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Ohio Secretary of State

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**MEMORANDUM**

TO: J. Kenneth Blackwell, Ohio Secretary of State

FROM: Richard Weghorst, Director of Campaign Finance *RAW*  
Faith Lyon, Board of Elections Liaison *FL*

CC: Members and Director, Lucas County Board of Elections

DATE: April 5, 2005

RE: Lucas County Board of Elections – Results of Investigation Following  
November 2004 General Election

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This document represents a compilation of the investigation performed at your direction into the administrative activities and functions performed by the Lucas County Board of Elections leading up to and culminating with the general election in November 2004. The report begins with background facts regarding the history of the administrative oversight status by which this Board is currently operating. We continue by identifying thirteen (13) areas of major concern and present them in order of severity. Finally, we conclude by summarizing the investigation and by outlining suggested areas of focus for this Board as it moves forward.

## **2005 INVESTIGATION REPORT LUCAS COUNTY BOARD OF ELECTIONS**

### **Background**

In May 2002, an investigative team from the Office of the Ohio Secretary of State was dispatched to the Lucas County Board of Elections to look into allegations of verbal and physical abuse by an office supervisor. The investigation revealed the Board to be deficient in the training of its employees, lacking in communication between its members and its day-to-day management team, inconsistent in its application of discipline and replete with mismanagement in its administration of elections. As a result of that investigation, on May 28, 2002, the Lucas County Board of Elections was placed on administrative oversight. (Exhibit A)

In May 2004, the administration of election procedures in the primary election required an investigation by Patricia Wolfe, Director of Elections, and Richard Weghorst, then, Assistant Director of Elections. After reviewing the results of that investigation, on September 16, 2004, it was decided to not only leave the Lucas County Board of Elections on administrative oversight, but to impose additional terms to the original oversight status. (Exhibit B) A collective public reprimand to all four Board members was also issued at that time. (Exhibit C)

Most recently, following the general election in November 2004, another investigation into the administration of this Board was required. As with the previous two investigations, the Board's operation was thoroughly researched. The Board members, the Director, the Deputy Director and all fulltime employees of the Lucas County Board of Elections were interviewed, with the exception of one person who resigned prior to the commencement of this investigation. Miscellaneous board minutes, e-mails, memoranda, reports and notes were also reviewed as part of the investigation

Since the November 2004 election, several personnel changes have occurred at the Lucas County Board of Elections. Paula Hicks-Hudson, who was the Director, announced her resignation on December 3, 2004. Her resignation became effective on January 14, 2005. Larry Loutzenhiser, who was the Manager of Voting Services, resigned on December 6, 2004. On January 24, 2005, the Board met and promoted Jill Kelly, previously the Deputy Director, to the position of Director. Due to a procedural mistake, the Board had to reconvene on January 26, 2005, to elect Diane Brown its chairperson. On February 11, 2005, the Board met and hired Michael Badik as its new Deputy Director. Mr. Badik's first day as a Board employee was February 28, 2005.

Additionally, Board chairperson Bernadette Restivo-Noe, in a letter addressed to the Ohio Secretary of State, dated December 22, 2004, announced her intent to resign as both chairperson of the Lucas County Republican Party and as chairperson of the Lucas County Board of Elections. (Exhibit D) According to her letter, her resignation from the Board of Elections was to be contingent on and concurrent with the selection of a new

party chairperson by the Lucas County Republican Party. Sam Thurber, in a letter to the Ohio Secretary of State, also dated December 22, 2004, announced that he, too, would resign as a member of the Lucas County Board of Elections and that his resignation would also be contingent on and concurrent with the selection of a new chairperson by the Lucas County Republican Party. (Exhibit E) At this time, the Lucas County Republican Party has not selected a permanent chairperson. Therefore, Ms. Noe and Mr. Thurber remain as members of the Lucas County Board of Elections.

### **Results of Investigation**

As a result of the most recent investigation, it is the investigators' determination that the members of the Lucas County Board of Elections, at the time of the November 2004 election, were directly responsible for the inefficient and unorganized management of the election process in their county. Listed below, in order of importance, are areas of grave concern:

- Failure to maintain ballot security;
- Inability to implement and maintain a trackable system for voter ballot reconciliation;
- Failure to prepare and develop a plan for the processing of the voluminous amount of voter registration forms received;
- Issuance and acceptance of incorrect absentee ballot forms;
- Manipulation of the process involving the 3% recount;
- Disjointed implementation of the Directive regarding the removal of Nader and Camejo from the ballot;
- Failure to properly issue hospital ballots in accordance with statutory requirements;
- Failure to maintain the security of poll books during the official canvass;
- Failure to examine campaign finance reports in a timely manner;
- Failure to guard and protect public documents;
- Lack of staff election plan;
- Current administrative operations; and,
- Non-compliant areas of the administrative oversight status mandates.

### **Ballot Security**

One of the most important responsibilities a Board of Elections has is the duty to protect the sanctity of the vote. One of the most important elements in protecting the sanctity of the vote is the duty to ensure the security and integrity of the ballot. According to the Director/Deputy Director Manual,

Beginning with absentee voting, the board must have in place procedures to secure ballots. All ballots – unused, voted, or spoiled – must be stored in a secure area, such as a vault, storage room, or double-lock file. Access to the ballots should require two keys. Only the director or the

director's designee should have one of the keys or combinations, and only the deputy director or deputy's designee should have the other key or combination. No one else should have copies of the keys or combination. This procedure assures that no one person can gain access to the ballots.

Director/Deputy Director Manual for Ohio County Boards of Election 69 (2000). (Exhibit F)

Ballots must be secured at all times by a Board of Elections, from the moment they are received from the printer until the moment that applicable state and federal laws allow for their disposal. Securing ballots should never be considered a responsibility of secondary importance. With regard to the 2004 general election, the Lucas County Board of Elections failed in its responsibility to secure its ballots.

While the administrative offices of the Lucas County Board of Elections are located on the third floor of One Government Center in downtown Toledo, the Board also maintains a work and storage area in a county-owned and operated warehouse located 4.6 miles north of the main office on Berdan Avenue. Several other county agencies also have offices in the Berdan Avenue warehouse. The Board of Elections has "control" of the entire third floor and, just prior to the 2004 general election, was given additional space on the second floor. Until just a few weeks before the 2004 general election, the third floor was the storage location for several hundred bulky, lever-operated voting machines. This space was, and continues to be, utilized for the packing of grips, as well. For the 2004 general election, the space on the second floor was primarily used to store optical scanners.

