

## LaRouche Spurs Broad Fight Against Bush's Election Theft

by Edward Spannaus

“We've got them dead to rights on violations of Federal law, on Voting Rights Act violations,” said Lyndon LaRouche in an interview on a Columbus, Ohio radio station on Dec. 16, in discussing how the Republicans stole the Nov. 2 Presidential election. “That is a crime,” LaRouche continued. “That's a five-year federal sentence, to be caught doing that crime! Whereas simple vote fraud is more difficult to deal with. *But*, if you go at the criminal violations, which are Federal criminal violations, in terms of election tampering and in terms of Voting Rights Act frauds, then you open up the whole area, you have to investigate the whole territory, in which these crimes have been committed—which means the *entire* question of the vote fraud is now looked at, from that standpoint.”

Since LaRouche, in his Nov. 9 webcast, first called for prosecutions of those who engaged in vote suppression, as violations of the Voting Rights Act (see Debra Hanania Freeman's testimony, p. 45), the fight against the theft of the Nov. 2 elections has exploded, reflecting a revived sense of combativity within the Democratic Party itself, in contrast to the sense of demoralization which pervaded many circles in and around the Party in the period immediately after the election.

This is seen in the hearings held by House Judiciary Committee Democrats in Washington on Dec. 8, and in Ohio on Dec. 13, in the resolutions proposed and adopted by Kerry Electors in a number of state capitols on Dec. 13, and in the announcement that same day by Sen. Byron Dorgan (N.D.), the chairman of the Senate Democratic Policy Committee, that Senate Democrats will act on their own to carry out oversight and investigations, whenever Republicans attempt to block Congress from carrying out its Constitutional responsibilities. Dorgan said that he expects hearings to be conducted by the Democratic Policy Committee as early as January.

### New England Electors Revolt

Meanwhile, Electors in three states—Massachusetts, Maine, and Vermont—have taken action questioning the validity of the election process, and urging investigations (see *Documentation*). Proposals for Electors to adopt such resolutions were also introduced in other states.

The Maine electors said in a resolution that “Maine's four electoral votes are meaningless if our sister states cannot hold elections that are fair, accurate, and verifiable.”

The Vermont Electors are in the process of adopting a resolution which cites the House Judiciary Committee members' inquiries into Ohio election irregularities, as well as the investigation being conducted by the Government Accountability Office (GAO), and which calls upon the Vermont Congressional delegation to object to the Electoral Votes from Ohio and other states in any case where there is “evidence of widespread violations of voter constitutional rights.”

The Massachusetts Electors unanimously adopted a resolution calling for an investigation of voting rights violations and vote fraud in the November elections. The resolution calls on Congress “to investigate all voting complaints that might have any validity,” to “remedy any voting rights violations or electoral fraud verified by its own agents or through the courts,” and to “commit their resources to passage of systemic remedies.”

Tom Barbera, the Massachusetts Elector who introduced the resolution, told Associated Press that “I would like us to go beyond that, and not certify the vote until they complete the votes in Ohio and New Mexico. They have their electors electing the President today, even before they certify the recount.” Barbera had been in Pennsylvania working for John Kerry prior to the elections, identifying and registering voters in the Scranton and Wilkes-Barre areas, and he reports that



*A protest against certification of the Presidential elections in Columbus, Ohio on Dec. 12. Ohio Secretary of State Kenneth Blackwell, who was co-chairman of the Bush-Cheney campaign in the state, did everything in his power to suppress the vote, and has refused to answer questions from 12 members of Congress on the massive Election Day irregularities in his state.*

his life was threatened, and his canvassers were assaulted. “I’ve worked on elections since I was 11 years old and I have never seen anything like this,” he said.

### **Conyers Goes to Ohio**

Five days after he had chaired a Dec. 8 Capitol Hill hearing on vote suppression and irregularities during the Nov. 2 elections in Ohio, Rep. John Conyers (Mich.), the ranking Democrat on the House Judiciary Committee, went to Ohio as he had promised, and chaired a followup hearing in Columbus, in which dramatic new evidence of vote suppression and fraud was presented, at the same time that the Presidential Electors were meeting to cast their votes.

