

To: The Board of Elections and the Board of County Commissioners of Cuyahoga County, Ohio

From: The Cuyahoga County Election Review Panel

Subject: Interim Report on Issues Surrounding the Conduct of the Primary Election Held in Cuyahoga County on May 2, 2006

Date: June 14, 2006

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## **Introduction**

During the May 2, 2006 Primary Election, most Cuyahoga County voters (“electors”) were required, for the first time, to cast ballots for the candidates and issues of their choice electronically. Despite extensive planning and preparation at all levels by the Cuyahoga County Board of Elections for this momentous transition from punch cards to e-voting technologies, significant problems occurred at the polling places on Election Day as well as in tabulating the vote. Completion of the unofficial vote count was delayed for approximately a week.

In light of the range of unanticipated problems, before the unofficial election results were announced the Board of Elections had started moving toward the creation of an independent review. On May 17, 2006, the Board of Elections unanimously passed a formal resolution constituting and charging the three-member Cuyahoga Election Review Panel. The resolution charged us to conduct an independent investigation into the surrounding facts and circumstances that adversely affected the outcome of the 2006 primary in this County. One day later, expressing its own concerns, the Cuyahoga County Board of Commissioners adopted a similar resolution, endorsing this Panel’s investigation, pledging the necessary resources for the transaction of our work, and requesting full reports on the outcomes of this study.

The Panel moved quickly to identify areas of investigation, assemble a competent staff and to marshal necessary experts and other resources to conduct a thoughtful and thorough inquiry. As charged by the Board of Elections, we are to:

1. Identify the deficiencies in the Cuyahoga County elections performance occurring in the May 2, 2006 election, including problems: (a) with preparation for the election, (b) with the conduct of the election on May 2, and (c) following the closing of the polls, including tabulating the vote.
2. Ascertain the causes and contributing factors to each aspect of deficient performance, including the technological failures, and training and administrative issues.
3. Provide a set of recommendations for remedying the deficiencies and achieving the highest standards in election administrative performance.

We recognize that the overarching purpose is primarily constructive: identify promising resolutions of those issues before the beginning of November’s General Election cycle, which predominantly commences at the end of August 2006. We have dedicated ourselves to that mission.

Accountability is central to this investigation. We seek to provide via this post-mortem investigation, accountability: accountability for decisions made and systems adopted to

collect, count and safeguard our votes. Such accountability is needed to correct the problems that have been revealed and achieve the required improved performance.

Accountability is also required for the restoration of the public's confidence in its electoral system. In our interviews within the management and staff of the Board of Elections, as a preliminary matter we were impressed that most appeared competent, dedicated, and hardworking. They present as individuals who are committed to the production of open, fair, efficient and accurate elections for our community.

Additionally, Cuyahoga County conducted an initial survey of voter attitudes toward the new electronic voting process following the May 2, 2006 primary. The preliminary results of that survey suggest that, overall, a significant majority of those who voted experienced no problem with the new technology. Yet, by many measures, that election was dangerously flawed. We are thus left to answer the question: Why wasn't the election flawless?

Our plan for pursuing the answers to that question is contained in the pages of this Interim Report. The Panel's Final Report and Recommendations will be simultaneously delivered to the Board Members of the Cuyahoga Board of Elections and the County Commission on July 17, 2006.

Respectfully submitted,

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Judge Ronald B. Adrine, Chair

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Director Thomas J. Hayes

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Professor S. Candice Hoke

## **Acknowledgements**

We, the Cuyahoga Election Review Panel (CERP), would like to acknowledge the parties which made this project possible. We would like to thank the Cuyahoga County Board of Elections for prompting this initiative and the Cuyahoga County Commissioners for partnering in this project and supporting our charge. We would also like to thank Geoff Mearns, Dean of the Cleveland Marshall College of Law, and Jack Boyle, Vice President for Business Affairs and Finance, for their assistance in expediting the setup of our temporary offices and logistical needs. We would also like to acknowledge and thank President Michael Schwartz and the staff of Cleveland State University who have graciously supported our effort.

## **I. Work Plan & Methodology**

The scope of this investigation covers the breadth of activities of the Cuyahoga County Board of Elections in preparing and implementing procedures for the May 2<sup>nd</sup> election, and the strategies that need to be undertaken to achieve excellence in election administrative performance.

In order to fulfill the charge, this investigation has commenced using the framework outlined in the CERP work plan (Appendix B). The broad areas of investigation called for by the work plan are:

- The election master plan and its execution;
- Procurements and procurement procedures affecting the conduct of the election, and relevant contractual relationships;
- Structure, coordination, and performance of critical Board of Elections units;
- Recruitment, training, deployment and support of poll workers (Booth officials and Election Day Technicians);
- Voter registration and provisional ballot systems and procedures;
- Equipment, supplies and ballot preparation and testing procedures, deployment, security and proper function;
- Election Day logistics, systems, procedures, and performance of personnel;
- Ballot counting systems and procedures including testing, security, and reconciliation;
- Absentee ballot systems and procedures including procurement, preparation, and testing.

The CERP has planned and begun to use a number of methods for investigating issues and developing recommendations to be disseminated in the final report of July 17, 2006.

Data is being gathered through:

- Interviews with Board of Elections personnel and walk-throughs of processes;
- Public hearings;
- Exit polls of voters;
- Telephone testimonies from voters and polling place personnel;

- Information provided by e-mail, online web forms, and other written submissions;
- Focus groups and surveys;
- Legal source materials;
- Documents provided by vendors, advocate groups, and the Board of Elections;
- Interviews with relevant vendor personnel; and
- Interviews with relevant government offices from the State and its Counties.

Primary analysis is through:

- Analysis of a range of relevant documents from Board of Elections administration and Election Day activities;
- Research into additional sources of corroboration for information reported by voters, poll workers, technicians, Board of Elections employees, and others;
- Reconciliation of actual systems and procedures, and received equipment and materials, with those called for by contracts, directives, and the governing law.

Recommendations are being developed through:

- Review of national “Best Practices”;
- The compilation of relevant recommendations given by the Board of Elections personnel, poll workers, advocacy organizations, and voters in interviews and testimony;
- Additional corrections which become apparent through analysis of expected, planned, and actual performance; and
- Review of the successes of other jurisdictions.

Through these and other appropriate methods, the CERP will continue to examine the issues that impeded the Board of Elections’ conduct of the May election. It will identify solutions to resolve as many issues as possible before the beginning of November’s General Election cycle, which commences at the end of August.

## **II. Staffing**

The CERP hired a Project Manager to be the administrative head of the operation. Jointly with a Panel member, the Project Manager then interviewed dozens of recommended candidates and hired a staff of 16 individuals to conduct the investigation under the CERP’s direction. (Appendix D)

The Cuyahoga Election Review Panel staff is comprised of well-qualified individuals that are representative of Cuyahoga County. The Panel gave careful consideration to the criteria for selecting individuals to account for both the scope of the investigation as well as the timeframe. Staff members have backgrounds in law, public administration, operations management, software engineering, and urban affairs. These individuals demonstrate a combination of acumen and skill that is appropriate for this initiative.

Working in project teams, each team is assigned one of the areas of inquiry called for by the work plan (Appendix B, summarized above). Guided by Panel members, each team is actively investigating problems raised by Board of Election personnel, citizens of Cuyahoga County, and community organizations. The teams seek to identify the problems uncovered by their research, and to generate recommendations to address them which can be implemented for the next election.

### **III. Office Setup**

With the dedicated assistance of multiple departments of the County (especially the County Administrator's Office) and of Cleveland State University, the CERP was able to set up its office and begin operations in a matter of days. The office design and layout serves to facilitate secure document analysis and storage, telephone interviews, research and efficient administration.

