
From the Congress

Conyers Report: 'What Went Wrong in Ohio'

The following is the Executive Summary of "Preserving Democracy: What Went Wrong in Ohio," a report by the House Judiciary Committee Democratic Staff of Jan. 5, 2005. The full report, 102 pages long, is available at the Committee's website.

Representative John Conyers, Jr., the Ranking Democrat on the House Judiciary Committee, asked the Democratic staff to conduct an investigation into irregularities reported in the Ohio presidential election and to prepare a Status Report concerning the same prior to the Joint Meeting of Congress scheduled for January 6, 2005, to receive and consider the votes of the electoral college for president. The following Report includes a brief chronology of the events; summarizes the relevant background law; provides detailed findings (including factual findings and legal analysis); and describes various recommendations for acting on this Report going forward.

We have found numerous, serious election irregularities in the Ohio presidential election, which resulted in a significant disenfranchisement of voters. Cumulatively, these irregularities, which affected hundreds of thousand of votes and voters in Ohio, raise grave doubts regarding whether it can be said the Ohio electors selected on December 13, 2004, were chosen in a manner that conforms to Ohio law, let alone federal requirements and constitutional standards.

This report, therefore, makes three recommendations: (1) consistent with the requirements of the United States Constitution concerning the counting of electoral votes by Congress and Federal law implementing these requirements, there are ample grounds for challenging the electors from the State of Ohio; (2) Congress should engage in further hearings into the widespread irregularities reported in Ohio; we believe the problems are serious enough to warrant the appointment of a joint select Committee of the House and Senate to investigate and report back to the Members; and (3) Congress needs to enact election reform to restore our people's trust in our democracy. These changes should include putting in place more specific federal protections for federal elections, particularly in the areas of audit capability for electronic voting machines and casting and counting of provisional ballots, as well as other needed changes to federal and state election laws.

With regards to our factual finding, in brief, we find that there were massive and unprecedented voter irregularities and anomalies in Ohio. In many cases these irregularities were caused by intentional misconduct and illegal behavior, much of it involving Secretary of State J. Kenneth Blackwell, the co-chair of the Bush-Cheney campaign in Ohio.

First, in the run up to election day, the following actions by Mr. Blackwell, the Republican Party and election officials disenfranchised hundreds of thousands of Ohio citizens, predominantly minority and Democratic voters:

- *The misallocation of voting machines led to unprecedented long lines that disenfranchised scores, if not hundreds of thousands, of predominantly minority and Democratic voters. This was illustrated by the fact that the Washington Post reported that in Franklin County, "27 of the 30 wards with the most machines per registered voter showed majorities for Bush. At the other end of the spectrum, six of the seven wards with the fewest machines delivered large margins for Kerry." Among other things, the conscious failure to provide sufficient voting machinery violates the Ohio Revised Code which requires the Boards of Elections to "provide adequate facilities at each polling place for conducting the election."*

- *Mr. Blackwell's decision to restrict provisional ballots resulted in the disenfranchisement of tens, if not hundreds, of thousands of voters, again predominantly minority and Democratic voters. Mr. Blackwell's decision departed from past Ohio law on provisional ballots, and there is no evidence that a broader construction would have led to any significant disruption at the polling places, and did not do so in other states.*

- *Mr. Blackwell's widely reviled decision to reject voter registration applications based on paper weight may have resulted in thousands of new voters not being registered in time for the 2004 election.*

- *The Ohio Republican Party's decision to engage in preelection "caging" tactics, selectively targeting 35,000 predominantly minority voters for intimidation, had a negative impact on voter turnout. The Third Circuit found these activities to be illegal and in direct violation of consent decrees barring the Republican Party from targeting minority voters for poll challenges.*

- *The Ohio Republican Party's decision to utilize thousands of partisan challengers concentrated in minority and Democratic areas likely disenfranchised tens of thousands of legal voters, who were not only intimidated, but became discouraged by the long lines. Shockingly, these disruptions were publicly predicted and acknowledged by Republican officials: Mark Weaver, a lawyer for the Ohio Republican Party, admitted the challenges "can't help but create chaos, longer lines and frustration."*

- *Mr. Blackwell's decision to prevent voters who requested absentee ballots but did not receive them on a timely basis from being able to receive provisional ballots likely disenfranchised thousands, if not tens of thousands, of voters,*

particularly seniors. A federal court found Mr. Blackwell's order to be illegal and in violation of HAVA.

