

SHREDS OF EVIDENCE
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Those who would dismiss out of hand our allegations of election fraud are fond of claiming that there is not a “shred of evidence” to substantiate our charges. To the contrary, there are millions of shreds of evidence in Ohio. In at least 56 of 88 counties, ballots and other elections records were shredded or otherwise destroyed.

On September 11, 2006, Judge Algenon L. Marbley, United States District Judge, Southern District of Ohio, Eastern Division, in the case of King Lincoln Bronzeville Neighborhood Association, et al. v. J. Kenneth Blackwell, et al. (Case No. 06-CV-745), issued an order requiring the Boards of Elections for all 88 counties in Ohio to preserve as evidence all the ballots from the 2004 presidential election, “on paper or in any other format, including electronic data.” The intent of Judge Marbley’s order was to extend the 22-month records retention period required by law for federal elections, which period would have ended on September 2, 2006. Judge Marbley cited Ohio Revised Code Section 3505.31, which states in relevant part:

. . . if the election includes the nomination or election of candidates for . . . president, the board shall carefully preserve all ballots prepared and provided by it for use in that election, whether used or unused for twenty-two months after the day of the election. (emphasis added)

. . . provided that the secretary of state . . . may order the board to preserve the ballots or any part of the ballots for a longer period of time, in which event the board shall preserve those ballots for that longer period of time.

In fact, Directive 2004-43, issued by Secretary of State J. Kenneth Blackwell, dated October 25, 2004, eight days before the election, had also instructed the Boards of Elections that “All used and unused ballots must be retained for at least 22 months.”

In addition, wrote Judge Marbley, the Boards of Election were required to preserve the ballots because they were the subject matter of a lawsuit (King Lincoln v. Blackwell), and the “duty to preserve the ballots began when each county Board of Elections office received a letter from Plaintiffs” on August 31, 2006, notifying them of the filing of the lawsuit.

In short, all ballots, used and unused, were protected from destruction until September 2, 2006 by Ohio Revised Code Section 3505.31 and Secretary of State Directive 2004-43; from August 31, 2006 onward by the filing in Federal District Court of King Lincoln v. Blackwell (Case No. 06-CV-745); and by Order of Judge Algenon L. Marbley from September 11, 2006 “unless and until such time otherwise instructed by this Court.”

As it happens, Boards of Elections in at least 56 of 88 Ohio counties did not comply with the law.

During the spring of 2007, the parties to the King Lincoln v. Blackwell lawsuit reached a court-approved Stipulated Agreement under which Ohio Secretary of State Jennifer Brunner, successor to J. Kenneth Blackwell, agreed to take possession of the ballots from all 88 counties in Ohio. According to records provided by Brunner’s office, 46 counties destroyed their unused ballots (a.k.a. “unvoted” ballots). In addition, I was personally informed by the Trumbull County Board of Elections that their unused ballots had been destroyed as well. The 46 counties are:

Allen, Ashland, Ashtabula, Athens, Champaign, Clermont, Columbiana, Coshocton, Darke, Erie, Fairfield, Fayette, Guernsey, Hamilton, Hancock, Hardin, Jackson, Lawrence, Licking, Logan, Lorain, Madison, Mahoning, Marion, Medina, Mercer, Monroe, Montgomery, Morgan, Morrow, Noble, Perry, Preble, Putnam, Richland, Sandusky, Scioto, Seneca, Shelby, Stark, Summit, Tuscarawas, Van Wert, Warren, Wayne, Wood.

Many of these counties (e.g. Ashland, Champaign, Erie, Fayette, Monroe, Perry, Shelby, Warren) claimed that the records retention schedule does not state that they must retain their unused ballots for more than 60 days. Fairfield County could only "assume" that the unvoted ballots "would have been shredded" 60 days after the election. Others (e.g. Hardin, Scioto, Stark) stated that their unused ballots were destroyed prior to the court order. Hancock County claimed that they "received verbal direction" from the office of former Secretary of State J. Kenneth Blackwell that the unused ballots and soiled ballots "did not have to be retained and these items were destroyed." Logan County actually claimed that they destroyed their unused ballots "pursuant to the Ohio Revised Code." Putnam County stated that "Following the 2004 General Election all unused ballots were destroyed for security purposes." Thirteen counties which failed to produce their unused ballots (Columbiana, Coshocton, Darke, Lawrence, Licking, Lorain, Madison, Morgan, Noble, Summit, Tuscarawas, Wayne, Wood) submitted no explanation at all.

