KEEP THIS SHORT. REMEMBER RESPONDENTS WANT TO KNOW KEN IS LISTENING TO THEM. THEY DO NOT WANT TO HEAR WHAT KEN HAS TO SAY!!!! PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 4. ALL OTHER RESPONSES SKIP TO SEGMENT 5)

Y: 4
N: 5
U: 5

3 If you Were Voting - Know Where to Vote? - (YES, NO)

IF YOU WERE VOTING, AND YOU WANTED TO MAKE SURE YOUR VOTE COUNTED ON ALL ISSUES IMPORTANT TO YOU AND YOUR COMMUNITY, YOU WOULD HAVE TO VOTE AT YOUR CORRECT VOTING LOCATION. DO YOU KNOW **the precinct where you vote?** (PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 4. ALL OTHER RESPONSES SKIP TO SEGMENT 5)

Y: 4
N: 5
U: 0
DNU1: 9
DNU2: 10

4 Make Sure All in Home Know Location. - (PLAY ONLY)

THAT'S GREAT. PLEASE MAKE SURE THAT ALL THOSE THAT ARE VOTING IN YOUR HOME KNOW WHERE TO VOTE AS WELL.

S: 7

5 Hear Number Again? - (YES, NO)

IN ORDER TO MAKE SURE YOUR VOTE AND THOSE OF YOUR FAMILY COUNT, (BREATH PAUSE FOR EDIT PURPOSES) PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT () ___ - ___ TO FIND OUT **where you vote**. THAT NUMBER AGAIN IS () ___ - _____. (BREATH PAUSE FOR EDIT PURPOSES) WOULD YOU LIKE TO HEAR THAT NUMBER AGAIN?

Here are the numbers to record and insert: (depending on time, Ken might also add their county name, instead of 'your local.' (E.g., Cuyahoga County Board of Elections).

Cleveland: 216-443-3200	Columbus: 614-462-3100
Dayton: 937-225-5656	Toledo: 419-213-4001
Youngstown: 330-783-2474	Cincinnati: 513-632-7000
Akron: 330-783-2474	

Y: 6
N: 7
U: 0
DNU1: 9
DNU2: 10

6 Number Again. - (PLAY ONLY)

PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT () ___ - ___ TO FIND OUT **the precinct where you vote**. THAT NUMBER AGAIN IS () ___ - _____. (REPEAT OF THE PHRASE THAT STARTS AT "PLEASE" ABOVE. HENCE THE NEED FOR BREATH PAUSES THAT WILL HELP US EDIT IN THE RIGHT PHONE NUMBERS)

(SEE NUMBERS IMMEDIATELY ABOVE)

S: 7

7 Thank You - Goodbye. - (PLAY ONLY)

AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL REGISTERED VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT VOTING LOCATION. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE.

S: 0

8 DNU - (DNU PROMPT)

PLEASE SAY YES OR NO NOW. (PROMPTS A YES OR NO RESPONSE)

9 DNU1 - (DNU PROMPT)

THIS MESSAGE WILL END WITHOUT A YES OR NO RESPONSE NOW. (WARNS OF HANG-UP WITHOUT RECEIPT OF REPNSE)

10 DNU2 - (DNU PROMPT)

PLEASE JOIN ME, KEN BLACKWELL IN EXERCISING OUR RIGHT TO VOTE ON NOVEMBER 2ND. THANK YOU FOR YOUR TIME. MAKE YOUR VOTE COUNT OHIO. GOODBYE. (PLAYS ON HANG-UP IF NO RESPONSE IS GIVEN)

11 Ans-Device 1&2 - (PLAY ONLY)

THIS WAS A PUBLIC SERVICE CALL REGARDING VOTING, FROM OHIO SECRETARY OF STATE KEN BLACKWELL. I'LL CALL BACK LATER. (PLAYS ON FIRST TWO PASSES IF WE GET AN ANSWERING DEVICE. DO NOT RECORD. STUDIO VOICE)

S: 0

12 Ans-Device 3 - (PLAY ONLY)

HELLO, THIS IS KEN BLACKWELL, YOUR SECRETARY OF STATE, WITH SOME TIPS TO MAKE SURE YOUR VOTE COUNTS! FIRST, VOTE AT YOUR CORRECT VOTING LOCATION. THE ONLY SURE WAY TO HAVE YOUR VOTE COUNT ON EVERY ISSUE IMPORTANT TO YOU AND YOUR COMMUNITY IS TO VOTE AT YOUR CORRECT **precinct**. IF YOU ARE UNSURE OF WHERE YOU SHOULD VOTE, **(BREATH PAUSE FOR EDIT PURPOSES)** PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT () ____ - _____. THAT NUMBER AGAIN IS () ____ - _____. **(BREATH PAUSE FOR EDIT PURPOSES)**. AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL ELIGIBLE VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT **precinct**. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE. **(THIS IS ALL THAT NEEDS TO BE SAID. IT NEEDS TO BE LESS THAN 100-WORDS. CONSTITUENTS WILL LISTEN TO IT THAT WAY. PLAYS ON ANSWERING DEVICE MESSAGES ON THIRD PASS. YOU CAN CHANGE THIS IF YOU LIKE. PLEASE TRY AND KEEP IT TO UNDER 30-SECONDTOTAL OR THIS SAME LENGTH [100 WORDS])**

S: 0

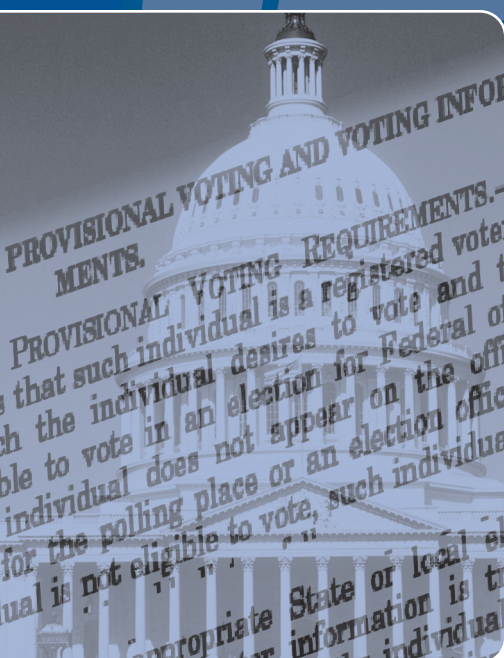
Here are the numbers to record and insert: (depending on time, Ken might also add their county name, instead of 'your local.' (E.g., Cuyahoga County Board of Elections).

Cleveland: 216-443-3200
Dayton: 937-225-5656
Youngstown: 330-783-2474
Akron: 330-783-2474

Columbus: 614-462-3100
Toledo: 419-213-4001
Cincinnati: 513-632-7000

electionline.org

Briefing



Solution or Problem? Provisional Ballots in 2004

They weren't quite the "hanging chad" of 2004, nor quite the safeguard envisioned by voting rights advocates. But regardless of how they were perceived, provisional voting was one of the most controversial aspects of post-Florida election reform around the country.

The federally-mandated system of provisional voting, included as part of the Help America Vote Act (HAVA), provides for voters who believe they are registered but whose names do not appear on polling place rosters. November marked the first time provisional ballots were required nationwide in a general election, with results that could generously be rated as mixed.

The election revealed quite dramatically that when it comes to provisional ballots, a national standard hardly means national uniformity – a reality that resonates across the entire issue of election reform and HAVA implementation.

This lack of uniformity in implementation of a uniform standard was especially stark with provisional ballots, where voters received such ballots under different circumstances and for different reasons. In Georgia, those not on registration rolls could have their provisional ballots counted if they were cast in the correct jurisdiction. Across the border in Florida, a voter found to be otherwise qualified would have his vote rejected if he cast it in a precinct other than his own.

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Additional differences complicated the process as well. In Connecticut, voters were told to go to their correct precinct before they could be given a ballot. In Florida, poll workers issued provisional ballots to voters in the incorrect precinct – if the voter demanded it.