In regard to external building security, the warehouse is armed with an alarm system that requires security code access. By comparison, once entry to the building is obtained, the internal security at the warehouse is not limited, and the ability to access other areas within the building is unrestricted. There is no security barrier preventing non-Board of Elections employees from gaining access to either the second floor, which is shared with other county agencies, or the third floor, the entirety of which is under the nominal control of the Board of Elections. An elevator in the building, which stops at every floor, has no restrictions on its use. There are also two unrestricted staircases in the building that provide access to both the second and third floors. The third floor consists of a large, open workspace interrupted by numerous support columns, several smaller rooms, one of which is a tool room, and a few offices. The offices are seldom locked during non-business hours. The work area on the second floor consists of one large room with a smaller room located within. The larger room may be accessed by either of two single locked doors. The small room located within the larger room may be accessed through one, double-locked door. This door, although double-locked, contains a large windowpane in the upper portion, thereby reducing its value as a security deterrent.

Having employed Diebold's AccuVote OS Optical Scan precinct count and central accumulation voting system in the 2004 general election (as well as in the 2003 primary and general elections and the 2004 primary election), it was necessary, unlike past elections when lever voting machines were used, to store over 300,000 ballots. The ballots, once received from the printer, Dayton Legal Blank, Inc., were stored at the warehouse in an unsecured environment. One employee advised that both the Director and the Deputy Director were well aware of the fact that the ballot room was not large enough to handle the large number of ballots required to be put under double lock and key, and they were equally aware that the overflow was being stored in an unsecured location on the third floor.

On Friday, October 8, 2004, the first shipment of ballots, consisting of 149 precincts, arrived at the warehouse from Dayton Legal Blank, Inc. A second shipment arrived soon thereafter. The Board had earlier decided that the already crowded tool room could double as a ballot room. The second lock on the door of the tool room/ballot room, however, was not installed until October 13, 2004. (Exhibit G) Therefore, the first two shipments of ballots to arrive at the warehouse, consisting of approximately four or five skids, were stored, for approximately five days, in the tool room/ballot room under one lock and key, not two, as required by our office. The tool room/ballot room was too small to accommodate all of the ballots. As a result, the third and successive deliveries of ballots, approximately ten skids, were stored in a corner of the third floor. Hence, over one-half of the ballots printed and used in the 2004 general election in Lucas County were stored in an open space on the third floor of the county warehouse with no security measures in place.

In the week prior to the election, Mr. Loutzenhiser, the Manager of Voting Services, oversaw the packing of the grips. Ballots, along with other election supplies, were placed in the grips. The packing of the grips took place on the third floor of the warehouse. Fulltime board employees, as well as temporary, seasonal employees, assisted Mr. Loutzenhiser. When this process began, the ballots were stored either in the tool room/ballot room under double lock and key, or, out in the open on the third floor. For each precinct, there were more ballots than would fit in a grip. As a result, it was decided to place approximately 200 ballots into each grip. There was one grip for each precinct. The majority of the remaining ballots were shrink wrapped and placed into ballot boxes owned by Diebold Election Systems, Inc. There was one sealed ballot box for each precinct. Throughout this process, the ballots, including those packed in grips and ballot boxes, remained, at all times, out in the open on the third floor, never under double lock and key, or, in any other way secured.

Another problem pertaining to ballot security was the day-to-day management team's initial plan for the distribution of extra ballots (the ballots that were placed into ballot boxes) to polling locations prior to the 2004 general election. At a meeting attended by Ms. Hicks-Hudson, Ms. Kelly, Mr. Loutzenhiser, Mr. Bruce Temple and Mr. Marty Limmer a couple of weeks before the election, it was collectively decided that privacy booths, optical scanners and ballot boxes containing extra ballots would be delivered to all polling locations prior to election day. To effectuate that plan, two, bi-partisan, four-

man teams were organized and sent out to make these deliveries starting on or about Monday, October 25, 2004. These teams were instructed to leave the voting equipment and ballot boxes in a locked room at each polling location. The recent investigative interview with Ms. Hicks-Hudson revealed that she instructed the employees delivering the equipment and ballots “not to tell anyone what was in the boxes.” During the interview, Ms. Hicks-Hudson stated it was her belief that the Board members were aware of this plan.

On or about Thursday, October 28, 2004, after approximately one-half to two-thirds of the polling locations had been visited and the equipment and ballots had been delivered, the teams were recalled. A principal within the Toledo Public School system contacted the Board of Elections and informed Ms. Hicks-Hudson that he was uncomfortable with live ballots being placed in a building under his control and for which he was responsible. He did not want to assume liability for the potential theft or destruction of those ballots. Ms. Paula Ross learned of this matter as she was in the Board office when Ms. Hicks-Hudson took the principal’s telephone call. Upon learning that live ballots were being delivered to polling locations a week in advance of the election, Ms. Ross instructed Ms. Hicks-Hudson to call Mr. Temple immediately and to instruct him to retrieve all ballots that had thus far been delivered. Ms. Hicks-Hudson placed the call to Mr. Temple, and, as a result, he, along with Mr. Charles Poore, a seasonal employee of the Board of Elections and member of the opposite party to Mr. Temple’s, proceeded to retrieve the ballots that had already been delivered. With Mr. Poore at his side, Mr. Temple took it upon himself to complete this task, as he had re-assigned the other employees under his supervision to other duties. According to Mr. Temple and Ms. Hicks-Hudson, all ballots that were delivered to polling locations prior to the election were successfully retrieved. One Board employee, however, who was assigned to the warehouse, informed us that he did not believe all of the ballots were successfully retrieved.

As a sidebar, it should be noted that Ms. Ross did not immediately inform all of her colleagues about this matter. After instructing Ms. Hicks-Hudson to call Mr. Temple, Ms. Ross proceeded to inform Ms. Brown, who was also present at the Board office that day, about the matter. Ms. Ross did not, however, inform either Ms. Noe or Mr. Thurber of the matter, as she was concerned that if they learned of it, Ms. Noe would inform the local media. In fact, Ms. Ross did not tell Ms. Noe about this matter until after the 2004 general election.

Another issue of a security nature is the custody of the keys for the ballot rooms’ doors at both the administrative office and the warehouse. During the investigation, it was determined that numerous staff members either keep in their possession or have easy access to the various ballot rooms’ keys. There is no system in place to track the chain of custody for the ballot rooms’ keys. It was also determined that the office’s ballot rooms’ keys were often not kept secured.

Finally, a note-worthy incident relating to security occurred on November 2, 2004, the day of the general election. At approximately 7:00 p.m., aforementioned Secretary of State representative, Richard Weghorst, arrived at the warehouse to observe ballot

distribution. Also present at that time were Mr. Temple, a couple of Democratic seasonal employees, a couple of Republican seasonal employees and Mr. Robert Diekmann of Diebold Elections Systems, Inc. Soon, two groups of partisan volunteers totaling approximately twelve people arrived at the warehouse. Since their purpose for being there was not immediately known, nor requested, they were asked to leave the premises. Their refusal to leave prompted Mr. Weghorst to place a telephone call for emergency assistance. Upon arrival of the authorities, the police escorted the partisan volunteers away from the building where the ballot materials were maintained. Later, it was learned that these volunteers had been instructed to go to the warehouse at the request of two Board members, Ms. Ross and Ms. Noe.

