

January 3, 2005

**STATEMENT OF JOHN C. BONIFAZ  
BEFORE THE RALLY FOR THE REPUBLIC, FANEUIL HALL, BOSTON**

**General Counsel for the National Voting Rights Institute**

**Co-counsel for presidential candidates David Cobb and Michael Badnarik in their demand for a full and meaningful recount of all of the votes cast for President in Ohio in the 2004 election**

Four years ago last month, the United States Supreme Court stopped the vote counting in the State of Florida and, for the first time, selected the president of the United States. It marked a dark moment in our nation's history.

Since that time, people throughout this country committed to the vision of democracy pledged to never let it happen again – never again would we allow an individual to assume the power of the presidency without the proper counting of all the votes. We are here tonight because we are dangerously close to allowing it to happen again. We are here tonight because we refuse to be silent.

On December 13, 2004, in the state capitol of Ohio, we witnessed a crime – a crime against democracy, a crime against the right to vote, a crime against our Constitution. On that day, Ohio Secretary of State J. Kenneth Blackwell presided over a meeting over a group of individuals who claimed to have won the right to serve as presidential electors for the State of Ohio in the Electoral College. Mr. Blackwell and that group gathered while a recount began of the votes cast in Ohio for President of the United States.

Mr. Blackwell has done everything in his power to push through a slate of electors based on an untested, initial count. In enacting its recount law, the Ohio legislature ensured that a proper counting of all the votes could include a recount. As candidates for the office of President of the United States, David Cobb and Michael Badnarik exercised their right under the law and sought a recount.

Mr. Blackwell had no right to convene a meeting of the Electoral College in Ohio while a recount was underway. And individuals who ran as candidates for presidential electors had no right to cast votes in the Electoral College in Ohio while a recount was underway.

The meeting of the Electoral College in Ohio on December 13 was illegitimate. It was in violation of the United States Constitution. It marked an utter contempt for the promise of democracy and for the rule of law.

We refuse to be silent in the face of this crime.

While Mr. Blackwell presided over this illegitimate gathering in Columbus, he also ignored his responsibility to ensure that the recount would be conducted in accordance with uniform standards as required by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the US Constitution. On December 7, we sent a detailed letter to Mr. Blackwell, on behalf of our clients, outlining a series of key issues that needed to be resolved prior to the start of the recount in order meet the requirement on consistent standards throughout the state for conducting the recount. Mr. Blackwell has yet to respond to the letter.

On December 13 and the days thereafter, the recount began in each of the 88 counties in Ohio. With hundreds of observers on the ground at each county board of elections office, we now know that this recount was not meaningful.

Under Secretary Blackwell's own guidelines for conducting a recount, each county board of elections must randomly select three percent of the total vote in that county and count that three percent by hand. If the three percent hand-count does not match the initial machine count conducted after the election, the board must then proceed to a full hand count of all of the votes in that county.

Of the 88 counties in Ohio, only one conducted a full hand count of the votes in that county. The vast majority of county boards of elections did everything they could to avoid a full hand count. Many did not select on a random basis the three percent to be hand-counted. Some counties altered ballots in order to get the three percent hand count to match the machine count. Others suspended the recount when the three percent hand count did not match the machine count. One summoned the Triad company to bring a new machine to the board prior to resuming the recount. Another simply refused to conduct a full hand count. And in one county -- Hocking County, a technician from the Triad company visited the board of elections office prior to the start of the recount and tampered with the central tabulator machine; he advised board of elections officials on how to post a "cheat sheet" on the wall so that the three percent hand count would match the machine count.

In light of this evidence from Hocking County, Congressman John Conyers, Jr. has asked the FBI to investigate the potential tampering of voting machines prior to the start of the recount. The Triad company provides the voting machines for 41 of the 88 counties in Ohio. We have filed a motion before the federal district court in Columbus seeking a court order preserving all ballots and election machinery in Ohio, as is required by federal law for 22 months after a federal election. We have also filed a motion for expedited discovery to investigate further the Triad company's potential tampering and destruction of voting materials in the 2004 election.

County board of elections in Ohio not only applied inconsistent standards to avoid a full hand count of all the votes. They also applied inconsistent standards on which votes to count.

Some counties allowed observers to view rejected provisional ballots. Others did not. Some counties allowed observers to view rejected ballots based on alleged undervotes or overvotes. Others did not. Some counties allowed observers to view rejected absentee ballots. Others did not.

This was not a meaningful recount. It was not conducted in accordance with uniform standards throughout the state. It was not conducted in accordance with the equal protection and due process guarantees under the US Constitution.

We demand a new recount. Last Thursday, on behalf of our clients, presidential candidates David Cobb and Michael Badnarik, we filed papers before the federal district court in Columbus documenting the inconsistent standards applied during the recount in Ohio. We requested that the court enjoin Secretary Blackwell from formally declaring the final results of the presidential election in Ohio until a new recount is completed in accordance with uniform standards throughout the state. On December 10, this same court stated that, upon a showing of a violation in the conduct of the recount, it would consider a request for ordering a new recount. That request has now been made and is pending before the court.

There has yet to be a proper counting of all of the votes cast for President in Ohio in the 2004 election. Until a full and meaningful recount has been completed – as required by state and federal law, it is premature for the United States Congress to count the Electoral College votes from Ohio. In a democracy, votes must count and every citizen's vote must be counted.

The nation is at a crossroads. We can stand by while our democracy erodes around us. Or we can stand up and fight. For the dignity of our nation and ourselves, and for the memory of those who have struggled before us, we must choose to fight. Count every vote.