Five counties (Athens, Guernsey, Hamilton, Mercer, Van Wert) expressed surprise at being unable to locate their unused ballots. The Athens County Board of Elections stated that "The Director in 2004 has retired and we feel that these unvoted ballots from the polls were inadvertently discarded." The Guernsey County Board of Elections stated that "The unused ballots as well as the punch card ballot pages were destroyed in error" because "the county maintenance worker, when collecting trash, picked up the boxes" that contained them. The Mercer County Board of Elections stated that the unused ballots "were not found in our storage area. Please note that the previous office administration was responsible for the handling of these ballots. We will continue to search for the unused ballots from this election." The Van Wert County Board of Elections stated that "After a thorough search of our basement (where most of our equipment and supplies are kept) and our office, we are unable to find any unvoted ballot cards from the November 2, 2004 General Election. We assume that those ballots were discarded." John M. Williams, Director of the Hamilton County Board of Elections, first discovered that their unused ballots were missing on August 22, 2006 when he failed to find them pursuant to my public records request. He submitted the following explanation to Secretary Brunner regarding the "unvoted" ballots and "soiled" ballots:

The above ballots were secured after the election in a basement storage area. To the best of my knowledge, the above ballots were inadvertently shredded between January 19th and 26th of '06 in an effort to make room for the new Hart voting system. The unvoted ballots were stored in boxes and wheeled carts. The voted ballots were not destroyed as they were stored in punch card filing cabinets that were also located in the basement area. The unvoted punch cards cannot be replicated.

Failure to preserve the unused ballots makes it impossible for any Board of Elections to verify the authenticity of the voted ballots. The sum total of voted, spoiled, and unused ballots in each precinct must equal the total number of ballots issued to that precinct. Without the unused ballots, there is no way for Hamilton, Montgomery, Richland, Stark, Summit and Trumbull counties to prove that ballots in selected precincts were not punched in advance for independent

and third-party presidential candidates. Without the unused ballots (and the stub numbers torn from the voted and spoiled ballots), there is no way for Clermont, Darke, Mercer, Shelby, Van Wert and Warren counties to prove that fake ballots were not substituted for real ones.

Clermont County is a special case, because of their infamous “stickered ballots.” During the “recount” of December 14, 2004, several witnesses saw numerous optical scan ballots with white stickers over the Kerry-Edwards mark, and the Bush-Cheney oval filled in. By the time we were allowed to photograph these hand-counted ballots in July of 2006, only one “stickered” presidential ballot survived. The most likely explanation is that the incriminating “stickered” ballots were replaced with “duplicates,” and then destroyed. The making of “duplicate” ballots would have partially depleted the stash of unused ballots, and because such a shortage would also be incriminating, the unused ballots would also have been destroyed.

My initial records request to the Clermont County Board of Elections was dated April 3, 2006. More than twenty weeks later, on August 24, 2006, Director Mike Keeley stated in writing to me that “As time permits, we are still attempting to locate said un-used ballots. When they are located you, and numerous other requestors, will be so notified.” More than one year later, on May 10, 2007, they were still looking, as stated in Keeley’s letter of explanation to Brunner:

The Clermont County Board of Elections (has) been unable to locate the unused ballots regarding the 2004 Election. In interviewing the staff, no one could remember the disposition of said ballots. No one remembers specifically discarding the ballots. There is a possibility that the ballots will surface as we complete the re-organization of our warehouse section, as well as a re-visit to our records storage facility. If/when we locate the unused ballots we will notify our Liaison, for disposition.

