

job, as Exhibit A attached to the Affidavit of Richard M. Kerger makes clear. This is a Blog from a Franklin County election worker. It outlines the kinds of problems that poll workers have to manage and in the absence of directives from the Secretary of State, the local boards are left to their own devices with how to overcome the difficulties.

Absent the directives in the three areas mentioned, the Relators are very much concerned about the election. In view of the complicated issues and the number of candidates on the ballots, there will likely be the same sort of line length and congestion that existed in 2004 and no one would want to repeat that. There certainly will be machines which malfunction and the poll workers need to have clear instructions on how far they are to go in attempting to make repairs. The danger is that the situation can be made worse, even to the extent of losing ballots already cast creating a situation in which Ohio voters are disenfranchised. Last there is the issue of machine security. This is of paramount importance not only to actually assure the security of the machines, but also to instill in voters the confidence that there is security for these machines.

Attached as Exhibit B to the Affidavit of Mr. Kerger is a news report from Maryland indicating that officials in that state have ordered 1.6 million paper ballots in order to avoid the possibility that machines will malfunction and create line congestion. That is the sort of Directive that the Secretary ought to issue. This would help reduce congestion and also provide back-up.

It is suggested the Secretary has dealt with these problems. Well, it would have been a simple enough matter for him to point out in response to the August letter from the Ohio Democratic Party where he had issued directives to the Boards. It would have been easy enough for the Secretary to produce those directives at the pretrial hearing and thus obviate the work of the Court in dealing with these issues.

Relators are confident that he has not issued any such directives and believe the Court will find it necessary to issue the Writ. Professor Dan Wallach has outlined the problems and given some ideas of what might be done to deal with these circumstances. Other solutions are no doubt possible, but the Secretary has to decide which ones to use. That is his job and he should be required to do it.

Without intending to tell the Secretary what to say, congestion and long lines can be reduced by having card tables with simple cardboard screens to allow the use of paper ballots, not provisional ballots which require special scrutiny, but simply a paper ballot given to a duly registered voter to cast her or his vote. It is not possible to wait until Election Day to do this as the voting officials explained to United States District Judge Algeron Marbley in his case, a copy of the transcript of which is attached to the Complaint. Not only are the ballots not available on such short notice, but the poll workers have not been trained in how to handle them. Such a directive should be issued immediately.

As to malfunctioning machines, if the repairs cannot be immediately effected (such as plugging the machine back in), the machine should be taken out of

use. That will avoid the possibility that votes will be lost. Having a paper ballot backup would avoid any congestion arising from such a machine being closed down.

Security of the voting machines has to be a paramount concern. Relators suggest this not only from the standpoint of assuring their actual security, but from the standpoint of voter perception. Many voters are skeptical of the electronic machines and whether that skepticism is justified or not, the fact is that it exists. By having the Secretary do something as simple as issuing a directive requiring that representatives from each major party be in voting machine storage areas when the room is unlocked would help a great deal. Requiring a sign-in log for anyone entering such a storage room requires them to provide the date, their names and the reason for their access, that log being maintained by the director of each local Board, would help a great deal.

In what is a transparent ploy, the Secretary has suddenly found it necessary to add additional legal counsel to his "team." This case was filed in early September. There has been a pretrial hearing, and a motion to dismiss, both of which were handled by legal counsel for Respondent, a very competent assistant attorney general who specializes in cases like this. The addition of a new lawyer at 4:45 p.m. on the day before the merits of this case are to be finally at issue should not give the Secretary even more time to avoid doing his job. Absolutely no explanation is given as to why new counsel needs to be added, other than the obvious reason of delaying matters still further. The Court ought not countenance such a ploy.

Voting is a right that we have not only held dear for ourselves but have tried to promote in other nations throughout the world. It is wrong for the chief election officer not to step up and provide the guidance which is required.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed this 20th day of October, 2006 to:

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Richard M. Keger
by HAN

**IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY**

State ex. rel. Ohio Democratic Party, et al.,)	Case No. 06CVH0911609
)	
)	Hon. Angela P. White
)	
Relators,)	<u>AFFIDAVIT OF RICHARD M. KERGER</u>
)	
v.)	
)	Richard M. Kerger (0015864)
)	Kimberly A. Donovan (0074726)
J. Kenneth Blackwell)	Zachary M. Clark (0080450)
Secretary, State of Ohio,)	KERGER & ASSOCIATES
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)	
)	COUNSEL FOR RELATORS
)	
)	

Now comes Richard M. Kerger, being first fully sworn and states that the attached Exhibit A and B are true and accurate documents reflecting real and potential problems in the coming election.