The CERP office, located at 1801 Euclid Ave., Cleveland, Ohio is a fully-functional office environment equipped with telephones, computers, Internet access, copying and document storage systems. Systems and procedures were established at once to ensure security and confidentiality; computer systems have been inspected and approved by a network security specialist. Systems and procedures are reviewed from time to time to ensure continuing security of sensitive materials.

### **IV. Public Outreach**

The CERP has arranged forums and systems for voters, poll workers (Booth Officials and Election Day Technicians), and other citizens of Cuyahoga County to provide input about problems they experienced with the May 2<sup>nd</sup> election. Through public hearings, telephone calls, electronic submissions and faxes, information is being gathered and used by the CERP's project teams in their investigation.

#### ***1) Public Hearings***

Public hearings were held to gather input from individuals and representatives of organizations wishing to testify about the conduct of the May 2006 primary. Congresswoman Stephanie Tubbs Jones, The Maxine Goodman Levin College of Urban Affairs Forum Program, and the Center for Election Integrity acted as partners of the CERP in holding these hearings.

Although Congresswoman Tubbs Jones intended to hold public hearings prior to the appointment of the Panel by the Board of Elections and the Cuyahoga County Board of Commissioners, the Congresswoman facilitated the scheduled hearings by explicitly stating that they served as forums for the CERP investigation. Panel members were present at most of these Hearings.

Sensitive to the concerns of local advocacy organizations, the CERP identified groups actively doing locally based election review and/or advocacy work at the time of the 2006 primary election. The Panel then held a hearing to gather input from these groups. The CERP invited these organizations to prepare presentations and submit reports in order for

it to understand their concerns. The Panel then incorporated, for consideration by its project teams, the relevant observations and research so obtained.

Finally, the Panel accepted an invitation by the Center for Election Integrity to refocus its planned June 9 election issues conference in order to assist the Panel's work. The Center offered to organize a series of conference panels, partnering with The Maxine Goodman Levin College of Urban Affairs Forum program. The June 9<sup>th</sup> conference, entitled "*Lessons Learned From Ohio's Primary: Making November a Success,*" produced additional valuable information, for example, presentations from election directors in Columbus and in Akron, which were heard alongside a presentation by Cuyahoga County Board of Elections Director Michael Vu. The Panel's final Public Hearing was scheduled to follow directly after the Conference. This arrangement made it possible for the Panel to hear further testimony in a community forum setting and at low cost to the taxpayers.

The CERP and staff heard 104 testimonies in these hearings, and a court reporter recorded the proceedings of each for use by the CERP. Below is a breakdown of the various hearings, their dates, and the number of testimonies recorded:

**Stephanie Tubbs Jones Public Hearings:**

May 22, 2006	Beachwood:	21 testified
May 30, 2006	Euclid:	21 testified
May 31, 2006	Cleveland:	15 testified
June 01, 2006	Bedford:	15 testified
June 02, 2006	E. Cleveland:	15 testified

**Advocacy Group Public Hearing**

May 31, 2006	5 testified
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**Public Hearing following the Election Conference**

June 09, 2006	12 testified
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**2) Telephone Calls**

The CERP office solicits testimony via telephone to its office in order to hear the concerns of members of the community not present at hearings. At the time of this report, the CERP has collected data from eighteen (18) individuals by telephone. The contact number is 216-802-3020.

**3) Electronic Submissions**

The CERP maintains the [www.cuyahogavoting.org](http://www.cuyahogavoting.org) Web site as a conduit for public input and to disseminate public information about its mission. Through online forms and e-mail, to date, the CERP has received testimony from 59 individuals electronically.

**4) Faxes**

The CERP maintains a fax line as an additional mechanism to gather input. The contact number is 216-802-3344.

## **V. Investigation**

The CERP has delineated a method for investigating the events during and leading up to the May 2<sup>nd</sup> election including interviews with involved parties, Board of Elections on-site studies, document analysis and legal research.

### ***1) Interviews***

The Cuyahoga Election Review Panel has interviewed the vast majority of permanent staff and managers at the Board of Elections. It has also conducted interviews with poll workers and interested voters to fully understand the problems of the May 2<sup>nd</sup> election. At the time of this report, fifty-five (55) Board of Elections line staff members have been interviewed, and twenty (20) Board of Elections administrators and managers have been interviewed.

In order to remain objective and preserve the validity of the findings, Panel members have avoided any conflict of interest in interviewing Board of Election management and staff. Care has been taken to ensure that no interviewee, at any time, directly reported to the CERP member conducting his or her interview.

### ***2) On-site Study at the Board of Elections Offices***

In order to understand the intricacies of the planning and implementation of the May 2<sup>nd</sup> election, the CERP and staff participated in Board of Elections “walk-throughs”. During each of the following, all Panel members attended and asked questions to fully develop an understanding of the internal processes:

May 30, 2006	Registration, Absentee Voting and Alphabetical Poll Book Prep processes (over 3 hours)
June 01, 2006	Candidate Petitions, Ballot Prep and Voting Device Prep processes (over 3 hours)
June 08, 2006	Election Day, Election Night and Ballot Count processes (over 4 hours)

### ***3) Document Analysis***

Document analysis is a primary means of investigating the issues and possible causes of problems experienced in the May 2<sup>nd</sup> election. Steps have been taken by the CERP and staff to insure that a consistent flow of pertinent information is available to the investigative project teams and Panel members. As of this writing, the CERP and staff have reviewed two hundred two (202) documents. A considerable number of additional documents have been received and not yet reviewed, and further document requests are awaiting fulfillment.

### **Creation of Document Analysis form**

In order to track and quantify the issues raised in problem report forms and in testimony, the CERP enlisted the assistance of a legal professional with extensive experience in

election evaluation methods. The CERP commissioned a grid for analysis as a primary tool to be used in analyzing the problems reported by Board of Elections employees, poll workers and voters.

### **Document Intake Process Design**

The need for security and tracking of the multiple sets of documents required for its investigation required the CERP to initiate an effective document intake process. Similar to a library system, the document management design delineates methods for recording incoming documents, phone calls, e-mails, faxes and electronic submissions received.

The CERP's document management system categorizes documents into areas of concern corresponding to the CERP project teams. This process outlines the steps which are taken to disseminate information to the appropriate project team, and tracks which documents are in whose hands at any given time.

### **4) Legal Research**

A large portion of the CERP investigation is heavily rooted in the question of contractual promises verses delivered outcomes. Some of the areas of legal research conducted by the CERP and staff include:

- Regulation regarding the purchase of voting machines
- BOE reporting of election results
- Federal and State voting machine technical specifications
- Tying agreements related to ancillary equipment specified by Diebold
- Ballot creation
- Voter Verified Paper Audit Trail
- Voting machine per resident requirement
- Recount standards
- Poll worker eligibility and polling place staffing
- Warranty issues on equipment

## **VI. Future Investigative Direction**

The CERP will continue to assess the problems and causes of the problems experienced in the May 2<sup>nd</sup> election. Fulfilling its charge, the Panel will prioritize constituent concerns and develop recommendations for measurable improvement in Board of Elections operations.

One of the planned activities of the CERP includes soliciting poll worker opinions through focus group discussions. These focus groups are intended to identify areas of greatest concern to poll workers and gather their specific recommendations on ways to do their jobs more effectively. The Panel will also investigate those precincts with previously-identified problems, as well as any other precincts where other challenges are discovered.