### **Ballot Reconciliation**

Prior to last year's general election, it was discovered by Secretary of State employees that the Lucas County Board of Elections failed to record and reconcile ballot stub numbers of absentee voters' ballots as required by statute. Ohio Revised Code (hereinafter "Revised Code" or "R.C.") § 3505.23 reads, in relevant part,

The voter shall then leave the voting compartment, deliver the voter's ballots, and state the voter's name to the judge having charge of the ballot boxes, who shall announce the name, detach Stub A from each ballot, and announce the number on the stubs. The clerks in charge of the poll lists or poll books shall check to ascertain whether the number so announced is the number on Stub B of the ballots issued to such voter, and if no discrepancy appears to exist, the judge in charge of the ballot boxes shall, in the presence of the voter, deposit each such ballot in the proper ballot box and shall place Stub A from each ballot in the container provided therefore.

Although this statement refers to a polling location on Election Day, the Board of Elections assumes the responsibility for absentee ballots, since they are statutorily required to distribute and process all absentee voters' ballots. (See R.C. § 3509.01)

In the past, the Lucas County Board of Elections employed an archaic and insufficient system to track and reconcile absentee voters' ballots. Instead of tracking this information in their voter registration system, which offers a field to enter ballot stub numbers for the purpose of reconciliation, the Board chose to track this information manually. While it is not unheard of to track ballot stub numbers by hand, the manual method used by this Board failed to capture the requisite information needed for reconciliation. Instead of linking the individual ballot to the voter as R.C. §§ 3505.23 and 3509.01 require, the Board staff recorded on a piece of paper, titled "Absent Voter Ballot Processing Log," the ward, precinct, total ballots sent, date the envelope was sealed, date mailed and a staff person's initials. By not making a link between the voter

and the ballot, the Board had no way of confirming who received which ballot, thereby making ballot reconciliation impossible.

By not making a link between the voter and the ballot, the Board had no way of knowing whether or not a voter had been mailed his or her absentee voter ballot, or, in fact, several absentee voter ballots, as was the case with one individual. Two weeks prior to the 2004 general election, it was reported to the Lucas County Board of Elections by an elector that her mother had received not one, but three absentee voter ballots. There are two reasons why this oversight occurred. First, the Board of Elections did not track the absentee voter ballots or application numbers. Second, the staff created mailing labels for the absentee voter envelopes without comparing them to the actual absentee voter ballots requested. Had they taken these steps, this would have ensured that a voter's information had not been entered into the system more than once or that a printing error had occurred. Fortunately, this concerned citizen returned all three absentee ballots to the Board office and a new ballot was issued and delivered to her mother by Board employees. There is no way to determine if incidents similar to this have occurred in the past and, if so, how often. None of the Board members knew that ballot stub numbers were not being entered into a trackable system. Nor did they know that, in the past, ballots had not been properly and fully reconciled.

A few days later, Secretary of State staff member Toni Slusser discovered that Ms. Ross had instructed Board employees to allow voters who had requested, but had not yet received, their absentee voter ballots, to vote provisional ballots at the Board office. Upon hearing this, Ms. Slusser instructed Ms. Ross and the staff that they should not do this due to the fact that they were unable to reconcile absentee voters' ballots. By failing to track ballot stub numbers, the Board had no way to cancel absentee voters' ballots that had not been received. Therefore, a provisional ballot could not be issued with certainty that only one ballot per voter would be counted.

Prior to Ms. Slusser's discovery, the office tried to reconcile the number of ballots sent to absentee voters against the number that was actually returned by them. Although they came close, Board employees never succeeded in balancing the ledger in regard to absentee voter ballots. It was not until Ms. Slusser trained the Board staff to match stub numbers against absentee ballot requests that they were they finally able to reconcile their absentee ballots. Since then, the Lucas County Board of Elections has adopted this method and now enters ballot stub numbers into their voter registration system.

### **Processing of Voter Registration Forms**

R.C. § 3503.19 (C) reads, in relevant part, "A board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration form shall register the applicant and promptly notify the applicant of the applicant's registration and the precinct in which the applicant is to vote." R.C. § 3503.19 (C) continues, in part, by saying,



The notification shall be by nonforwardable mail, and if the mail is returned to the board, it shall investigate and cause the notification to be delivered to the correct address; or if it determines that the voter is not eligible to vote for residency reasons it shall cancel the registration and notify the registrant, at the last known address, of a need to reregister.

The members of the Board did not have a plan to deal with the volume of registration forms they received leading up to the November 2004 election. The members of the day-to-day management team, headed by the director, Ms. Hicks-Hudson, simply did not grasp the urgency of processing voter registration forms in a timely and expeditious manner. They did not realize, until it was almost too late, that their unhurried approach to processing the voter registration forms could and, in fact, would impinge upon their ability to discharge other election administration duties. While they did finally complete the processing of the voter registration forms, they finished the processing so late that it had a negative impact upon their ability to perform other statutorily imposed election tasks. Hence, not only did they fail to comply with R.C. § 3503.19 (C), but they also came close to not being able to perform other tasks essential to the administration of a smooth and fair election, such as the preparation of signature books and the timely completion of absentee voter ballot requests.

The general election of 2004 was like no other in recent times as far as the number of newly registered voters was concerned. Boards of Elections in all of Ohio's 88 counties saw unprecedented numbers of voter registration cards being submitted. Many organizations, such as Project Vote, America Coming Together and the Association of Community Organizations for Reform Now, submitted thousands of forms that were either incomplete or improperly completed. Still, other Boards managed to handle this task by anticipating it and planning for it.

One employee advised that Mr. Loutzenhiser, who, at the time, was the Manager of Election Services, a man with over 16 years of experience and the dean of board employees, made the comment to her in the latter part of August or first part of September that he had "...told Jill and Paula [Hicks-Hudson] till [he] was blue in the face that they needed to start working overtime to get caught up [on the processing of voter registration cards]." While Ms. Hicks-Hudson did have the staff come in a couple of Saturdays in August and September to work overtime on the processing of the voter registration applications, this was the extent of her efforts at this time to deal with the backlog. Ms. Kelly, on the other hand, attempted, in late September or early October, to convince Ms. Hicks-Hudson to start another fulltime shift to work on nothing but the processing of the voter registration applications. Ms. Hicks-Hudson resisted the idea.

In talking to the staff, estimates as to when the mail trays loaded with voter registration forms started stacking up around the office range from immediately after last year's primary election to sometime shortly after the special election in August. Even Ms. Hicks-Hudson said that she "...started noticing a huge influx of VR forms coming into

the office in July.” Yet she took no real steps nor made any specific plans to handle this influx. It was not until sometime in mid September that extra, part time employees were hired to help specifically with the processing of voter registration forms. By that time, the backlog of unprocessed forms was voluminous.