According to records provided by Secretary Brunner, 23 counties destroyed their spoiled ballots (a.k.a. “soiled and defaced” ballots). The 23 counties are:

Allen, Ashtabula, Clark, Darke, Hamilton, Hancock, Holmes, Jackson, Lawrence, Licking, Logan, Marion, Medina, Miami, Montgomery, Morrow, Preble, Richland, Sandusky, Seneca, Shelby, Stark, Wyandot.

Miami was the only one of these counties that destroyed their spoiled ballots and nothing else. They submitted no letter of explanation. Failure to preserve the spoiled ballots makes it impossible for Miami County to verify the authenticity of their 570 “recount remakes.” Without the spoiled ballots, there is no way to prove that the “remakes” match the originals they supposedly duplicate. As stated in a previous chapter, “Rain-Soaked Records in Miami County,” the rate of undervotes among the “remakes” was 13.9% (79 of 570), compared to a rate of 0.50% (248 of 49,744) among all the other ballots in the county. It cannot be proven that these were not “remakes” of tampered ballots on which a presidential choice had been erased or covered over.

In Darke County, in Precinct Greenville 3-A, 225 punch card ballots were cast on the wrong voting machine with the wrong ballot rotation, causing votes for all contested offices to be shifted to candidates not of the voters’ choosing. Somehow the Board of Elections knew which ballots these were, because the others were counted according to which positions were punched. But the 225 ballots in question were all “duplicated” by the Board of Elections on hot pink punch cards, with no punches at all for President or for any other contested office subject to ballot rotation. Clearly, these are not accurate duplications of the original ballots. The proper procedure, when

making “duplicate” ballots, is to identify them by their stub number, and to attach that stub to the “original” ballot being duplicated, so that an auditor can match them up. If we had the originals, we could figure out which ballot rotation was utilized, and restore the votes to the rightful candidates. But because Darke County has failed to turn over its spoiled ballots (submitting no letter of explanation), there is no way we can do this, and 225 voters have been needlessly disenfranchised.

Also according to records provided by Secretary Brunner, 19 counties destroyed their “ballot pages.” These are booklets, placed upon the voting machines, which list the candidates and the numbered positions on the punch cards that correspond to their names. The 19 counties are:

Adams, Ashtabula, Butler, Clinton, Fayette, Guernsey, Lorain, Marion,
Medina, Montgomery, Morrow, Paulding, Preble, Richland, Sandusky,
Scioto, Seneca, Shelby, Summit, Wyandot.

Fayette County stated that “The actual Election Day ballot pages would have been destroyed a month before the next election so we could reuse the frames.” The Director of the Clinton County Board of Elections stated that “I discovered the punch card ballot pages were not included in the boxes from the Records Department and began to search for them immediately. I called previous Board of Elections employees and searched our office.” She stated that they “opened and searched each box stored at the Records Department,” but the “Presidential ballot pages were not found.”

Four of these counties (Adams, Butler, Clinton and Paulding) destroyed their ballot pages and nothing else. The Butler County Board of Elections offered the following explanation:

In early March of 2007, we were in the process of creating an inventory of all storage items being held in our off-site warehouse. At that time, a request to discard unused forms from the 2004 Precinct Kits was approved. When these instructions were related via telephone to our offsite warehouse staff, a miscommunication occurred. The instructions were interpreted as to include boxes containing the 2004 ballot pages - as they were being stored next to the unused forms boxes. At no time was anyone specifically instructed to discard these items. Our warehouse staff then began cleaning the storage area and marking boxes for inventory purposes. During that process, several boxes containing all the wire-bound ballot pages were discarded into a Rumpke dumpster. This dumpster would have been emptied into the local landfill.

Failure to preserve the ballot pages makes it impossible to verify that the ballot rotation was listed correctly on each and every voting machine. Without the ballot pages, there is no way for Butler County, for example, to prove that the “Connally anomaly” in specific precincts was not due to the ballot positions being reversed on one of several voting machines in that precinct. This could have happened in one of two ways. If the presidential positions were reversed on a machine in a “blue precinct,” there would have been a net loss of Kerry votes to Bush; or if the Chief Justice positions were reversed on a machine in a “red precinct,” there would have been a net loss of Moyer votes to Connally. Either way, by fraud or error, Connally would likely have run ahead of Kerry in that precinct. Reversing the ballot rotations on all machines for a single precinct would make the results obviously erroneous. But if only one machine of several was affected, the results would be merely anomalous.

