



## Judging Cuyahoga and Ohio Electoral Success

This Center serves as the Public Monitor of Cuyahoga Election Reform through 2008 by joint appointment from the Cuyahoga County Board of Elections and the County Commissioners.

The following brief overview of Ohio and Cuyahoga County election administrative issues may assist in assessing the relative successes (and errors or apparent inadequacies) that may occur as a part of the 2008 Ohio Primary Election. It reviews:

- Ohio's distinctive electoral administrative features
- Ohio administrative issues affecting this Primary electoral cycle (Fall 2007-March 2008)
- Understanding Cuyahoga County's special situation (p. 4)

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### A. Ohio's Electoral Administrative features

1. Highly decentralized electoral administrative system: Ohio features perhaps the most decentralized election administrative system in the nation. Significant discretionary scope is committed to county electoral boards (BOEs), including the choice of voting technology. Ohio's 88 counties differ substantially in population density, rates of higher educational degrees, affluence, and other demographic factors.
2. SOS powers The Secretary of State possesses significant powers to preempt local decision making by issuing administrative Directives having the force of law. Use of these powers can be controversial. The SOS can also remove for cause the executive leadership of local BOEs, their Board Members (2 Rs and 2 Ds), or refuse to reappoint certain individuals who are recommended by the county political party organization.
3. Voting Systems: Ohio requires that any voting system (VS) used in the State have passed federal "qualification" review. Over the past year, studies have issued documenting the certification labs' failures to perform the expected federal VS tests. Most voting systems currently deployed nationwide, including Ohio's, were approved via this porous, problematic testing process that included skipping some of the most vital system testing.

### 3. Voting Systems, cont'd

(A) Vendors: Former Secretary of State Ken Blackwell authorized only 3 manufacturer/vendors to sell their voting systems within Ohio: ES&S, Premier (formerly Diebold), and Hart Intercivic. Except for two counties choosing Hart, the State's counties have roughly split the election tabulation business between the first two companies, which are also the two largest VS vendors in the nation.

(B) Outsourcing Secretary Blackwell required every Ohio county to change its voting system to one of the new HAVA-compliant and OH-SOS approved electronic systems. These electronic voting systems have proved to be substantially more expensive to utilize and maintain than punch cards, with the touchscreen DREs at the zenith. The computerized systems have presented unexpected technical complexities causing many counties to outsource ballot creation and other technical tasks. Setting up and operating the computer software during vote tabulations can also be difficult, especially for counties with small election staffs and no IT personnel. Roughly half of Ohio county BOEs have *only 2 employees*, which means that many counties may have outsourced to private vendors significant duties over ballot creation and vote tabulation. Ohio does not specify at the SOS level oversight and auditing procedures as a check on the privately held vendor activities.

(C) Security, Reliability, Accuracy and Access Concerns Last fall, Secretary of State (SOS) Brunner commissioned a scientific study reassessing the security, reliability, accuracy and other capabilities of the voting systems used in Ohio. Like the California SOS's Top to Bottom Study, the Ohio study identified a broad range of flaws in the software, the voting devices, and the other components comprising the computerized voting systems. Significant security deficiencies were identified in every system, but the single most vulnerable components arguably were the touchscreen (DRE) voting units. Over half of Ohio's counties use DRE touchscreens for Election Day voting at the polling locations. Secretary Brunner has urged that these DRE voting devices be replaced by paper ballot optical scanning. At least two counties have made the change during the last two months. Replacing DRE touchscreen devices will become a major issue post-primary, with cost/who pays and transitional timing issues (first use just prior to the presidential election) to be raised with security and reliability concerns.

## **B. Electoral Administrative Issues in Ohio this primary election cycle:**

1. Timing of Voting System Technology Study and Proposed Tech Changes The OH-SOS issued its comprehensive voting systems study (EVEREST) findings and recommendations in mid-December 2007. Ohio election officials, joined by both State and national election reform organizations, raised many concerns about the SOS recommendations for major tech changes just before the March primary, and about others sought for adoption before the November 2008 presidential election.

A prime concern lay in SOS noncompliance with a widely respected axiom of sound election administration: major election administrative changes should occur well in advance of major elections, with the goal being to test-run new tech systems and managerial-operational strategies in a smaller election. Timing of major changes matters greatly to smooth Election Day operations. A 60-day window for implementing and troubleshooting changes before the most complex election in the 4 year cycle – the federal primary—was widely viewed to present grave risks.

The OH-SOS compelled only one county to change its voting technology between the study's issuance and the March 2008 primary election--Cuyahoga County. But the OH-SOS's attempt to publicize security deficiencies in the voting systems, where closeness of the March primary foreclosed county tech reassessments and new procurements, dismayed many local officials and some nonprofit advocacy organizations working for fair elections. They considered SOS timing of public education on reliability and security deficiencies of the voting technologies that millions of Ohio voters would be using in the March 08 primary simply wrong. Arguably, voting tech security procedures could have been modified as a stop-gap for March but this was not a focus of the OH-SOS before the primary. The VS study provided important information, and reassessment of VS tech and security procedures needs to occur in many counties, but these issues will be confronted after March. Sadly, lingering resentment about some SOS activities might undermine candid voting tech reassessments.