On September 1, 2004, one entity, Project Vote, delivered 7,000 voter registration forms to the Board office for processing. In addition, voter registration applications were being received from several other entities as well, including our office. Still, Ms. Hicks-Hudson either refused to acknowledge or failed to comprehend the need to hire additional, part-time employees. It was not until the middle of September that several part-time employees were hired for the sole purpose of eliminating the backlog of unprocessed voter registration applications. Many of the individuals hired as part-time employees to help process the voter registration applications were friends and acquaintances of Ms. Hicks-Hudson. Most had limited or no data entry skills. Therefore, the backlog of forms was not eliminated.

On September 18, 2004, Ms. Hicks-Hudson and Ms. LaVera Scott, Supervisor of Voter Services, initiated what they referred to as a “second shift.” The fulltime employees continued to process voter registration forms during their regular working hours, i.e., from approximately 8:00 a.m. to 4:30 p.m., while the part-time staff, which had been working alongside the fulltime employees, was now told to work from approximately 12:00 p.m. to 8:00 p.m. As a result, a true second shift was not added in September. The part-time employees were simply given a different work schedule.

October 4, 2004, was the filing deadline for new registrants wanting to vote in the 2004 general election. On that day, Project Vote delivered to the Lucas County Board of Elections two boxes containing a total of approximately 10,000 voter registration forms. One of these boxes contained approximately 7,000 forms while the other one contained approximately 3,000 forms. Incidentally, in an interview with Ms. Hicks-Hudson following the general election, she stated, “October 4 was when I realized that more resources would be needed to complete the voter registration processing.” It took approximately 20,000 unprocessed voter registration applications at a point less than a month before the election for Ms. Hicks-Hudson to finally recognize that “more resources would be needed.” Yet, other than sending an e-mail to the staff on October 8 informing them that, hence forward, they would be working 12 hours a day to eliminate the voter registration backlog, Ms. Hicks-Hudson did nothing. She still did not sense or appreciate the urgency of the matter.

Ms. Scott confused matters as well. On at least one occasion last fall, when Project Vote employees delivered several thousand voter registration forms to the office, Ms. Scott instructed Ms. Judy Werner, the office receptionist, not to date-stamp the individual forms, but, rather, to simply date-stamp the boxes in which the forms arrived. Ms. Scott did not realize that, by doing this, she was violating R.C. § 3503.19 (A). As a result, she also ran the risk of frustrating the Board’s ability to ascertain whether the applicants’ forms were received in a timely manner to qualify them as electors eligible to vote in the 2004 general election.

Also, several Board employees mentioned that Ms. Hicks-Hudson, Ms. Kelly and Ms. Scott instructed them to process agency forms and mail-in forms first and to leave the counter forms for last, rather than processing the forms in the order in which they were received. There was no benefit to be realized by processing agency forms and walk-in forms first and saving the counter forms for last. Nor was there any indication as to why management wanted agency forms and walk-in forms processed first and counter forms processed last, beyond a comment allegedly made by Ms. Scott, in which she said, in referring to several thousand voter registration applications delivered to the office by Project Vote prior to the October 4, 2004, filing deadline, "We may not get to them."

At least one mail tray containing between 4,500 and 7,000 (estimates vary) unprocessed Project Vote applications was "discovered" by Ms. Scott on or about October 18, 2004. After accepting the applications on October 4, 2004, Ms. Werner was instructed by Ms. Scott to set them aside. Although she did as she was told, Ms. Werner, on an almost daily basis for the next two weeks, kept reminding Ms. Scott not to forget about these forms, that they, too, needed to be processed. Finally, after two weeks of having Ms. Scott ignore her warnings not to forget the unprocessed voter registration applications, Ms. Werner decided, on October 18, 2004, to have the tray of unprocessed applications physically moved from her work area and placed on Ms. Scott's desk. The next day, Ms. Werner was questioned by Ms. Hicks-Hudson, Ms. Kelly, Ms. Scott and Ms. Lori Christie, who was Ms. Werner's team leader, as to why she had not informed her supervisors earlier about these unprocessed forms. Ms. Werner responded that she had informed Ms. Scott numerous times about these forms in the previous two weeks, but to no avail. Ms. Scott denied that Ms. Werner had ever given her any notice of these forms.

In the final analysis, this entire episode never should have occurred. The Director should have heeded the advice given to her by her more experienced staff members and prepared a plan last summer to manage the processing of the large influx of voter registration applications. Nor are the Board members without fault in this matter. They failed to perceive there was a problem with the processing of the voter registration applications until late October, weeks after mail trays full of unprocessed forms started stacking up in the office.

### **Absentee Ballot Requests**

On October 31, 2004, Secretary of State staff member, Richard Weghorst, discovered that the Application for Absentee Voter Ballot used by the Lucas County Board of Elections contained improper and inaccurate information. The application form being used by the Board allowed voters to fax their absentee ballot requests and to request an entire year's worth of absentee ballots, which is in direct violation of statute. (Exhibit H) Furthermore, the allowance of faxed absentee requests and the ability for an individual to request absentee ballots of all elections in a single year does not follow the guidelines as set forth in prescribed Form Number 11A, Application for Absent Voter's Ballots, from the Secretary of State's office. (Exhibit I)

Faxing of absentee ballot requests can be traced back to approximately 1998, according to Board employees. R.C. § 3509.03 states, in pertinent part, “The application...shall be signed by the applicant.” This statement, on its face, implies that the signature received on an absentee application must be an original signature, not a faxed signature. The signature must also be clear, so that it may be matched to the voter’s signature on file with the Board of Elections office, thereby making faxed copies insufficient.

Section 3509.03 of the Revised Code also states, in pertinent part, “The application need not be in any particular form but shall contain words which...indicate the request for the ballots, the *election* for which such ballots are requested...” (emphasis added) The statute goes on to say, “*Each application for absent voter’s ballots shall be delivered to the director...*” Id. (emphasis added) Based on statute, it is clear that the intent is one request per election. The practice of accepting faxed requests provides many possibilities for fraud.

Since these discoveries were made and brought to light by our office, the Lucas County Board of Elections has corrected their application for absentee voter ballots and began using the new, corrected forms for the February 2005 special election. They have also sent letters and new Applications for Absentee Voter’s Ballots to those voters who have already submitted a form requesting absentee ballots for an entire year.