RICHARD M. KERGER

STATE OF OHIO)
)
COUNTY OF LUCAS)

SS.

Sworn to before me and subscribed in my presence this 19th day of October, 2006.

Brigid A. Matthews
NOTARY PUBLIC – STATE OF OHIO



BRIGID A. MATTHEWS
Notary Public, State of Ohio
My Commission Expires 09-11-07

Election Official Confidential: a scoop from Ohio

by histopresto <<http://histopresto.dailykos.com/>>

Mon Oct 16, 2006 at 09:15:54 AM PDT

After mobilizing in 2004 as an official (frustrated) observer for the Democratic Party, I decided that this time around, I would become a Precinct Election Official. That way, I could help ensure that voters got to cast a regular ballot, instead of being virtually disenfranchised into the hell of provisional ballots. This weekend, I attended the mandatory training session and oohhh doggies, did I get an earful from the trainers. How did I miss hearing about how badly the May primary election went off the rails? Oh yeah, because it was never publicized. More after the break...

* histopresto's diary <<http://histopresto.dailykos.com/>> :: ::
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In case you haven't noticed, the average age of a Precinct Election Official is 75, which means that a whole lot of our local septuagenarians are getting their very first exposure to computers this year. Of the 40 people who showed up for training with me, only a handful were under 60. One official was on an oxygen tank and kept asking the same question all day, one drove a cute lil Rascal Scooter over people's feet, and one guy in a wheelchair with only one leg kept freaking me out by standing up to reach stuff. More people in the group had buckeye shirts on for Ohio State gameday than had their own cellphones (I asked around). Several people said very loudly that the only reason they were coming back to work this election was because of its political importance, that because of the voting machines they would never work another election again.

The May primary was the first major election in Franklin County in which voters used the new ES&S Ivotronic I touchscreen machines. In public and on their website, the Franklin County Board of Elections sounds a lot like the old guy from "Are You Being Served?", telling all the local election workers and the voters that "You've all done very well!!" You can take a look at the official training video online [here <https://www.franklincountyohio.gov/boe/content/election/precoff.html>], if you're in the mood for an alternate version of reality.

In May, it was categorically proven that the Precinct Election Officials could not follow the directions shown on the screens of the voting machines, which help them open and close the polls. The acronyms used to identify memory cartridges, cords, and data ports were so counterintuitive that people were unable to figure out what steps they were to follow. The big message from the BOE trainer to prevent problems in November was "Follow the checklist and wait. Just wait, wait, wait until the machine tells you what to do."

Because of all the problems that were experienced with the first use of these machines, the manual used for the May and August elections has been thrown out and new manuals are being used to train officials for the November general election. The manual is 139 pages long and comes with a companion DVD (and how many 75 year olds have DVD players, do you think?)

Here's some of the highlights lowlights from the May primary:

-The new ES&S voting machines have two plastic doors that fold over the unit for storage. They are opened up to expose the touchscreen for use and to provide privacy for voters. In May, the doors were sealed shut by the Board of Elections with a wire security seal to prevent tampering. Before the machines were ever turned on, Precinct Election Officials attempting to remove the wire seals and open the plastic doors effectively BROKE over 600 new voting machines. The small plastic holes at the top of the doors for the seals that are supposed to provide some semblance of security are easily ripped apart. The doors will need to be replaced so that they can be sealed for future elections. The wire cutters that were provided to cut the wire seals will now be velcroed to the supply box, in plain sight.

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EXHIBIT

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-The flash memory cards (which are just like the ones used in digital cameras) that store the results for individual machines were protected from tampering by another wire seal that held the sliding access doors closed. The plastic loops that this seal was attached to were torn off the voting machines when Election Officials couldn't get the wire seals off. There went another couple hundred voting machines. A tamper-resistant security tape will be used instead in November.

