

**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 Lynne Serpe

I, Lynne Serpe, declare as follows:

1. My name is Lynne Serpe. I serve as the campaign manager for the 2004 presidential campaign of Green Party presidential candidate David Cobb. In that capacity, I also serve as the state coordinator for the Cobb campaign of the recount of the 2004 presidential vote in Ohio as requested by Mr. Cobb and Libertarian Party presidential candidate Michael Badnarik.
2. As the state coordinator for the Cobb campaign of the recount, I have supervised a team of regional coordinators throughout the state and hundreds of volunteers who have served as witnesses of the recount at the county level. I have received numerous reports from witnesses throughout the state of Ohio as to how the recount has been conducted at the county level. These reports demonstrate that county Boards of Elections in Ohio have not conducted this recount in accordance with uniform standards, leading to inconsistent practices throughout the state. I will summarize in this declaration the key points highlighting these inconsistencies.

Inconsistent Standards in Selecting the Initial 3% Hand Count: Many County Boards of Elections Did Not Randomly Select the Precinct Samples

3. Mr. Keith Cunningham, Director of the Allen County Board of Elections, explained that it would take considerably longer to carry out the recount if there were a random selection process employed. Instead, the Board pre-selected four precincts, totaling slightly more than the required three percent,

for the recount. The Green Party and Democratic Party witnesses raised objections but to no avail.

4. The Clermont County Board of Elections selected the 3% precinct samples by choosing the thirteen precincts with lowest number of voters plus the next number of precincts that reached the total of 3% of the total votes cast in that county. This selection process eliminated larger and more diversified precincts. The staff of the Board admitted that small precincts were chosen because fewer problems would be encountered in smaller precincts. A Green Party witness objected to this selection process, but to no avail.
5. The Cuyahoga County Board of Elections decided to choose only precincts with 550 votes or more and from a cross-section of areas — one East side, one West side, one affluent, one non-affluent. This criteria left only eight percent of precincts available to be selected. In addition, witnesses observed that the ballots were not in a random order, and that they had been previously sorted. As the ballots were fed into the counting machines, there were long runs of votes for only one candidate and then long runs for another, which seemed statistically improbable.
6. The total number of votes cast in Morrow County was 16,694. Three percent of this would be 501. The Morrow County Board of Elections selected the Harmony Township precinct for the initial hand count because it had 517 ballots cast. When observers complained this was not random, the Board responded that it had the right to select the precinct. During this discussion,

- an election official with the Board called the Secretary of State's office and reported that the Secretary of State's office stated that the Board was correct.
7. The Hocking County Board of Elections met and Rod Hedges, a Republican Board member stated that he believed the Board should select a precinct that was not heavily in favor of George W. Bush or John F. Kerry. The Board decided to consider only the precincts where the vote totals for Bush and Kerry were similar. The Green Party observer objected that this was not a random selection, but to no avail.
 8. Election officials in Medina County were aware of several "problem" districts, but instead chose to perform the manual 3% test recount on two precincts that had been part of a school levy recount the previous Monday. That meant that those ballots had been taken out of the standard "double lock" situation and had been handled several times since that Monday.
 9. The Board of Elections in Vinton County selected a precinct 3% manual recount test simply because its vote total was closest to 3% of the total votes cast in the county.
 10. The Summit County Board of Elections selected precincts randomly with the Director and Deputy Director of the Board of Elections and two other Board employees present, both of whom were IT specialists for the Board so that they could compute the three percent. The Board shuffled 475 precinct cards and then chose randomly from the pile. The Summit County Board of Elections conducted this selection without any recount witnesses present.

11. The Brown County Board of Elections only had a certain number of precincts which were not too large for the three percent sample, so the Board put these in a hat and had the observers pull them out until the number equaled at least three percent, constituting a random selection.
12. In Athens County, the Board of Elections wrote the names of all of the precincts on equal size pieces of paper, placed all of the pieces of paper in a coffee can and drew randomly until it had reached the required 3% of the total votes cast in the county.

Inconsistent Standards in Applying the Full Hand Count Requirement: Counties Not Conducting Full Hand Count After 3% Hand and Machine Counts Did Not Match

13. In Monroe County, the 3% hand-count failed to match the machine count twice. Subsequent runs on that machine did not match each other nor the hand count. The Monroe County Board of Elections summoned a repairman from Triad to bring a new machine and the recount was suspended and reconvened for the following day. On the following day, a new machine was present at the Board of Elections office and the old machine was gone. The Board conducted a test deck run followed by the 3% hand-counted ballots. The results matched this time and the Board conducted the remainder of the recount by machine.
14. In Fairfield County, the hand recount of the 3% test sample did not match the machine count, even after two attempts. The Board suspended the recount and stated that Secretary Blackwell recommended that the recount should begin again "from scratch." The Green recount observers were then told that

it was 4:00 PM, the building was closed, and all had to leave. The Republican recount observers, however, were allowed to stay in a conference room for an additional ten minutes or so for a private discussion. When the Board reconvened a few days later, it announced that it would be conducting a machine count of the county's votes. When a Green Party observer objected, she was told by the Board that she was not allowed to speak.