Then there were distinctions within states. News reports in Ohio indicated some provisional ballots cast by people not in their assigned precinct were counted – an apparent violation of a state directive.¹

Some counties in Washington tracked down voters who would have otherwise had their provisional ballot rejected because they failed to complete part of their voter registration form.² This “second chance” for some voters had a number of politicians fuming as the state tried to sort out the closest gubernatorial election in Washington’s history.

“Some counties have gone above and beyond what’s required by law,” said John Pearson, the state’s deputy director of elections.³

It is these imbalances that have many concerned that Congress’ cure for what ailed much of the electoral system before the 2000 election might now be sick as well.

This 10th *electionline.org* Briefing investigates provisional ballots by analyzing the counting and rules for qualifying ballots in each state. Who received a provisional ballot and why? Where did they receive the ballot? Under what circumstances were their ballots counted or rejected? And overall, how many ballots ended up being included in the final tally?

By looking at the numbers from each state, *electionline.org* found the differences in provisional ballot rules from state to state affected how many ballots were counted.

This report does not intend to imply that provisional ballots were a failure. To the contrary, more than 1.6 million voters received provisional ballots in the 2004 presidential election. More than a million were counted.

Five years ago, hundreds of thousands of those voters would have been turned away at the polls with no remedy – even if they were left off the rolls through no fault of their own.

Prior to the passage of HAVA in 2002, most states, but not all, offered some form of provisional ballot. No state gave the voter the right to find out the status of their ballot after the election, as required by the federal act. In Florida, thousands of voters who had been wrongly pegged as felons were denied the right to vote. Lacking any recourse, Florida election officials sent those voters home – and cemented the state’s place as ground zero for arguably the most controversial presidential election in American history.

There were dozens of factors that affected whether ballots were counted or not counted. In some cases, the data did not fit any known assumptions.

Our national survey found that 70 percent of provisional ballots were counted in states with rules that allowed those ballots to be considered if cast anywhere in the correct jurisdiction.⁴ That number dropped

to 62 percent in states limiting consideration of provisional ballots to those cast in the correct precinct.

Some states with seasoned statewide voter registration databases had fewer provisional ballots, possibly indicating fewer problems managing new applications.

For example, Alaska and Michigan both have statewide voter registration databases. However, Michigan, which ranks 8th nationally in population, distributed 5,610 provisional ballots. Alaska, ranked 47th in population, issued more than 23,000 provisional ballots. In terms of the total vote count, Alaska led the nation in provisional votes, with the fail-safe ballots accounting for more than 7 percent of the state’s vote total, compared with Michigan, where provisional ballots accounted for less than one-tenth of 1 percent of the vote.⁵

For more details, see the “Key Findings” section on page 5 and the tables beginning on page 11.

Provisional voting can and did work for many on Nov. 2. But the disparities in the application of the law have been of continuing concern to lawmakers, policy experts and civil rights advocates. This study seeks to explore what those differences in application of federal law meant to voters in all 50 states and the District of Columbia. It is by no means comprehensive enough to offer a final say on the use of provisional ballots in 2004. But it does begin to reveal some trends that could prove significant as HAVA implementation moves forward.

Executive Summary

November 2, 2004 marked the first time all states offered federally-mandated provisional ballots in a general election. While the use of fail-safe, affidavit, or provisional ballots was not new to more than two-thirds of states before the passage of the Help America Vote Act (HAVA), the requirements enacted by Congress requiring notification for voters of the dispensation of their provisional ballot were.

The use of provisional ballots could, in one sense, be considered a national success. Nearly 1.1 million provisional ballots were counted out of 1.6 million cast. Many of those voters would have been otherwise disenfranchised.

But that success was not unqualified. The study of provisional ballot statistics from around the country revealed that even a national standard does not mean uniformity. The lack of uniformity has raised concerns from civil rights groups to the halls of Congress. And for good reason – if the intention of HAVA was to make sure every vote counted, the national mandate for provisional ballots did not always achieve that goal.

The pre-election controversy over how provisional ballots would be cast and counted continues. Ballots counted in one state would be discarded in another. In one state, poll workers would issue ballots to voters in the wrong precinct – sometimes knowing those ballots were destined to be disqualified. In some counties, election officials defied state law or practice to count ballots that in other counties in the same state would not be counted.

Voters in some counties were given a chance after the election to fix problems with their registration forms that kept them off the rolls – offering essentially a second chance to have their votes counted. Most, however, did not have that opportunity and instead had their votes discarded, sometimes for technicalities such as an unchecked box on a registration form.

In a number of key battleground states that lacked safeguards previously, including Florida, Ohio and Pennsylvania, the federal rules ensured that voters who would otherwise

be turned away from the polls if their names did not appear on registration rolls at least had the opportunity to cast a ballot and have their vote counted if they were found to be properly registered voters.

Among the findings in the report:

THE DATABASE EFFECT

The use of statewide voter registration databases did not necessarily decrease the percentage of list omissions. There is little difference between the percentages of provisional votes counted in the 17 states with statewide voter registration databases than the states without them. However, statewide voter lists might have led to fewer provisional ballots being cast.

VOTE COUNTING VARIED WIDELY

Around the country, the percentage of provisional ballots counted ranged from a national high in Alaska of 97 percent to a low of 6 percent in Delaware. Further study is needed to determine why some states counted so many and some so few. State practices could play a significant role.

IN-PRECINCT VS. OUT-OF-PRECINCT RULES

Whether a state accepted a provisional ballot cast outside of a voter's home precinct or not had some impact on the percentage of provisional ballots cast. In the states where ballots were partially or fully counted if cast in the wrong precinct but correct jurisdiction, 70 percent of provisional ballots were counted. In the states that did not count ballots cast in the incorrect precinct – and provided data – 62 percent were tabulated.

There are holes in the provisional balloting data that make comparison difficult, but not impossible. The varying state practices – when a provisional ballot is given, to whom and in what location – lead to the “fruit salad” problem where an apples-to-apples or even apples-to-oranges comparison is not possible. But this report does begin to form conclusions about how provisional balloting worked – or did not – in November 2004.

The Trouble with Numbers

Caveat Lector (Reader Beware)

By compiling and releasing the enclosed data on provisional ballot acceptance rates, *electionline.org* hopes to further inform the ongoing debate about the provisional voting requirement in the Help America Vote Act (HAVA). The research, however, has its limits.

These figures are not definitive on the subject of provisional voting, for two key reasons:

■ **States cannot be directly compared (a.k.a. the “fruit salad” problem).**

Because HAVA allowed states to implement provisional voting as they saw fit – resulting in widely varying requirements and procedures nationwide – there is no way to make definitive comparisons of one state to another. Moreover, because of varying state practices, *electionline.org* collected the enclosed data at different times from different sources in different states. [Indeed, as this Briefing went to press, some states had yet to release final official provisional voting statistics.] This variation makes comparisons very difficult; as Ohio’s Dana Walch says, comparing provisional ballot statistics is not like “apples to apples.” In fact, given the degree of variation between (or even within) states, any provisional ballot comparison is not even apples to oranges – it is more like fruit salad.

■ **Correlation is not causation.**

Throughout this Briefing, we make observations about the differences in provisional ballot rates associated with

different conditions such as statewide voter databases (or lack thereof), voter identification requirements or “in-precinct” voting rules. As noted in our key findings, some of these conditions appear to be associated with different acceptance rates of provisional votes between states. It does not mean, however, that such conditions “cause” increases or decreases of provisional ballot acceptance rates – such conclusions can only be drawn after a more careful examination.

Why, then, compile these figures at all?

The answer is that this first analysis serves to identify areas of future inquiry for policymakers and election officials on the subject of provisional voting.

For example, the figures suggest that states without statewide voter databases count only a slightly higher percentage of provisional ballots (68 percent) than states with such databases (65 percent). This small difference would seem to run counter to the conventional wisdom that new databases will significantly reduce the impact of provisional voting.

