

**STATEMENT BY JOHN C. BONIFAZ, FOUNDER AND GENERAL COUNSEL  
OF THE NATIONAL VOTING RIGHTS INSTITUTE**

**BEFORE THE CONGRESSIONAL FORUM,  
“PRESERVING DEMOCRACY – WHAT WENT WRONG IN OHIO,”  
LED BY THE HON. JOHN CONYERS, JR., RANKING MEMBER,  
COMMITTEE ON THE JUDICIARY,  
UNITED STATES HOUSE OF REPRESENTATIVES**

**WEDNESDAY, DECEMBER 8, 2004,  
2237 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C.**

My name is John Bonifaz. I am the founder and general counsel of the National Voting Rights Institute based in Boston, a national non-profit, non-partisan organization dedicated to protecting the constitutional right of all citizens to vote and to participate in the electoral process on an equal and meaningful basis. We serve as co-counsel for Green Party presidential candidate David Cobb and Libertarian Party presidential candidate Michael Badnarik in their demand for a full recount of all votes cast in Ohio for President in the 2004 general election.

Congressman Conyers and other members of the committee: Thank you for holding this critical hearing today and thank you for your leadership.

In a democracy, votes must count and every citizen's vote must be properly counted. Our clients, David Cobb and Michael Badnarik, have demanded a full recount of all of the votes cast in Ohio for President in the 2004 election. They are standing up for all of us to help ensure a proper counting of the votes and to protect the integrity of our electoral process. We at the National Voting Rights Institute are proud to represent them, along with voters across the state and Common Cause/Ohio in support of the recount.

But certain election officials in Ohio have been standing in our way.

Under Ohio state law, candidates Cobb and Badnarik are entitled to seek a recount provided that they post the necessary bonds to help pay for it. People throughout the state of Ohio and this nation have contributed the required \$113,600 for the posting of the bonds. Candidates Cobb and Badnarik have a right to this recount. We, as a people, have a right to this recount.

On November 17, 2004, we sent an overnight letter, on behalf of our clients, to Ohio Secretary of State J. Kenneth Blackwell and to the directors of each of the 88 Ohio County Boards of Elections. The letters asked that they immediately initiate appropriate

procedures for starting the recount and that the recount be promptly initiated following the formal applications for the recount and the posting of the necessary bonds with each county board of elections. The letters highlighted the importance of a prompt initiation of the recount in light of the impending timetable with the casting of the presidential electors' votes for President. The letters further requested a response by noon on Friday, November 19, 2004, and that the response include whether they would commence the recount procedures in advance of the statewide certification, upon receipt of the bonds at the county boards of elections.

On November 18, 2004, candidates Cobb and Badnarik, through their counsel, filed, via overnight delivery for arrival on November 19, 2004, formal applications for a full recount with each of the 88 county boards of elections in Ohio. The applications included the posting of the necessary bonds with each of the county board of elections.

On November 19, 2004, plaintiffs' counsel received a letter from Monty Lobb, Assistant Secretary of State of Ohio. The letter stated that Secretary Blackwell refused to have the recount initiated or any recount procedures initiated prior to his certification of the statewide vote. The letter did not answer the candidate plaintiffs' concerns about the need to conduct a meaningful recount in a timely manner prior to the casting of the presidential electors' votes for President.

That following Monday, November 22, 2004, we filed a federal lawsuit in federal district court in Toledo against Secretary Blackwell on behalf of candidates Cobb and Badnarik, and on behalf of voters across the state of Ohio and Common Cause/Ohio, seeking to expedite the recount process so that it might be completed in time for the meeting of the presidential electors at the Electoral College on December 13. On November 23, 2004, the federal district court denied our motion for a preliminary injunction ordering an expedited process on the grounds that candidates Cobb and Badnarik would not suffer irreparable harm if the recount were not completed by the time of the Electoral College meeting.

On the same day of the federal court's ruling, the county prosecutor for Delaware County, on behalf of the Delaware County Board of Elections, filed a lawsuit in state court against Mr. Cobb, Mr. Badnarik, and our organization, the National Voting Rights Institute, serving as co-counsel for Cobb and Badnarik. The lawsuit sought a court order preventing us from seeking a recount in that county, based on an argument, irrespective of Ohio state law, that a recount was unnecessary and too expensive. Without any notice to the parties being sued, a common pleas court judge issued a temporary restraining order preventing us from seeking a recount in that county. The temporary restraining order was to expire at noon on Wednesday, December 1, 2004, and the common pleas court judge scheduled a hearing for that time on the plaintiffs' motion for an injunction extending the temporary restraining order.