Conyers was joined in the Columbus hearing by Rep. Jerrold Nadler (D-N.Y.), Rep. Tom Strickland (D-Ohio), Rep. Maxine Waters (D-Calif.), Rep. Stephanie Tubbs-Jones (D-Ohio), Ohio State Sen. Ray Miller, and two members of the Columbus City Council. Among the featured speakers were Rev. Jesse Jackson; attorney Cliff Arnebeck, who is the lead attorney in the newly filed lawsuit contesting the Nov. 2 election; and Prof. Bob Fittrakis, publisher of the *Free Press* in Columbus.

“The closer we get to Columbus and the Ohio Presidential election, the worse it looks,” Conyers said in his statement opening the hearing. “Each and every day it becomes increasingly clear that the Republican power structure in this state is acting as if they have something to hide.” Conyers asked why Secretary of State Kenneth Blackwell—also the co-chair of the Bush-Cheney campaign in Ohio—had taken actions to prevent citizens from registering, to prevent registered voters from getting ballots, and to prevent lawful ballots from being counted. He also asked why would

there was no “investigation by the state into the huge Republican effort to disenfranchise minority voters” and into other gross irregularities. “There is no right more precious in our Constitution than the right to vote,” Conyers stated. “That is why I pledge that this investigation will not end and we will not go away until these questions are answered.”

### **‘Texan’-Style Intimidation**

Witness testimony provided further documentation of the extent of voter disenfranchisement and fraud.

Explosive new evidence was presented concerning a group calling themselves the “Texas Strike Force,” which had checked into a local Holiday Inn, where their accommodations were paid for by the local Republican Party. They

were using pay phones to make intimidating calls to former prisoners who had had their voting rights restored, telling them that they would be reported to the FBI and arrested if they attempted to vote, and sent back to jail. These calls constitute a felony violation of the Voting Rights Act, punishable by up to five years in prison.

Two days later, on Dec. 15, Conyers sent a letter to the FBI and to the Hocking County Prosecutor, asking for a criminal investigation of apparent tampering with computerized voting equipment in anticipation of the scheduled recount. Conyers referred to “inappropriate and likely illegal election tampering,” involving a technician for the Triad company which provides computer tabulators for the elections. According to a witness cited by Conyers, the Triad representative “advised the election officials how to manipulate the machinery so that the preliminary hand recount matched the machine count.”

*EIR* has been advised that that allegations of criminal conduct in and around the Nov. 2 elections have been taken to a number of local and Federal prosecutors. Criminal violations of the Voting Rights Act and election laws are likely to figure heavily in challenges that are being prepared to the certification of the Electors from Ohio and possibly other states, when Congress meets in joint session on Jan. 6 to receive the Electoral Votes for the Presidential election. When the Electoral Votes are opened, objections can be made against the validity of those votes; if an objection is made by one member each of the House and the Senate, the counting of Electoral Votes ceases until the objections have been considered by both the House and the Senate, which withdraw into separate sessions for that purpose.

### Massachusetts Electoral College Resolution

*This resolution was passed by the Massachusetts Electoral College on Dec. 13, 2004. The text was supplied by the Office of the Secretary of the Commonwealth of Massachusetts.*

I hereby motion that we, the duly sworn electors of Massachusetts, call on Congress and especially the honorable members of our Massachusetts Congressional Delegation as follows:

Whereas we believe that as electors, we have a unique opportunity and obligation to ensure that justice does not again become so delayed as to be denied,

We call on the Congress of the United States and most especially our own honorable representatives, and members of the Massachusetts Congressional Delegation to:

1. Act to commit Congress to investigate all voting complaints that might have any validity that they receive;
2. Act to commit Congress to remedy any voting rights violations or electoral fraud verified by its own agents or through courts;
3. File in Congress and commit their resources to passage of systemic remedies.

### Maine Electoral College

*This resolution was passed by the Electoral College of Maine on Dec. 13, 2004.*

We, the duly sworn electors of Maine, enter the following statement into the record as a sense of the body:

Whereas we recognize that many of the recommended election reforms being called for are already implemented in Maine, that:

We have Election Day registration in Maine.

We have the Clean Elections system, which has increased voter choice and accountability.

We have a paper trail for ballots.

And we have early voting provisions.

Wherefore, the citizens of Maine should be proud that we have possibly the fairest elections in the nation.

Whereas we nevertheless recognize that Maine's four electoral votes are held meaningless if our sister states cannot hold elections which are fair, accurate, and verifiable,

We are proud today to represent the citizens of Maine and

cast our votes on their behalf for Senators John Kerry and John Edwards.