Yet, upon closer examination, we see that fewer provisional ballots were cast in states with databases – partly because several larger states have yet to develop databases (such as California and Ohio), but perhaps also because the database states have the ability to screen out voters who should not vote

provisionally. And in states where databases are new, there is also the implementation problem – as Election Assistance Commission member Ray Martinez noted at the recent hearing in Columbus, Ohio, such new databases sometimes create more problems than they solve in the short run.

In any event the lack of clear statistical separation between database and non-database states should serve as a signal to policymakers and researchers to actually test the belief that better lists will reduce the impact of provisional voting – and if so, to identify more concretely if such lists will inform voters of the right (or lack thereof) to cast a ballot.

Provisional voting has become a politically and emotionally-charged issue, with partisans and advocates debating its impact on the tradeoff between access and integrity in the voting process. By identifying potential linkages between certain conditions and provisional voting, the preliminary numbers in this Briefing – messy, incomplete and admittedly imprecise – nonetheless suggest ways in which election reform stakeholders across the spectrum can focus the debate on HAVA’s provisional voting requirement.

To put it another way, these figures are not the final word on HAVA’s provisional voting requirement – but they are intended to help move the conversation forward.

Key Findings

Thousands of voters in Florida lost their voting rights in 2000 because of administrative errors and database problems. State law had no remedy for voters missing from registration rolls. Qualified voters – most often African Americans – were sent home, disenfranchised by registration roll mistakes caused by a private company managing a purge. Under the radar, safeguards were lacking in other states as well.

The outrage was widespread and bipartisan. Congress passed the Help America Vote Act (HAVA) in 2002, sweeping legislation responding to the troubled 2000 vote that included mandating the use of provisional ballots nationwide.

The rules, though not new to more than two-thirds of the states (not including, of course, Florida), nonetheless codified the national minimum standard allowing those whose names are not on voter lists but believe they are registered to cast ballots that could be checked later to verify a voter's eligibility.⁶

The provisional ballot mandate was the most widely hailed aspect of federal election reform, touted as a cure to some of the problems that plagued Florida in 2000.

Good intentions, however, did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.

Good intentions did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.



It became clear well before November 2 that provisional ballots would be dealt with differently in different states. National standards, even those seeking to achieve precisely the same goal, did not mean uniformity. To the contrary, provisional voting – once a bipartisan goal in the wake of 2000 – became one of the most contentious election administration issues before, during and after November 2 and led to litigation, legislation and calls to federally standardize the process.

Provisional ballots in 2004

Despite the controversy, provisional ballots could be considered a success. Over 1.6 million provisional ballots were cast and nearly 1.1 million, or 68 percent, were counted.⁷ Unlike in 2000, there were no reports of large numbers of voters being turned away at the polls. To the contrary, in some states, large numbers of voters stood in long lines at the polls, waiting because there were too many of them and too few machines.

electionline.org's survey of provisional ballot results had some clear indications and also some challenges. Thus, the findings have some caveats.

A thorough analysis of provisional ballot data presents problems and complexities that make drawing broad generalizations difficult. "Comparing provisional ballot numbers between states is not comparing apples to apples," stated Dana Walch, election reform project manager in Ohio.⁸

Those difficulties and differences can be defined in categories – who gets a ballot, which ballots are counted and what laws for fail-safe ballots existed prior to the passage of HAVA.

Who receives provisional ballots and which provisional ballots are counted vary from state to state. Sometimes, counting rules even varied over county lines.

Who gets a provisional ballot?

In many states, the universe of voters who could potentially receive provisional ballots is much larger than just those voters who claim they are registered to vote but are not on precinct rosters. HAVA also

Key Findings

states they can be issued when an election official claims an individual is not eligible to vote.

Many states issue provisional ballots to voters who do not show ID but are required to do so, either because of HAVA's minimum standard or because of other state law. There are other reasons for the ballots to be issued as well – to voters who are challenged or if the poll hours have been extended.

Whose ballot gets counted?

Whether a provisional ballot was counted relied largely upon the home state of the voter.

In 28 states, a provisional ballot cast in the wrong precinct was not counted. In 17 states, a ballot cast in the wrong precinct but correct jurisdiction would be counted.⁹ This disparity in state practice – more than any other election reform issue – triggered a number

of lawsuits in battleground states in the weeks and months leading to the November election.

In the post-election period, the issue has led some at the state and federal level to call for national standards of counting provisional ballots. Kay Maxwell, president of the League of Women Voters, told *The Associated Press* that her organization is urging a reconsideration of the precinct-only rules limiting pro-

Provisional Ballot Notification Process

The Help America Vote Act (HAVA) requires every state to “establish a free access system (such as a toll-free telephone number or an Internet Web site) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.”¹⁰

However, it too has been implemented differently in different states. Which free-access system or systems are used, when information is available to voters and whether or not the information is available from the county or state level differs across the country.

States were left with some leeway on how to meet the free-access system requirement. A toll-free number and/or Web site as mentioned in HAVA are used by a number of states, but many also use written notification, either in conjunction with one of the other systems or on its own.

Texas, for example, sends out written notification 10 days after the election.¹¹ An official with the Texas Elections Division told *electionline.org* that counties could choose to use a Web site or toll-free number, but none of them do so at this time.¹²

The length of time that the states have to make the information available also differs by state. By statute, Alaska has 60 days after the certification of an election to send a letter to the voter¹³ and has 30 days to make the information available through a toll-free number,¹⁴ whereas Alabama does it within 10 days as a matter of policy, not law.

Pennsylvania's Web site has provisional ballot information available for most counties three days after the election,¹⁵ while North Carolina has their information available eight to 10 days after the election.¹⁶

Virginia has a toll-free number provisional voters can use to check the status of their ballots. Those whose ballots did not count receive a letter; but anyone can call the number. Information is available several days after the election, depending on when the local electoral boards end their meetings to determine the status of the ballots. Provisional voters and political party officials have the right to be present at those meetings in order to present evidence either for against the counting of specific provisional ballots.¹⁷

Other states also leave the notification process up to the counties, including (but not limited to) Alabama, Arkansas, Arizona and Washington.

Key Findings

visional voting in more than half of the states.

“We felt strongly that individuals who ended up in their so-called wrong precinct ... they should have been able to cast ballots for president and vice president and any statewide offices,” Maxwell said. “If it’s a problem for even a couple of people, then it’s a problem that needs solving.”¹⁸

However, leaving this issue up to the states was by no means unintentional. During the Senate debate over HAVA, Sen. Christopher Dodd, D-Conn., stated, “whether a provisional ballot is counted or not depends solely on state law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter’s eligibility to vote is determined under State law.”¹⁹

Prior to the 2004 election, approximately two-thirds of the states were using some form of provisional voting, meaning laws and mechanisms were in place that already varied from state to state.²⁰

The provisional voting experience

With state-by-state differences in mind, data from the 2004 election still can provide some general insights into the experience nationally using provisional voting.

■ *Counting varied*

Alaska had the highest percentage of provisional ballots cast with 97 percent and five other states counted more than three-quarters of their provisional ballots – Oregon, Washington, Nebraska, Ohio and Colorado.

The lowest percentage of counted provisional ballots came from Delaware which tallied only 6 percent. Five other states counted 15 percent or fewer of their provisional ballots – Hawaii, Oklahoma, South Dakota, Kentucky and Indiana.²¹

■ *The ‘good database’ effect?*

Five of the six states that had the lowest percentage of provisional ballots cast have statewide registration databases in place. Indiana was the sole exception.

Prior to the November 2004 election, conventional wisdom among election experts was that a healthy statewide voter registration database would reduce errors. That would, in turn, lead to a

databases in use during the November election with those that did not, there is little difference in the percentage of ballots counted. In states with databases, 65 percent of provisional ballots were counted. In states without databases, 68 percent of these ballots were counted.