Inconsistent Standards in the Treatment of Ballots: Some Counties Marking Ballots and Some Counties Not Securely Storing Ballots

15. In Washington County, the Board of Elections had, in the first count, excluded ballots which included no votes and overvotes. During the recount, the Board altered many such ballots to make them work. The Green Party observer protested this practice. An election official pulled a black marker from his right pocket near the beginning of the recount and stated that he was the mark-up man. He proceeded to do all of the marking of the ballots. Another election official assisted with the "band-aids". The Green Party observer noted that all the re-marking and band-aiding of ballots did reflect the will of the voter, with one exception. In the precinct Belpre 4A, a voter had both marked the oval and put an X through it for presidential candidate Michael Peroutka and had marked the oval for Bush. The election official put a band-aid over the Peroutka vote and put his own X on the Bush vote. The Green Party observer objected that it should be counted as an overvote. The Board ruled that the vote should count for Bush.

16. In Lucas County, the Green Party observer witnessed the physical alteration of three ballots for the apparent reason of ensuring that the vote count produced by the optical scan machine would match the 3% hand count. At least one of the election officials stated that she did not want the hand count and machine count to be different because they did not want to do a complete hand count. The Board made the alterations to the ballot after determining the intent of the voters. Following a lunch break during the recount, the Board kept recount observers waiting while a technician from the Diebold company reprogrammed the machine.
17. In Ashland County, ballots cast in the presidential election were stored by precinct in open cubicles along one wall in the employee lunchroom/meeting room, completely open and visible to anyone who enters the room. Piled on top of the cubicles were bags of Doritos, mugs, cleaning products, Glad Wrap and other miscellaneous items. Board of Election officials said the room was kept locked, except when used.
18. In Greene County, the Board of Elections' office was found open on the Saturday prior to the recount; the police were called to the scene.
19. In Coshocton County, the Board stored voted ballots mixed with blank, unused ballots in partially-opened boxes, unsealed at the time of observation and apparently never sealed after the election. While ballots were stored in a locked room, all Board employees had keys to the room.
20. In Hocking County, a representative from the Triad company was allowed unsupervised access to the tabulation room at the Board of Elections' office

prior to the start of the recount. The Triad technician disassembled the computer and asked election officials which precinct had been selected for the 3% hand count. He advised the staff of the Board how to post a "cheat sheet" on the wall so that the hand count would match the machine count. The Hocking County Board of Elections placed ballots in a storage area with both a "Democratic Lock" and a "Republican Lock." This lock system was shown to be irrelevant when one key opened both locks.

21. In Belmont County, the Deputy Director of Elections stated that her county had hired an independent programmer ("at great expense") to reprogram the counting machines so that they would only count votes for President during the recount.
22. In Harrison County, a representative of the Triad company reprogrammed and retested the tabulator machine and software prior to the start of the recount. The Harrison County tabulating computer is connected to a second computer which is linked to the Secretary of State's Office in Columbus. The Triad technician handled all ballots during the machine recount and performed all tabulation functions. The Harrison County Board of Elections kept voted ballots and unused ballots in a room open to direct public access during daytime hours when the courthouse is open. The Board had placed voted ballots in unsealed transfer cases stored in an old wooden cabinet that, at one point, was said to be lockable and, at another point, was said to be unlockable.
23. In Union County, the hard drive on the vote tabulation machine, a Triad machine, had failed after the election and had been replaced. The old hard

drive was returned to the Union County Board of Elections in response to a subpoena.

24. In Fulton County, the Director of the Board of Elections stated that the Triad company had reprogrammed the computer by remote dial-up to count only the presidential votes prior to the start of the recount.
25. In Portage County, all ballot boxes were locked and reopened, locked and reopened again – always in plain sight – and transported methodically from the visual inspection area to the tabulator room.

Inconsistent Standards in the Treatment of Witnesses at the Recount

26. In Summit County, recount witnesses were threatened with expulsion if they spoke to counting teams. In some instances, they were expected to "observe" from up to 20 feet away, which prevented them from being able to actually observe recount.
27. In Huron County, the punchcard tabulator test was observed only by Republican witnesses. This test was conducted the day before the Green Party witness was invited to observe the recount.
28. In Putnam County, Board of Elections officials told the Green Party observer that their Board would meet on December 15th to decide the start date. When the observer called back on the 15th, she was told the recount had already taken place.
29. In Portage County, the Board treated the recount witnesses with respect, allowed them to see anything they missed, and allowed them to set the pace of the recount.

Inconsistent Standards in the Treatment of Access to Provisional and Absentee Ballots

30. In Allen County, observers were not allowed to examine provisional ballots and absentee ballots during the recount. The Board told them that they must make an appointment at a later time working around the Board's schedule. The Board further stated that only the specific person who cast such a ballot is allowed to inquire whether his or her vote was counted.
31. In Holmes County, observers asked to see the spoiled ballot pile, comprised of five ballots, but the Board denied access, stating that they were in a sealed envelope that could not be opened.
32. In Licking County, the Board denied observers access to view provisional and absentee ballots.
33. In Mahoning County, the Board denied observers access to view rejected absentee ballots.
34. In Medina County, the Board denied observers access to view provisional ballot tallies, provisional ballots, and the actual machines and ballot booklets used.
35. In Morgan County, 30 of 160 provisional and absentee ballots were not counted, and the Board denied observers access to view these ballots. The Board stated that these ballots were locked away and would be destroyed 60 days after the election.
36. In Stark County, the Board denied an observer request to view the provisional ballots.

- 37. In Warren County, the Board denied an observer request to view provisional and absentee ballots. The observer has requested that the Board have this decision reviewed by the county prosecutor and the Board is now awaiting the county prosecutor's decision.
- 38. In other counties, such as Pickaway County, the Boards of Elections granted the recount observers access to view provisional and absentee ballots which had been rejected in the initial count.

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 22 day of December, 2004.


 Lynne Serpe