



Cuyahoga Board of County Commissioners  
1219 Ontario Street, 4<sup>th</sup> floor  
Cleveland, OH 44113

*Delivered and presented in person at the January 3, 2008 meeting*

Dear Commissioners:

The ACLU of Ohio urges this Board to reconsider the decision to abandon Cuyahoga County's current voting technology in favor of a costly contract to switch to non-notice Central Count Optical Scan (CCOS) voting machines. State law, federal law, and prudence dictate that Ohio only utilize voting technology that gives voters the notice and opportunity to correct mistakes, which CCOS does not.

The ACLU has no preference as to the type of voting technology used, so long as it provides notice. Our only concern is one of Equal Protection, of ensuring that Cuyahoga County voters, and all Ohio voters, have an equal opportunity to cast a ballot and have it counted.

There are a variety of voting technologies that provide a voter with notice and opportunity to correct mistakes – for example, the current DREs (electronic touch screen machines) and Precinct Count Optical Scan (paper ballots scanned by the voter at the precinct). There are also a variety of voting technologies that do not give a voter notice of errors, which result in a higher number of uncounted ballots – such as punch-cards and Central Count Optical Scan.

Generally, CCOS voting entails a voter marking a ballot, placing it into a ballot box, and the box being transported to a central location where the ballots are machine-counted. If a ballot contains an error, the machine rejects it and the ballot is uncounted. To the contrary, so-called “notice” technology allows the ballot to be read at the precinct when the voter casts a ballot, so that the voter is notified of potential errors and given an opportunity to correct them.

Ohio Revised Code Section 3506.10 governs the requirements for voting machines to be “purchased, rented, or otherwise acquired, or used” in Ohio elections. One of the requirements listed, RC § 3506.10(C), expressly prohibits voting machines unless they preclude an elector from overvoting, or casting more votes than the elector is eligible to cast.

CCOS technology does not provide a voter with notice of overvoting, and thus it is prohibited by state law.

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In addition, the U.S. Court of Appeals for the Sixth Circuit previously ruled in *Stewart v. Blackwell*, 444 F.3d 843 (6th Cir. 2006), that Ohio's prior central-count optical scan and punch card voting equipment violated the Equal Protection Clause of the U.S. Constitution, because they result in more lost votes than other available technology. The Sixth Circuit subsequently ordered this case dismissed as moot, after Ohio's old equipment was replaced with new technology that provides voters with notice and the opportunity to correct errors. 473 F.3d 692 (6th Cir. 2007).

Moving to a non-notice central-count optical voting system would be a major step backwards for Cuyahoga County voters, would run afoul of state and federal law, and is likely to lead to costly litigation. Therefore, the ACLU of Ohio urges this Board not to approve the contract for the Board of Elections to acquire CCOS voting machines.

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Should you have any questions, please feel free to contact our office.

Sincerely,

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Staff Counsel