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Husted, Counties Sued to Prevent Planned Destruction of Election Records

Columbus, OH, April 20, 2018 – Ohio voters are suing Secretary of State Jon Husted and the Boards of Election of Franklin and Cuyahoga in order to protect key election materials from next month's primary election that they say the counties plan to destroy.

At issue are the "digital ballot images" created by the digital scanners that tabulate votes on paper ballots. Digital scanners are in use in 15 counties, including Cuyahoga and Franklin. These records are essential for verifying the accuracy of the election results, according to the suit.

"We've had indications that most of the counties that use this technology are following the law and preserving the digital ballot images," said attorney Robert J. Fitrakis of Columbus, who filed the suit yesterday in the Ohio Supreme court. "As a precaution, we're seeking a court order that these crucial records be protected in every county where they exist."

The election scanners in question, manufactured by Election Systems and Software, create a digital image of each ballot scanned. The scanner then reads the votes from the digital image rather than from the paper ballot. According to Fitrakis, this means that the digital images are ballots. Ballots are among the election materials required by law to be preserved.

"This case is simple and there's no reason for it to be controversial," says Fitrakis. "The law is clear. We're simply asking the judge to order Secretary of State Jon Husted and the Boards of Election to follow the law."

Election transparency expert John Brakey, Director of Americans United for Democracy, Integrity and Transparency in Elections (AUDIT-USA), said, "The ballot images feature was created to provide a way to double-check the scanners' vote counts. Scanners often miss votes, like when a voter marks the ballot lightly. We need to be able to look at the digital images to make sure all votes get counted. Obviously, when the digital images have been destroyed, that's not possible." Brakey filed a supporting affidavit in the case. "There's no excuse for destroying these records."

"This is not a partisan issue," said attorney Fitrakis. "Voters in the Democratic, Republican, and Green parties are all involved in this case. One has already filed an affidavit, and the others will be officially joining our suit early next week. This is an issue of fair elections, and that impacts everyone."

Last week, a New York appellate court confirmed a lower court's ruling that digital ballot images are part of the public record. AUDIT-USA was involved in court cases in 2017 in both Arizona and Alabama similar to the one filed here yesterday. In both cases, judges ruled that the digital ballot images must be preserved. In Alabama, however, Secretary of State John Merrill won a stay in the State Supreme Court.

“We’re waiting for the original Alabama court to issue a ruling that will apply to future elections,” Brakey said. “But I have to say we were shocked that a state’s chief election official would go to court to argue for the right to destroy important election materials.”

The digital scanners in use in 15 Ohio counties include a menu that offers options for saving all ballot images, saving only images for write-in votes, and saving no images. The default setting saves all images. Even when “None” is selected, the scanners still create ballot images, but will delete those images after the machine count.

The case asks the judge to order all Ohio counties to select the setting on the scanners that will save all ballot images. This can easily be done in time for next month’s election.

In addition to Cuyahoga and Franklin, the counties that use digital scanners are Auglaize, Belmont, Carroll, Clermont, Fayette, Guernsey, Harrison, Huron, Knox, Mahoning, Monroe, Portage and Summit.

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