2. Timing of Procedural and Operational Changes: The corollary to avoiding precipitous tech changes before a major election is the axiom is to lock down major election procedures and governing rules by at least 8 weeks prior to an election. This timetable is crucial for effective poll worker and other training, logistical planning, trouble-shooting for security concerns, and other work. Fine-tuning of procedures may be necessary up through the eve of an election as troubleshooting and contingencies arise, but stability in procedures is a virtue. Election officials throughout Ohio are concerned that the OH-SOS office has issued relatively tardy Directives that can endanger the election's accuracy, security, and overall voter satisfaction. Examples:

- a. The mid-January SOS public promise that all voters who desire paper ballots can be assured of receiving one at the DRE/touchscreen polling locations. But the SOS required the counties to supply only a minimum of 10% paper ballots, and issued in a Directive mid-January barely six weeks from Election Day. Some scanners require ballots printed on special paper that must be ordered weeks in advance; tracking and security procedures (including ballot boxes at the precincts) have to be modified for containing possibly many more paper ballots; tabulation procedures may have to change for combining two sets of election results (introducing the risk of errors), among many more hurdles generated by this one administrative change.
- b. Other SOS Directives have issued in the past 3 weeks. Many were issued too late for high or perhaps any compliance. (E.g., voting locations should be chosen in light of security features). This timing unfortunately does not elicit respect and high compliance from election officials, and generates friction between the OH-SOS and BOE officials that can retard the relationships needed for tackling other issues.
- c. Mid-day Ballot Pick-up for Cuyahoga and other Central Count Counties These final rules were negotiated by the OH-SOS with legislative leaders, and departed from the agreements the OH-SOS established with Cuyahoga officials earlier in December. Thus, procedures for a security-risky novel process concerning the handling of voted ballots must proceed under rules dramatically departing from the rules taught to poll workers and the logistics that election officials had originally planned. The rules were finalized in legislation with barely a 2 week lead time before the election. This timing is worrisome, and must be avoided in future election "reform" proposals.

Unquestionably the OH-SOS has good intentions but stability of rules and procedures in the period just prior to a major election is a critical need that should be a high priority.

### **C. Criteria for Judging Ohio & Cuyahoga Electoral Success**

Evaluations of election administrative success should occur with reference to core objectives that can be found within Ohio and federal Election Law. These objectives also reflect fundamental public expectations.

#### **Core Objectives to be achieved:**

1. verifiable accuracy of election results
2. voting ease and accessibility for all valid voters
3. maximum security and reliability of voting systems (for achieving # 1 and 2)

We would add that the above three core objectives are best achieved in the context where the State and Counties also actualize a commitment to **TRANSPARENCY** in elections: for instance, mechanisms to achieve transparency include auditing of reported election results and independent review of system logs for operational activities/deficiencies.

**SPEED** in producing election results is not a high value when compared with the above objectives; seeking to achieve early unofficial results can compromise other values.

#### **RECOMMENDATION: Technical Incidents Reporting Needed**

At the Center, we would submit that every Board of Election, in Ohio and nationally, should compile and release a list of all reported or suspected technical incidents or technical difficulties occurring in the preparation or conduct of elections. This effort should include both the *particular voting system* (voting devices and server/software) and the *voter registration database system*. Most of these systems produce automatic logs that can provide some of the critical data; these logs also need to be configured for maximum data compilation. We need collaborative efforts to troubleshoot this equipment and ready it for the maximum accuracy and reliability possible.

This technological information is essential for determining whether the equipment can handle the capacity expected in the November presidential election, or whether some attention is needed, either for repair, upgrading, new operational procedures, replacement, and more. We need to know about technical disruptions or irregularities in order to improve and protect the November 08 election.

### **Cuyahoga's Special Hurdles**

The Cuyahoga Board had to manage very significant administrative changes as a result of the decision to change voting systems from precinct touchscreens to high speed optical scanning. The decision occurred in late December 2007. A cascade of other administrative and logistical changes were then necessitated.

A list of the major changes the Cuyahoga Board had to plan and master in just over 60 days included:

**NEW**

1. voting technology (DRE to Central Count Op Scan)
2. voting machine vendor (from Diebold to ES&S)
3. software for ballot creation and tabulation
4. (different) building for receiving ballots and conducting the tabulation (logistical changes galore)
5. poll worker duties and instruction/manuals
6. security measures needed in every phase of ballot handling and technical tabulations
7. election official training
8. procurements of ancillary equipment
9. tabulation equipment (scanners) testing procedures
10. voter education for voting optical scan ballots correctly

***AND ON AND ON...*** see Public Monitor memo to the BOE concerning EVEREST and the proposed tech change in 60 days, dated Dec. 17<sup>th</sup>, at [www.csuohio.edu/cei/](http://www.csuohio.edu/cei/)

**SOS Role in Cuyahoga's Transition:**

OH- SOS Brunner believed that there was no good time for Cuyahoga County to shift to the paper based system, but that the federal primary was the best time of the poor choices available. She may have been right. Although a change before November would have been easier to manage, the first roll-out Election Day for universal county-wide paper ballots would have been the presidential election.

At the Center, we regret the late decision to change voting technology. Enough information was available early last fall for the SOS to have decided to change to paper op-scan ballots, and that procurement and transition process could have begun many weeks earlier.

Director Jane Platten and the Cuyahoga Board are enormously talented, dedicated and attentive. We believe they have done almost everything possible to conduct a quality election despite these significant hurdles. But the list of administrative changes to develop and master proficiently are far too many to ask of any Board, much less one in the process of rebuilding its structure, procedures, confidence and the public's trust.

In judging the types of errors that may occur, most likely in the polling locations, all should keep in mind the timing and extensive list of tasks to be shouldered. The tech changes alone were required in 1/3 of the time that California statutes mandate be given to a county for an SOS-mandated voting tech change.

In judging the relative success of the Cuyahoga County election board in this election, these special hurdles should provide part of the context for judgment.

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