## **VII. Future Activity of the Cuyahoga Election Review Panel**

The CERP Schedule of Activities between the time of this interim report and the release of the final report is as follows:

- June 19        Conference w/ staff, in re: preliminary findings and conclusions, direction of final investigative push
- June 30        Delivery of final investigative work product by staff to Panel for consideration
- July 7         Staff Draft of Final Report delivered to Panel
- July 7 - 9     Discussions and Modifications to Final Report by Panel
- July 10        Final Report Proofing
- July 11        Report Printed for Distribution
- July 12        Preview of Final Report's Findings and Recommendations
- July 17        Final Report Delivered to the Board of Elections and the Board of County Commissioners

## **VIII. Conclusion**

The CERP has acted in earnest to fulfill the charge directed by the Board of Elections and Cuyahoga County Commissioners within the timeframe allotted. The progress to date is significant, and findings are being documented and substantiated through the investigation team.

As a part of the July 17<sup>th</sup> final report, the CERP will inform the Board of Elections and the Board of County Commissioners of reasonable measures that can be taken to achieve excellence in the County's election administration.

***Appendix A.1 Policy Statement and Resolution of the Cuyahoga County Board of Elections***

**Cuyahoga County Board of Elections**

**Policy Statement**

**and**

**Formation of the Election Review Panel**

**Comprehensive Review of the Problems that Occurred in Preparing For and Conducting the May 2, 2006 Election in Cuyahoga County**

The Cuyahoga Board of Elections recognizes that a variety of problems occurred on Election Day, May 2nd, and others arose during its activities preparing for this election. This primary election was the first in which two new electronic voting systems were used county-wide. It required the creation and deployment of a wide range of new administrative and training systems in a very short period of time. Effective completion of these tasks presented high hurdles, and despite its dedicated efforts, the Board did not clear the bar in some respects.

We sought to conduct an error-free election. We join the voters and candidates in saying that the technical and administrative performance levels of the May 2nd election are unacceptable and cannot be repeated. We can and will dramatically improve this Board's performance in conducting elections before the next federal election scheduled for November 7, 2006. The voters of this county deserve nothing less.

For these improvements to occur in less than the six months remaining before November, the Board must initiate a rigorous, independent, and comprehensive review that will identify both the causes and effective solutions to these difficulties. And it must be completed expeditiously in light of the election calendar. We must structure the inquiry in a manner that will incorporate relevant expertise, depth of insight, and sound judgment. It must be able to move quickly and surely to determine the problems and the needed resolutions. And it must be conducted with the utmost integrity and impartiality.

Obviously, this independent and impartial inquiry must be conducted by those who have no financial connection to Board Members, its employees, and contractors. It must not be politically biased in any manner. It must avoid a cumbersome structure that would make the logistics and pace of its work difficult to achieve. And the panelists must be available to start on this work immediately.

With these principles in mind, the Cuyahoga County Board of Elections has created the Cuyahoga Election Review Committee. We have directed all employees and contractors

of the Board to cooperate in every manner with the Review Committee's work. We request that all persons within County government, within its contractors' staffs, and members of the public at large who might have relevant information to be forthcoming with that information. We also charge the Review Committee to cooperate with the Secretary of State's investigation into the events under examination, and to obtain relevant information and evaluations from the County's technical contracting firm on an expedited basis.

We believe that this independent inquiry will generate the information that is essential for the Board to receive so that it can correct various problems that may impede citizens' rights to vote and the ability of the Board of Elections to tabulate that vote accurately.

Further details can be found in the statement below.

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Name: **Cuyahoga Election Review Committee**

Composition: 3 members: Appointed to these posts are:

1. Judge Ronald B. Adrine
2. Director Thomas J. Hayes
3. Professor Candice Hoke

Agreeing to chair this inquiry is Judge Ronald B. Adrine.

Charge:

1. Identify the deficiencies in the Cuyahoga County elections performance occurring in the May 2, 2006 election, including problems with (a) preparation for the election, (b) the conduct of the election on May 2, and (c) those following the closing of the polls, including tabulating the vote.
2. Ascertain the causes and contributing factors to each aspect of deficient performance, including the technological failures, and training and administrative issues.
3. Provide a set of recommendations for remedying the deficiencies and achieving the highest standards in election administrative performance.

Timetable for Reports: A report is to be completed by July 17, 2006 with an interim report submitted to the Board by June 14, 2006.

**RESOLUTION**

WHEREAS, the Board of Elections recognizes the need to comprehensively understand the events leading up to and occurring in the May 2, 2006 Primary Election;

WHEREAS, the Board of Elections formed an independent panel known as the Cuyahoga Board of Elections Review Panel to review the May 2, 2006 Primary Election;

WHEREAS, the Board has requested Judge Ronald Adrine of the Cleveland Municipal Court chair said Panel, Candice Hoke, Law Professor of Cleveland Marshall College of Law and Director of the Center for Election Integrity at Cleveland State University, and Thomas Hayes, Director of the Ohio Lottery Commission and former Director of the Board of Elections serve on said Panel;

WHEREAS, the Board is requesting the review of all administrative duties and functions performed by the Board of Elections staff in preparing for and conducting the May 2, 2006 Primary Election;

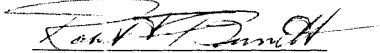
WHEREAS, the Board is requesting the review of poll worker recruitment and training issues relevant to improving polling place performance in future elections, and;

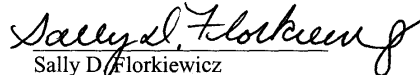
WHEREAS, the Board is requesting a forensic analysis into the optical scan ballots and devices and the cause of the manual count of the optical scan ballots, and;

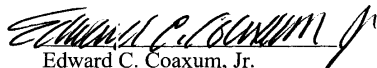
WHEREAS, the Board is seeking to achieve excellence in all aspects of its operation.

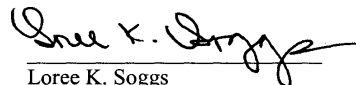
**NOW, THEREFORE, BE IT RESOLVED BY THE CUYAHOGA COUNTY BOARD OF ELECTIONS:**

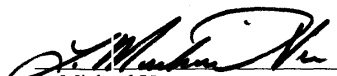
We hereby approve the attached Policy Statement and Formation of the Election Review Panel as indicating the charge and duties of the Cuyahoga Board of Elections Review Panel to review the May 2, 2006 Primary Election and report back to the Board by July 17, 2006 with suggested changes that will ensure proper administration, quality poll worker recruitment and training, accurate and reliable tabulation of optical scan ballots in future elections, and other improvements as the Panel determines important.

  
Robert T. Bennett  
Chairman

  
Sally D. Florkiewicz  
Board Member

  
Edward C. Coaxum, Jr.  
Board Member

  
Loree K. Soggs  
Board Member

  
L. Michael Vu  
Director

  
Gwendolyn Dillingham  
Deputy Director

*Appendix A.2 Resolution of the Cuyahoga County Board of County Commissioners*

Resolution passed May 18, 2006  
will soon be available on the  
Cuyahoga County Board of Commissioners  
website at the following URL:

<http://cuyahogacounty.us/bocc/resolutions/resoyear.asp>

***Appendix B. Work plan - May 18, 2006 Project Scope***

**Cuyahoga Election Review Panel (CERP) Task List**

Review election master plan and evaluate execution of the plan.

Review all election related procurements and procedures used for those procurements.

Review the performance of critical CCBOE personnel assigned to the election process.

Investigate any contractual or other relationship between Dayton Legal Blank, ES&S and Diebold.