### **Recount (3%)**

On December 7, 2004, J. Kenneth Blackwell, Secretary of State, issued Directive 2004-58, which outlined the requirements for a recount for the Presidential Election. On page five, (§§ d-g) of the “Outline of Recount Procedures” included in Directive 2004-58, are the guidelines for how to conduct the recount. Those procedures read as follows:

- d) The board must randomly select whole precincts whose total equals at least 3% of the total vote. These precincts’ ballots must be manually counted.
- e) Run the manually counted precincts through the computer.
- f) If the computer count does not match the hand count, and after rechecking the manual count the results are still *not* equal, *all ballots must be hand counted*. If the results of the computer count and the hand counted ballots are equal, the remainder of the ballots may be processed through the computer and results tabulated electronically. (emphasis in original)
- g) At the conclusion of the recount, the program must be retested using the pre-audited test deck.

In accordance with the outlined requirements and at the request of Ms. Hicks-Hudson, Mr. Limmer, Information Services Manager, selected, for the Board's approval, a sample of single precincts with few poll book or clerks' book balancing problems and that equaled just over 3% of the total vote. Upon receiving the sample, Ms. Kelly provided this information to the Board members for their review.

Not long after providing the requested random sample to the Board members, Ms. Ross asked that the breakdown of precincts for the 3% recount be amended to make it more representational of the "central city." Once a new sample was prepared based upon Ms. Ross' specifications, that sample was sent to the Board members for comment. Upon reviewing Ms. Ross' sample, Ms. Noe responded that she was upset that one Board member was trying to control the process and that no major suburban areas, such as Maumee and Monclova Township, were represented.

In order to reach a compromise to begin the actual recount, Mr. Thurber began to act as a mediator between Ms. Ross and Ms. Noe. While reviewing Ms. Ross' proposal, Mr. Thurber noticed that when the 3% was broken out, it represented 80% of the "central city" with the remaining 20% coming from the suburbs. This was unacceptable to Mr. Thurber and Ms. Noe, since it made the election results seem as though they favored Mr. Kerry more than the actual election results. Mr. Thurber then contacted Ms. Ross and explained that her sample was not acceptable, since the presidential election results were approximately 60% (132,715) Kerry and 40% (87,160) Bush in Lucas County. During this discussion, it became clear that Ms. Ross selected her sample based upon votes cast, while Mr. Thurber thought it was best to be representative of the presidential election outcome in the county. After much discussion, it was agreed that Mr. Thurber would work with the vendor and Board staff to select the 3% precinct ratios as agreed to and based upon the presidential election results in both the "central city" and the suburbs.

After a great deal of work and compromise, the Board was able to agree upon the 3% sample that would be used for the initial hand count portion of the recount. Although, in doing so, it appears that once again, as in previous investigations, party politics played a role in what should have been a simple non-partisan process. The requirements for the selection of a random recount sample were clearly laid out in Directive 2004-58. Instead of following these guidelines, Ms. Hicks-Hudson ordered a staff member to purposefully select certain precincts that would easily balance during a hand recount. Then, Ms. Ross took it upon herself to try to ensure that an overwhelmingly large Democratic population was represented in the recount. Had Ms. Ross been permitted by the rest of the Board to proceed, public perception of the presidential election may have been skewed from reality.

### **Removal of Nader and Camejo From Ballot**

On September 29, 2004, J. Kenneth Blackwell, Secretary of State, issued Directive 2004-37 to all Boards of Elections. (Exhibit J) That directive stated: "Consistent with my Order below rendered yesterday, you are to remove Nader/Camejo from the ballot immediately. You will receive more detailed instructions by the close of business today."

Later that same day, you issued Directive 2004-38 to all boards of elections. (Exhibit K) This directive, in relevant part, stated, "Boards of elections shall remove the names of these joint candidates for president and vice president [Nader and Camejo] from the ballot to the extent practicable in the time remaining before the election and according to the instructions below." The directive continued by saying,

A board of elections shall do one of the following:

- (1) Reprint the ballots without the names of these joint candidates for president and vice president.
- (2) Remove these names from existing ballots by use of stickers or other method adopted by the board as in the case of a withdrawn candidate.
- (3) Post a notice in each precinct where the candidates' names remain on the ballot informing voters that any vote cast for these two candidates will not be counted, if the board determines it is not feasible to remove the two names from the ballots.

Directive 2004-38 states that, "In determining which method to use, a board of elections shall consider all of the following factors: (a) The type of voting system used by the county; (b) The number of precincts and number of ballots, including absentee ballots yet to be distributed; and, (c) The time remaining before election day."

Because the Lucas County Board of Elections used an optical scan voting system in the 2004 general election, the second option given to Boards for handling the removal of Nader and Camejo from the ballot was not feasible. Optical scan tabulating equipment will not read ballots with stickers affixed to them. Ballots with stickers affixed to them will jam optical scanners. Therefore, the Lucas County Board of Elections had only two options available to them. They could have either re-printed their ballots or they could have posted notices in precincts where the candidates' names appeared on the ballots. On the day these directives were disseminated to the Boards, September 29, 2004, Dayton Legal Blank, Inc. was in the midst of printing Lucas County's ballots. When word was received that Nader and Camejo were to be removed from the ballot, Dayton Legal Blank, Inc. had already printed approximately 96,000 ballots for Lucas County, some of which were absentee voter ballots and some of which were precinct ballots.

On September 30, 2004, the Board met in special session to consider and discuss Directive 2004-38. In this meeting, Ms. Ross moved that the Board direct Dayton Legal Blank, Inc. to stop printing its ballots until the Board could obtain additional information on the matter. The motion was seconded by Mr. Thurber and passed 4-0. (Exhibit L) The next day, October 1, 2004, the Board again met in special session. In this meeting, three motions were made and passed in regard to the Nader/Camejo issue. First, Ms.

Ross moved that the Board produce ballots on demand for all military and overseas voters without Nader and Camejo appearing on them. The motion was seconded by Mr. Thurber and passed 4-0. Then, Mr. Ross moved that, of the 96,000 ballots that Dayton Legal Blank, Inc. had already printed with Nader and Camejo appearing on them, the Board should only accept delivery of those that were absentee voter ballots (which comprised approximately 13,360 ballots) and, further, that these absentee voter ballots would only be used on the conditions that Nader's and Camejo's names be crossed out in red, a bright-colored notice be sent with every absentee voter ballot warning that a vote cast for Nader and Camejo would not be counted and, finally, that a similar warning sticker be placed on every identification envelope. The motion was seconded by Mr. Thurber and passed 4-0. Ms. Brown then offered the last motion on this matter. She moved that the Board instruct Dayton Legal Blank, Inc. to re-print all precinct ballots bearing Nader's and Camejo's names that were part of the initial 96,000 ballots already printed and that all future ballots to be printed should also have Nader's and Camejo's names removed. The motion was seconded by Mr. Thurber and passed 4-0. (Exhibit M) Thus, rather than comply with directive as given, the Board chose to pursue a "hybrid" strategy in regard to the Nader and Camejo dilemma.

