

EXHIBIT G



Committee on
House Administration

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Hearings :: Hearing - 2004 election and the implementation of the Help America Vote Act (HAVA)

Testimony By J. Kenneth Blackwell

Secretary Of State Ohio

Thank you, Chairman Ney, for the opportunity to testify today. As Ohio's chief elections officer, I am keenly interested in the Help America Vote Act (HAVA) and proposed changes to the federal law, and – more than that – interested in fair, clean, and transparent elections.

The state of Ohio received more than its fair share of attention during the long campaign leading to the November 2 election. With the prospect of a close contest for the state's 20 Electoral College votes, Ohioans experienced an unprecedented media blitz and energetic drives to register voters, which produced nearly 1 million new voters. As Election Day approached, attorneys for both sides were in position, combing Ohio's election rules for provisions that would help, them and watching the process for errors that might invalidate the election.

Let me quote one succinct statement about the outcome: "Overall, Ohio has a good system. Like any system, if you scrutinize it enough, you're going to find weaknesses." This quote is from Don McTigue, a Democratic election lawyer who worked in the secretary of state's office in a previous administration, and who was deeply involved in the election and its aftermath.

I happen to agree with Mr. McTigue. Overall, Ohio has a good system, and it performed well under extraordinary stress. And yes, it has some weaknesses. I will speak to some problems and our plans to address them.

But first, I am compelled to speak to the fabrications, exaggerations, and innuendos that some who dislike the fact that their presidential candidate lost Ohio keep repeating. Unlike Mr. McTigue, they dismiss evidence and simple explanations – and the word of fellow Democrats – when the intimation of some vast conspiracy to steal the election is so much more exhilarating.

Sadly, these fabrications come not only from disappointed partisans talking to each other on internet boards, but also from people in responsible positions and people with enough experience in electoral politics to know better.

A reported dated January 5, 2005 by the U.S. House Judiciary Committee minority staff made several misleading and intellectually dishonest assertions regarding the 2004 election in Ohio. That report and its false assertions were shamefully used to challenge Ohio's electors at the Joint Meeting of Congress to ratify the Electoral College vote. It was a stunning and disgraceful display demonstrating that there are those in Congress who are very willing to cast aside the Constitution and the lawfully certified vote of the people to wage a nasty and disingenuous partisan attack. I am certain that history will not look kindly on those who engaged in the shenanigans of January 6, 2005.

While the report's charges were thoroughly examined and debunked by the Ohio media, I would like to address some of the document's more egregious mistakes.

The report stated "the misallocation of voting machines led to unprecedented long lines that disenfranchised scores, if not hundreds of thousands, of predominantly minority and Democratic voters."

To believe this statement, you would have to conclude that somebody decided to distribute voting machines with the idea in mind that mostly Democratic voters, when faced with long lines, would give up and go home.

There are numerous problems with that statement. First, the "misallocation" would have to have been the work of bipartisan election officials. Ohio has a system of decentralized election administration; meaning day-to-day management of election procedures (including the disbursement of voting machines) is handled at the county level.

County boards of elections are bipartisan led by two Republican and two Democrat board members. The board chair and staff director are of opposite political parties. In Franklin County, the epicenter of disenfranchisement charges, the chairman of the board of elections, Mr. William Anthony, is a Democrat, but not just any Democrat. Mr. Anthony is also the chairman of the Franklin County Democratic Party. In addition, the person responsible for voting machine allocation in Franklin County, board deputy director Michael Hackett is also a Democrat. To believe that these two individuals somehow conspired with Republicans to disenfranchise voters is silly – even insulting.

It is true that the bipartisan election officials in Franklin County had difficulty in allocating voting machines and as a result some voters faced delays in voting. This is a matter that the county board of elections has investigated. My office will conduct its own investigation. What we know is that following a formula based on historic turnout patterns and population shifts in the county (where the suburbs are growing while the city is not), Democrats and Republicans made what they thought were informed choices about the allocation of available machines.

It is, however, absolutely false that "scores, if not hundreds of thousands of, predominantly minority and Democratic voters" were disenfranchised as cited in the report. In fact, nearly a million more Ohio voters participated in the 2004 general election as compared to the 2000 general election. In Franklin County, more than 100,000 more voters cast ballots in the 2004 general election compared to 2000.

