

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION 2008 JUL 10 P 3: 52

FILED
JAMES BONINI
CLERK

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EASTERN DIVISION
COLUMBUS

KING LINCOLN, ET AL.

PLAINTIFFS,

AND

THE OHIO ELECTION JUSTICE CAMPAIGN,
PADDY SHAFFER, MARLYS BARBEE,
VIRGINIA BROOKS, MARK BROWN,
BRUCE DUNCANSON, MARIAN LUPO,
PETER JONES, AND TIMOTHY KETTLER,

individually and as CLASS REPRESENTATIVES
under Fed.R.Civ.P. 23,

v.

JENNIFER BRUNNER, ET AL.

DEFENDANTS.

Civil Action No. C2 06 745

JUDGE ALGENON
MARBLEY

MAGISTRATE
JUDGE KEMP

Affirmation to Accompany
Appendix A

RE: DELAWARE COUNTY, GENOA I PRECINCT BALLOTS

2004 Presidential Election – Delaware County, Ohio

Appendix A Volumes 1-3

Delaware County uses the company called ES&S Election Systems.

Delaware County uses the ES&S Punch Card System (Exhibit A)

How To Read These Ballots

Appendix ps

The ballots enclosed in volumes 1-3 represent what the Delaware County Board of Elections (BOE) provided to Paddy Shaffer as the actual votes of the people in the Genoa I Precinct in Delaware County on November 2, 2004 for President of the United States of America. Janet Brenneman was the Director of the Delaware County Board of Elections then, and Kim Spangler was the then Deputy Director. The enclosed ballots show consecutive runs of ballots for a candidate of more than 50, to over 300. Such voters would have had to have lined up, one after another to vote, or there is a problem reflected here. These are what is called a punch card ballot, and were photocopied with most, but not all pages having three ballots to a page. This was done with the lid of the copier open to allow a light to dark contrast. This will allow the viewer to see the actual holes punched in these cards. The lavender pages represent the actual pages as delivered, which each had a post it note on them, with a handwritten note. The volumes are named according to those post-it notes, starting with "Genoa I, 1 of 3" 11/29/06" which reflects when the copies were made." This is followed by a page in each volume that shows the reverse side of the three ballots. There is one of these pages in each of the three volumes, just as they arrived from the BOE. The printed names in of the four board members are on the back of each ballot and read as follows, Jeffery Burkam, John Myers, Teri Morgan, and David H. Staley in a handwritten stamp reflecting their signatures. Burkam and Morgan represent the Republicans Party, while Myers and Staley are the representatives for the Democratic Party. The final election results of the Presidential and other 2004 candidates in Delaware County, requested by Richard Hayes Phillips were not signed in the copy they provided him, months after the election.

Of great importance in viewing these documents is the small numbers that were originally handwritten on the back of the paper. These were written at the request of the Delaware County Prosecutor's Office, and for Genoa I Precinct. Most interaction on any election record in Delaware County went through First Assistant Prosecutor, William Owen, working under Delaware County Prosecutor David Yost. This numbering of pages was also done with other photocopied Delaware precincts collected by our citizen investigators. The office of the Delaware County Prosecutor ordered that an identical set was kept for Delaware County, with the handwritten numbers on the back. There are 384 pages, and are split into three volumes. The split occurs, where the original ballots were split. This reflects the original size of a rubber-banded bundle of punch card ballots. The numbers written on the back of these double sided documents play a significant role in allowing the court to see the sequential order of the Genoa I ballots. They have not been rearranged. They now represent what would be the pattern of the actual voters on November 2, 2004 for President.

The first set of Genoa I ballots I was mailed did not include the full ballots, as they were not centered on the copier for duplicating. The markings that record that it is an absentee ballot were cut off. When I went in person to the BOE to request that they again print the Genoa I ballots, so I could identify the Absentee ballots, then Deputy Director Brenneman wanted to deny a second set

of records being copied for me. The Director at that time, Spangler eventually agreed to re-copy them for me. Brenneman did not look pleased.

There are large consecutive runs of votes for both John Kerry as number 6 in the first column, and George Bush represented as the number 4. What I refer to as a run denotes ballots where all votes are for the same candidate. The whole first column numbered 1-19 is the only place that the presidential votes were located for this election. Votes would only be recorded for even numbers, represented by 2, 4, 6, 8, and 10. The page numbers I refer to, are the ones on the back of the page, recorded by a Delaware County Board of Elections employee. I do not know who did the actual photocopying of these pages. Any ballot with "Genoa I" handwritten in the top right corner represents an absentee ballot. It appears that there are multiple handwritings. One example of a run of consecutive votes for John Kerry and John Edwards begins on page 26 of Appendix A, Volume 1 of 3, and ends on page 72. All votes in between are cast for Kerry/Edwards as a number "6". The beginning ballots on pages 26 to page 35 are all absentee, recognizable by the handwritten "Genoa I" or as some ballots say "Gen I". This is a run of 30 absentee votes for Kerry. The run of consecutive votes for # 6 continues into regular ballots, as 77 additional votes. The total of the absentee and regular ballots in this run are 107 votes. This represents that 107 people arrived to vote in consecutive order and all voted for John Kerry in Delaware County on November 2, 2004. In Appendix A Volume 2 of 3, there are 91 pages with 3 ballots per page followed by one page recording one ballot that are all votes for George W. Bush and Dick Cheney. These votes are represented by the number "4". These ballots represent that 274 Delaware County residents, in one consecutive swell of support for the Bush/Cheney ticket cast their ballots, uninterrupted by supporters of any other presidential candidate.