■ *Number of ballots issued*

Several states issued a large number of provisional ballots. More than 3.5 percent of votes cast for highest office in three states and the District of Columbia were provisional ballots.

Ned Foley, a law professor at Ohio State University, said he wondered if in states with low rates of provisional ballot use, voter registration data was handled better.

Whether a provisional ballot counted relied largely upon the home state of the voter.



reduced need for provisional ballots. Further, “good” statewide databases would mean fewer mistakes in list maintenance.

The same conventional wisdom also suggests that those seeking provisional ballots in states with good databases probably were not properly registered, filled out a form incorrectly or perhaps were never registered at all.

The preliminary data does not support convention wisdom.

When comparing states that had statewide voter registration

“Maybe states with lower usage rates were able to put out fires ahead of time,” Foley told the Election Assistance Commission in February 2005.²²

■ *In-precinct vs. out-of-precinct rules*

In the states where ballots were counted or partially counted if they were cast in the wrong precinct but correct jurisdiction (county, township), 70 percent of provisional ballots cast were counted. Eleven of these states counted more than 50 percent of these ballots.

Key Findings

In the states that did not count provisional ballots cast in the wrong precinct (and provided data), 62 percent of the ballots counted. Sixteen of these states counted fewer than 50 percent of these ballots.

■ *Election-day registration*

Six states – Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming – have election-day registration and are exempt from HAVA provisional ballot rules. Four of these states

Ohio, arguably the most watched state during the 2004 election, was one of five states, along with Colorado, Florida, Michigan and Missouri, that faced a lawsuit over the counting of provisional ballots cast in the wrong precinct. The court ruled for the state and agreed that ballots cast outside the correct precinct should not be counted.

Dana Walch stated the high number of provisional ballots cast – over 150,000 – could be at least partially explained by the state’s pol-

sional voting surfaced. According to newspaper reports, fewer than 50 percent of provisional ballots cast were counted. The number was even lower in some mid-state counties.

“Some people thought they could just come in the day of the election and vote with a provisional ballot. I also think a lot thought they were registered and they actually weren’t,” Steven G. Chiavetta, director of Dauphin County’s elections and registration bureau told *The Patriot News*.²⁷


In-state variation

Not only does the question of whose ballot gets counted vary from state to state, it sometimes varies even within a state.

In Arizona, a state that requires provisional ballots be cast in the correct precinct to be counted, at least two counties, Gila and Pinal, counted provisional ballots cast in the wrong precinct.²⁸

Illinois had a similar issue. During the state’s presidential primaries, Illinois did not count provisional ballots cast in the wrong precinct. The State Board of Elections issued a directive for the November election instructing counties to count ballots cast in the wrong precinct for some federal races. Some counties followed the directive, while others citing state law requiring the correct precinct did not.²⁹

And like everything else in election administration, procedure matters. In King County, Washington – the center of the contentious guber-



Maybe states with lower usage rates were able to put out fires ahead of time.

– Ned Foley, Ohio State University.

do not use provisional ballots – Idaho, Maine, Minnesota and New Hampshire.²³

Wisconsin and Wyoming, however, use provisional ballots for first-time voters who were not on the voter list and do not have identification. Both states had small numbers of provisional ballots cast and a low percentage of provisional ballots counted – Wisconsin counted 32 percent of its 373 provisional ballots and Wyoming counted 25 percent of its 94 provisional ballots.²⁴

State-by-state variation

A brief examination of how provisional voting is handled in several states demonstrates just how varied the process is.

icity of issuing provisional ballots to voters who moved and did not update their registration forms. Those voters were eligible to have their ballots counted.²⁵

In the opposite case – an unusually small number of provisional ballots cast and/or counted – state law or practice can adequately explain the numbers.

Vermont, one of the least populous states, had an extraordinarily low number of provisional ballots cast – 101 cast, 37 counted. The state avoids issuing provisional ballots to most by allowing voters to use a sworn affidavit at the polling place on Election Day and vote a regular ballot.²⁶

In Pennsylvania, reports of confusion about registration and provi-

Provisional Ballots Spur Activity in Congress and State Legislatures

The inclusion of provisional ballots in the Help America Vote Act was universally hailed as a major step in ensuring the right to vote for Americans who might otherwise be turned away from the polls.

As the 2004 presidential election approached, it also became clear that the varied ways in which states planned to handle the ballots could swing the election one way or the other.

A high-stakes race, new territory in election law and partisan feuding combined to produce a frenzied fight over provisional voting in the months leading up to the November vote, when advocates and others challenged provisional voting rules in five states – Colorado, Ohio, Florida, Michigan and Missouri.

At the center of the lawsuits was the method of distribution and rules for counting ballots. Some argued that ballots cast in the wrong precinct should be completely voided while others claimed that votes cast on provisional ballots for federal and statewide offices should be counted no matter where they were cast.

After the election, calls to standardize provisional ballot rules emerged, not surprisingly from those states where the ballots had the greatest impact in determining the outcome of races.

In the state of Washington, Democrats and Republicans introduced legislation that would make provisional ballots distinguishable from standard and absentee ballots. Lawmakers want the ballots to be marked by different colors in order to avoid a repeat of what occurred on Election Day in King County when more than 300 provisional ballots were improperly run through tabulating machines before the voters' registration status could be verified.

Jim Kastama, D-Tacoma, said the state must set high standards to assure public trust in elections. "You have no other choice but perfection," said Kastama, the chairman of the Senate Government Operations and Elections Committee. "To do otherwise is to say that you discount someone's vote."³⁰

Lawmakers in Illinois re-opened the pre-election debate on standards for when a provisional ballot should be counted. The distribution and counting of provisional ballots in Illinois varied so widely that according to news reports only some of the state's 110 jurisdictions followed the State Board of Elections' recommendation that provisional ballots cast in the wrong precinct should still count for some federal offices.³¹

Democratic lawmakers in North Carolina passed a measure during the first week of March that affirmed a 2003 law that allows for the counting of out-of-precinct ballots cast on Election Day.³²

At the federal level, Rep. John Conyers, D-Mich., introduced legislation that would amend HAVA to mandate that provisional ballots cast by eligible voters anywhere in a state would count. Two other bills, one proposed by Sen. Hillary Clinton, D-N.Y. and the other by Sen. Christopher Dodd, D-Conn., include provisions that would do the same.

In mid-February, Florida's Secretary of State's office recommended that those who cast provisional ballots should be given a week, instead of two days, to prove their eligibility as well as grant supervisors and canvassing boards more time to review the ballots, eliminating some of the pressure to make a decision during an election.³³

Key Findings

CONTINUED FROM PAGE 8

natorial election – hundreds of provisional ballots were incorrectly counted in polling place counting machines before they could be verified as eligible votes.³⁴

Litigation, legislation and looking ahead

Not surprisingly, the problems some states faced with provisional ballots have led to both post-election litigation and legislation.

North Carolina election officials, following state law, initially counted provisional ballots if they were not cast in the correct precinct. The state Supreme Court unanimously ruled, however, that the offi-

A similar bill has been introduced in Illinois which would require counting races for federal and statewide offices on provisional ballots cast out of precinct.³⁶

Federal response to provisional ballot confusion

Several bills have been introduced at the federal level amending HAVA to require out-of-precinct provisional ballots to be counted. Sen. Hillary Clinton, D-N.Y., introduced S. 450 which states, “the determination of eligibility shall be made without regard to the location at which the voter cast the provisional ballot and without regard to any require-

individual who cast such ballot is otherwise eligible to vote.”³⁸

However, a bill introduced by Sen. Mitch McConnell, R-Ky., and Sen. Christopher “Kit” Bond, R-Mo., demonstrates the ever-present partisan divide over state authority and may be an indicator of the difficult road any moves to further standardize provisional ballot rules face at the federal level.

