

Workers accused of fudging '04 recount

Prosecutor says Cuyahoga skirted rules

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After the 2004 presidential election, Cuyahoga County election workers secretly skirted rules designed to make sure all votes were counted correctly, a special prosecutor charges.

While there is no evidence of vote fraud, the prosecutor said their efforts were aimed at avoiding an expensive - and very public - hand recount of all votes cast. Three top county elections officials have been indicted, and Erie County Prosecutor Kevin Baxter says more indictments are possible.

Michael Vu, executive director of the Cuyahoga County elections board, said workers followed procedures that had been in place for 23 years. He said board employees had no objection to doing an exhaustive hand count if needed, meaning they had no motive to break the law.

Internet bloggers have cried foul since 2004 about election results in Ohio, one of the key states in deciding the election. They have been tracking Baxter's investigation with online posts about the indictments.

Baxter's prosecution centers on Ohio's safeguards for ensuring that every vote is counted.

Baxter charges that Cuyahoga election workers - mindful of the month long Florida recount in 2000 - not only ignored the safeguards but worked to defeat them during Ohio's 2004 recount.

Candidates for president from the Green and Libertarian parties requested the Ohio recount. State laws and regulations specify how a recount works.

Election workers in each county are supposed to count 3 percent of the ballots by hand and by machine, randomly choosing precincts for that count.

If the hand and machine counts match, the other 97 percent of the votes are recounted by machine. If the numbers don't match, workers repeat the effort. If they still don't match exactly, the workers must complete the recount by hand, a tedious process that could take weeks and cost hundreds of thousands of dollars.

But the fix was in at the Cuyahoga elections board, Baxter charges.

Days before the Dec. 16 recount, workers opened the ballots and hand-counted enough votes to identify precincts where the machine count matched.

"If it didn't balance, they excluded those precincts," Baxter said.

"The preselection process was done outside of any witnesses, without anyone's knowledge except for [people at] the Board of Elections."

On the official recount day, employees pretended to pick precincts randomly, Baxter says. Dozens of Cuyahoga County election workers sat at 20 folding tables in front of dozens of witnesses and reporters.

They did the hand and machine count of 3 percent of the votes 34 of the 1,436 precincts and when the totals matched, the recount was completed by machines.

The recount gave Kerry 17 extra votes and took six away from Bush.

But observers suspected that the precincts were not randomly chosen and asked a board worker about it, said Toledo attorney Richard Kerger. The worker acknowledged that there had been a precount.

Kerger wrote a letter to Cuyahoga County Prosecutor Bill Mason, complaining and asking for an investigation. Mason recused himself, and Baxter was appointed special prosecutor. He brought elections workers before a grand jury to find out what happened.

"They screwed with the process and increased the probability, if not the certainty, that there would not be a full countywide hand count," Baxter said.

Everyone expected the recount to "be conducted in accordance of the law," he said.

Vu said the precincts were chosen as they had been in the past, by a Democrat and a Republican in the ballot department.

Because of Baxter's investigation, Vu declined to comment on whether the board's longtime procedures involve precounting precincts before the recount.

Vu acknowledged that the selection of precincts was not completely random because precincts with 550 votes or fewer were not used.

Nor were precincts counted where the number of ballots handed out on Election Day failed to match the number of ballots cast.

Vu said the board also had asked for legal opinions from the prosecutor's office before and after the election to ensure all rules were followed.

Kathleen Martin, who headed the civil division at the prosecutor's office and worked with the board on the issues, has since died.

"If Kathleen Martin was still alive, she could put so much light on this," Vu said.

Regardless, he said, the board was prepared for a full hand recount.

"Why do all that work to prepare for the election, conduct it, audit it, canvass and then not meet this last obligation?" Vu said.

"Our plan was to regroup after Christmas and just work through it."

Baxter has said he can't understand why the three people indicted all managers - continue to work at the election office. None has the same duties they had in 2004.

Kathleen Dreamer was manager of the board's ballot department. Rosie Grier was assistant manager. Jacqueline Maiden was Elections Division director and its third-highest-ranking employee. All have been charged with misdemeanor and felony counts of failing to follow the state elections law.

A May 8 trial date is set for Dreamer and Grier, but Baxter wants to combine all three cases, including Maiden's, who was indicted later.

Kerger said he was surprised by the charges.

"We wrote, not to have any criminal charges, but just to find out what happened," he said. "The special prosecutor has the ability to conduct an investigation and not file any charges."

Kerger said he believes there are two reasons, generally, why an elections board would precount before a recount. The first is to change the results of the vote, which he does not believe happened.

The second, he speculated, was that "the workers were so tired and didn't want to hassle with doing a hand recount."

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