Review the Booth Officials Office including:

- Recruitment
- Training
- Deployment of booth officials and pool staff
- Attendance
- Feedback
- Analyze incident reports from booth officials, and election technicians and organizations
- Interview booth officials and election technicians to assess election
- Conduct telephone surveys of Booth officials and EDTs

Review of Registration System including:

- Purging procedures
- Registration challenge procedures for Election Day
- Provisional ballot procedures

Review the operations of the Warehouse including:

- Device preparation and loading ballot styles by voting location
- LNA/IV&V Testing at the Warehouse
- Device deployment
- Device security
- Supplies at polling location
- Voting location readiness and availability @ 6:30 am.
- Voting device failure rate and reasons for failure

Review the operations of Ballot Prep including:

- Design of ballot
- Creation of ballot styles
- Ballot rotation and proofing
- QC of optical scan ballots

Election Day procedures and performance including:

- Polling location setup
- Polling locations open 6:30 am to 7:30 pm
- Call center logs and resolutions to complaints
- Pink Sheet issues/Supervisor cards
- Performance of Election Day technicians
- Performance of Election Day inspectors
- Poll closing procedures

- Return of memory cards
- Return of devices
- Call Centers including scalability and responsiveness

Ballot Counting procedures and performance including:

- Testing of vote tabulation machines and readers
- L&A testing of readers and tabulation machines
- IV&V by the SOS of readers and tabulation machines
- Chain of custody of memory cards
- Reconciliation of Certificate # 1 by polling location
- Review all procedures used to conduct the official count

Review Administrative Structure and Personnel Issues including:

- administrative and reporting structures
- communication systems between top managers and the Board
- communication systems between department managers and top managers
- criteria for hiring and promotion of staff
- overtime & compensation issues for permanent staff temporary staff recruitment, deployment, supervision, and evaluation
- systems for employee reports of legal infractions (“internal whistleblowing”)
- methods for follow-up on voter & advocacy organization concerns/recommendations
- communication systems between candidates and BOE on election problems/results

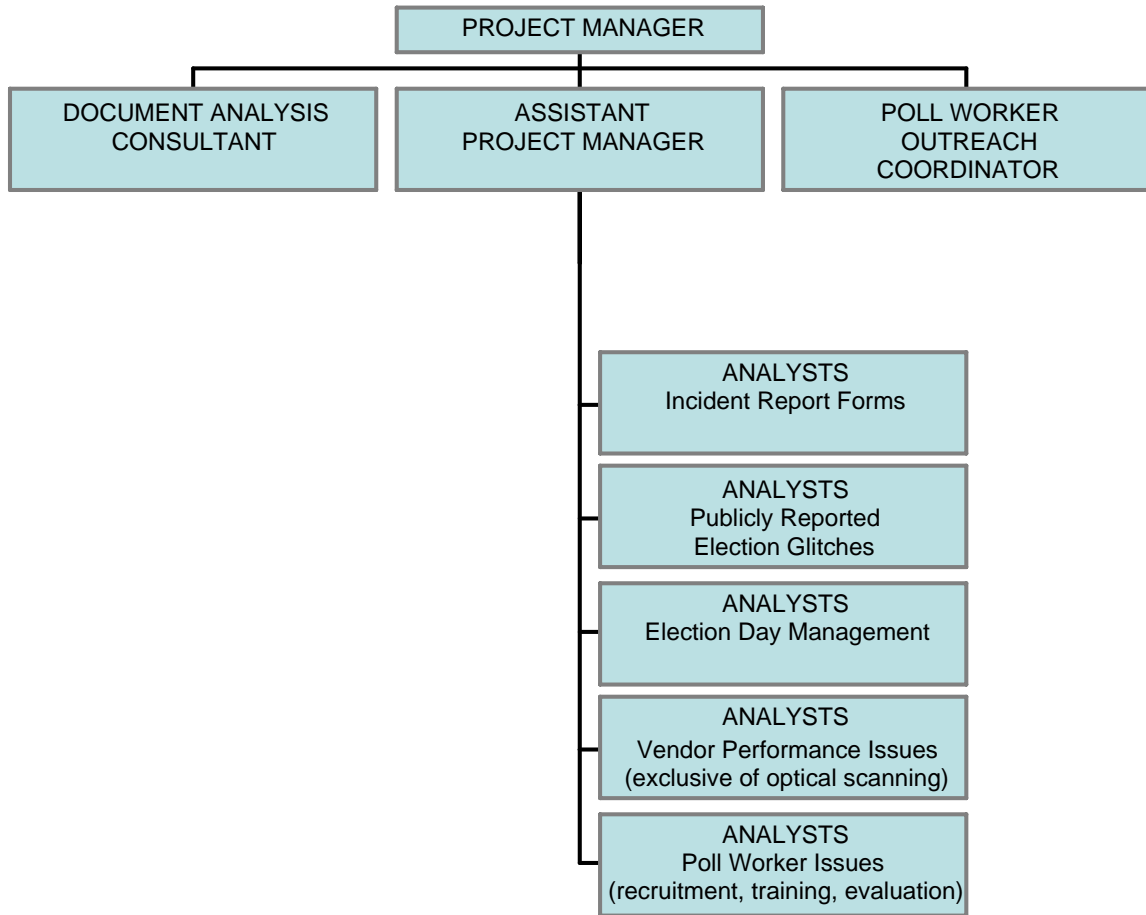
Absentee Ballot system procedures and performance including:

- Assess contract compliance by Diebold and MCR
- Timeliness of procurement process by CCBOE
- Evaluate absentee ballot system testing including L&A test and ballot test packs
- Evaluate IV&V testing by Secretary of State
- Evaluate printed ballots for accuracy for all ballot styles
- Timing marks
- Assess alternate ballot count procedures used for unofficial and official count
- Evaluate the absentee ballot counting system to determine reason for failure during unofficial count and assign responsibility for system failure
- Evaluate absentee ballot system performance during February Special Election and any corrective actions

**Election Science Institute (Contract)**

- Exit polling of voter satisfaction with electronic voting
- Evaluate need for additional machines based on failure rate
- Compare manual count with electronic vote
- Compare memory cards to manual count
- Review election process for security threats

*Appendix C. Panel Organization Chart*



*Appendix D. Staff Member Overview*

<b><u>Position</u></b>	<b><u>First</u></b>	<b><u>Last</u></b>	<b><u>School</u></b>	<b><u>Degree /Year in School</u></b>
Project Manager	Rachael	Balanson	Maxine Goodman Levin College of Urban Affairs	M.P.A.
Legal Analyst	Laura	Black	Case Western Reserve Law School	3L
Legal Analyst	Kevin	Burns	Georgetown Law Center, Washington D.C.	LL.M. Candidate 2007
Legal Analyst	Matilda	Carrena	Cleveland Marshall College of Law	3L
Assistant P.M. / Technology	Arthur	Dexter	Cleveland State University	BA Candidate
Legal Analyst	Christine	Frieder	Case Western Reserve Law School	3L
Legal Analyst	Michael	Holbrook	Cleveland Marshall College of Law	1L
Legal Analyst	George	Inman	Case Western Reserve Law School	1L
Legal Analyst	Gabrielle	Kelly	Case Western Reserve Law School	3L
Legal Analyst	David	Kettye	Case Western Reserve Law School	1L
Legal Analyst	Lou	Kroeck	Case Western Reserve Law School	1L
Legal Analyst	David	Levine	Case Western Reserve Law School	1L
Legal Analyst	Austin	McGuan	Cleveland Marshall College of Law	3L
Legal Analyst	Suzanne	Melgun	Cleveland Marshall College of Law	2L
Outreach Coordinator	Romona	Ramos	Mercyhurst College	B.A. Political Science
Legal Analyst	Amber	Samuelson	Case Western Reserve Law School	1L
Legal Analyst	Daniel	Thiel	Cleveland Marshall College of Law	3L
Writer / Stats Analyst	Ben	Trimbell	Maxine Goodman Levin College of Urban Affairs	M.U.P.D.D. Candidate