Among the counties that failed to provide all their voted ballots to Secretary Brunner, two counties (Mahoning, Ross) are listed as having destroyed only their absentee ballots. That is because the only paper ballots they ever had were absentee ballots. Both of these counties utilized electronic voting at the polls on Election Day. The Mahoning County Board of Elections blamed the destruction of evidence on poor communications with the "Green Team" (a.k.a. Mahoning County Commissioners' Reuse and Recycling Division):

The ballots were accidentally disposed of on Friday, March 23rd of 2007. On Wednesday the 21st the warehouse supervisor asked the Director, Thomas P. McCabe, if it was acceptable to have the Mahoning County Green Team pick up all recyclables in the storage room for disposal pursuant to the retention schedule. The Director gave the affirmative that it was acceptable. Lost in the communication was the previous memorandum between said two of the September court order to retain all 2004 materials past the retention date.

Five counties (Allen, Holmes, Jackson, Lawrence, Scioto) provided some but not all of their voted ballots to Secretary Brunner. The Lawrence County Board of Elections, which failed to provide their provisional ballots, offered no explanation at all. The Jackson County Board of Elections found only "a partial portion" of the voted ballots, and offered two alternative explanations for how the ballots went missing: "They may have been destroyed pursuant to the retention schedule," or they may have been "accidentally destroyed when we moved our Board of Elections office." The Scioto County Board of Elections offered the following explanation:

Un-voted ballots were released and shredded following the twenty-two (22) month retention period and prior to our receipt of Judge Marbley's order on September 11, 2006. Our staff has searched diligently and thoroughly for the box of missing voted ballots but they have not been located, to date. The ballots have not been intentionally destroyed. It is unknown whether the ballots were accidentally destroyed or have been otherwise misplaced.

The letter of explanation from the Holmes County Board of Elections is entertaining, although it does fall short of compliance with the spirit of the law (Ohio Revised Code Section 3505.31), which requires the Board to "carefully preserve all ballots." (emphasis added)

A shelving unit collapsed in the Board of Elections storeroom on the morning of Friday, April 7, 2006. That shelving unit held the voted ballots, stubs, soiled and defaced ballot envelopes, and ballot accounting charts from the 2004 General Election. The shelves and stored items collapsed onto a side table holding a working coffee maker. The carafe on the coffee maker was full at the time of the incident. Many of the stored items had to be destroyed due to the broken glass and hot coffee. The ballot pages and unused ballots were stored on a neighboring shelf and were not damaged.

More serious problems were encountered by the Allen County Board of Elections:

Following the 2004 General Election the Allen County Board of Elections boxed and labeled all voted ballots and placed them in our vault for the required 22 months of storage. Throughout the latter part of 2004 and into 2005 the Allen County Board of Elections began to experience problems with storm water migrating and subsequently penetrating our primary storage

areas including our vault. As a result of these events, much of what was stored in our vault, including the 2004 General Election ballots, was compromised by water damage and subsequently destroyed on or about August 20, 2006. Pursuant to the recommendations of the Allen County Health Department, the boxes displaying mold or mildew were set aside to be discarded. Unfortunately, the contractor hired to remove the damaged boxes also accidentally removed the undamaged boxes as well. Those items include: Poll Books, Clerks Books and a box containing 498 write-in ballots.

Finally, seven counties (Ashtabula, Marion, Medina, Montgomery, Preble, Sandusky, Seneca) provided no ballots at all to Secretary Brunner. Marion, Medina, Sandusky and Seneca counties stated that they destroyed their ballots pursuant to the records retention schedule, shortly after September 2, 2006. Marion and Medina counties stated that this was done before they received Judge Marbley's order. Sandusky and Seneca counties claimed that they have "no record" of receiving Judge Marbley's order. Ashtabula County gave the following explanation:

The 2004 Presidential ballots were inadvertently disposed of when the old punch card equipment appurtenances were disposed of before the May 2006 primary when the new optical scan voting equipment was implemented.