### Vermont Electoral College

*This resolution by Vermont's three electors is to be released Dec. 20.*

WHEREAS our democracy depends on fair elections; and  
WHEREAS troubling questions have been raised about the integrity of Ohio's 2004 presidential election by many members of Congress; and

WHEREAS the Ohio vote was marred by significant irregularities, discrepancies, anomalies, and other problems as disclosed by U.S. Representative John Conyers, and a number of members of the House Judiciary Committee and elsewhere in the Congress, and

WHEREAS the Government Accountability Office is undertaking a systematic and comprehensive review of election irregularities in Ohio, Florida, New Mexico, and certain other states, the Congress having received about 57,000 complaints about voting machine breakdowns, inaccuracies, intimidation, suppression, and other and similar violations of voter rights, and

WHEREAS unequal and discriminatory voter access and treatment, as may have occurred in Ohio and elsewhere, violate the Equal Protection guarantee of the Constitution's Fourteenth Amendment and would call into question the validity of Elector certification from Ohio and certain other states under the Electoral Count Act (3 U.S.C. §5) and the teachings of *Bush v. Gore*, and as a result the Congress could decide that Elector votes from Ohio and certain other states were not "regularly given" by properly certified Electors under the Act (3 U.S.C. §15), and

WHEREAS the Congress could determine the validity of Electoral College votes from Ohio and certain other states following receipt by the Senate President of Objections from at least one member of the House and one member of the Senate, and

WHEREAS as citizens and Electors, we are committed to fair elections and equal voting rights for all,

THEREFORE IT IS RESOLVED that that Senators Jeffords and Leahy and Representative Sanders: (1) give due and sufficient consideration to the results of the ongoing investigation of voting irregularities in Ohio's 2004 Presidential election; (2) support the GAO's inquiry into and review of thousands of reports of systemic and other 2004 voting and election deficiencies; (3) sponsor or otherwise support legislation (a) mandating paper records, trails, or backups for all absentee ballots under the Help America Vote Act (HAVA), (b) uniform rules for the issuance and tabulation of provisional and absentee ballots under the Help America Vote Act

(HAVA), and (c) sufficient funding for full and fair implementation of HAVA; and (4) if warranted by evidence of widespread violations of voter Constitutional rights in the 2004 election in Ohio and certain other states, as now appears, under 3 U.S.C. §15 on the ground that such Electoral certifications are invalid and that, as a result, these Electoral votes were not regularly given by qualified, legal elections.

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## Testimony of Debra Hanania Freeman

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### Preserving Democracy: What Went Wrong in Ohio?

*This testimony of Debra Freeman, national spokeswoman for Lyndon LaRouche and the LaRouche PAC, was presented to Dec. 8, 2004 hearings in Washington, D.C. on vote fraud, convened by Rep. John Conyers. Subheads have been added.*

On behalf of Lyndon LaRouche and the LaRouche PAC, as well as the tens of thousands of American voters who found themselves disenfranchised on Election Day, I'd like to take the opportunity to thank Chairman Conyers and the members of the panel for holding this crucial forum and putting a spotlight on the grave violations of the U.S. Constitution that occurred in this 2004 Presidential election.

During a webcast forum that was held here in Washington, D.C., on Nov. 9,<sup>1</sup> Lyndon LaRouche declared that, "Those Republicans who engaged in vote suppression around the Nov. 2 Presidential elections are guilty of the crime of violation of the Federal Voting Rights Act and of the U.S. Constitution. LaRouche said that, "from a Constitutional law standpoint, what was made was a not-so-cold coup d'état against the United States Constitution."

"Voter suppression—that's tyranny!" LaRouche charged. "That's dictatorship. . . . What is pouring in, in terms of evidence, day by day, is the evidence of a massive fraud by the Republican Party, which amounts to practically a criminal conspiracy."

In response to a number of questions about the fraud and irregularities in the elections, LaRouche said that the Republicans had taken advantage of the fact that the Democratic Party had not mobilized sufficiently among the lower 80% of the population, instead still orienting way too much toward the suburban "swing" voters, as it has in recent elections. To defeat the fraud being planned by the Republicans, required

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1. More extensive remarks by Mr. LaRouche on voter suppression can be found on the LaRouche PAC website, [www.larouchepac.com](http://www.larouchepac.com), both in his Nov. 9 speech, and in an address to the LaRouche Youth Movement in Seattle on Dec. 4.

that the Democrats organize a landslide, but only the forces around LaRouche and those working with us, mobilized in this manner.