On November 30, 2004, we filed papers in federal district court in Columbus removing that case from state court on the grounds that it raised federal questions and, therefore, belonged in federal court. In addition, on that same day, the Kerry Edwards 2004

campaign filed a motion to intervene in the Delaware County case in defense of the right to a recount.

On December 1, 2004, the federal district court in Columbus held a preliminary conference call with all counsel in the Delaware County case. The court ruled that it would allow the temporary restraining order to expire that day and scheduled a hearing on the pending preliminary injunction motion for Friday, December 3, 2004.

On December 2, 2004, we filed counterclaims in that case against the Delaware County prosecutor, the Delaware County Board of Elections, and Secretary Blackwell, whom we added as a counter-defendant. We argued that Secretary Blackwell and the other counter-defendants were depriving our clients' rights, under Article II of the US Constitution and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the US Constitution, to a meaningful and timely recount of all of the votes cast for President in Ohio in the 2004 election. We also filed a motion for a preliminary injunction seeking to expedite the recount process, in light of the new presence by the Kerry Edwards campaign in the case.

On December 3, 2004, the federal district court in Columbus, following a two-hour hearing, issued a ruling denying the Delaware County prosecutor and Delaware County Board of Elections their motion for a preliminary injunction seeking to stop the recount in that county. The court recognized the candidates' right to a recount. However, the court also denied our motion seeking to expedite the process, chiefly on the grounds that Senators Kerry and Edwards were not separately petitioning for a recount and, through their counsel, had stated that they would not do so. While there will be a recount in Ohio, the federal judiciary has, unfortunately, refused to intervene to ensure that it will be completed by the time of the Electoral College meeting.

Secretary of State J. Kenneth Blackwell has been actively engaged in thwarting the recount law. He has done everything in his power to deny our clients from having a meaningful and timely recount. It took a full 34 days after the November 2<sup>nd</sup> election for Mr. Blackwell to certify the statewide results of this election. Thirty-four days prior to certification. The Ohio recount law states that candidates shall file their requests for a recount within five days after the Secretary certifies the statewide results. Mr. Blackwell knows that, which is why he delayed his certification until this past Monday, December 6.

Secretary Blackwell's office stated that on December 7 he would be sending out certificates to the presidential electors for their casting of the votes at the Electoral College on December 13. These dates are created by federal statute. Mr. Blackwell knows that. He intentionally allowed no time for a recount to occur before he sent out the certificates to the presidential electors on December 7 and before the Electoral College meets on December 13. Mr. Blackwell, who also serves as co-chair of the Bush-Cheney 2004 campaign in Ohio, has done everything he can to push through a slate of electors based on an untested, initial count of the vote.

He should be stopped. While the courts will not expedite this recount process, we have a message today for Mr. Blackwell:

In the name of democracy, in the name of the right to vote, in the name of the Constitution, let the recount process proceed to its completion before the Electoral College meets. Let the recount process proceed to its completion prior to the casting of Ohio's Electoral College votes.

Presidential electors serve a term of office. It is a one day term. They show up to meet to cast their state's electoral votes in the Electoral College. They derive their power from the people of each state. They represent the will of the voters.

If a recount process is proceeding, by definition, the will of the voters remains undetermined. No presidential elector has the right to assume his or her term of office until a final determination of the vote count is made. And no secretary of state has the right to certify the presidential electors until a final determination of the vote count is made. In a democracy, votes must count.

We will have a recount in the State of Ohio. As of today, we have re-filed with every county board of elections and with Secretary Blackwell our clients' demand for a recount along with necessary bond payments with each county as required under Ohio state law. This recount process will now begin. And even if the Electoral College meets on December 13, the recount process will continue. And if, at the end of the recount process, it is determined that a different set of presidential electors should be representing the people of Ohio, that set of electors will meet and will cast their votes for President. And if that happens, the United States Congress will receive the votes of two competing sets of presidential electors from the state of Ohio when it convenes on January 6, 2005, to formally receive the Electoral College votes. One slate will be chosen by Mr. Blackwell. The other will be chosen by the will of the people of Ohio. We will have a recount. And the fight will go on.

We stand with citizens all across Ohio and all across this country in this fight for democracy. We urge people to please visit our website, [DefendTheRecount.org](http://DefendTheRecount.org), to join our legal defense fund and to sign up for updates on the legal fight. We need the help of people around the country to make this fight possible. [DefendTheRecount.org](http://DefendTheRecount.org)

Mahatma Gandhi once said:

First, they ignore you. Then they laugh at you. Then they fight you. Then you win.

They are no longer ignoring us. They are no longer laughing at us. They are fighting us now. And we're going to win. The right to vote will win. The Constitution will win. Democracy will win. Count every vote.

*For more information on the legal defense of the Ohio recount, see [www.defendtherecount.org](http://www.defendtherecount.org)*