“As we expressed throughout the debates standard requirements for elections are to be implemented by the state. On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide,” Bond said when he introduced the bill.³⁹

Not surprisingly, state officials agree. In an open letter to Congress, the National Association of Secretaries of State urged lawmakers not to pass federal legislation creating national standards for administering elections.

“The passage of any such law would undercut the states’ ability to effectively administer elections and interfere with the progress they have made in implementing election reforms. Perhaps most importantly, it would discount our country’s unique political philosophy — the belief in the division of authority between state and federal governments,” the letter states.⁴⁰

“On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide.”

– Sen. Christopher “Kit” Bond, R-Mo.

cials were incorrectly interpreting state law and threw out at least 11,000 provisional ballots cast in the wrong precinct. In response, Democratic lawmakers passed a measure that clearly allows for the counting of out-of-precinct provisional ballots. An appeal is likely.³⁵

ment to present identification to any election official.”³⁷

Rep. John Conyers, D-Mich., has introduced a similar bill H.R. 533 stating, “notwithstanding at which polling place a provisional ballot is cast within the state, the state shall count such ballot if the



Table 1: Provisional Ballots Cast and Counted by State

State	Cast	Counted	Percent Counted
Alabama	6,560	1,836	28%
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
Arkansas	7,675	3,678	48%
California	668,408	491,765	74%
Colorado	51,477	39,163	76%
Connecticut	1,573	498	32%
Delaware	384	24	6%
District of Columbia	11,212	7,977	71%
Florida	27,742	10,017	36%
Georgia	12,893	3,839	30%
Hawaii	346	25	7%
Illinois	43,464	22,167	51%
Indiana	4,029	598	15%
Iowa	15,406	8,038	52%
Kansas	45,563	31,805	70%
Kentucky	1,494	221	15%
Louisiana	5,971	2,411	40%
Maryland	48,936	31,860	65%
Massachusetts	10,060	2,319	23%
Michigan	5,610	3,277	58%
Missouri	8,183	3,292	40%
Montana	653	357	55%
Nebraska	17,003	13,298	78%
Nevada	6,154	2,447	40%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Ohio	158,642	123,548	78%
Oklahoma	2,615	201	8%
Oregon	8,298	7,077	85%
Pennsylvania	53,698	26,092	49%
Rhode Island	2,147	984	46%
South Carolina	4,930	3,207	65%
South Dakota	533	66	12%
Tennessee	8,778	3,298	38%
Texas	36,193	7,770	21%
Utah	26,389	18,575	70%
Vermont	101	37	37%
Virginia	4,172	728	17%
Washington	87,393	69,645	80%
West Virginia	13,367	8,378	63%
Wisconsin	373	120	32%
Wyoming	95	24	25%
TOTAL	1,626,160	1,097,933	68%

Table 2: States Ranked by Percentage of Provisional Ballots Counted

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	1,626,160	1,097,933	68%

Table 3: Provisional Ballots Counted: Database Status

Statewide registration database in place

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Louisiana	5,971	2,411	40%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Massachusetts	10,060	2,319	23%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%

TOTAL 211,159 137,366 65%

Statewide registration database not in place

State	Cast	Counted	Percent Counted
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%

TOTAL 1,415,001 960,567 68%

Table 4: Provisional Ballots Counted: In vs. Out-of-Precinct

Provisional ballots eligible for counting if cast outside correct precinct

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Maryland	48,936	31,860	65%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Vermont	101	37	37%
Georgia	12,893	3,839	30%
Delaware	384	24	6%

TOTAL 1,113,338 790,930 70%

Ballots disqualified if cast outside correct precinct

State	Cast	Counted	Percent Counted
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Kansas	45,563	31,805	70%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
Montana	653	357	55%
Iowa	15,406	8,038	52%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Florida	27,742	10,017	36%
Connecticut	1,573	498	32%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%

TOTAL 492,822 307,003 62%

Table 5: Percent Counted of Total Vote⁴¹

State	Cast	Counted	Percent Counted	Vote for Highest Office	% Counted of Total Vote
Alaska	23,275	22,498	97%	312,598	7.20%
California	668,408	491,765	74%	12,419,857	3.96%
Arizona	101,536	73,658	73%	2,012,585	3.66%
District of Columbia	11,212	7,977	71%	227,586	3.51%
Kansas	45,563	31,805	70%	1,187,756	2.68%
Washington	87,393	69,645	80%	2,859,084	2.44%
Ohio	158,642	123,548	78%	5,627,903	2.20%
Utah	26,389	18,575	70%	927,844	2.00%
Colorado	51,477	39,163	76%	2,129,630	1.84%
Nebraska	17,003	13,298	78%	778,186	1.71%
Maryland	48,936	31,860	65%	2,386,678	1.33%
North Carolina	77,469	42,348	55%	3,501,007	1.21%
New Mexico	15,360	8,767	57%	756,304	1.16%
West Virginia	13,367	8,378	63%	755,887	1.11%
Iowa	15,406	8,038	52%	1,506,908	0.53%
Pennsylvania	53,698	26,092	49%	5,769,590	0.45%
Illinois	43,464	22,167	51%	5,275,415	0.42%
Oregon	8,298	7,077	85%	1,836,782	0.39%
Arkansas	7,675	3,678	48%	1,054,945	0.35%
Nevada	6,154	2,447	40%	829,587	0.29%
Rhode Island	2,147	984	46%	437,134	0.23%
South Carolina	4,930	3,207	65%	1,617,730	0.20%
Tennessee	8,778	3,298	38%	2,437,319	0.14%
Florida	27,742	10,017	36%	7,609,810	0.13%
Louisiana	5,971	2,411	40%	1,943,106	0.12%
Missouri	8,183	3,292	40%	2,731,364	0.12%
Georgia	12,893	3,839	30%	3,301,867	0.12%
Alabama	6,560	1,836	29%	1,883,415	0.10%
Texas	36,193	7,770	21%	7,410,749	0.10%
Massachusetts	10,060	2,319	23%	2,912,388	0.08%
Montana	653	357	55%	450,434	0.08%
Michigan	5,610	3,277	58%	4,839,252	0.07%
Connecticut	1,573	498	32%	1,578,769	0.03%
Indiana	4,029	598	15%	2,468,002	0.02%
Virginia	4,172	728	17%	3,198,367	0.02%
South Dakota	533	66	12%	388,215	0.02%
Oklahoma	2,615	201	8%	1,463,758	0.01%
Kentucky	1,494	221	15%	1,795,860	0.01%
Vermont	101	37	37%	312,309	0.01%
Wyoming	95	24	25%	243,428	0.01%
Delaware	384	24	6%	375,190	0.01%
Hawaii	346	25	7%	429,013	0.01%
Wisconsin	373	120	32%	2,997,007	0.00%
TOTAL	1,526,160	1,097,933	68%	104,980,618	1.05%

NOTES FOR TABLES 1-5:

- States with incomplete data - not all counties have reported provisional ballot numbers: Indiana, Pennsylvania, South Carolina and Virginia
- No data from Mississippi, New Jersey and New York.
- No data for states with election-day registration (Idaho, Maine, Minnesota and New Hampshire).
- North Dakota does not require voter registration.
- Data compiled from phone calls and emails to state election officials, data provided by the U.S. Election Assistance Commission, an *electionline.org* survey and press reports. For more information, see the methodology.

Snapshots of the States

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Alabama

CAST: 6,560 ■ COUNTED: 1,836 (28%)

Summary: Provisional ballot issued if name is marked off voter list because he/she applies for absentee ballot, if voter does not provide the required proof of identity or voter is challenged.⁴² Provisional ballot eligible to be counted if cast in correct precinct.

Alaska

CAST: 23,275 ■ COUNTED: 22,498 (97%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity and is not known by elections board⁴³ or if voter is challenged.⁴⁴ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Arizona

CAST: 101,536 ■ COUNTED: 73,658 (73%)

Summary: Provisional ballot issued if voter moves to a new address within the county and does not notify the election board before the deadline.⁴⁵ Provisional ballot eligible to be counted if cast in correct precinct.