***Appendix E. Panel Members' Investigative Activity: Summary***

- May 17 All - After meeting with Panel appointees, Board of Elections formally adopts charge.
- May 17 Tom Hayes (TH) – Conducted 15 staff interviews. Candice Hoke (CH) – Researched absentee ballot system consultants; logistics issues; staff recruitment and application review.
- May 18 Judge Ron Adrine (RA) - Conducted 4 BOE management staff interviews; these interviews averaged 1/2 hour each. CH – Responded to email and telephone inquiries from poll workers and citizens; logistics issues, including website; drafted poll worker and citizen surveys for website.
- May 18 RA, CH - conducted 4 additional interviews with BOE management staff; averaged between 2 1/2 and 4 hrs each.
- May 18 TH - Conducted 21 staff interviews.
- May 18 All - After meeting with Panel appointees, Board of County Commissioners formally adopts charge.
- May 19 RA, CH - Interviewed BOE Member Sally Florkiewicz.
- May 20 CH – Attended Board Meeting (CCBOE) on primary election issues.
- May 21 CH – Interviewed (with Project Manager) all finalist staff candidates.
- May 22 RA, CH - Congresswoman Stephanie Tubbs Jones Election Forum - Beachwood, Ohio.
- May 22 TH - Conducted 5 staff interviews.
- May 22 CH – Telephone interview with SysTest Representative.
- May 23 RA – Conference call with the SOS, regarding investigative priorities.
- May 23 TH – Conducted 12 staff interviews.
- May 24 TH – Conducted 1 staff telephone interview.
- May 24 RA, CH - Concluded orientation meeting with CERP Staff.
- May 24 RA, CH - Conference with CERP Project Manager and Assistant Project Manager.

May 24 All - Conference call with the other members of the Panel.

May 25 All - Briefing with Plain Dealer Editorial Board.

May 25 RA - Briefing with Call & Post Editorial Board. CH – Conducted interview with 1 member of management staff (3 hours).

May 26 TH - Conducted 1 staff telephone interview. CH – Conducted interview with 1 member of management staff, interview (2 hours).

May 30 All - Walk-through of Registration, Absentee Voting and Alphabetical Poll Books. CH – Workshop research issues.

May 30 RBA - Interview with Associated Press.

May 31 All - CERP Election Groups Forum.

May 31 All - Cong. Stephanie Tubbs Jones Cleveland Election Forum.

June 1 All - Walk-through of Candidate Petitions, Ballot Prep and Voting Devices.

June 1 RA - Board of County Commissioners retains SysTest to perform forensic Examination.

June 1 RA, TH - Met with BOE Top Management and Forensic Team from SysTest.

June 1 RA - Radio Interview.

June 1 TH - Cong. Stephanie Tubbs Jones Bedford Forum.

June 5 All - Conference call with CERP staff.

June 6 All - Conference call with CERP staff.

June 7 All - Conference call with CERP staff. RA, CH – Interviews with 3 members of management staff.

June 8 RA, CH Interview with BOE Member Edward Coaxum. CH – Worked on BOE document collection.

June 8 All - Walk-through of BOE Election Services (Warehouse)/Election Day Operations (Pink Room) & Ballot Count process.

- June 9 RA - Closing remarks for CSU Center for Election Integrity Public Forum.  
CH – Attended forum.
- June 9 CERP Public Forum on Cuyahoga County Election Process  
Future Activity. CH – Interview with 1 member of management staff.
- June 12 RA, CH – Interviews with 3 members of management staff (4 hours). CH  
– Interviews with 2 members of management staff (2.5 hours).
- June TBA RA, CH, TH - Interview with BOE Member Loree Soggs.
- June 12 RA - 11th Congressional District Caucus Meeting.
- June 14 Delivery of Interim Report.
- June 16 RA, CH - Interview with BOE Chair Bob Bennett.

*Appendix F. Press Release*

**Media Advisory and Request  
May 30, 2006**

Contact: Turo Dexter, 216-802-3020

*The Cuyahoga Election Review Panel urgently requests that each media outlet serving Cuyahoga County convey the following information to the public:*

The Election Review Panel seeks to hear from voters and other county residents on all concerns they have about elections and voting systems in this county.

The Panel was created by action of both the County Commissioners and by the Board of Election to:

4. Identify the deficiencies in the Cuyahoga County elections performance occurring in the May 2, 2006 election, including problems with (a) preparation for the election, (b) the conduct of the election on May 2, and (c) operations following the closing of the polls, including tabulating the vote.
5. Ascertain the causes and factors contributing to each aspect of deficient performance, including technological failures, and training and administrative issues.
6. Provide a set of recommendations for remedying the deficiencies and achieving the highest standards in election administrative performance.

In order to fulfill these crucial public duties, the Panel needs to hear from the voters and citizens of the County.

*Please alert your listeners, readers, and viewers to these various ways they can contact the Panel to relate concerns, suggestions, and other comments:*

- **Web site:** [www.cuyahogavoting.org](http://www.cuyahogavoting.org) , where comments can be entered online, either anonymously or with personal contact information;
- **Phone:** **216-802-3020**, where callers can remain anonymous if desired;
- **Email:** [comments@cuyahogavoting.org](mailto:comments@cuyahogavoting.org)
- **In person** at a Public Hearing on June 9, from 1:00- 5:00 pm, at CSU's Urban College Atrium, corner of E. 18<sup>th</sup> Street at Euclid Avenue.

**Interviews or further information:** If your media outlet wishes to conduct an interview with Panel members about the work the Panel has undertaken to investigate and restore the integrity of the County's voting and elections processes, or has any questions or suggestions for the Panel, please contact Turo Dexter, Assistant Project Manager, at 216-802-3020.

**CUYAHOGA COUNTY**

**Election comments wanted**

The Election Review Panel investigating problems that occurred during the May 2 primary is asking voters, election workers and others with concerns about the elections and voting systems in Cuyahoga County to contact them. County residents can contact the panel online at [www.cuyahogavoting.org](http://www.cuyahogavoting.org). Voters can comment anonymously. Residents can call 216-802-3020, or e-mail [comments@cuyahogavoting.org](mailto:comments@cuyahogavoting.org). Finally, concerned citizens can attend the public hearing on Friday, June 9, 1-5 p.m., at Cleveland State University's Urban College Atrium, 1717 Euclid Ave.

*Appendix G. Congressional Contacts*

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*Appendix H. News reports and editorials about the May 2, 2006 Primary Election*

## THE PLAIN DEALER

### **Elections board opens probe into voting fiasco**

Tuesday, May 09, 2006

Joan Mazzolini

Plain Dealer Reporter

The Cuyahoga County elections board today launched an investigation into why last week's election was such a fiasco, creating a committee to probe administrative, personnel and technical issues.

The board acted at a special meeting Monday, which also featured a grim report by Elections Director Michael Vu.

Blame was widely spread, with board members especially critical of Diebold Elections Inc., manufacturer of the touch-screen machines used at the polls and optical-scan machines used to count absentee ballots.

Officials complained that the company shipped the optical-scan machines late and failed to provide general technical help when it was most needed.

But voter advocates reminded the board that they had warned well before the election that poll-worker training was inadequate and that confusion would reign at the polls.

And Diebold spokesman Mark Radke, who was not invited to speak, said afterward that his company sent 115 people to Cuyahoga County to help poll workers on Election Day when it became clear that many poll workers were not showing up to work.

Radke defended the machines, pointing out that 47 other Ohio counties used the same machines without problems. All those counties used the same Dayton-area company to print the paper ballots, while Cuyahoga County used a local printer.

Radke also argued that board officials themselves are responsible for the late arrival of the optical-scan machines, which weren't ordered until mid-March.

But Vu said it was clear after several test runs that the optical scanning process wasn't working. That forced officials to hand-count 15,000 absentee ballots, which in turn created a domino effect that brought everything else to a virtual standstill.

"It turned our attention from poll workers and voters to hand-counting," said Vu.

Less attention was given during Monday's meeting to the other major problem: that poll workers lost 70 computer memory cards holding vote totals from hundreds of precincts.

Vu conceded that some memory cards -- seven to 12 -- are still unaccounted for. Election officials were able to get results in those precincts only by reading the "flash memory" on touch-screen machines, a sort-of temporary data storage.