We can make up numbers all day about the number of voters who might have cast ballots if the lines were shorter. But what would be the point? We can only count the ballots of the voters who registered their preferences, not the phantom voters of someone's dreams. We need to keep these same facts in mind – a decentralized and bipartisan election administration coupled with surprising turnout – in considering the other famous case of long lines in Knox County. There, the bipartisan election officials calculated that the usual two machines that served Gambier, home of Kenyon College, would suffice. It always had, since typically year-round residents voted there, while students voted absentee or not at all.

A late registration effort that encouraged students to vote in Ohio caused a dramatic spike in turnout. No nefarious conspiracy – just miscalculations on the part of election officials and student activists. However, to the credit of Ohio election law and dedicated Ohio poll workers, all those who were in line by the 7:30 p.m. poll closing time were permitted to stay and cast their ballot.

Regarding provisional ballots the report stated, "Mr. Blackwell's decision to restrict provisional ballots resulted in the disenfranchisement of tens, if not hundreds, of thousands of voters, again predominantly minority and Democratic voters. Mr. Blackwell's decision departed from past Ohio law on provisional ballots."

In the 2004 general election, Ohio ranked fourth (78 percent), tied with Nebraska, in the percentage of

provisional ballots counted according to the recently published non-partisan Electionline.org March 2005 Briefing, which I submit for the Congressional Record. Only Alaska (97 percent), Oregon (85 percent), and Washington State (80 percent) counted a higher percentage of provisional ballots. However, the overwhelming majority of voters in Alaska and Washington vote by mail or absentee ballot. And all voters in Oregon, with the exception of Election Day walk-in voters, vote by mail. These non-precinct based systems may naturally produce higher validation rates because voters typically know that a problem occurred when their ballot does not arrive in the mail, allowing time to inquire with local officials.

Nonetheless, Ohio counted a higher percentage of provisional ballots than most states with less so-called restrictive provisional ballots laws. We tied with Nebraska among states with similar laws. And we were first among states of equal or greater population, regardless of counting standards and laws. In Pennsylvania, for example, which allows voters to cast provisional ballots outside their home precincts, only 48 percent of the provisional ballots were either fully or partially counted. And in California, which also allows voters to cast provisional ballots outside their home precincts, 74 percent were counted. Not bad, but not as good as Ohio.

I would like to be very clear to the committee on this particular point: Ohio did well with provisional ballots because we have operated under the same provisional ballot review and qualification standards since the passage of Am. Sub. S.B. 30, effective January 1, 1995. I would like to submit, for the Congressional record, a directive establishing Ohio's provisional ballot standards issued on December 9, 1994 by my predecessor, Ohio's current Gov. Bob Taft.

The long-standing Ohio law referenced in the 1994 directive clearly requires a voter to cast his or her ballot in their home precinct in order to have that ballot counted. The provisional ballot directive I issued on Sept. 16, 2004 simply restated Ohio's rules regarding provisional ballots – rules shared by 27 other states and the District of Columbia. Those rules were upheld as Constitutional and compliant with HAVA by the United States Court of Appeals for the Sixth Circuit. In addition, I would also like to submit for the Congressional record a legislative history of provisional ballots written by Professor Ned Foley of the Ohio State University Moritz College of Law.

Regarding voter registrations the report stated: "Mr. Blackwell's widely reviled decision to reject voter registration applications based on paper weight may have resulted in thousands of new voters not being registered in time for the 2004 election." This assertion falls when considering that during the 2004 election, more than 800 thousand Ohioans were added to our voter rolls and that relatively few provisional ballots were not counted.

Ohio's paperweight requirement for voter registration forms was in place for many years. Its goal was to protect the forms from damage by postal equipment and was based on US Post Office requirements for self-mailers.

In the past elections, most voter registration forms were filled out by individual voters and mailed to the appropriate board of elections, the requirement served an important purpose. It insured that forms arrived to their destination in one piece and the voter registration was processed. However, in the 2004 election we saw a change in the voter registration process in Ohio and across the nation. In addition to individual voters submitting registrations, third party groups registered voters and then delivered registration forms directly to county board of elections. While my office printed and distributed four million voter registration forms during the 2004 election, some groups in well-intentioned efforts reproduced forms that did not meet Ohio standards. The paperweight requirement that previously served voters well now seemed archaic. I removed the requirement and a record number of Ohio voter registration forms were accepted and processed.