### **Hospital Voting**

Perhaps the most glaring defect that occurred on Election Day at the Lucas County Board of Elections was the handling of hospital absentee ballots. R.C. § 3509.08 (B)(1) states, in relevant part,

Any qualified elector who is...confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election, may apply to the director of the board of elections of the county where the elector is a qualified elector to vote in the election by absent voter's ballot. This application shall be made in writing and shall be delivered to the director not later than three p.m. on the day of the election.

R.C. § 3509.08 (B)(1) goes on to say "...the director shall arrange for the delivery of an absent voter's ballot to the applicant, and for its return to the office of the board, by two employees..." Furthermore, R.C. § 3509.05 (A) states, "...envelopes containing marked absent voter's ballots, shall be delivered to the director not later than the close of the polls on the day of an election."

In previous years, Board employee Kelly Mettler was responsible for the processing and delivery of hospital ballots. This year, Ms. Mettler was assigned by Ms. Hicks-Hudson to work at the Board of Elections' polling site, located on the first floor of their office building. A seasonal employee was placed in charge of processing hospital absentee ballots in addition to answering incoming telephone calls to the Board on Election Day. The only training the seasonal employee received, given to her the day before the election, was verbal training on how to process hospital absentee requests.

On Election Day, the seasonal employee began processing the hospital requests received the day before along with the requests received throughout the morning. It is still unclear who was assigned the task of supervising the seasonal employee to make sure the requests were being handled properly. To the best of our knowledge, this supervisory function belonged to Ms. Hicks-Hudson and Mr. Loutzenhiser, the Manager of Election Services.

Early in the afternoon, Ms. Mettler left her assigned polling location on the ground floor of the Board's office building and went upstairs to check on the processing of hospital ballots. It became clear to her that the individual working on these ballots was falling behind. At approximately 3:00 p.m., Ms. Mettler and Ms. Scott, Voter Services Supervisor, assigned two other employees to assist in the processing of hospital ballots. By 5:00 p.m. or 5:30 p.m., it appeared they were finally caught up. They began printing the absentee envelopes and pulling ballots. While placing the ballots in the absentee envelopes, it was discovered that some envelopes were missing.

The Board staff then began to compare the absentee requests for hospital voters to what was entered into the database. Soon after, it became evident that one or more of the individuals entering data did not check the "H" box to signify the voter was a hospital voter. Thus, envelopes did not print for those individuals. Once this error was found, the staff went through the hospital requests and entered the "H," while the rest of the ballots were pulled for the volunteers to take to the hospitals.

As a result of the issues addressed above, volunteers were not able to leave the Board office to begin hospital voting until approximately 7:30 p.m. on election night as the polls were closing. The voting of the 211 hospital patients was completed between the hours of 10:45 p.m. on November 2 and 1:30 a.m. on November 3, according to payroll records kept by the Lucas County Board of Elections. (Exhibit N) This was a direct violation of R.C. § 3505.09.

There is no doubt this error was caused by a lack of proper training and supervision by the Board of Elections' leadership team. Neither the Director nor the Deputy Director had previously supervised a presidential election. Thus, they were unable to judge if hospital absentee requests were being processed in a timely manner. Also, there were no written instructions provided to the individuals who entered the absentee hospital requests that resulted in the data processing errors. Finally, according to their election plans, no one was designated as being the person responsible for supervising the processing of hospital absentee requests.

### **Official Canvass – Missing Poll Book**

Not earlier than the eleventh day and not later than the fifteenth day after a general election, Boards are to begin their official canvass of election returns. (See R.C. § 3505.32) During this time, Boards are required to open and count all uncounted ballots and recount the ballots counted on election night. Boards should also examine all poll books, poll lists and tally sheets received from the polling places to ensure that no parts



are missing, incomplete or showing different results than the Boards' unofficial counts. The Lucas County Board of Elections received all poll books, poll lists and tally sheets from their polling places and began their official canvass as required by law.

The official canvass went well the first few days. Then, on Saturday, November 20, 2004, the Swanton 3 poll book turned up missing. Fulltime Board employee, Marjorie Simmons-Davenport, and her partner, Ida Hartford, a seasonal employee, were auditing the Swanton 3 poll book. At some point around the noon hour, they suspended their work, cleaned up their work area and went to lunch. As was the practice of the Lucas County Board of Elections, they left the Swanton 3 poll book on the desk where they were working. When they returned from lunch, they realized the poll book was missing. They began to ask other employees if they knew where it was and notified the Director and Deputy Director. Once Ms. Hicks-Hudson and Ms. Kelly were made aware of the missing poll book, the entire staff was asked to help locate it. No one found the poll book that day, nor has it since been located. The Board should have conducted an investigation into this missing poll book.

### **Campaign Finance**

R.C. § 3517.11 explains where campaign finance statements are to be filed and by whom they are to be reviewed. Specifically, R.C. § 3517.11 (A)(1) describes the circumstances under which campaign committees, political action committees, political contributing entities, political parties and legislative campaign entities must file their campaign finance statements with the secretary of state. All other campaign finance statements are to be filed with local Boards of Elections. R.C. § 3517.11 (A)(2) reads, in relevant part:

Except as otherwise provided in division (F) of section 3517.106 of the Revised Code, campaign committees of candidates for all other offices shall file the statements prescribed by section 3517.10 of the Revised Code with the board of elections where their candidates are required to file their petitions or other papers for nomination or election.

When read in *pari materia*, it can be determined that candidates for local office, political action committees and political contributing entities that only make contributions to local candidates or issues and local political parties must file their campaign finance statements with their local board of elections. R.C. § 3517.11 (B)(4)(a) states, in pertinent part, "The secretary of state or the board of elections shall examine all statements for compliance with sections 3517.08 to 3517.17 of the Revised Code." Here, a simple extrapolation would suggest, correctly, that every campaign finance statement filed with a local Board of Elections is to be examined by employees of that Board of Elections.

When the Board members and employees of the Lucas County Board of Elections were interviewed in January 2005, only a few campaign finance reports from 2003 had been

examined. No campaign finance reports from 2004 had been examined. The Lucas County Board of Elections did not examine one campaign finance report in all of 2004.

It is the opinion of the investigative team that the reasons this occurred are as follows:

- First, the Lucas County Board of Elections is understaffed. The employees responsible for examining campaign finance reports are also some of the most veteran, and therefore, experienced employees in the office. They have skill sets in other areas, such as voter registration and absentee voter ballots. In an extremely busy election year, like 2004, when their skill sets were sorely needed, management pulled them off their campaign finance duties and gave them other tasks.
- Second, neither Ms. Hicks-Hudson nor Ms. Kelly understood the importance of examining campaign finance reports. As is the case in many Boards of Elections, they did not view the examination of campaign finance reports, a statutory mandate, with the same degree of consequence as other statutorily mandated tasks.
- Third, the Board members, like the Director and Deputy Director, either did not understand the importance of this responsibility, or they were unaware of it. Neither of these possibilities is likely, as campaign finance workshops are held at almost every elections conference. Campaign finance workbooks published by the office of the Ohio Secretary of State are distributed to every Board of Elections. In 2003, a campaign finance seminar, conducted by Secretary of State employee Kelly Neer, Assistant Campaign Finance Administrator, was held in the same building in which the Board of Elections is located.