Elections board Chairman Bob Bennett announced two members of the committee, Cleveland State University law professor Candice Hoke and Ohio Lottery director Tom Hayes.

Hoke will be in charge of investigating the adequacy of the training poll workers received. Hayes, who was director of the elections board in the mid-1990s and is a running buddy of Vu, will oversee a probe of the board's administrative and election procedures.

Bennett said others would soon be named to the committee.

"I can assure you it will be independent and thoughtful," Bennett said.

He added that the results of the investigation, due by mid-July, could result in resignations by board members or the removal of board members by the secretary of state.

The internal investigation was ordered by the Secretary of State Ken Blackwell's office on Friday. The secretary's office has also given board officials until Wednesday to submit a written plan on how they will conduct the official canvass -- essentially a recount to ensure accuracy before the election is deemed official.

As part of the canvass, board employees will have to recount paper ballots cast by absentee voters. The first hand count took six days of 24-hour counting. The canvassing must be completed by May 23.

Also Monday, the Ohio Democratic Party called on Blackwell to step aside from the investigation, saying he has "numerous" conflicts of interest, including his candidacy for governor. The party called for appointment of a "special master" to handle the probe.

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## THE PLAIN DEALER

### **A primary post-mortem**

**A good, hard, independent look at Election Day mishaps is the first step toward a better performance in November**

Wednesday, May 10, 2006

With the unofficial count of last week's primary ballots finally done, the Cuyahoga County Board of Elections now must begin restoring its credibility in advance of November's high-turnout main event.

The board has to get this right. Nothing less than public confidence in the democratic system is at stake. There can be no more excuses.

At a special meeting on Monday, Chairman Robert Bennett announced that a committee of outsiders would investigate last week's problems and recommend reforms.

Bennett promised that the committee would be independent and that its work would be open to the public. We intend to hold him to his word.

Bennett also announced two lead investigators: S. Candice Hoke, the law professor who runs Cleveland State University's Center for Election Integrity, will focus on poll worker recruitment, training and performance; Ohio Lottery Director Tom Hayes will examine the election board staff's performance. Bennett and his three board colleagues are still looking for candidates to lead the overall probe, to zero in on last week's technical glitches and to fill out the investigative team.

Hoke and Hayes are a good start. They need to be joined by others of similar talent and integrity who reflect this community. The overall leader needs to be someone of unquestioned fairness who will be unafraid to go wherever the facts lead - someone like retired Common Pleas Judge Burt Griffin or Cleveland Municipal Judge Ronald Adrine.

The investigators need to figure out what went wrong with the system for counting some 17,000 absentee ballots. The vendor who printed the ballots and the one who made the optical scanners blame each other. Responsibility needs to be pinpointed, both to fix the problems and to determine who should reimburse taxpayers for the cost of a long hand count.

That count divided the board's attention on a day when the county was using touch-screen voting machines for the first time. Most worked fine, as did most poll workers. But a disturbing number of workers did not know what to do, either when machines went haywire or when it came time to close the polls. Elections boss Michael Vu admitted Monday that training was inconsistent and that not every worker got complete instructions. Layer on those who did not grasp what they were told, add in those who simply didn't show up, and you had a fiasco in too many precincts.

Here's one thing that may help in November: Rather than depending on well-meaning volunteers to staff the polls, use county employees wherever possible. In particular, put county supervisors in charge of polling sites, especially those with poor track records. They could get extra training and, unlike volunteers, could be held responsible if problems aren't addressed.

November's election will be critical to Ohio's future. Cuyahoga County's votes must be cast and counted without the hand-wringing, finger-pointing and uncertainty of the past week.

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## THE PLAIN DEALER

### **Diebold voting machine spurs security concerns**

Thursday, May 11, 2006

Dan Goodin

Associated Press

San Francisco- Officials overseeing elections in three states have directed local authorities to take additional security measures with a popular type of electronic voting machine to prevent election fraud.

California, Iowa and Pennsylvania issued the voting directives in recent weeks after researchers discovered a feature that could allow someone to load unauthorized software on Diebold Election Systems computerized machines.

Diebold is a unit of Green, Ohio-based Diebold Inc.

A hacker theoretically could use the software to rig or sabotage an election or to perform some other unauthorized function, said Michael Shamos, a computer science professor at Carnegie Mellon University.

"It's worse than a hole," said Shamos, who has been briefed on the vulnerability of the Diebold machines. "It's a deliberate feature that was added by Diebold that we all believe is unwise."

In the wake of the ballot-tabulating problems that plagued the 2000 presidential election, electronic voting has become a flash point for many people concerned about fair elections. Critics charge that electronic voting machines are too susceptible to fraud and error to be trusted and should not replace traditional balloting until proper safeguards are installed.

Diebold spokesman David Bear said there is no evidence electronic results have been subject to tampering. He added it would be hard for anyone to exploit the recently discovered flaw if officials follow security procedures already in place, but that Diebold is developing a permanent solution to address concerns.

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## THE PLAIN DEALER

### **Voting machines a winner in poll: But problems being probed**

Saturday, May 13, 2006

Grant Segall

Plain Dealer Reporter

When the new machines worked, the voters loved them.

An exit poll shows this rare bit of good news from Black Tuesday - Cuyahoga County's sputtering May 2 primary.

"The voters were overwhelmingly satisfied with the system," Steven Hertzberg, project director of Election Science Institute, said Friday.

Still, an independent committee began Friday to investigate the primary's many problems, including missing memory cards, hours of delay in opening some polls and days of delay in counting absentee ballots by hand.

The committee's chairman, Judge Ronald Adrine of Cleveland Municipal Court, hopes to help the county elections board do much better in November's general election.

"I am absolutely hopeful that we'll be able to turn it around," said Adrine.

The committee's other members are Thomas Hayes, Ohio Lottery director and the board's former director; and Candice Hoke, a law professor running the Elections Institute at Cleveland State University.

The exit poll reflects 2,597 voters at 50 locations. Among the highlights:

Ninety-five percent of the voters called the new touch-screens easy to use.

Ninety-two percent said the screens beat the old punch cards.

Ninety percent reported no problems with them.

Ninety-four percent were confident that their votes would be counted correctly.

On a troublesome note, 35 percent of Clevelanders said they'd been asked for identification, versus 16 percent of suburbanites. The gap was nearly as wide between black voters (31 percent) and white voters (18 percent).

The immediate issue may be moot in November, when all voters will need IDs. But county official Hugh Shannon promised that the staff would investigate whether the gaps reflected valid differences or unequal treatment.

People should have been asked for identification this month only if voting for the first time at their current address or at all.

The nonprofit Election Science Institute of San Francisco got help with the poll from Edison Media Research of New Jersey. Edison is best known for a 2004 exit poll off by a fateful couple of points, showing a win for John Kerry in the presidential election.

Under a \$275,000 county contract, Election Science will continue to study the May 2 vote, partly by auditing the tallies on three kinds of media: paper, memory cards and the machines' internal records.

County commissioners are expected Thursday to give Election Science \$66,000 more to survey poll workers about their struggles with the machines.

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## THE PLAIN DEALER

### **Cuyahoga aiming for better result in election Board's procedures to be reviewed, changed**

Thursday, May 18, 2006

Joan Mazzolini

Plain Dealer Reporter

Look for big changes for this November in how Cuyahoga County recruits and trains precinct workers for Election Day.

The panel investigating the May 2 election debacle said Wednesday it would come up with a system for finding competent people to work the polls and a program to give those people all the training necessary to guarantee a successful election.

"We see our primary responsibility to get this board ready for November and to restore public confidence in the election system," said Candace Hoke, a law professor running the Center for Election Integrity at Cleveland State University.