The report stated, "there were 93,000 spoiled ballots where no vote was cast for president, the vast majority of which have yet to be inspected." Actually, the over and under vote in Ohio was 94,488 or about 1.65 percent. While roughly the national average for punch card ballots, it is an improvement for Ohio compared to

the 2000 general election when the state had 1.9 percent over and under votes.

But these figures should not be new for the committee (considering the enormous time and effort its members spent crafting HAVA – specifically to do away with punch cards). In fact, over and under votes should not be new to members Congress, who are election system experts in their own right. The shame, however, is in the report's implication that those ballots were not inspected and arbitrarily disregarded. Bipartisan teams at county boards of elections inspected every over and under voted ballot. If a ballot was torn or inserted into the voting device backwards, it was remade. If a punch card chad was hanging by one or two corners, the chad was removed and the ballot was counted. I challenge the authors of the report to identify a more comprehensive ballot review system. I doubt that they will even attempt to search. Because, sadly, those individuals are not interested in truth or fair elections, they are interested in bluster and deceptive partisan rhetoric. This committee has an obligation to the people of the great state of Ohio to set the record straight and atone for the mischaracterizations by those that challenged Ohio's electors.

And one last point about Ohio's bipartisan system. There have been some who have noted as if it were some deep, dark, meaningful secret that I was a co-chair of the President's campaign in Ohio. I confess: I'm a Republican. And with every other Republican elected to statewide office, I was an honorary co-chair of President Bush's Ohio campaign. It was an honor – one shared by previous Ohio secretaries of state of both parties, in presidential elections – but it was one that carried no responsibilities.

Moreover, the 176 Democrats and 176 Republicans who lead Ohio's county boards of elections are political appointees who have, in addition to their official roles, political responsibilities. Their partisan affiliations make them extra vigilant.

American University Professor Emeritus and Election Administration Reports Editor Richard G. Smolka recently lauded Ohio's bipartisan election system in an analysis of the 2004 election published in *Elections Today*, which I also submit for the Congressional record. Professor Smolka wrote:

"The value of this type of system was highlighted when it became clear that the outcome of the presidential election depended on this state. Each four member county board of elections in Ohio has a chair from one party and a vice chair from the other. Each county also has a full-time director of elections, who is a member of the opposite party than that of the chair, and a deputy director of the party opposite that of the vice chair. Both major political parties are aware of every administrative decision and share in every decision.

"Thus, when Democratic presidential candidate John Kerry sought information on Election Day about Ohio's election procedures, anomalies and results, he had access to Democratic officials in each county who were themselves, in part, responsible for election procedures and the vote count. Kerry conceded the election with confidence that the information he obtained was complete, accurate and would not change the results.

"Although nonpartisan election administration finds excellent models in nations such as Canada and Australia (and most U.S. election administrators attempt to conduct themselves in a nonpartisan manner), Ohio's bipartisan model served the nation well in 2004."

Professor Richard G. Smolka American University Professor Emeritus and Election Administration Reports Editor *Elections Today*, Vol. 12, No. 4 - 2005

And while our transparent bipartisan system did indeed serve Ohioans and the nation well, the professionalism exhibited by Ohio election officials served us equally well. They and I had and have an obligation to the law and citizens of Ohio that is greater than the one to our political parties. I would like to submit for the Congressional record a detailed conference call question and answer document, which was available to all Ohio election officials to assist with pre and post election issues.

While Ohio's county election officials and I had differences of opinion on a variety of issues, we have worked through those differences in a manner that has maintained the integrity of our elections system. Some of my decisions, such as requiring that boards of elections follow Ohio's provisional ballot laws, made Democrats unhappy. Some, such as removing Ralph Nader from the Ohio ballot, made Republicans unhappy. That is because my primary responsibility is to follow Ohio and federal law.

I will continue to work to make Ohio's elections fair and fraud free. It is my official responsibility and it is what the citizens of Ohio deserve. I will work to fix the real problems in Ohio's election system. I only wish those who intimate some dreadful conspiracy governs Ohio's elections would follow the facts and do the same.

Thank you.