

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

STATE EX. REL DAVID YOST,
ET AL.

Plaintiffs,

v.

NATIONAL VOTING
RIGHTS INSTITUTE, ET AL.

Defendants

And

KERRY-EDWARDS 2004, INC.

Intervenor-Defendant

NATIONAL VOTING
RIGHTS INSTITUTE, ET AL.

Counter-Plaintiffs,

And

KERRY-EDWARDS 2004, INC.,

Intervenor-Counter-Plaintiff

v.

DELAWARE COUNTY BOARD
OF ELECTIONS

And

J. KENNETH BLACKWELL,
Secretary of State of Ohio
30 East Broad Street
Columbus, Ohio 43215

Counter-Defendants

Civil Action No. C2-04-1139
(ES/TK)

Declaration of John C. Bonifaz

I, John C. Bonifaz, declare as follows:

1. I am the founder and general counsel of the National Voting Rights Institute, a non-profit, non-partisan legal center dedicated to protecting the constitutional rights of all citizens to vote and to participate in the electoral process on an equal and meaningful basis. I serve as co-counsel for the defendants and the counter-plaintiffs in this action.
2. On December 6, 2004, counter-defendant Secretary of State J. Kenneth Blackwell certified the statewide results of the presidential election in the State of Ohio in the 2004 general election. Immediately following that certification, presidential candidates David Cobb and Michael Badnarik (counter-plaintiffs in this action) and presidential elector candidate Anita Rios filed formal applications with each of the 88 county boards of elections in Ohio for a full recount of all of the votes cast in Ohio for President in the 2004 general election. Mr. Cobb, Mr. Badnarik, and Ms. Rios also sent a letter to Secretary Blackwell informing him of these applications.
3. Since the filing of these requests, I have learned that there are varying standards throughout the State of Ohio as to how the recount in each of the counties will be conducted. These varying standards raise serious equal protection and due process concerns.
4. Sharon Fisher, the deputy director for the Warren County Board of Elections, has stated that there will not be any hand recount of the ballots

cast for President in Warren County in the 2004 election. Other county boards of elections say that, in accordance with Secretary Blackwell's Directive No. 2004-58 regarding the recount, they will be conducting a hand recount of randomly-selected whole precincts whose total equals at least three percent of the total vote in their respective counties. If that manual count does not match the machine count, Secretary Blackwell's directive instructs that all ballots in such counties must be hand counted. Warren County's plans to conduct only a machine count conflict with this directive and with the standards to be employed by other counties in the state.

5. Michael Hackett, the deputy director for the Franklin County Board of Elections, states that the Board will not be recounting ballots that were not accepted, including provisional ballots that were not accepted. He states that such ballots were placed in sealed envelopes, which have not been opened since the sealing and which will not be opened. Other county boards of elections say they will be recounting all ballots, including those not accepted in the first, initial count.
6. Regina Prater of the Hocking County Board of Elections states that there is no need to send witnesses for the recount because the room is too small and the Democratic Party has it covered. Ohio Revised Code Section 3515 allows each candidate during a recount to assign witnesses to observe the recount. Other county board of elections state they will be complying with the law.

7. Dan Bare, the director of the Clermont County Board of Elections, refuses to reveal in person or by phone when the recount will begin in Clermont County. He states that he has responded to the recount request in a letter sent by certified mail to the candidates and will not give further information. Other county boards of elections are revealing when the recounts will begin in their respective counties upon being asked by members of the public and representatives of the presidential campaigns.
8. Keith Cunningham, the director of the Allen County Board of Elections, states that they will be starting the recount on December 16 at 9 am and that, should there be any discrepancy between the votes counted by hand and by machine in the first three percent of the precincts counted, the Board will not conduct a full hand recount until January 10, 2005. Other county boards of elections have stated they will conduct a full hand recount upon the showing of such a discrepancy and have not stated that such a full hand recount will be delayed for several weeks.
9. The Lorain County Board of Elections, following a request from presidential candidate David Cobb, is allowing access to representatives of the candidate to review poll books at the Board and to count signatures for comparison with official tallies. Other county boards of elections are refusing such access.
10. There is uncertainty whether county Boards of Elections will allow for substitute witnesses during the recount process on any given day. If no substitutes are allowed, candidates' witnesses, most of whom are serving

as volunteers, will need to observe for the full day, which may last eleven hours in at least Franklin County, regardless of whether paid county officials may substitute for each other.

11. There is uncertainty whether county boards of elections will allow a candidate witness for each counting table or only one witness at the Board, regardless of the number of counting tables.
12. There is uncertainty as to how county boards of elections which employed electronic voting machines on Election Day will conduct a recount of the votes cast in such counties without any paper trail. There is also uncertainty as to how the candidates, through their witnesses, will be able to inspect the ballots of such machines.
13. On December 7, 2004, my co-counsel Rick Kerger and I sent a letter via facsimile and via overnight mail, on behalf of Mr. Cobb and Mr. Badnarik, to Secretary Blackwell outlining a series of issues relating to his Outline of Recount Procedures as posted on his official website. We stated in the letter that “resolution of these issues is necessary in order to ensure that the recount is conducted uniformly in the various county boards of election and in accordance with state and federal law.” A copy of that letter is attached to this declaration.
14. On December 7, 2004, Secretary Blackwell issued Directive No. 2004-58 entitled “Recount for the Presidential Election *Only*: November 2, 2004 General Election.” (emphasis in original) In this directive, Secretary

Blackwell re-issued his Outline of Recount Procedures. A copy of that directive is attached to this declaration.

15. Neither Secretary Blackwell nor anyone in his office has responded to our letter of December 7, 2004. By ignoring our letter, Secretary Blackwell has fostered the disparate county practices outlined in this declaration.
16. At least six county boards of elections (Clinton, Coshocton, Fayette, Holmes, Jefferson, and Ottawa) have scheduled their recounts to begin on Monday, December 13, 2004.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

This 10th day of December, 2004.

John C. Bonifaz