Arkansas

CAST: 7,675 ■ COUNTED: 3,606 (48%)

Summary: Provisional ballot issued if voter is challenged.⁴⁶ Provisional ballot eligible to be counted if cast in correct jurisdiction.

California

CAST: 668,408 ■ COUNTED: 491,765 (74%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,⁴⁷ or if voter moves within the county, does not re-register, and votes at the polling place assigned to their new address.⁴⁸ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Colorado

CAST: 51,477 ■ COUNTED: 39,163 (76%)

Summary: Provisional ballot issued if voter's name is marked off the voter list because he/she applies for an absentee ballot,⁴⁹ if voter does not provide the required proof of identity,⁵⁰ or if voter moves to a new address within the state and does not notify the elections board before the deadline.⁵¹ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Connecticut

CAST: 1,573 ■ COUNTED: 498 (32%)

Summary: Provisional ballot issued if voter is challenged or if the voter does not provide the required proof of identity.⁵² Provisional ballot eligible to be counted if cast in correct precinct.

Delaware

CAST: 384 ■ COUNTED: 24 (6%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

District of Columbia

CAST: 11,212 ■ COUNTED: 7,977 (71%)

Summary: Provisional ballot issued if voter moves to a new address within the District and does not fill out a form before Election Day.⁵³ Provisional ballot eligible to be counted if cast in correct precinct.

Florida

CAST: 27,742 ■ COUNTED: 10,017 (36%)

Summary: Provisional ballot issued if a voter registers for the first time by mail and does not provide the required proof of identity, a voter is challenged, or the voter either refuses to sign an oath as to his or her eligibility or a majority of the clerks and inspectors doubt the voters eligibility.⁵⁴ Provisional ballot eligible to be counted if cast in correct precinct.

Georgia

CAST: 12,89 ■ COUNTED: 3,839 (30%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁵⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Hawaii

CAST: 34 ■ COUNTED 25 (7%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Idaho

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Illinois

CAST: 43,464 ■ COUNTED: 22,167 (51%)

Summary: Provisional ballot issued if voter is challenged and the challenge is sustained by a majority of election judges or if voter applies for absentee ballot but wishes to vote in person and does not produce the unused absentee ballot.⁵⁶ Provisional ballot eligible to be counted if cast in the correct jurisdiction.

Indiana

CAST: 4,029 ■ COUNTED: 598 (15%) (INCOMPLETE DATA)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Iowa

CAST: 15,406 ■ COUNTED: 8,038 (51%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide required proof of identity⁵⁷ or voter is challenged.⁵⁸ Provisional ballot eligible to be counted if cast in correct precinct.

Kansas

CAST: 45,563 ■ COUNTED: 31,805 (70%)

Summary: Provisional ballot issued if voter applies for absentee ballot but the ballot was spoiled, destroyed, lost, or not received,⁵⁹ the voter is challenged,⁶⁰ voter registers for the first time by mail and does not provide the required proof of identity,⁶¹ voter changes their name or moves within the county and does not re-register.⁶² Provisional ballot eligible to be counted if cast in correct jurisdiction.

Kentucky

CAST: 1,494 ■ COUNTED: 221 (15%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity or voter is challenged by all four precinct election officers.⁶³ Provisional ballot eligible to be counted if cast in correct precinct.

Louisiana

CAST: 5,971 ■ COUNTED: 2,411 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁶⁴ Provisional ballot eligible to be counted if cast in correct parish (county).

Maine

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration. State uses “challenge ballots” of which all are counted. The only time challenge ballots are looked at specifically would be in the case of a recount.

Maryland

CAST: 48,936 ■ COUNTED: 31,860 (65%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity, if voter applies for absentee ballot but wishes to vote in person, if voter moves to new address within the county or changes name and does not notify election board before deadline or if vote is challenged.⁶⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Massachusetts

CAST: 10,060 ■ COUNTED: 2,319 (23%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Michigan

CAST: 5,610 ■ COUNTED: 3,277 (58%)

Provisional ballot eligible to be counted if cast in correct precinct.

Minnesota

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

Mississippi

CAST: 25,975 (NUMBER DOES NOT INCLUDE TUNICA COUNTY) ■ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Missouri

CAST: 8,183 ■ COUNTED: 3,292 (40%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Montana

CAST: 653 ■ COUNTED: 357 (55%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,⁶⁶ or if the voter is challenged.⁶⁷ Provisional ballot eligible to be counted if cast in correct precinct.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Nebraska

CAST: 17,003 ■ COUNTED: 13,298 (79%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Nevada

CAST: 6,154 ■ COUNTED: 2,447 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁶⁸ Provisional ballot eligible to be counted if cast in correct precinct.

New Hampshire

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

New Jersey

CAST: NO INFORMATION ■ COUNTED: NO INFORMATION

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter moves to a new address within the county or changes his/her name and does not notify the elections board before the deadline.⁶⁹ Provisional ballot eligible to be counted if cast in correct precinct.

New Mexico

CAST: 15,360 ■ COUNTED: 8,767 (57%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁷⁰ Provisional ballot eligible to be counted if cast in correct jurisdiction.

New York

CAST: NO INFORMATION ■ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

North Carolina

CAST: 77,469 ■ COUNTED: 42,348 (55%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁷¹ Provisional ballot eligible to be counted if cast in correct jurisdiction.

North Dakota

CAST: N/A ■ COUNTED: N/A

Summary: No voter registration.

Ohio

CAST: 158,642 ■ COUNTED: 123,548 (78%)

Summary: Provisional ballot issued if voter moves to a new address within the county or from one Ohio County to another during the last 28 days before Election Day.⁷² Provisional ballot eligible to be counted if cast in correct precinct.

Oklahoma

CAST: 2,615 ■ COUNTED: 201 (8%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter's political affiliation is disputed in a primary.⁷³ Provisional ballot eligible to be counted if cast in correct precinct.

Oregon

CAST: 8,298 ■ COUNTED: 7,077 (85%)

Summary: Provisional ballot issued if voter never received his/her mail-in ballot or if he/she wants to vote in person in a different town or county than the one in which he/she is registered.⁷⁴ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Pennsylvania

CAST: 53,698 ■ COUNTED: 26,092 (49%)

Summary: Provisional ballot issued if a voter is voting for the first time in his/her county or has recently moved to another residence within the county and does not provide the required proof of identity, or if a voter is challenged.⁷⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Rhode Island

CAST: 2,147 ■ COUNTED: 984 (46%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, if a voter is challenged, or if person whose name does not appear on the list of registered voters for the voting district but does appear on the community list contends he or she is voting in the correct voting district.⁷⁶ Provisional ballot eligible to be counted if cast in correct jurisdiction.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

South Carolina

CAST: 4,930 ■ COUNTED: 3,207 (65%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if a voter is challenged,⁷⁷ moves to a different precinct within the county and does not notify the county board of registration. Provisional ballot eligible to be counted if cast in correct precinct.

South Dakota

CAST: 533 ■ COUNTED: 66 (12%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, he or she signs an affidavit, and his/her affidavit is challenged.⁷⁸ Provisional ballot eligible to be counted if cast in correct precinct.

Tennessee

CAST: 8,778 ■ COUNTED: 3,298 (38%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Texas

CAST: 36,193 ■ COUNTED: 7,770 (21%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity or if a voter has applied for a ballot by mail but has not received it.⁷⁹ Provisional ballot eligible to be counted if cast in correct precinct.

Utah

CAST: 26,389 ■ COUNTED: 18,575 (70%)

Summary: Provisional ballot issued if a voter is challenged.⁸⁰ Provisional ballot eligible to be counted if cast in the wrong precinct and the ballot is identical to the one that the voter would have voted if he or she appeared at the correct jurisdiction.

Vermont

CAST: 101 ■ COUNTED: 37 (37%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

Virginia

CAST: 4,172 ■ COUNTED: 728 (17%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁸¹ Provisional ballot eligible to be counted if cast in correct precinct.