But otherwise, the Democratic Party was the "sitting duck party," LaRouche said, and was totally unprepared for the criminal operations that the Republican Party was planning.

### Voting Rights Act Violations

The very fact of voter suppression is a violation of the Voting Rights Act, LaRouche said, and we should go from that, to look at the secondary crimes that were committed. Referring to Ohio Secretary of State Kenneth Blackwell, LaRouche said that the Republicans "had this guy, this so-called African-American . . . saying he's in charge of the vote suppression program!" LaRouche said that this is an admission of a crime, adding: "It's a violation of Federal law, and I would go after that because a coup was run against the American people and the Constitution, by a violation of that law."

LaRouche elaborated: "Voter suppression is subversion, and a party that engages in voter suppression, the officials of that party who engage in that and those who knowingly cooperate in that program, are guilty of a crime, of violation of the Voters Rights Act, and they should be imprisoned for the relevant period of time, and they should be squeezed for all it's worth. . . . What we have to do is take the moral high ground of authority, and say, well, you guys committed a crime. You allowed a crime to go on, called vote suppression. You were trying every pretext in the world to suppress the votes of people, known groups of people, and you were targeting on a racialist and similar basis. It's a crime. And I would say to these, let's start from the strong point that we have. We have a lot of evidence of irregularities, a lot of evidence of corruption. Things that could not have happened by accident. And therefore, let's start with what we've got the goods on these guys for. They engaged in a systemic voter suppression action. That had an effect on the vote. Therefore, you guys are guilty of a crime! Say, good morning, judge."

I should note here that Mr. LaRouche's full remarks on voter suppression are included in the video archive and written transcript of his Nov. 9 webcast address, which is available on the LaRouche PAC website <http://www.larouchepac.com>.

### LaRouche: All-out Battle Against Voter Suppression

In a statement he released on Dec. 6, Mr. LaRouche called on Democrats, and others, to start their battle against the insane, unconstitutional Bush Administration with an all-out battle against the voter suppression carried out by the Republicans in the Nov. 2 election. Reiterating his statement during his Nov. 9 webcast, he charged that the Republicans had carried out a "not-so-cold coup" against the Constitution, by violating the Voting Rights Act with a policy of voter suppression, particularly among expected Kerry voters.

At the same time, LaRouche identified George W. Bush's

plans to rip off Social Security through privatization, as the second major focal point for a mobilization to salvage the country, from the dangers presented by the insane second Bush Administration. Bush's privatization plans, will, as currently estimated by the Congressional Budget Office, create a \$2 trillion hole in the system, and require the cutting of benefits up to 45%.

"With these two national focal points of mobilization," LaRouche said, "we have the best chance to revitalize the American political system, both by rebuilding the Democratic Party as an effective force, and building relationships between Democrats and those traditional Republicans, who understand the danger which George W. Bush's election, and lies, represent for our nation."

Mr. LaRouche has enthusiastically supported leading Democrats, like Rep. John Conyers (D-Mich.), who are collecting the evidence of voter suppression, and has urged that that evidence be used to bring criminal charges, and jail those who committed this Federal crime. He has further urged that the evidence be compiled, to be presented to the full House and Senate on or before Jan. 6—which is when Congress meets in Joint Session to certify the Electoral College votes.

To understand the type of mobilization which is needed, I think it is worth recalling what happened four years ago. In a webcast held by LaRouche on Jan. 3, 2001, a member of the Congressional Black Caucus (CBC) posed a question about the pending nomination of John Ashcroft as U.S. Attorney General. LaRouche insisted that the Congress had to use every means at its disposal to block the Ashcroft nomination, because it signalled the intent to launch a coup against the Constitution. LaRouche explained that Hitler's ultimate consolidation of power in 1933, after his rise to the Chancellorship, came as a result of a series of emergency measures crafted by Nazi jurist Carl Schmitt. Those measures were enacted under the pretext of the Reichstag fire, which burned the German parliament building, and Hitler's dictatorship was thereby firmly established.