In Appendix A, Volume 3 of 3 the vote tally begins with two votes for the candidate represented by the number "8". This is followed by one vote for Bush/Cheney as a number "4". The next page is page 264 and the whole rest of Volume 3 of 3, which is pages 264 to 384 are all votes for George W. Bush and Richard Cheney. This records 360 consecutive votes for these number "4" candidates. This is where the Genoa I Delaware County ballots end. Volume 3 of 3 had 2 votes for candidate "8", and 360 votes for candidate "4".

These ballots represent the true and correct votes in the order they were cast by actual citizens of the United States as recorded by the Delaware County Board of Elections. In 2004 the Director of the Delaware County Board of Elections was Janet Brenneman, and the Deputy Director was Kim Spangler. In July 2008, Janet is again the Director and Kim has left the Delaware County Board of Elections (BOE) for employment with the State of Ohio in southern Ohio.

Requesting Genoa I Precinct, Delaware County, Ohio

Paddy Shaffer requested this precinct of ballots, because of the investigative work of Richard Hayes Phillips Ph.D. and Stuart Wright. The day Richard and Stuart went to view these ballots the first time, they found in my opinion "the smoking gun". The original request for records was pared down during a visit to Ohio by Richard, and then Director Kim Spangler, requested that Richard resubmit his record request, removing the name Paddy Shaffer as I was not to join Richard that day. This was June 8, 2006, and Richard rewrote the request removing my name, and he switched one precinct, asking for Genoa I rather than the original request for Genoa L. The reason

for the switch is something Richard and I had agreed that if either of us were ever able to alter the record request we made together, at the last minute, to do so. Delaware was very reluctant to allow any access, with board member Jeff Burkam at one Board meeting in May 2006 wanting to declare ballots no longer public records, and thereby stopping Paddy Shaffer access. We wondered if the records we were shown were the real thing, or altered? Stuart Wright was involved in counting and tallying the numbers of votes, and the sequence they fell in with a man from the Delaware BOE. Midway through the count of the precinct Kim Spangler and Janet Brenneman became aware that the precinct was not the one of the original request. I understand Janet was visibly upset. I later requested photocopies of Genoa I Precinct, wondering if they would still be in the same sequential order. They were.

The Importance of Retaining The Ballots/Election Records

Retaining the public election records in Ohio is a statutory duty during the retention schedule, and beyond that if they are part of litigation as required in the County Board of Elections (CBE) Record Retention Schedule by Ohio law. These records can tell a story all on their own, which can go beyond the reports of those hired to care for and count. Genoa I is a perfect example. I know of no other time and place that public records show that 360 people all supporting one candidate were the only ones to come and vote. The records show they were the final voters of the day on November 2, 2004. Delaware County fought the efforts of Presidential Candidates David Cobb and Michael Badnarik to conduct a recount of Ohio; Allen County Director Keith Cunningham considered joining the lawsuit. This was a temporary injunction to stop the recount in Delaware, which set up legal precedence across the state, which stalled the entire state. The suit was moved from the courtroom of Delaware County Judge W. Duncan Whitney, and went before Federal Judge Edmund Sargus Jr. Delaware County Prosecutors David Yost, William Owen, Christopher Betts, and others argued the case. Other Attorneys present arguing that the recount was needed were John Bonifaz and Don McTigue. The Judge ordered that there would be a recount, but it appeared that it would not be finished before the election was certified since Delaware County had effectively delayed the start of it for the state.

I asked them what they feared, why not recount? Possibly what is represented to the public as the recorded votes of the people of Genoa I precinct in Delaware, Ohio tells us. How many other stories have been destroyed by the 58 (or possibly more) Ohio counties that destroyed these protected records, some in 60 days, prior to the certification of the election. The OEJC has found that the many counties do not follow the CBE record retention schedule, do not file the required RC-3 forms to properly dispose of records, do not submit those forms to the three agencies that they are required to gain permission from to destroy records. Some records are unsafely stored, with access given to other persons, which have put the integrity of how our records are kept and protected in jeopardy. The responsibility was given to the election officials, and for many of the 88 Ohio Counties that responsibility has been neglected, or deliberately thwarted. Investigation is needed.

These are just some of the reasons Ohio Election Officials no longer have the 2004 records. Many counties did not give a reason, Franklin County included.

Ashtabula -- (BOE) "inadvertently disposed of"

(Ashtabula Prosecuting Attorney) "inadvertently discarded and destroyed"

Butler -- "unintentionally discarded into a Rumpke dumpster"

Champaign – "these items have always been destroyed"

Clermont – "unable to locate" "No one remembers specifically discarding the ballots." "There is a possibility that the ballots will surface"

Guernsey - "destroyed in error, due to the county maintenance worker, when collecting trash"

Holmes – "a shelving unit collapsed onto a side table holding a working coffee maker.

Many of the stored items had to be destroyed due to broken glass and hot coffee"

Mahoning – "accidentally disposed of (by) the Mahoning County Green Team"

Putnam – "destroyed for security purposes"

Warren – "The ballots were intentionally destroyed."

I affirm these records, Appendix A Volumes 1-3, are copies of the actual records provided to me by the Delaware County Board of Elections, and then Director Kim Spangler and then Deputy Director Janet Brenneman. They were postmarked December 01, 2006.

Paddy Shaffer July 10, 2008

Paddy Shaffer

Director, The Ohio Election Justice Campaign