A similar explanation was provided by Preble County:

We are in receipt of Secretary Brunner's Directive #2007-07 requesting delivery of the 2004 general election ballots to her office. Upon receipt of that Directive our director and deputy director went to our storage area to retrieve the ballots but were unable to find them. They contacted our recently retired director to see if she might know where they were located. She told them that she had been aware that they were not where they were supposed to be and thought it likely that they had been inadvertently discarded by the Courthouse maintenance staff when room had to be made for our new electronic voting equipment.

The Montgomery County Board of Elections, in a letter signed by Steven P. Harsman, Director, provided a lengthy and contentious explanation:

As you are aware, in accordance to Ohio Revised Code the retention schedule for a Federal Election is 22 months. We prepared the certificate of destruction in preparation of destroying the materials from the Presidential Election and we received the signed copy of Certificate of Destruction from the county records to proceed with destruction according to the retention schedule. In addition, we contacted our county prosecutor for further authorization. In addition, we experienced an extra ordinary situation having 4 elections during a 90 day period. We literally ran out of space to prepare, stage, and retain material for those elections. It was imperative that we process the 2004 materials for destruction under the guidelines of the 22 month retention. Therefore, all materials were properly destroyed in a timely manner and we are unable to comply due to those circumstances. We did not receive formal notice from the courts prior to preparing the certificate of destruction.

In short, Harsman is saying that the 2004 election records still existed at the time the Board of Elections received Judge Marbley's order to preserve them, but because they "ran out of space" to store these records, and because the Board had already received authorization from the County Prosecutor to destroy these records, it was "imperative" and "proper" to destroy them. The opinion of the County Prosecutor trumps an order from a United States District Judge.

It was Steven P. Harsman who, accompanied by Betty Smith, Deputy Director, barged into the room where I was photographing ballots at about 3:30 P.M. on Thursday, August 24, 2006, and ordered me to stop. I refused, stating that Harsman had agreed to allow me one full day to photograph the uncounted ballots from all 23 precincts specified in my public records request. Earlier on this same day, the Montgomery County Board of Elections had received notification by e-mail from Cliff Arnebeck, Attorney at Law, of the impending lawsuit, and was asked to preserve the ballots as evidence in the case. But the Board was eager to destroy them. The employees who handled the ballots for me brought up the subject themselves.

Of the 501 uncounted ballots photographed in these 23 precincts, 322 (64.3%) contained multiple punches for president. Of these, 21 (6.5%) were punched for both Bush and Kerry, 273 (84.8%) were punched for Kerry and one or two independent or third-party presidential candidates, and only 19 (5.9%) were punched for Bush and for one or two independent or third-party presidential candidates. It is my conclusion, stated in a previous chapter, "Pre-Punched Ballots in Deep Blue Precincts," that these ballots were pre-punched in order to ruin otherwise valid ballots in heavily Democratic precincts, but that the pre-punching was not done by the Board of Elections.

However, 70 (14.0%) of the uncounted ballots had "dimpled chads" for president, 57 intended for Kerry, and 13 intended for Bush. There were 1124 holes punched cleanly through the very ballots on which these 70 "dimpled chads" were found, indicating that some of the voting machines were rigged to make it more difficult to vote for president than for any other office or ballot initiative. If the holes in the "masks" or "shields" that cover the punch card ballots are too small, the punching implement, or "stylus," will leave only a dent, or "dimple," in the ballot. It is the Boards of Elections, not the voting machine vendors, who punch the holes in the "masks" or "shields." This would be a powerful incentive for the Board of Elections to destroy the ballots.

Richard Hayes Phillips has been investigating the 2004 Ohio election ever since it happened. The Free Press was the first to publish any of his writings. The preceding chapter will appear in his forthcoming book, "Witness to a Crime: A Citizens' Audit of an American Election."