LaRouche's startling reponse reverberated through Washington, and especially the CBC, and thus, when the time came for Bush's election to be certified by the Congress a few days later, members of the CBC staged a dramatic action on the floor of the Joint Session, rising one after another to object to the Florida electoral vote, citing the history of the civil rights movement and the Voting Rights Act. Although the Caucus was unsuccessful in persuading a single member of the Senate to support their valiant cause—as is required to allow an objection to an electoral vote to proceed—they captured national attention. Following Bush's certification, the drive to stop Ashcroft grew. By the time his nomination came to the Senate floor, there were a sufficient number of U.S. Senators organized and ready to block Ashcroft's confirmation. At the very last moment, Senate Democratic leader Tom Daschle, in an act of betrayal that probably cost him his Senate

seat in 2004, ordered Democratic Senators to halt their resistance, and confirm Ashcroft.

## Democrats Need to Make a Fight

Today, we are much stronger than we were then. A growing number of Democratic leaders recognized the importance of making a fight on this issue, as LaRouche has specified. One key Democrat noted to me last week, that making a fight on this point—even if it does not succeed in depriving Bush and Cheney of a second term—will deliver a clear and reverberating message, that the synarchists' attempted coup will not be a "cold" one, but that they had better be prepared to deal with people who are prepared to fight back.

I would like to think that with this action today, that message will begin to ring out across our great nation.

Thank you.

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## Congressmen Intervene

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### Conyers to Ohio Forum

*Rep. John Conyers, Jr., chairman of the House Judiciary Committee, hosted a Democratic 2004 Election Forum in Columbus, Ohio, Dec. 13. This is his opening statement. The emphasis appears in the original document.*

At the outset of this hearing, I would like to announce that *10 Members of Congress, including myself, have written to Governor Taft asking him to either delay or treat as provisional the vote of Ohio's Presidential electors.* Secretary of State Blackwell's actions have had the result of unduly delaying the initial certification of votes so that any recount and other litigation could not possibly be completed by Dec. 13. Under these circumstances, law and equity—not to mention the credibility of our democratic system—demand a delay.

*The closer we get to Columbus and the Ohio Presidential election, the worse it looks.* Each and every day it becomes increasingly clear that the Republican power structure in this state is acting as if they have something to hide:

1. Why else would the Secretary of State abrogate Ohio law and *lock down public election records in Green County this weekend?*

2. Why else would Mr. Blackwell—who is also the co-chair of the Bush-Cheney campaign in Ohio—*take position after position to prevent citizens from registering, prevent registered voters from getting ballots, and prevent lawful ballots from being counted?*

3. Why else would Mr. Blackwell *refuse to answer a single one of the 36 questions presented to him by 12 members of Congress?*

4. Why else would Mr. Blackwell unnecessarily delay the certification of the Ohio vote, making a recount impossible by the meeting of the electoral college?

5. Why else would the exit polls, which showed a significant lead for Kerry throughout the day, be so out of whack with the final returns?

6. Why else would there **not be a single investigation by the state into the huge Republican effort to disenfranchise minority voters?** *No investigation into the unprecedented lock down on Warren County? No investigation into the mysterious disappearance of 4,000 votes in Franklin County?*

*There is no right more precious in our Constitution than the right to vote. That is why I pledge that this investigation will not end and we will not go away until these questions are answered.*

## Conyers Letter to Ohio FBI and Prosecutor

*Rep. John Conyers, Jr., wrote Dec. 13 to Mr. Kevin R. Brock, Special Agent in Charge of the Cincinnati FBI office and Mr. Larry E. Beal, the Hocking County Prosecutor in Logan, Ohio, requesting investigation of charges of election tampering by the Triad GSI voting machine company. Here is the text of the letter, without its footnotes. Some punctuation has been added.*

Dear Mr. Brock and Mr. Beal:

As part of the Democratic staff's investigation into irregularities in the 2004 election and following up on a lead provided to me by Green Party Presidential Candidate, David Cobb, I have learned that Sherole Eaton, a Deputy Director of Board of Elections in Hocking County, Ohio, has first-hand knowledge of inappropriate and likely illegal election tampering in the Ohio Presidential election in violation of federal and state law. I have information that similar actions of this nature may be occurring in other counties in Ohio. I am therefore asking that you immediately investigate this alleged misconduct and that, among other things, you consider the immediate impoundment of election machinery to prevent any further tampering.

On Dec. 13, my staff met with Ms. Eaton who explained to them that last Friday, Dec. 10, Michael Barbian, Jr., a representative of Triad GSI, unilaterally sought and obtained access to the voting machinery and records in Hocking County, Ohio, modified the computer tabulator, learned which precinct was planned to be the subject of the initial test recount, and made further alterations based on that information, and advised the election officials how to manipulate the machinery so that the preliminary hand recount matched the machine count. Ms. Eaton first relayed this information to Green Party representatives, and then completed, signed, and notarized an

affidavit describing this course of events, a copy of which is attached.