Second, on election day, there were numerous unexplained anomalies and irregularities involving hundreds of thousands of votes that have yet to be accounted for:

- *There were widespread instances of intimidation and misinformation in violation of the Voting Rights Act, the Civil Rights Act of 1968, Equal Protection, Due Process and the Ohio right to vote.* Mr. Blackwell's apparent failure to institute a single investigation into these many serious allegations represents a violation of his statutory duty under Ohio law to investigate election irregularities.

- *We learned of improper purging and other registration errors by election officials that likely disenfranchised tens of thousands of voters statewide.* The Greater Cleveland Voter Registration Coalition projects that in Cuyahoga County alone over 10,000 Ohio citizens lost their right to vote as a result of official registration errors.

- *There were 93,000 spoiled ballots where no vote was cast for president, the vast majority of which have yet to be inspected.* The problem was particularly acute in two precincts in Montgomery County which had an undervote rate of over 25% each—accounting for nearly 6,000 voters who stood in line to vote, but purportedly declined to vote for president.

- *There were numerous, significant unexplained irregularities in other counties throughout the state:* (i) in Mahoning county at least 25 electronic machines transferred an unknown number of Kerry votes to the Bush column; (ii) Warren County locked out public observers from vote counting citing an FBI warning about a potential terrorist threat, yet the FBI states that it issued no such warning; (iii) the voting records of Perry county show significantly more votes than voters in some precincts, significantly less ballots than voters in other precincts, and voters casting more than one ballot; (iv) in Butler county a down ballot and underfunded Democratic State Supreme Court candidate implausibly received more votes than the best funded Democratic Presidential candidate in history; (v) in Cuyahoga county, poll worker error may have led to little known third-party candidates receiving twenty times more votes than such candidates had ever received in otherwise reliably Democratic leaning areas; (vi) in Miami county, voter turnout was an improbable and highly suspect 98.55 percent, and after 100 percent of the precincts were reported, an additional 19,000 extra votes were recorded for President Bush.

Third, in the post-election period we learned of numerous irregularities in tallying provisional ballots and conducting and completing the recount that disenfranchised thousands of voters and call the entire recount procedure into question (as of this date the recount is still not complete):

- *Mr. Blackwell's failure to articulate clear and consistent standards for the counting of provisional ballots resulted in the loss of thousands of predominantly minority votes.* In

Cuyahoga County alone, the lack of guidance and the ultimate narrow and arbitrary review standards significantly contributed to the fact that 8,099 out of 24,472 provisional ballots were ruled invalid, the highest proportion in the state.

- *Mr. Blackwell's failure to issue specific standards for the recount contributed to a lack of uniformity in violation of both the Due Process Clause and the Equal Protection Clauses.* We found innumerable irregularities in the recount in violation of Ohio law, including (i) counties which did not randomly select the precinct samples; (ii) counties which did not conduct a full hand count after the 3% hand and machine counts did not match; (iii) counties which allowed for irregular marking of ballots and failed to secure and store ballots and machinery; and (iv) counties which prevented witnesses for candidates from observing the various aspects of the recount.

- *The voting computer company Triad has essentially admitted that it engaged in a course of behavior during the recount in numerous counties to provide "cheat sheets" to those counting the ballots.* The cheat sheets informed election officials how many votes they should find for each candidate, and how many over and under votes they should calculate to match the machine count. In that way, they could avoid doing a full county-wide hand recount mandated by state law.

Lautenberg Legislation

Don't Let Election Officials Suppress the Vote

The following press release was issued by Sen. Frank Lautenberg (D-N.J.) on Jan. 6, titled "In Response to Serious Concerns Over Presidential Vote in Ohio, Lautenberg Announces Measure to Prevent Partisan Activity by Election Officials: Ohio Sec. of State Ken Blackwell Was Also Co-Chairman of Bush/Cheney '04 Campaign."