Washington

CAST: 87,393 ■ COUNTED: 69,645 (80%)

Summary: Provisional ballot issued if a voter requests an absentee ballot but wishes to vote in person.⁸² Provisional ballot eligible to be counted if cast in correct jurisdiction.

West Virginia

CAST: 13,367 ■ COUNTED: 8,378 (63%)

Summary: Provisional ballot issued if the signature on the poll slip and the registration card do not match, if a voter moves to a different precinct within the county or if a voter does not provide the required proof of identity.⁸³ Provisional ballot eligible to be counted if cast in correct precinct.

Wisconsin

CAST: 373 ■ COUNTED: 120 (32%)

Summary: Election-day registration. Provisional ballot issued if a voter registers for the first time by mail, does not provide the required proof of identity at the time of submitting the registration form, and does not do so at the polling place. In addition, if a voter's registration application was submitted as part of a voter registration drive, their application was not witnessed by an official voter registration deputy, and the voter does not provide the required proof of identity at the polling place, they are entitled to receive a provisional ballot. In order for the provisional ballot to be counted, the voter must provide the required proof of identity before Election Day, to poll workers before polls close on Election Day, or to the municipal clerk's office by 4:00p.m. the day after the election.⁸⁴ Provisional ballot eligible to be counted if cast in correct precinct.

Wyoming

CAST: 95 ■ COUNTED: 24 (25%)

Summary: Election-day registration. Provisional ballot issued if a voter does not have the required proof of identity when attempting to register on Election Day. The voter has until close of business the day after the Election to provide proof of identity to the county clerk. The same holds true for a challenged voter; after he/she signs an affidavit, he/she has until close of business the next day to have a proof of identity approved by the county clerk.⁸⁵ Provisional ballot eligible to be counted if cast in correct precinct.

Methodology

Information for this report was taken from primary sources – interviews with state election officials, an *electionline.org* survey of state election officials – as well as secondary sources including newspaper articles. In addition, data collected by the Election Assistance Commission in its February 9, 2005 *Testimony Before the House Administration Committee* was used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

Endnotes

- 1 Claussen, Nick. "Election board deals with provisional votes, employee complaint," *The Athens News*, November 18, 2004.
- 2 Willmsen, Christine and Kelleher, Susan. "Ballot checks vary widely across state," *The Seattle Times*, December 19, 2004.
- 3 Ibid.
- 4 Jurisdiction is generally defined as the geographic area served by one voter registrar – either county, township, or independent town or city.
- 5 Data is derived from information found in Table 5 and information provided by the U.S. Census Bureau at www.census.gov.
- 6 The Help America Vote Act (hereinafter HAVA), Public Law 107-252, § 302(a) ("If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.")
- 7 Data for some states is not final and for other states is incomplete – not all counties had reported to the state their provisional ballot numbers. New York and New Jersey did not provide data and Mississippi had numbers for how many ballots cast but not counted. For more detailed information on sources and data collection please see the methodology section.
- 8 Telephone interview with Dana Walch, February 2005.
- 9 The remaining states have election-day registration. North Dakota does not require voter registration.
- 10 HAVA § 302(5)(B).
- 11 Texas Elec. Code § 65.059.
- 12 Phone conversation with Texas election official, February 2004.
- 13 Alaska Stat. § 15.20.207(I)(2).
- 14 Alaska Stat. § 15.20.207(K).
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- 22 Foley, Ned. Testimony before the Election Assistance Commission, February 23, 2005.
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- 24 Wyoming is one of only a handful of states that has detailed information on its state Web site listing the status of all 94 provisional ballots. The two main reasons for ballots not being counted – acceptable ID never provided or the voter cast the ballot in the wrong precinct. "Statewide Provisional Ballots – Wyoming Official Summary – November 2, 2004," Wyoming Secretary of State Web site, <http://sos.wy.state.wy.us/election/2004/results/g-prov-b.pdf> (last visited March 11, 2005).
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- 48 Calif. Election Code § 14311.
- 49 Colo. Rev. Stat. § 1-7.5-107(3.5)(d).
- 50 Colorado Secretary of State Amended Election Rules 26.2.3, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).
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electionline.org

Briefing

electionline.org, administered by the Election Reform Information Project, is the nation's only nonpartisan, non-advocacy website providing up-to-the-minute news and analysis on election reform.

After the November 2000 election brought the shortcomings of the American electoral system to the public's attention, The Pew Charitable Trusts made a three-year grant to the University of Richmond to establish a clearinghouse for election reform information.

Serving everyone with an interest in the issue – policymakers, officials,

journalists, scholars and concerned citizens – *electionline.org* provides a centralized source of data and information in the face of decentralized reform efforts.

electionline.org hosts a forum for learning about, discussing and analyzing election reform issues. The Election Reform Information Project also commissions and conducts research on questions of interest to the election reform community and sponsors conferences where policymakers, journalists and other interested parties can gather to share ideas, successes and failures.

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Serving the public interest by providing information,
policy solutions and support for civic life.

Untangling the voting controversies

Since the hotly contested presidential election, dozens of allegations of voter irregularities and conspiracies in Ohio have been made, many on the Internet. Here are several of the claims most often heard and an analysis of their veracity.

STATEWIDE

ALLEGATION	EXPLANATION
About 94,000 people chose either no one or more than one person when they voted for president. That meant their votes didn't count. In such a hotly contested race it was impossible to imagine that many people wasting a vote.	Do the math. Those 94,000 ballots are less than 1.7 percent of the total cast statewide. Experts say that's not far from the national average of 1.5 percent who vote twice or not at all for president. It's not anywhere near enough to cast doubt on the presidential race, said Edward Foley, director of the Election Law Program at Ohio State University's Moritz College of Law.
Election officials have not inspected all of those 94,000 "spoiled" ballots for pregnant or hanging chads or other signs of voter intent. Those ballots should be reviewed and counted.	There's a three-part explanation: First, Ohio law says election employees should take reasonable steps to inspect punch cards before the initial count. So ballots should have been reviewed. Second, Ohio law is specific about what counts and doesn't count as a vote. Pregnant chads don't; chads loosed at three or four corners do. That leads to the third point: reviewing punch card ballots by hand makes little difference, according to election expert Dan Tokaji, a law professor at Ohio State University. Tokaji points out that many things can go wrong with punch card ballots. They don't, for example, alert voters who have accidentally selected two people for president and allow them to correct their mistake. And double voting doesn't change upon review.
Too many provisional ballots, cast by those who believed they were registered but whose names didn't appear on voter registration rolls, were never counted. Election workers found problems with them — the voter wasn't registered, for example — and didn't enter them in the final tally.	Ohio counted a larger percentage of its provisional ballots than many other states, according to electionline.org, a nonpartisan clearinghouse for election reform information. Of the 17 states it had gathered data for by Dec. 1, Ohio counted the most — 77.33 percent. That compares to 6.38 percent in Delaware, 22.53 percent in Massachusetts and 57.52 percent in Michigan.
Exit polls showed Kerry ahead in Ohio, but Bush won the state. Votes must have been tampered with.	Two polling firms — Edison Media Research and Mitofsky International — were hired for exit-polling for ABC, CBS, NBC, CNN, Fox News Channel and The Associated Press. Joe Lenski, executive vice president of Edison Media Research, said exit polls were done at 50 precincts throughout Ohio. He said the firms are investigating results nationally, and that no evidence of fraud was found in Ohio. Lenski said states such as Vermont, Connecticut and Delaware had higher discrepancies between exit polls and election results than did Ohio. Kerry won those three states, but "no one's questioned those," he said. "There's this fiction out there that exit polls are accurate to the decimal point, and that's just not true. They're a survey, like any other survey."