The Triad official sought access to the voting machinery based on the apparent pretext that he wanted to review some "legal questions" the officials might receive as part of the recount process. At several times during this visit, Mr. Barbian telephoned into Triad's offices to obtain programming information relating to the machinery and the precinct in question. I have subsequently learned that Triad officials have been, or are in the process of intervening in several other counties in Ohio—Greene and Monroe, and perhaps others (see attached).

There are several important considerations you should be aware of with respect to this matter. First, this course of conduct would appear to violate several provisions of Federal law, in addition to the Constitutional guarantees of equal protection and due process. 42 U.S.C. §1973 provides for criminal penalties against any person who, in any election for Federal office, "knowingly and willfully deprives, defrauds, or attempts to defraud the residents of a State of a fair and impartially conducted election process, by . . . the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held." 42 U.S.C. §1974 also requires the retention and preservation, for a period of 22 months from the date of a Federal election, of all voting records and papers and makes it a felony for any person to "willfully steal, destroy, conceal, mutilate, or alter" any such record. Further, any tampering with ballots and/or election machinery would violate the Constitutional rights of all citizens to vote and have their votes properly counted, as guaranteed by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution.

Second, the course of conduct would also appear to violate several provisions of Ohio law. No less than four provisions of the Ohio Revised Code make it a felony to tamper with or destroy election records or machines. Clearly, modifying election equipment in order to make sure that the hand count matches the machine count would appear to fall within these proscriptions.

Moreover, bringing in Triad officials into other Ohio Counties would also appear to violate Ohio Revised Code §3505.32 which provides that during a period of official canvassing, all interaction with ballots must be "in the presence of all of the members of the board and any other persons who are entitled to witness the official canvass," given that last Friday, the Ohio Secretary of State has issued orders to the effect that election officials are to treat all election materials as if they were in a period of canvassing, and that "Teams of one Democrat and one Republican must be present with ballots at all times of processing."

Third, it is important to recognize that the companies implicated in the wrongdoing, Triad and its affiliates, are the leading suppliers of voting machines involving the counting

of paper ballots and punch cards in the critical states of Ohio and Florida. Triad is controlled by the Rapp family, and its founder Tod A. Rapp has been a consistent contributor to Republican causes. A Triad affiliate, Psephos Corporation, supplied the notorious butterfly ballot used in Palm Beach County, Florida, in the 2000 Presidential election.

Please respond to me at your earliest convenience through Perry Apelbaum or Ted Kalo of my Judiciary Committee staff. . . .

## Affidavit of Ohio Board Of Elections Deputy Director

*Sherole Eaton, Deputy Director of the Board of Elections in Hocking County, Ohio, signed the following affidavit Dec. 13. A copy of the affidavit was attached to the preceding letter of Rep. Conyers.*

RE: General Election 2004, Hocking County. Triad Dell Computer about 14 years old—No tower.

On Friday, Dec. 10, 2004, Michael from Tri Ad called in the AM to inform us that he would be in our office in the PM on the same day. I asked him why he was visiting us. He said, “to check out your tabulator, computer and that the attorneys will be asking some tricky questions and he wanted to go over some of the questions they may be ask.” [sic] He also added that there would be no charge for this service.

He arrived about 12:30 PM. I hung his coat up and it was very heavy. I made a comment about it being so heavy. He, Lisa Schwartze, Director, and I chatted for a few minutes. He proceeded to go to the room where our computer and tabulation machine is kept. I followed him into the room. I had my back to him when he turned the computer on. He stated that the computer was not coming up. I did see some commands at the lower left hand of the screen but no menu. He said that the battery in the computer was dead and that the stored information was gone. He said that he could put a patch on it and fix it. My main concern was—what if this happened when we were ready to do the recount. He proceeded to take the computer apart, and call his office to get information to input into our computer. Our computer is 14 years old and as far as I know it has always worked in the past. I asked him if the older computer, that is in the same room, could be used for the recount. I don’t remember exactly what he said but I did relay to him that the computer was old and a spare. At some point he asked if he could take the spare computer apart and I said, “yes.” He took both computers apart. I don’t remember seeing any tools and he asked Sue Wallace, Clerk, for a screwdriver. She got it for him. At this point I was frustrated about the computer not performing and feared that it wouldn’t work for the recount. I called Gerald Robinette, board chairman, to inform him regarding the computer prob-

lem and asked him if we could have Tri Ad come to our office to run the program and tabulator for the recount. Gerald talked on the phone with Michael and Michael assured Gerald that he could fix our computer. He worked on the computer until about 3:00 PM, and then asked me which precinct and the number of the precinct we were going to count. I told him, Good Hope #17. He went back into the tabulation room. Shortly after that he stated that the computer was ready for the recount and told us not to turn the computer off so it would charge up.