In addition, during the last several years, the Board has referred only one committee to the Ohio Elections Commission. While making referrals to the Ohio Elections Commission may not necessarily be a pleasant task, it is, when warranted, the responsibility of a local board of elections. There is no plausible explanation as to why the Lucas County Board of Elections seldom makes referrals to the Ohio Elections Commission. However, since they fail to properly process campaign finance reports, it would be difficult to perform timely and accurate referrals.

### **Destruction of Public Documents**

R.C. § 149.43 (A)(1) reads, in pertinent part, “Public record means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units...” R.C. § 149.43 (B)(1) states, also in pertinent part:

Subject to division (B)(4) of this section, all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this

section, upon request, *a public office or person responsible for public records shall make copies* available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division. (emphasis added)

Finally, R.C. § 149.351 (A) states, in relevant part:

All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code...

Although some of the details of the following incident are sketchy, the results of the incident are not. Sometime in late September or early October, an employee of the Ohio Republican Party contacted Mr. Thurber in regard to a public records request. The person wanted to inspect and have copies made of all recently returned voter confirmation postcards. Two or three days after contacting Mr. Thurber, representatives of the Ohio Republican Party arrived in Toledo. The facts are somewhat muddled as to exactly when they first appeared at the Board of Elections and with whom they talked in regard to making arrangements for the requested inspection. However, it seems as though Ms. Noe, Mr. Thurber, Ms. Hicks-Hudson and Ms. Kelly were aware of the request and were all somehow involved in negotiations concerning how best to accommodate it. At some point, as arrangements were being made, a representative from the Ohio Republican Party offered to furnish volunteers to assist with the copying of the postcards. The offer was accepted. Apparently, it was collectively decided by Ms. Noe, Ms. Hicks-Hudson and Ms. Kelly that the Ohio Republican Party volunteers would be allowed behind the counter at the Board office and that they would be stationed at a copier for whatever period of time necessary to make the desired copies. In fact, it was related to us that the partisan volunteers were asked by someone at the Board of Elections to make two copies of the returned voter confirmation postcards, one for themselves and one for the Board of Elections. There is some debate among the witnesses interviewed as to whether or not a Board employee was assigned the duty of supervising these volunteers, or at least keeping them under observation. It appears no one can confirm that any employee was given this responsibility.

The first day the Ohio Republican Party volunteers were in the office went well. They stood at the copier, made their copies and were as unobtrusive as possible given their presence in a cramped office. The second day, however, was a different story. On the second day, there were three Ohio Republican Party volunteers present in the office making the copies. Then, as all seemed to be going well, Ms. Jennifer Bernath, the Democratic booth official, saw the Ohio Republican Party volunteers peeling off the

yellow return stickers applied to the postcards by the post office. Ms. Bernath quickly informed Ms. Patrice Webster, Ms. Kelly's executive assistant, what she had observed. Ms. Webster suggested to Ms. Bernath that she inform Ms. Hicks-Hudson. At this time, however, Ms. Hicks-Hudson and Ms. Kelly were both out of the office. They were at the warehouse checking ballots. Ms. Webster then called Ms. Hicks-Hudson and Ms. Kelly at the warehouse and informed them what Ms. Bernath had observed. At the same time, Ms. Lykowski instructed the Ohio Republican Party volunteers to immediately stop what they were doing. Within thirty minutes, Ms. Hicks-Hudson and Ms. Kelly were back in the Board office. Upon their arrival, Ms. Hicks-Hudson told the Ohio Republican Party volunteers to leave.

The Lucas County Board of Elections committed a series of egregious blunders that ultimately resulted in the apparent violation of at least two laws. First, they allowed individuals who were not employees of the Lucas County Board of Elections and who were therefore not responsible for the office's public records to make copies of said records, arguably a violation of R.C. § 149.43 (B)(1). Second, their apparent violation of R.C. § 149.43 (B)(1) resulted in them becoming unwitting participants in the destruction, mutilation and damage of public records belonging to the Board of Elections, arguably a violation of R.C. § 149.351 (A).

### **Election Plan**

Though not required by the Ohio Revised Code, election plans are a basic and essential element of proper Board operations. By having an election plan for the Board staff, the coordination of various tasks and responsibilities relating to the administration of an election is more easily managed. Additionally, the opportunity for overreaction and chaos is less likely.

The management team of the Lucas County Board of Elections did not develop and distribute to the Board members and office staff a comprehensive election plan. The investigative team learned that none of the regular fulltime staff ever received a written election plan. A few employees may have received written confirmation of their Election Day duties. For the most part, any direction the staff received from management regarding the 2004 general election occurred verbally through impromptu staff meetings or in passing conversation.

Upon request, the investigative team received five separate documents that were considered to be the election plan. (Exhibits O, P, Q, R and S) The first document is a one-page election schedule that was posted on the office refrigerator, which lists the Board employees along with their Election Day duties. This document failed to list several important items, such as, to whom the staff should escalate issues, lunch and dinner breaks (only a handful of staff were able to eat on election day) and some Election Day duties, such as the processing of hospital ballots. The second document is a project plan from Diebold Election Systems, Inc., dated August 2003, regarding voting system implementation. A note at the top of the page states, "Tasks That Back Up the Project Plan." Although this document was intended to be used as an implementation plan for

voting systems, and not as an election plan, there are items contained in the plan that should have been, and in some cases were, noted in the election plans. The final three documents received are separate project plans for the November 2004 election. The tasks listed in each document did not always correspond with one another, nor were there always start and finish times for the projects. Though these documents were a step in the right direction, it is clear that not much time or effort was put into developing these plans into one comprehensive, uniform and cohesive document.