The three-member election review panel worked out the scope of the investigation Wednesday with Bob Bennett, elections board chairman. Essentially, the panel will conduct a wholesale review of how the board runs elections. The panel will examine how the board prepares machines for election day, sets up poll locations, designs ballots and awards contracts.

Panelists told Bennett they need a specialist to help figure out why the county's new optical scanners failed to accurately read absentee ballots. The failure resulted in the board hiring an army of temporary workers to hand-count 17,000 absentee ballots, which delayed election results for six days. The specialist would be an expert in ballot printing and Diebold Inc. election machines.

Cleveland Municipal Judge Ronald Adrine and Thomas Hayes, Lottery Commission director and former elections board director, are on the panel with Hoke. They said they plan to hire law students from CSU and Case Western Reserve University to help them review all the data and come up with ways to fix the system.

A report is due to the elections board July 14. With a big November election looming - the governor, a U.S. Senate seat and all seats in Congress are up - board officials will have little time to revamp procedures.

The voting machines were just part of the problem May 2. Nearly 20 percent of the poll workers did not show up, leading many polling locations to open late. Then, after the

polls closed, workers lost more than 70 memory cards from the machines. The cards store the votes.

Elections board officials still haven't accounted for about a dozen of the cards but hope to find them during the official, final vote count, due at the secretary of state's office Tuesday.

For the official count, elections officials decided not to repeat the hand-counting of the absentee ballots. Instead, workers entered votes recorded on the paper absentee ballots into touch-screen machines.

Michael Vu, executive director of the elections board, said the counts haven't been compared with the unofficial count completed last week.

He expects the counts to differ. He said hand-counting is the least accurate method.

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## THE PLAIN DEALER

### **How the vote got messed up**

#### **Lorain kept election schedule; Cuyahoga problems snowballed**

Wednesday, May 31, 2006

Joan Mazzolini

Plain Dealer Reporter

A lot had to happen, on time, for the May 2 primary election to be successful in Cuyahoga and Lorain counties.

Both counties were using Diebold's new optical scanners to count absentee ballots, so they had technical challenges to overcome.

Both counties had to modify the machines, wiring them directly into elections computers to bypass the limited capacity in the machines' memory cards.

Both counties also needed big stacks of test ballots to run through the machines to see if they counted accurately.

Both counties needed to test the machines well before Election Day, leaving enough time to fix anything that did not work.

But only one county, Lorain, met the deadline. Cuyahoga was a step behind from the start and never caught up.

The result was that Lorain County voters learned the results of their elections May 2. Cuyahoga voters waited five more days.

Lorain County had one advantage. It had the four optical scanners it needed on hand six months before Election Day. Cuyahoga County, nearly five times the size of Lorain,

received five machines from the secretary of state's office in January, but it had been lobbying for more since late December.

After months of back-and-forth discussions, Cuyahoga received 15 more optical scan machines April 14, just 18 days before the primary.

"Things were running late," said Michael Vu, director of the Cuyahoga County Board of Elections. "But it was more global, it wasn't just localized to the board."

One of the key problems involved the memory cards for the machines. They did not have the capacity to hold the 2,000 different ballots to be used in Cuyahoga County for the primary.

Diebold consultants in both counties told election officials they were pushing the state to approve modifying the machines to get around the memory cards. The modification, used in other states, wires the machine to election computers, which contain all forms of the ballots.

Ohio's Board of Voting Machine Examiners certified the modifications in mid-February.

But the two counties differed in their approach to the changes.

Lorain elections officials ordered the equipment they needed from Diebold on April 12, said Marilyn A. Jacobcik, director of the Lorain County Board of Elections.

The equipment arrived the next day, on April 13, and the county's four machines were wired into elections computers that afternoon, Jacobcik said.

Cuyahoga County went to other vendors for the equipment and didn't get everything it needed until April 25, seven days before the primary.

"We received something from Diebold showing the cost would be nearly \$6,000," Vu said. "Anything over \$5,000 we have to bid."

Vu said two other vendors came in less than \$6,000.

Going with another vendor created a new problem, with board officials needing confirmation from Diebold that they were buying the right equipment.

"We tried to get confirmation on April 10 . . . but we didn't get a response back until April 18," Vu said.

Then, Vu said, the Diebold consultant adapting the machines didn't get training on the conversion until April 22.

"We're now a week away from the election," Vu said. The modifications were not complete until April 28 or 29, four days before the primary.

Even if the machines had been ready earlier, Cuyahoga County didn't have ballots to conduct tests.

Lorain election officials ordered their absentee and test ballots in early January and had the absentee ballots in hand by early April, the same time Cuyahoga's four-member board was getting around to picking a printer to do the ballots.

The test ballots for Lorain arrived April 14, and by the 19th, the testing of the optical scan machines was complete.

"It was a little later than we would have liked," Jacobcik said of the testing. But she said the conversion from punch ballots to electronic voting "was a learning experience."

In Cuyahoga County, elections officials and Diebold representatives were worrying in mid-April that their test ballots wouldn't arrive in time.

The printer, MCR Inc., gave assurances to the county, but the test ballots did not arrive until April 30, two days before the primary.

On May 1, testing began. By 2:30 a.m. Election Day, elections officials realized that machines were not counting accurately and decided not to use them.

Instead, temporary workers began hand-counting 15,000 absentee ballots on Election Day. They finished five days later.

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## Spate of lawsuits target e-voting

By Patrick O'Driscoll, USA TODAY

Posted 6/4/2006 11:15 PM ET



By Bill Kalina, The York  
Dispatch via AP

## E-VOTES INCREASE

Percentage of registered voters whose jurisdictions use electronic voting machines:

**2000:** 12.6%

**2002:** 22.5%

**2004:** 28.9%

**2006:** 39.1%

Source: Election Data Services

Machine Inspector Fran Eck, left, and Judge of Elections Belita Rosier prepare the polling station at Lutheran Nursing Home in York, Pa., May 16. Electronic voting machines debuted during this primary election, but lawsuits have targeted the devices in Pennsylvania and other states.

DENVER — Electronic voting machines, adopted widely after the disputed Florida ballot count in the 2000 presidential election, are under legal attack as primary election season heats up.

Lawsuits have been filed in at least six states, the most recent last week in Colorado, to block the purchase or use of computerized machines.

Voter Action, a non-partisan advocacy group, led the challenge filed Thursday against the state of Colorado and nine counties, as well as similar lawsuits in California and Arizona this spring and New Mexico last year. Court actions by others targeted the devices in Florida, Ohio and Pennsylvania.

Most of the suits argue that the machines are vulnerable to software tampering, don't keep an easily recountable printed record and may miscount, switch or not record votes and even add phantom votes.

In California, one of eight states holding primaries Tuesday, a lawsuit in March led several counties to switch to printed ballots counted with optical scanners, a competing technology. Six of the eight states will have some electronic balloting, which records votes by touch screens.

Texas and Illinois had some problems using electronic voting machines during their March primaries.

About one-third of the USA's 3,114 counties use some electronic systems, according to Election Data Services, a consulting group. It says half the counties use optical scanners that read dots or marks that voters pencil in on ballots.

The rest vote by other means, mostly hand-counted paper ballots in smaller communities but also lever-type machines in New York and Connecticut.

No case yet has claimed intentional manipulation of electronic vote data. But another advocacy group, Black Box Voting, reported last month that a Finnish expert found security flaws for a Diebold Election Systems model.

Diebold, a major manufacturer, says the vulnerability is theoretical and will be fixed this year.

System defenders say most problems occur because of hasty set-up before elections or poor training of poll workers. "Certainly none of the allegations of security breaches on the equipment have ever been demonstrated to be true," says R. Doug Lewis of the Election Center, a group of state and local election officials.

