



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

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DIRECTIVE 2007-07

April 9, 2007

To: ALL COUNTY BOARDS OF ELECTIONS

Re: ALL BALLOTS FROM THE 2004 PRESIDENTIAL ELECTION

This directive concerns the secretary of state's efforts to address the boards of elections' continued court-ordered obligation to maintain all ballots from the 2004 presidential election.

On September 11, 2006, the U.S. District Court for the Southern District of Ohio ordered all boards of elections "to preserve all ballots from the 2004 Presidential election, on paper or in any other format, including electronic data, unless and until such time otherwise instructed by this Court." (*King Lincoln Bronzeville Neighborhood Assn. v. Brunner*, Case. No. C-1-06-0745).

It has come to the attention of our office that the ongoing expense and space limitations of maintaining all ballots from the 2004 presidential election have created hardships for many boards of elections. In order to alleviate this hardship and to insure the ballots remain secure until the resolution of the court proceeding, our office has obtained permission from the federal district court to take custody of the ballots and remove them to a secure location in Columbus. A copy of the April 6, 2007 court order is attached to this directive.

The purpose of this directive is to provide the procedure for the Secretary of State's office to take custody of the ballots and to insure that a proper chain of custody is maintained. The boards of elections are to use the attached inventory sheet to account for the ballots from the 2004 election, including voted ballots, unvoted ballots, and soiled ballots. For the purposes of this directive, "ballots" includes ballots contained "on paper or in any other format, including electronic data." For boards who used punch card voting systems in the 2004 general election, "ballots" must also include the punch card ballot pages. For boards who transferred electronic ballot data to CD-ROM format in accordance with Advisory No. 2005-04, the ballots turned over will be the CD-ROMs. Additionally, in order to anticipate the storage requirements needed for the Secretary of State to take custody of and maintain these ballots, boards must describe the amount of storage space they have utilized to store these ballots.

To enable the Secretary of State to take custody of the 2004 general election ballots in adequate time so as not to cause disruption with any municipal primary or special elections to be held May 8, 2007, boards must complete the attached inventory form within three (3) days and fax it to the Elections Division at 614-752-4360. Your regional liaison or a designated employee of the Columbus office who will be identified to you in advance will then contact you to make arrangements to take custody of the ballots and thereafter transport them to Columbus.

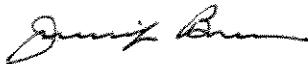
Once you have received a date and time of transferring custody of the 2004 general election ballots, please prepare the ballots for transport by packaging or bundling and clearly labeling them according to precinct. A list of precincts for your county should accompany the packaged or bundled and labeled ballots. We request that packaging be secure to prevent damage to ballots in transportation or their disorganization during transport. This packaging will aid in secure and organized storage of the ballots as we await further order of the court.

On the date and at the time arranged, the regional liaison or designated employee of our office will review your board's completed inventory form with the director and deputy director, and all three must sign the form to acknowledge that the regional liaison or designated employee of our office has received the ballots as accounted for on the inventory form and taken physical custody of the ballots. The board must keep a copy of the signed inventory form for its records, fax a copy to the Secretary of State's office at the fax number listed above, and tender the original to the regional liaison or designated employee of our office along with the ballots and listing of precincts in the county for the 2004 election.

Once the regional liaison or designated employee of the Secretary of State's office signs the inventory form and takes physical custody of the ballots and list, the regional liaison or designated employee will directly and promptly deliver the ballots and list to our secure location in Columbus. Chief of security for the Secretary of State's office, will receive the ballots and lists on behalf of the Secretary of State and verify that the accounting of ballots on the completed inventory form comports with the number and descriptions of actual ballots delivered, along with the list of precincts. The chief of security will then sign the inventory form and take physical possession of the inventory form, the ballots, and the lists on behalf of the Secretary of State. Thereafter, the Secretary of State will maintain the ballots and lists at a single secure location until further order of the court as to their final disposition.

We believe that these actions will assist you in preparing for elections you must administer this year and next and provide you with needed space for carrying out your duties. Thank you for your cooperation and patience in complying with the court's orders. If you have any questions or need additional information then please contact the Elections Division legal staff assigned to your board at 614-466-2585.

Sincerely,



Jennifer Brunner
Secretary of State

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KING LINCOLN BRONZEVILLE
NEIGHBORHOOD ASSOCIATION, *et al.*

Plaintiffs,

v.