Before Lisa ran the tests, Michael said to turn the computer off. Lisa said, “I thought you said we weren’t to turn it off.” He said turn it off and right back on and it should come up. It did come up and Lisa ran the tests, Michael gave us instructions on how to explain the rotation, what the test mean, etc. No advice on how to handle the attorneys, but to have our Prosecuting Attorney at the recount to answer any of their legal questions. He said not to turn the computer off until after the recount,

He advised Lisa and I on how to post a “cheat sheet” on the wall so that only the board members and staff would know about it and what the codes rates meant, so the count would come out perfect and we wouldn’t have to do a full hand recount of the county. He left about 5:00 PM.

My faith in Tri Ad and the Xenia staff has been nothing but good. The realization that this company and staff would do anything to dishonor or disrupt the voting process is distressing to me and hard to believe. I’m being completely objective about the above statements and the reason I’m bringing this forward is to, hopefully, rule out any wrong doing.

## Congressmen Query Ohio’s Sec. of State Blackwell

*Rep. John Conyers, Jr. and 11 other Democratic Congressmen from the House Judiciary Committee wrote to Ohio Secretary of State J. Kenneth Blackwell Dec. 2, about the Ohio election irregularities. The text of the letter appears below, without the footnotes. The other signers are Jerrold Nadler (N.Y.), Melvin L. Watt (N.C.), Sheila Jackson Lee (Tex.), Maxine Waters (Calif.), William Delahunt (Mass.), Robert Wexler (Fla.), Tammy Baldwin (Wisc.), Anthony Weiner (N.Y.), Linda T. Sanchez (Calif.), and Zoe Lofgren (Calif.).*

We write to request your assistance with our ongoing investigation of election irregularities in the 2004 Presidential election. As you may be aware, the Government Accountability Office has agreed to undertake a systematic and comprehensive review of election irregularities throughout the nation. As a separate matter, we have requested that the House Judiciary Committee Democratic staff undertake a thorough review of each and every specific allegation of election irregularities

received by our offices.

Collectively, we are concerned that these complaints constitute a troubled portrait of a one-two punch that may well have altered and suppressed votes, particularly minority and Democratic votes. First, it appears there were substantial irregularities in vote tallies. It is unclear whether these apparent errors were the result of machine malfunctions or fraud.

Second, it appears that a series of actions of government and non-government officials may have worked to frustrate minority voters. Consistent and widespread reports indicate a lack of voting machines in urban, minority, and Democratic areas, and a surplus of such machines in Republican, white, and rural areas. As a result, minority voters were discouraged from voting by lines that were in excess of eight hours long. Many of these voters were also apparently victims of a campaign of deception, where flyers and calls would direct them to the wrong polling place. Once at that polling place, after waiting for hours in line, many of these voters were provided provisional ballots after learning they were at the wrong location. These ballots were not counted in many jurisdictions because of a directive issued by some election officials, such as yourself.

We are sure you agree with us that regardless of the outcome of the election, it is imperative that we examine any and all factors that may have led to voting irregularities and any failure of votes to be properly counted. Toward that end, we ask you to respond to the following allegations:

## **I. Counting Irregularities**

### *A. Warren County Lockdown*

On election night, Warren County locked down its administration building and barred reporters from observing the counting. When that decision was questioned, County officials claimed they were responding to a terrorist threat that ranked a “10” on a scale of 1 to 10, and that this information was received from an FBI agent. Despite repeated requests, County officials have declined to name that agent, however, and the FBI has stated that they had no information about a terror threat in Warren County. Your office has stated that it does not know of any other county that took these drastic measures.

In addition to these contradictions, Warren County officials have given conflicting accounts of when the decision was made to lock down the building. While the County Commissioner has stated that the decision to lockdown the building was made during an Oct. 28 closed-door meeting, e-mailed memos—dated Oct. 25 and 26—indicate that preparations for the lockdown were already under way.

