



December 10, 2007

VIA EMAIL AND U.S. MAIL

The Honorable Jennifer Brunner
Secretary of State of Ohio
180 E. Broad Street
Columbus, OH 43215

Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, OH 44115

Dear Secretary Brunner and Members of the Board:

As you may recall, we represented a group of Ohio voters in the *Stewart v. Blackwell* case, which challenged the state's use of non-notice punch card and optical scan voting systems under the Fourteenth Amendment to the U.S. Constitution and the Voting Rights Act of 1965. A Sixth Circuit panel concluded that this equipment violated the equal protection rights of Ohio voters, based on evidence showing that many votes would not be counted with these systems. 444 F.3d 843 (6th Cir. 2006). The en banc court subsequently ordered this case dismissed as moot in January of this year, after central-count optical scan and punch card voting systems were eliminated throughout the state. 473 F.3d 692 (6th Cir. 2007)(en banc).

We are writing in regard to recent news reports regarding the voting technology used in Cuyahoga County. We understand that a review of Cuyahoga County's direct record electronic voting system has been undertaken and that recommendations may be imminent. We further understand that one option under consideration is eliminate the current system and move to a central-count optical scan system.

Although we support ongoing efforts to assess the reliability of voting technology, we would strongly urge that Cuyahoga County avoid moving to a *central-count* optical scan voting system. This type of equipment does not provide voters with notice and the opportunity to correct errors, like inadvertent "overvotes" (marking more choices for a contest than is allowed) and "undervotes" (failing to mark a choice that can be read for a particular contest). Social science evidence demonstrates that non-notice optical scan systems result in more lost votes.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
SOUTHERN
REGIONAL OFFICE
2600 MARQUIS ONE TOWER
245 PFACHTREE CENTER AVENUE N
ATLANTA, GA 30303-1227
T/404 523 2721
F/404 653 0331
WWW.ACLU.ORG
WWW.VOTINGRIGHTS.ORG

NATIONAL OFFICE
125 BROAD STREET, 18TH FL
NEW YORK, NY 10004-2400
T/212 549 2500
F/212 549 2654
WWW.ACLU.ORG

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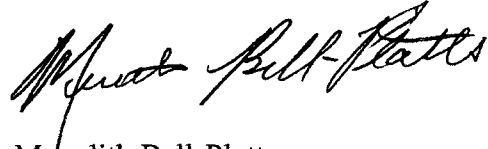
Particularly problematic is the Inkavote optical scan system. Among the problems with this system are that: 1) the names of candidates are not printed on the ballot, as with the now-retired Votomatic punch card, 2) it is difficult for voters to determine whether they have marked their ballots correctly, and 3) votes may not be counted if the ballot is marked too lightly or if there are stray marks. One study found that the Inkavote resulted in a 3.52% overvote and undervote rate in 2005, compared to 1.07% for direct record electronic and 1.22% for precinct-count optical scan systems. Henry Brady & Iris Hui, U.C. Berkeley, "Let's Not Forget About Accuracy" (2007). The available evidence also shows that racial minorities and people of lower educational levels are particularly hard hit by the Inkavote in Los Angeles County. *Id.*

For these reasons, moving to a central-count optical scan system would represent a major step backwards for Cuyahoga County. It would deny voters the benefits of currently available notice technology, which has been proven to reduce errors and to prevent lost votes. The predictable result of a switch to non-notice technology is that a larger number of citizens' votes *would not be counted*. In the 2008 election, it is predictable that tens of thousands of citizens will not have their votes counted, if Cuyahoga County moves to a non-notice system. Given Ohio's pivotal role in national politics, it is quite possible that switching to this equipment would affect the results of the election. It is certain that a non-notice system would have an especially harmful effect on racial minorities and those of limited education levels.

Though we have concerns about the feasibility of any transition during the 2008 election cycle, we do *not* oppose the county moving to a precinct-count system that would give voters notice and the opportunity to correct errors. Moving to a *non-notice* system, however, would increase the number of lost votes. As we asserted in the *Stewart* litigation, it would also violate voters' rights under both the Fourteenth Amendment and the Voting Rights Act. As noted above, a Sixth Circuit panel concluded that non-notice equipment violates citizens' voting rights due to the higher number of lost votes. It would be most unfortunate if the State of Ohio were to again find its voting equipment challenged in court. We hope that such litigation will not be necessary.

Accordingly, we strongly urge that Cuyahoga County avoid moving to a non-notice optical scan voting system. We respectfully request a response within one week of this letter, by the close of business on Monday, December 17, 2007. We would welcome the opportunity to discuss this matter with you or representatives, if you think such a discussion would be productive.

Sincerely,



Meredith Bell-Platts
ACLU Voting Rights Project

Paul Moke
Richard Saphire
Daniel Tokaji*

* Not admitted to Ohio bar.

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cc: Richard Coglianese, Ohio Attorney General's Office
The Honorable Chris Nance, Assistant Secretary of State
Cuyahoga County Board of Commissioners