JENNIFER BRUNNER, *et al.*,

Defendants.

Case No. C2-06-745

JUDGE ALGENON L. MARBLEY

Magistrate Judge Abel

AGREED ORDER

This matter came before the Court upon the Joint Motion Regarding Disposition of All Ballots From 2004 Presidential Election. The Court finds the Joint Motion to be well-taken and it is hereby Ordered that

The Secretary of State of Ohio, Jennifer Brunner, shall prepare a directive pursuant to R.C. 3501.05 requiring the 88 county boards of elections to transfer to the custody of the Secretary of State of Ohio all ballots from the 2004 Presidential election, on paper or in any other form, including electronic data, previously preserved in accordance with the Court's September 11, 2006 Opinion and Order. It is further ordered that

The 88 county boards of elections shall comply with the Secretary's directive requiring the transfer of all ballots from the 2004 presidential election to the custody of the Secretary of State. It is further ordered that

The stay in this matter shall be lifted for the sole purpose of entering this Order, and upon entry of this Order and by agreement of the parties, this Order shall serve to reimpose the stay previously entered in this matter. It is further ordered that

The Secretary of State shall maintain all ballots from the 2004 presidential election in a secure location pending the final resolution of this matter.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATED: April 6, 2007

**OHIO SECRETARY OF STATE JENNIFER BRUNNER
INVENTORY SHEET
FOR 2004 PRESIDENTIAL BALLOTS**

County _____

Voting System Used In Precinct(s) For 2004 Presidential Election

Voting System Used By Disabled Voters For 2004 Presidential Election

Voting System Used For Absentee Ballots For 2004 Presidential Election

Total Number Of Voted Ballots _____

Total Number Of Unvoted Ballots _____

Total Number Of Absentee Ballots _____

Total Number Of Provisional Ballots _____

Total Number Of Soiled Ballots _____

For Punch Card Systems, Total Number Of Punch Card Ballot Pages

For Electronic Systems, Total Number Of CD-Roms _____

List Of Precincts In County Has Been Provided To Regional Liaison Or Designated
Secretary Of State Employee _____
(Use check mark here)

Description Of The Amount Of Storage Space Utilized By The Board To Maintain The Ballots Accounted For Above (such as the number and dimensions of boxes):

CERTIFICATION BY DIRECTOR AND DEPUTY DIRECTOR:

I hereby certify that the number of ballots, punch card ballot pages, and/or CD-ROMS as reported above accurately reflects the total number of ballots currently in the possession of the board of elections and maintained in accordance with federal court order, and I have further provided these ballots and ballot pages, along with a list of the precincts in the county for the 2004 general election, to the Secretary of State's regional liaison or designated employee who has signed the certification below in my presence.

Director

Deputy Director

Date and time: _____

Date and time: _____

Director and Deputy Director: You must fax a signed copy of this Inventory Sheet to the Elections Division of the Secretary of State's office at 614-752-4360 as soon as the Secretary of State's employee leaves your premises with the ballots, ballot pages and precinct list described above.

CERTIFICATION BY SECRETARY OF STATE REGIONAL LIAISON OR DESIGNATED SECRETARY OF STATE EMPLOYEE:

I hereby certify that I have been authorized by the Secretary of State to take custody of the ballots, ballot pages and list of precincts in the county from the 2004 presidential election from the _____
_____ County Board of Elections. I have reviewed and confirmed that the accounting listed

above is accurate and that I am taking custody of all the ballots, ballot pages and list(s) as described above. I have signed this certification in the presence of the Director and Deputy Director of the _____ County Board of Elections and further certify that I will promptly deliver said ballots, ballot pages and list(s) of precincts for the county to the secure location as directed by the Secretary of State.

Employee of Secretary of State

Date and time of taking custody

CERTIFICATION BY SECRETARY OF STATE DIRECTOR OF SECURITY:

I hereby certify that I have been authorized by the Secretary of State to receive the ballots, ballot pages and lists of precincts from the 2004 presidential election that were delivered by _____
_____ from the _____ County Board of Elections. I further certify that I have reviewed and confirmed that the ballots, ballot pages and lists that I have received comport with the numbers and descriptions as accounted for, certified and listed above.

Doug Miller, Director of Security
Office of Secretary of State of Ohio

Date and time of taking custody