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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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December 22, 2004

By Fax (937-376-3078) and Mail

Brett A. Rapp  
President  
Triad GSI  
358 S. Monroe Street  
Xenia, OH 45385

Michael Barbian, Jr.  
Ohio Field Representative  
Triad GSI  
358 S. Monroe Street  
Xenia, OH 45385

Dear Mr. Rapp and Mr. Barbian:

I have just reviewed a tape prepared by the documentarian Lynda Byrket of the hearing held by the Hocking County Board of Elections on December 20, and based on that tape I have more questions and concerns than ever about the conduct of your firm in connection with the Ohio presidential election and recount. In particular, I am concerned that your company has operated – either intentionally or negligently – in a manner which will thwart the recount law in Ohio by preventing validly cast ballots in the presidential election from being counted.

You have done this by preparing “cheat sheets” providing county election officials with information such that they would more easily be able to ignore valid ballots that were thrown out by the machines during the initial count. The purpose of the Ohio recount law is to randomly check vote counts to see if they match machine counts. By attempting to ascertain the precinct to be recounted in advance, and than informing the election officials of the number of votes they need to count by hand to make sure it matches the machine count is an invitation to completely ignore the purpose of the recount law.

You as much as admitted that this was your purpose at the December 20 hearing:

Rapp: “Remember: the purpose was to train people on how to conduct their jobs... and to help them identify problems when they conducted their recount... **If they could not hand recount the ballots correctly, they would know what they needed to look for in that hand count.**”

[break]

Observer: “Why do you feel it was necessary to point out to a team counting ballots the number of over-votes and under-votes when the purpose of the team is to in fact locate those votes and judge them?”

Barbian: “It’s an easy mistake as you’re hand counting... It’s just human error. **The machine counts it right.**... We’re trying to give them as much information as possible to help them out.

[break]

Interviewer: “**You were just trying to help them so that they wouldn’t have to do a full recount of the county, to try to avoid that?**”

Barbian: “**Right.**”<sup>1</sup>

It would be very helpful to me, if you could explain what you meant by the above statements, since on their face, they would appear to indicate an effort to thwart the Ohio recount law.

Beyond, this question, and notwithstanding your general assertions that you did not tamper with any votes or violate any law, it appears that notwithstanding the abbreviated hearing of the Hocking County election board, a number of questions and issues regarding Triad’s actions remain unanswered. In order to help resolve these doubts and concerns, I would ask that you respond to the following questions.

#### Additional Questions Concerning Hocking County

1. Did Mr. Barbian ask Ms. Eaton or any other representative of the Hocking County Election Board to notify him of the precinct or precincts which were to be recounted by

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<sup>1</sup>Preliminary Transcript, Hocking County Board of Elections Meeting, December 20, 2004, on file with the House Judiciary Democratic Staff.

hand prior to the recount on December 13? Were any similar requests made in other counties? If so, which ones? At the hearing, Mr. Barbian stated that he required this information to serve as a “sample.” However, the Eaton affidavit appears to indicate that he sought the information on the precinct to be recounted, not a sample precinct.

2. Did Mr. Barbian advise Ms. Eaton or any other representative of the Hocking County Election Board as to how to post a “cheat sheet” to insure that the hand count would match the machine count? Was any similar advice proffered by your staff in other counties? If so, which ones? Again, at the hearing, you indicated that you were merely providing information to the Board, however, it appears that the information was specifically designed to help them avoid completing a full recount by disregarding any valid ballots that were not counted by the machines on election night.
3. At the hearing, Mr. Rapp indicated that you could not comment on any matters beyond giving information to the Board of Election workers since it was “interpretational.” Please explain what you mean by this, given that the Eaton affidavit appears to attribute specific statements to Mr. Barbian that go above and beyond giving information to the Board.
4. Did Mr. Barbian advise Ms. Eaton or any other representative of the Hocking County Election Board that he would put a “patch” on the election machinery? If so, why? Was any similar advice proffered by your staff in other counties? If so, which ones?
5. Did Mr. Barbian advise Ms. Eaton or any other representative of the Hocking County Election Board that he would be visiting to go over questions that attorneys would be asking in connection with the recount? If so, was any legal information of this nature ever given to representatives of the Hocking County Election Board prior to the December 20 hearing?
6. Please describe any other disagreements you have with the attached affidavit by Sherole Eaton.
7. Please provide me with a copy of your service agreement with the Hocking County Board of Elections and the structure and files of the machines in question.
8. Was Mr. Barbian placed on any administrative or other leave status as a result of his actions relating to the recount or any publicity relating to these matters?

#### Additional Questions Concerning Other Ohio Counties

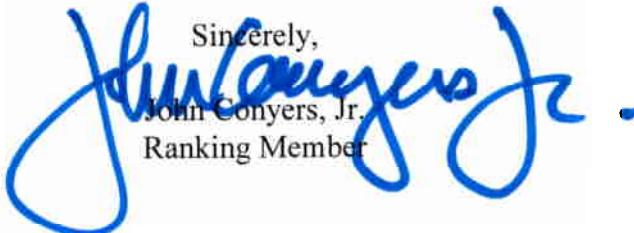
9. In which counties in Ohio did Triad personnel interact with election machinery after the November 2 election and before the recent presidential recount. Please state the counties and the personnel.
10. Our research indicates that any handling of ballots – which are defined by the Ohio Code

to include election machinery<sup>2</sup> – may only be done in the presence of the entire election board and qualified witnesses.<sup>3</sup> In addition, any modification of the election machinery may only be done after full notice to the Secretary of State.<sup>4</sup> When your staff made adjustments to the election machinery in Hocking and the other 40 Ohio counties, was the entire election board present? If not, why not? Did you provide any notice of any of the actions you took to the Secretary of State? If so, please provide us with copies. If not, why not?

11. To what extent did Triad provide election results to the Secretary of State's office on or immediately after election day for Hocking or any other county?
12. Please note which if any of the 41 counties Triad services for election matters contacted your firm prior to the recount. Was there any cost associated with your services concerning the recount? If so, how were such costs paid for.

I know that Triad is as eager as anyone to resolve this matter as promptly and completely as possible. Your response to the above questions will go along way towards resolving many of the concerns that have been raised with respect to Triad's involvement in the election.

I would therefore appreciate receiving a response by December 29, 2004. Please respond to me through Perry Apelbaum or Ted Kalo of my Judiciary Committee staff, 2142 Rayburn House Office Building, Washington, D.C. 20515 (tel. 202-225-6504, fax 202-225-4423).

Sincerely,  
  
John Conyers, Jr.  
Ranking Member

Enclosures

cc: The Hon. F. James Sensenbrenner, Chairman, House Committee on the Judiciary  
Mr. Kevin R. Brock, FBI Special Agent in Charge  
Atty Larry Beal, Hocking County Prosecutor

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<sup>2</sup>The Ohio Code defines a ballot as “the official election presentation of offices and candidates...and the means by which votes are recorded.”OHIO REV. CODE § 3506.01(B) (West 2004).

<sup>3</sup>OHIO REV. CODE § 3515.04 (West 2004).

<sup>4</sup>The Ohio Code and applicable regulations specify that after the state certifies a voting system, changes that affect “(a) The method of recording voter intent;(b) Voter privacy; (c) Retention of the vote; or the (d) Communication of voting records,” must be done only after full notice to the Secretary of State. OHIO ADMIN. CODE § 111:3-4-01 (2004).