

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,

v.

DELAWARE COUNTY BOARD  
OF ELECTIONS

And

J. KENNETH BLACKWELL,

Counter-Defendants

---

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

DEFENDANTS/COUNTER-PLAINTIFFS'  
MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, defendants/counter-plaintiffs the National Voting Rights Institute, David Cobb and Michael Badnarik move for a temporary restraining order and preliminary injunction requiring counter-defendant Ohio Secretary of State Blackwell to prescribe and require the eighty-eight Boards of Election to use adequate, fair and uniform standards and instructions for conducting the state-wide recount in Ohio to ensure that they accurately, fairly and finally determine the results of the 2004 election for the President of the United States. Defendants/counter-plaintiffs file in support of this motion the accompanying memorandum of law, declaration, and a proposed order.

Defendants/counter-plaintiffs request that this motion be heard this afternoon, December 10, 2004, at 3:45 p.m.

Dated: December 10, 2004

Respectfully submitted,

---

Richard Kerger, Ohio Bar #  
Kerger & Kerger  
33 South Michigan Street, Suite 201  
Toledo, OH 43602  
(419) 255-5990 telephone  
(419) 255-5997 facsimile

John C. Bonifaz\*  
National Voting Rights Institute  
27 School Street, Suite 500  
Boston, MA 02108  
(617) 624-3900 telephone  
(617) 624-3911 facsimile

*Counsel for Defendants David Cobb,  
Michael Badnarik, and the National  
Voting Rights Institute*

*\*Admitted pro hac vice*

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,

v.

DELAWARE COUNTY BOARD  
OF ELECTIONS

And

J. KENNETH BLACKWELL,

Counter-Defendants

---

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

**[PROPOSED] ORDER**

Upon consideration of defendants/counter-plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, the accompanying papers, any opposition thereto, the entire case herein, and, after a hearing on the motions, the Court finds that (i) counter-defendant has issued procedures for the recount of the 2004 Presidential election, which procedures are inadequate to provide a uniform and fair statewide recount, as demonstrated by the disparate interpretations of these procedures by various Ohio counties; (ii) the harm to defendants/counter-plaintiffs in the absence of an injunction – the violation of the right to equal treatment and fundamental fairness as guaranteed by the Equal Protection and Due Process clauses of the Constitution if the recount is conducted without uniform and fair standards and instructions-- is not reparable; (iii) the injunction would not cause substantial harm to others; and (iv) the public interest is clearly served by a uniform and fair recount of the votes cast for the Presidential electors in Ohio, in which all votes are given equal treatment, in the 2004 Presidential election. Accordingly, it is this \_\_\_\_\_ day of December 2004

ORDERED that defendant/counter-plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is GRANTED; and it is further

ORDERED that the Secretary of State of Ohio is enjoined to prescribe adequate, uniform and fair standards and instructions to be used in the recount of the 2004 Presidential election; and it is further

ORDERED that the Secretary of State of Ohio direct the Boards of Elections in each county of Ohio to use such recount standards and instructions prescribed by the Secretary of State; and it is further

ORDERED that the recount standards and instructions prescribed by the Secretary of State address the issues raised in the December 7, 2004, letter from counsel for David Cobb and Michael Badnarik to Secretary Blackwell, attached to this Order.

Dated: December \_\_\_\_, 2004

---

UNITED STATES DISTRICT JUDGE