-The memory card, the power cord and the data port are located at the top of the machine in plain sight, directly next to each other. Many voting machines lost power in May because the officials knocked the power cord loose when they used the data port to print out opening machine count tapes. The battery back-up for the machines will only last for an hour, if you're lucky. During the November election, Precinct Election Officials are supposed to push in the data line and power cords during the day. They're also cautioned to watch out for lively babies (!?!)yanking out the cords, thereby disrupting the election by bypassing the paper log and recorded vote.

-All Presiding Election Officials at each precinct are given a cell phone and confidential Hotline number to call for advice and technical assistance. During the May Primary, by 7:00 p.m. every single phone line used by precinct officials to call the Board of Elections for help with the new machines was out of order. ATT was blamed for the failure, according to the trainer. An entirely new phone system is currently being installed, just 3 weeks away from the big election.

-The portable printers that are used to provide official result tapes at the beginning and the end of the day failed at many precincts. Their batteries could not be charged to allow them to function for the whole day; at the end of the day they would only function after being plugged in for at least 45 minutes (which nobody knew and with all the phones down, precinct officials could not get in contact with BOE unless they used their own phones). When the officials couldn't get the tapes to print, they sent voters home.

-The voting machines have a time/date memory log which prevents Precinct Election Officials from closing down the polls until the legal 7:30 closing time. The time/date memory on many machines were set wrong, so the machines would not allow themselves to be shut down until THEY thought it was 7:30. This cannot be resolved without a technician visiting from BOE. In November, there's a new step that requires officials to call BOE for a technician to come and reset machines to the correct time so the polls can actually be closed down on time.

-The paper Real Time Audit Log is the official record of votes cast in case of a recount- it's the paper tape that's under glass so the voter can read it to verify their votes. Depending on the length of the ballot, the tape can only accommodate 50 voters before the tape must be changed and resealed in the machine by a technician visiting from BOE. Not surprisingly, the tapes ran out and voting machines had to be closed down in May. This November, Officials are supposed to check the counts and call for service during the day BEFORE all their machines run out of paper tape.

-Precinct Election Officials didn't really understand that the little flash memory cards were important, so they either left them in the machines (like the machines they couldn't use) or didn't turn them in to BOE on election night in May. According to the trainer, several Officials went out to dinner or went home to bed, thinking they could turn in the memory cards and log-books the next morning. The BOE called out the County Sheriff to roust the Officials and make them retrieve the flash memory cards, wherever they ended up. In November, the BOE has changed their procedures to force Officials to recognize that they need to turn in more than the old log-book and paper poll results.

-Finally, one problem that really has nothing to do with the Voting Machines-the provisional ballots were printed backwards, so that directions on how to complete them and how to process them at the polls were inaccurate. No word on how many voters and officials just gave up on completing the ballots, or how many were invalidated from being counted because of errors.

Amazingly enough, after all of these technical problems were addressed by various fixes, the big thing that was stressed by the trainer had NOTHING to do with voting machines. Instead, they spent most of their time talking about the new VOTER ID requirements that people are going to be encountering this November. VOTER ID law changes in Ohio mean that many, many people will have difficulty establishing their identity and legal address so that they can vote on a regular ballot, instead of a provisional ballot.

nbc4.com

Md. Orders Paper Ballots As Backup Plan

Election Officials Fear Electronic Voting Snafus

POSTED: 10:52 am EDT October 12, 2006
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ANNAPOLIS, Md. -- Election officials in Maryland said if there are problems with computerized voting machines in November's general election, paper ballots will be used.

The same company that makes the electronic voting machines, Diebold Election Systems, has been ordered by the state to print 1.6 million paper ballots.



SPECIAL SECTION: Voter Resources

Although some will be used as absentee ballots, most will be reserved as provisional ballots in case of machine glitches on Election Day.

Problems forced some precincts to resort to provisional ballots during September's primary, and some precincts ran out. Meanwhile, some politicians are urging voters who are skeptical about electronic voting to use absentee ballots for the election.

With more than three weeks remaining until the election, the number of requests for absentee ballots has already topped the number requested four years ago.

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