Electronic voting, in use for more than a decade, didn't catch fire until Congress passed the Help America Vote Act in 2002. It overhauled election standards and required states to replace old voting methods such as punch cards, which fouled up the 2000 election in Florida. Congress also gave states more than \$300 million to replace outdated systems.

Paul DiGregorio of the federal Election Assistance Commission acknowledges some glitches but says any system "can be trusted" as long as safeguards are in place.

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## THE PLAIN DEALER

### **Blackwell gets brunt of registrants' anger He denies trying to disenfranchise voters**

Tuesday, June 06, 2006

Ted Wendling

**Plain Dealer Bureau**

Columbus- Democrats and representatives of voter-registration groups accused Secretary of State Ken Blackwell on Monday of trying to rig this November's election by publishing draconian new rules governing the activities of people who register voters.

Testifying at a hearing chaired by Judy Grady, Blackwell's director of elections, lawyers for ACORN, Common Cause, the Ohio Democratic Party and other groups said training documents drafted by Blackwell's office are so vague that they subject registrars to felony penalties for even inadvertent violations.

As a result, ACORN, the Association of Community Organizations for Reform Now, has drastically cut back its voter-registration efforts while its lawyers review the new rules, Katy Gall, Ohio ACORN's head organizer, said in an interview.

Gall said ACORN has registered 35,000 voters in six Ohio cities since February. Its goal is 130,000.

Samuel Gresham, an attorney for Common Cause, charged that the rules are "part of a consistent pattern, intentionally so," by Blackwell to disenfranchise black, low-income and Democratic voters.

Blackwell's actions, Gresham and others said, are intended to suppress Democratic voter turnout in what is shaping up as a closely contested governor's race between Blackwell, a Republican, and Democratic U.S. Rep. Ted Strickland.

"It appears that Ken Blackwell finally figured out how to deal with long lines on Election Day," said state Democratic Party spokesman Brian Rothenberg. "He's just trying to outright deny people the right to vote now."

Those criticisms brought a scathing response from Blackwell's campaign spokesman, Carlo LoParo.

"That's outrageous," LoParo said. "The Blackwell campaign is making a very focused effort to gain the votes of Ohio's urban voters, but particularly Ohio's African-American voters, and that's because Ken Blackwell is the only candidate in this race that can articulate their concerns."

In contrast, Strickland is so out of touch with black voters, LoParo said, that "before this campaign, his idea of diversity was opting for Neapolitan ice cream at the congressional buffet."

The rules were drafted to comply with a new state election-reform law. The focus of most of the voter-registration activists' ire is a provision that says registrars must return applicants' forms "directly" to the secretary of state's office or a county board of elections.

Peg Rosenfield, elections specialist for the League of Women Voters of Ohio, said a strict interpretation of that rule means that the person who registers a voter can't even turn the form over to his supervisor for review.

Angered by the passage of a similar law in Florida, the League ceased all voter-registration efforts and sued Florida elections officials last month with the assistance of the Brennan Center for Justice at the New York University School of Law. A lawyer for the Brennan Center also testified at Monday's hearing in Columbus.

State Rep. Kevin DeWine, the legislator who sponsored the election-reform law, said he believes Blackwell's office faithfully drafted the rules to comply with the bill.

However, he said the law "might need a fix" because lawmakers didn't intend to subject registrars to criminal penalties if they turn their forms over to a supervisor for review instead of directly submitting them to the secretary of state.

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Last Updated: 9:41 am | Tuesday, June 6, 2006

## **New rules criticized by voting groups**

BY JOHN MCCARTHY | THE ASSOCIATED PRESS

**COLUMBUS** - New rules issued by the Ohio secretary of state's office governing groups that pay people to register voters are confusing and have hindered their efforts to sign up new voters, critics of the rules said Monday.

Representatives of the Ohio Democratic Party, the League of Women Voters of Ohio and groups active in registering voters said the rules developed by Secretary of State Ken Blackwell's office go beyond the law they were intended to implement.

The Legislature, controlled by Republicans, passed the bill in January. The rules covering paid circulators went into effect May 2, the day of Ohio's primary in which Blackwell defeated fellow Republican Jim Petro for the GOP nomination for governor.

The rules grew out of a bill Gov. Bob Taft signed Jan. 31 that overhauls Ohio election law. It will require voters to show identification at the polls before being allowed to vote, bars the attorney general and secretary of state from acting as treasurer or in an official capacity for ballot initiatives and sets new rules for people paid to collect voter registrations or signatures to qualify an issue for the ballot.

A rule requires paid circulators to return signed registration cards within 10 days to county boards of elections or to the secretary of state's office, not to the group paying them. That goes beyond what legislators intended, critics said.

Groups such as MoveOn.org and America Coming Together actively registered voters in the groups' attempt to defeat President Bush in 2004. Don McTigue, a lawyer representing a similar group, Association of Community Organizations for Reform Now said the rules are causing such groups to look for new voters outside Ohio.

"They want to engage in voter registration drives, but they might not be able to," McTigue told Judith Grady, Blackwell's elections director, at a hearing on the new rules.

The League of Women Voters of Ohio is being peppered with questions from groups that pay circulators, said Peg Rosenfield, the league's elections specialist.

"We need answers," she said.

The requirement to submit registrations directly to elections officials singles out groups usually associated with political causes, said Wendy Weiser, deputy director for democracy programs for the Brennan Center for Justice, a New-York based think tank.

"While a library might be able to accept a lot of individual forms and submit them in a box, a voter registration group could not," Weiser said. "It's just calculated to make it as difficult as possible."

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**The New York Times**  
**Block the Vote, Ohio Remix**  
Published: June 7, 2006

If there was ever a sign of a ruling party in trouble, it is a game plan that calls for trying to win by discouraging voting.

The latest sign that Republicans have an election-year strategy to shut down voter registration drives comes from Ohio. As the state gears up for a very competitive election season this fall, its secretary of state, J. Kenneth Blackwell, has put in place "emergency" regulations that could hit voter registration workers with criminal penalties for perfectly legitimate registration practices. The rules are so draconian they could shut down registration drives in Ohio.

Mr. Blackwell, who also happens to be the Republican candidate for governor this year, has a history of this sort of behavior. In 2004, he instructed county boards of elections to reject any registrations on paper of less than 80-pound stock — about the thickness of a postcard. His order was almost certainly illegal, and he retracted it after he came under intense criticism. It was, however, in place long enough to get some registrations tossed out.

This year, Mr. Blackwell's office has issued rules and materials that appear to require that paid registration workers, and perhaps even volunteers, personally take the forms they collect to an election office. Organizations that run registration drives generally have the people who register voters bring the forms back to supervisors, who can then review them for errors. Under Mr. Blackwell's edict, everyone involved could be committing a crime. Mr. Blackwell's rules also appear to prohibit people who register voters from sending the forms in by mail. That rule itself may violate federal elections law.

Mr. Blackwell's rules are interpretations of a law the Republican-controlled Ohio Legislature passed recently. Another of the nation's most famous swing states, Florida, has been the scene of similar consternation and confusion since it recently enacted a law

that is so harsh that the Florida League of Women Voters announced that it was stopping all voter registration efforts for the first time in 67 years.

Florida's Legislature, like Ohio's, is controlled by Republicans. Throughout American history both parties have shown a willingness to try to use election law to get results they might otherwise not win at the polls. But right now it is clearly the Republicans who believe they have an interest in keeping the voter base small. Mr. Blackwell and other politicians who insist on making it harder to vote never say, of course, that they are worried that get-out-the-vote drives will bring too many poor and minority voters into the system. They say that they want to reduce fraud. However, there is virtually no evidence that registration drives are leading to fraud at the polls.

But there is one clear way that Ohio's election system is corrupt. Decisions about who can vote are being made by a candidate for governor. Mr. Blackwell should hand over responsibility for elections to a decision maker whose only loyalty is to the voters and the law.