COUNTY-BY-COUNTY

<p>FRANKLIN COUNTY Minority precincts were intentionally deprived of voting machines, which created long lines and thousands of potential voters leaving in frustration.</p>	<p>Democratic and Republican election officials allocated machines based on voting patterns and estimates on where more were needed. Because of a growth and shift in population since the 2000 election, 29 precincts had been added. Election officials reviewed active voter files as of July 2004 to decide where to put the machines. William Anthony Jr., who is black, and chairs both the Franklin County Democratic Party and its elections board, said, "It broke the way it broke because the growth wasn't in the inner city, not because we wanted to disenfranchise black voters."</p>
<p>FRANKLIN COUNTY People not inside some polling places by 7:30 p.m. were told to leave, even if they had waited in line for hours, violating the Voting Rights Act.</p>	<p>Anthony and Mike Hackett, deputy director of the elections board, both Democrats, said no voter allegedly turned away has come forth. They said they would investigate any such complaint made to them.</p>
<p>HOCKING COUNTY A repairman may have tampered with results when he showed up to check a voting machine before the recount. He found a fuse was out and replaced the fuse.</p>	<p>Hocking County Prosecutor Larry Beal ordered the repairman to show reporters, the elections board, computer experts and others how he made the repair, and Beal, a Democrat, ruled that nothing fishy happened.</p>
<p>KNOX COUNTY Mostly Democratic students at Kenyon College, a liberal arts school, waited nine or 10 hours to vote while students at Mount Vernon Nazarene University — more likely to support Republican candidates — had no wait.</p>	<p>A late registration drive at Kenyon meant many names were added in the two weeks before Election Day, after voting machines had been assigned and programmed. Election workers had no way of predicting that the Kenyon precinct would have one of the highest turnouts in the county — almost 73 percent — said Rita Yarman, deputy director of the Knox County Board of Elections and a Democrat.</p>
<p>MAHONING/FAIRFIELD COUNTIES Some voters chose Kerry but their machines registered a vote for Bush. This allegedly happened in other Ohio counties.</p>	<p>Mahoning County had problems with machines early on Election Day but some machines recorded votes for Kerry when Bush was selected too, said elections Director Michael Sciortino, a Democrat. The machines not working were quickly fixed and voters corrected their mistakes — electronic machines highlight the name of the candidate so voters can catch errors before their vote is cast. Fairfield County officials say they don't know how the rumor got started about machines there. They use punch card ballots. "So if you voted for Kerry, you voted for Kerry and if you voted for Bush, you voted for Bush," said Director Alice Nicolia.</p>
<p>MIAMI COUNTY On election night, vote totals changed from 31,620 to 50,235, both based on 100 percent of precincts tallied. In both counts, Bush and Kerry oddly maintained the same percentage, 66 percent to 34 percent, in Bush's favor. Even more unlikely, the margin in the higher vote total was exactly 16,000 votes, raising suspicions about the accuracy of optical-scan machines.</p>	<p>Miami County officials, according to the Dayton Daily News, said the 19,000 "new" votes appeared because Ohio Secretary of State Ken Blackwell's Web site initially used incomplete results when it posted what it said were final figures. The correct numbers were sent when the error was found.</p>
<p>WARREN COUNTY Some Democrats with proper identification were forced to use provisional ballots so that their ballots were subjected to closer review when counted.</p>	<p>Robert Hammock, Board of Elections chairman and co-chairman of the county's Democratic Party, wasn't aware of such complaints.</p>



Ohio Secretary of State J. Kenneth Blackwell
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DIRECTIVE 2005-01

January 12, 2005

- [2005-05 Attachment Bond](#)

ALL COUNTY BOARDS OF ELECTIONS

DEPLOYMENT OF VOTING SYSTEMS

The standards under development for VVPAT equipment as required per Substitute House Bill 262, the 2004 increase in Ohio voter registrations and the increase in time required to use VVPAT machines all mitigate against this technology as a viable option for the state of Ohio. The existing Federal funding and supplemental funding from the General Assembly under SHB 262 will not be sufficient to cover the purchase of direct recording electronic (DRE) voting systems with a voter verified paper audit trail (VVPAT). I reached this conclusion following extensive research by the SOS staff.

A logical analysis of the requirements of both HAVA and SHB 262 in combination with the HAVA deadline slightly more than one year away, lead inexorably to the following conclusion. In order for the state of Ohio to be in compliance with both federal and state law within existing funding, Precinct Count Optical Scan (PCOS) voting systems are the only viable option. PCOS voting systems already approved by the Controlling Board as a part of existing contracts meet all federal and state requirements. Further, they can be purchased and deployed with currently available funds.

Therefore, I am directing the selection and use of PCOS voting systems by all county boards of election in Ohio in order to comply with requirements of HAVA and SHB 262.

During the Winter Conference, eligible vendors will be available to answer your questions regarding their PCOS voting systems and to demonstrate their products. Under SHB 262, all counties may select a PCOS system for funding from the Office of the Secretary of State. All counties must select a PCOS system no later than February 9th. The selection must be submitted to Judy Grady, Director of Election Reform, via fax at 614-752-4360. Any county that does not provide written notification of their Board's vendor selection by the February 9th deadline will result in my office selecting a vendor for your county utilizing a random selection process. You will be notified on or before February 11th of the vendor selected for your county if we are forced to make your selection.

If you have any questions regarding this directive, please feel free to contact Judy Grady, Director of Election Reform at 614-728-8361.

Sincerely,

A handwritten signature in cursive script that reads "J. Kenneth Blackwell".

J. Kenneth Blackwell



Ohio Secretary of State J. Kenneth Blackwell
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DIRECTIVE 2005-07

April 14, 2005

ALL COUNTY BOARDS OF ELECTIONS

SELECTION OF VOTING SYSTEMS

Pursuant to Substitute House Bill 262 (SHB 262), the standards for the Voter Verified Paper Audit Trail (VVPAT) were approved on March 24, 2005, and will take effect on April 28, 2005. In light of the significant changes that have occurred over the last few months (as discussed in greater detail in the accompanying memorandum), your county may now select a direct recording electronic (DRE) with a VVPAT (hereinafter collectively referred to as "DRE/VVPAT") as your county's primary voting system.

In order to provide your county with the opportunity to choose a DRE/VVPAT voting system, we are extending the selection deadline set forth in Directive 2005-1 until May 24, 2005. Please notify my office of the vendor and certified voting system you have selected on or before that date, so that we may move forward with the purchase of a voting system on your behalf.

Of course, the Precinct Count Optical Scan (PCOS) voting system still remains an option for your county. If you intend to select a PCOS voting system, or have previously selected a PCOS system (as most of you have) and do not wish to change that selection, we encourage you to notify us as soon as possible so that we can move forward with the purchase of that system on your behalf. If you previously selected a PCOS voting system and vendor, and we do not hear from you on or before May 24, 2005, we will assume that your selection has not changed and will move forward with the purchase of a PCOS system from the vendor you previously selected.

As a reminder, before my office will purchase the voting system you have selected, the following requirements must be satisfied:

1. If you select a DRE/VVPAT voting system, both the DRE and the VVPAT must be separately certified by ITA, the Ohio Board of Voting Machine Examiners and Compuware, by not later than May 13, 2005;
2. The selected voting system must be otherwise in compliance with the Help America Vote Act (HAVA) and SHB 262, by not later than May 24, 2005;
3. If you select a DRE/VVPAT voting system, the county must deploy in a ratio of 1:175, and

4. If the total cost of ownership of the voting system that you have selected exceeds the amount of federal and state funds allocated for the purchase and implementation of voting systems for your county, your county is responsible to make up the difference in cost for the voting system you have selected. As stated in the cover memorandum, you will soon be notified of the amount allocated for your county in a separate communication.

If you have any questions regarding this Directive, please do not hesitate to contact Judy Grady, Director of Election Reform, at 614-728-8361.

Thank you for your continued cooperation in this important endeavor.

Sincerely,

A handwritten signature in cursive script that reads "J. Kenneth Blackwell". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

J. Kenneth Blackwell