WASHINGTON, D.C.—During the debate today in Congress over concerns about the electoral process in the critical state of Ohio during the recent Presidential election, United States Senator Frank R. Lautenberg (D-N.J.) announced plans to introduce legislation to ensure that those State officials in charge of supervising the certification of votes for federal elections are not also affiliated with the campaigns of those persons running for federal office.

"Allowing a state official to oversee a federal election while serving as a campaign official for one of the candidates in that election is a blatant conflict of interest," added Lautenberg.



KEN BLACKWELL

OHIO SECRETARY OF STATE

State-Wide Appeal
Urgent Action Requested
Personal Attention Please

Dear Friend,

As the Co-Chairman of Bush/Cheney '04 in Ohio, I want to say thank you for helping deliver the great Buckeye State for George W. Bush.

Without your enthusiasm, generous support and vote, I'm afraid the President would have lost...

...And an unapologetic liberal Democrat named John Kerry would have won.

Thankfully, you and I stopped that disaster from happening!

My friend, not only would a Kerry victory have been a terrible result for Ohio -- it would have been a horrible outcome for the families and taxpayers of America.

That's why in the late hours of Election Night, I was truly pleased to announce President Bush had won a critical and clinching victory here in Ohio, on the belief that it was statistically improbable for Senator Kerry to recover.

I have no doubt the strong campaign we helped the

Ohio Secretary of State Kenneth Blackwell's fundraising letter.

Senator Lautenberg's Federal Election Integrity Act (FEIA) of 2005, to be introduced later this month, would prohibit Secretaries of State and other state election officials with supervisory authority over the administration of federal elections from participating in the political campaign or management of a candidate running for federal office in their state. The Secretary of State is the chief election official in 39 States.

In a letter sent out on stationary that appeared to be official Ohio Secretary of State letterhead, Blackwell stated, "As the Co-Chairman of the Bush/Cheney '04 in Ohio, I want to say thank you for helping deliver the great Buckeye State for George W. Bush. Without your enthusiasm, generous support and vote, I'm afraid the President would have lost. . . . And an unapologetic liberal Democrat named John Kerry would have won. Thankfully, you and I stopped that disaster from happening." Mr. Blackwell's entire letter is attached to this release.

"Those officials in charge of certifying elections in the State must not be allowed to serve two masters. The will of the voters must come before the personal politics of those who oversee elections," said Lautenberg.

A fact sheet of Sen. Lautenberg's legislation is below:

Federal Election Integrity Act of 2004

Senator Lautenberg's Federal Election Integrity Act (FEIA) of 2005 would prohibit Secretaries of State and other state election officials with supervisory authority over the administration of Federal elections from participating in the political campaign or management of a candidate running for Federal office in their state. The FEIA creates a direct prohibition on State election officials from taking part in political campaigns by amending the Federal Campaign Act of 1971.

This is not a Democratic or Republican issue. Rather, this is an issue that concerns the preservation of the American people's faith and confidence in the election process. Simply put, an election official responsible for ensuring fair and accurate federal elections should not be connected with any of the candidates in that election.

Conflict of Interest

There is an inherent conflict of interest when an election official charged with supervising the administration of an election, and ensuring the fairness and accuracy of the results has a direct role in the campaign of one of the candidates running for Federal office.

In the 2004 Presidential election, Ohio Secretary of State Ken Blackwell was co-chairman of Bush/Cheney '04 in Ohio. On December 6th, 2004, Blackwell certified President Bush as the winner in Ohio.

This is the second presidential election that presented such a conflict of interest in a critical state. In the 2000 election, Florida Secretary of State Katherine Harris served as co-chair of President Bush's Florida campaign. President Bush's narrow victory in Florida gave President Bush the state's 25 electoral votes necessary to win the presidency.

Authority

Congress has the right to set the rules for fair Federal elections. Thus, Senator Lautenberg's bill does not affect state elections, but only elections for Federal offices, such as President, Vice President, U.S. Senator and U.S. Representative.