### **Administrative Operations**

The recent investigation identified several administrative weaknesses that are contributing factors to the current inefficient operation of the office. These weaknesses have also played a major role in the sagging morale of the employees. Below are a few of the problems that were uncovered:

- **Lack of Communications:** The most common complaint heard from the employees when interviewed was the lack of communications in the office. Examples include the lack of regularly scheduled, all-employee staff meetings and the lack of universal e-mail access within the office. A couple of staff members even said that inner-office communications are so bad that they watch the local news and listen to local radio broadcasts to find out what is happening in their office.
  - **Lack of Regularly Scheduled Staff Meetings:** Staff meetings, when they are held, are called spontaneously and without any formal agenda. They seldom have anything to do with elections, but deal more with human relations issues. Last year, staff meetings were held with such infrequency that, finally, management completely stopped having them about three weeks before the general election.
  - **Lack of Universal E-Mail Access Within Office:** On many occasions leading up to last year's general election, management used e-mail to inform staff of changes regarding election administration processes and/or procedures. Some employees did not (and still do not) have e-mail access. The messages would instruct those employees with e-mail access to share with their co-workers the messages contained in the e-mails. There were numerous occasions when employees without e-mail access did not receive the latest, most up-to-date information from their co-workers. As a result, it was often the case that employees sitting next to each other were applying different standards or rules to the same work before them.
- **Lack of Training and Cross-Training:** Training in the office is scarce at best and non-existent at worse. For new employees, training consists of sitting with a veteran employee and watching him or her work for a few hours to a couple of days, at which time a new employee is then expected to understand his or her job, nuances and all. There are no training manuals provided to employees, be they

new employees or seasoned employees, nor is there cross-training. During the 2004 general election, some employees with valuable skill sets were re-assigned to other areas for cross-training purposes, but they were eventually re-assigned back to the area that would benefit most from their skill sets.

- **Poor Phone System:** In the weeks leading up to last year's general election, the Lucas County Board of Elections installed a new telephone system. The old system was the type where incoming telephone calls were answered by a person. The new system is automated, and the caller is directed to a menu of options for routing the call. The results were less than successful. Employees from the Ohio Secretary of State's office tested the system on two occasions and experienced poor results. On both occasions, the calls were terminated due to being placed on hold for over 45 minutes.

### **Jill Kelly**

Director Kelly, previously the Deputy Director, was, during last year's general election, and continues to be, extremely helpful to and cooperative with the Secretary of State's office. She has repeatedly gone out of her way to seek knowledge and guidance to enable her to do what is best for the Board of Elections. Overall, Ms. Kelly has shown a true and sincere interest in bringing stability and uniformity to the Lucas County Board of Elections.

However, a few staff members did discuss several behavioral concerns they have with Ms. Kelly. Those concerns are:

- Poor staff interaction and lack of interpersonal skills;
- Too much reliance on her executive assistant;
- At times, seems threatening when speaking to staff members; and,
- Uses inappropriate language and demonstrates unprofessional conduct.

### **Previous Administrative Oversight**

When the Lucas County Board of Elections was initially placed on administrative oversight status following the 2002 investigation, the terms of that status required the following:

- A program of supervisory training for the new Director, Deputy Director and all office supervisors as well as an orientation and initial training program for new Board employees;
- A policy whereby the Board conducts regular meetings at least once a month;
- A policy whereby the Director and Deputy Director establishes a practice of conducting regular meetings with supervisors and employees for the purpose of disseminating information;

- The development of a communications plan that addresses how information will be distributed to members of the Board, Board office staff and the Secretary of State; and, finally,
- The development of a plan that addresses the re-organization of the Board office as it pertains to personnel and the improvement of the staff's efficiency through better workload distribution methods.

Following the 2004 investigation of the Lucas County Board of Elections, additional terms were added to the original administrative oversight status. These additional terms required:

- The Board must, where applicable and in consultation with staff from the Secretary of State's office, comply with the terms of the original administrative oversight;
- The Board must adopt and implement policies and procedures governing personnel and elections administration matters as deemed necessary following consultation with staff from the Secretary of State's office;
- The Director and Deputy Director must submit their weekly reports and/or Board members updates to the Secretary of State's office within 24 hours of submission to board members;
- The Director and Deputy Director must submit all approved Board minutes to the Secretary of State's office within 10 business days of their approval; and,
- The Board must be in session every Election Day from 6:30 a.m. until the unofficial count has been tallied and submitted to the Secretary of State's office as required by R.C. 3505.30.

The recent investigation performed after the November 2004 election reveals the status of these mandates:

- Management Training: The Board has partially met this requirement in that it has taken its Directors, Deputy Directors and supervisors to elections conferences and district meetings. However, the Board has not provided its Directors, Deputy Directors and supervisors any in-house training since being placed on administrative oversight.
- Regular, Monthly Board Meetings: The Board consistently fulfills this requirement.

- Staff Meetings: Directors and Deputy Directors, both past and present, have done a poor job in holding regular staff meetings since this Board was placed on administrative oversight.
- Communications Plan: The Board has not fulfilled this requirement.
- New Organization Chart: The Board met this requirement in 2004, but the current organization chart shows some flaws, and it should be revised.
- Personnel Manual: The Board adopted an employee manual in January 2005.
- Elections Administration Manual: The Board has not fulfilled this requirement.
- Timely Submission of Weekly Reports and Board Member Updates: The recent investigation revealed that Ms. Hicks-Hudson, past Director, did not fulfill this requirement. It is unclear if she sent the reports and updates to her Board members, or, if she simply failed to submit them to the Secretary of State's office. The current Director, Ms. Kelly, has been submitting her reports and updates on time as required.
- Timely Submission of Board Minutes: This requirement has not been fulfilled. There is evidence that several months have lapsed between the receipt of Board minutes.
- Board Meetings on Election Days: The Board consistently fulfills this requirement.

### **Recommendation**

After this extensive investigation and review of the irregularities at this Board, it is our recommendation that the members of this Board be removed based upon the authority of the Secretary of State and in accordance with Revised Code § 3501.16 based upon the severity of the issues that they failed to properly manage which constitutes neglect of duty.

### **Summary**

Based on the 13 items identified as areas of grave concern, the Lucas County Board of Elections requires an immediate overhaul of its administrative functions. It is our recommendation that someone be assigned to work directly with this Board to address, implement and monitor all work processes relating to the day-to-day operation of the Board. These activities include, but are not limited to, the following:

- Developing a comprehensive training program for the management staff;
- Scheduling regular staff meetings;



- Addressing communications methods necessary to assure all staff understand and implement required work processes in a uniform method;
- Fine tuning the organization chart;
- Completing a written job description for all staff members; and,
- Creating a timetable for submission of weekly reports and board member updates.

In addition, the person assisting the Board should also oversee all activities associated with preparing for and carrying out a successful election experience for the voters in Lucas County. These activities include, but are not limited to, the following:

- Helping the Board create an Election Administration Manual;
- Identifying by statute and time frame Board activities that are time sensitive by law;
- Developing a compliance plan for adherence to Secretary of State directives and election procedures required of the Board;
- Formulating a plan to ensure the security of the ballot which will include a contingency plan to provide for security alternatives to high volume in voter turn out;
- Producing a plan for managing the work leading up to an election, e.g., the processing of voter registration forms, the hiring of appropriate staff, etc.;
- Developing an election cycle staff plan for Board employees; and,
- Addressing security issues pertaining to voter ballot reconciliation, issuance of hospital ballots, maintenance of poll books and access to public records information.

The Board should remain on Administrative Oversight Status until all of the above issues have been resolved to the satisfaction of the office of the Ohio Secretary of State.