This lockdown must be viewed in the context of the aberrational results in Warren County. In the 2000 Presidential election, the Democratic Presidential candidate, Al Gore, stopped running television commercials and pulled resources out of Ohio weeks before the election. He won 28% of the vote in Warren County. In 2004, the Democratic Presidential

candidate, John Kerry, fiercely contested Ohio and independent groups put considerable resources into getting out the Democratic vote. Moreover, unlike in 2000, independent candidate Ralph Nader was not on the Ohio ballot in 2004. Yet, the tallies reflect John Kerry receiving exactly the same percentage in Warren County as Gore received, 28%.

We hope you agree that transparent election procedures are vital to public confidence in electoral results. Moreover, such aberrant procedures only create suspicion and doubt that the counting of votes was manipulated. As part of your decision to certify the election, we hope you have investigated these concerns and found them without merit. To assist us in reaching a similar conclusion, we ask the following:

1. Have you, in fact, conducted an investigation of the lockdown? What procedures have you or would you recommend be put into place to avoid a recurrence of this situation?
2. Have you ascertained whether County officials were advised of terrorist activity by an FBI agent and, if so, the identity of that agent?
3. If County officials were not advised of terrorist activity by an FBI agent, have you inquired as to why they misrepresented this fact? If the lockdown was not as a response to a terrorist threat, why did it take place? Did any manipulation of vote tallies occur?

### *B. Perry County Election Counting Discrepancies*

The House Judiciary Committee Democratic staff has received information indicating discrepancies in vote tabulations in Perry County. For example, the sign-in book for the Reading S precinct indicates that approximately 360 voters cast ballots in that precinct. In the same precinct, the sign-in book indicates that there were 33 absentee votes cast. In sum, this would appear to mean that fewer than 400 total votes were cast in that precinct. Yet, the precinct’s official tallies indicate that 489 votes were cast. In addition, some voters’ names have two ballot stub numbers listed next to their entries, creating the appearance that voters were allowed to cast more than one ballot.

In another precinct, W Lexington G AB, 350 voters are registered according to the County’s initial tallies. Yet, 434 voters cast ballots. As the tallies indicate, this would be an impossible 124% voter turnout. The breakdown on election night was initially reported to be 174 votes for Bush, and 246 votes for Kerry. We are advised that the Perry County Board of Elections has since issued a correction claiming that, due to a computer error, some votes were counted twice. We are advised that the new tallies state that only 224 people voted, and the tally is 90 votes for Bush and 127 votes for Kerry. This would make it appear that virtually every ballot was counted twice, which seems improbable.

In Monroe Township, Precinct AAV, we are advised that 266 voters signed in to vote on election day, yet the Perry



County Board of Elections is reporting that 393 votes were cast in that precinct, a difference of 133 votes.

4. Why does it appear that there are more votes than voters in the Reading S precinct of Perry County?
5. What is the explanation for the fluctuating results in the W Lexington AB precinct?
6. Why does it appear that there are more votes than voters in the Monroe Township precinct AAV?

#### *C. Perry County Registration Peculiarities*

In Perry County, there appears to be an extraordinarily high level voter registration, 91%; yet a substantial number of these voters have never voted and have no signature on file. Of the voters that are registered in Perry County, an extraordinarily large number of voters are listed as having registered in 1977, a year in which there were no federal elections. Of these an exceptional number are listed as having registered on the exact same day: in total, 3,100 voters apparently registered in Perry County on Nov. 8, 1977.

7. Please explain why there is such a high percentage of voters in this County who have never voted and do not have signatures on file. Also, please help us understand why such a high number of voters in this County are shown as having registered on the same day in 1977.

#### *D. Unusual Results in Butler County*

In Butler County, a Democratic Candidate for State Supreme Court, C. Ellen Connally, received 59,532 votes. In contrast, the Kerry-Edwards ticket received only 54,185 votes, 5,000 less than the State Supreme Court candidate. Additionally, the victorious Republican candidate for State Supreme Court received approximately 40,000 less votes than the Bush-Cheney ticket. Further, Connally received 10,000 or more votes in excess of Kerry's total number of votes in five counties, and 5,000 more votes in excess of Kerry's total in ten others.

It must also be noted that Republican judicial candidates were reportedly "awash in cash," with more than \$1.4 million and were also supported by independent expenditures by the Ohio Chamber of Commerce.

While you may have found an explanation for these bizarre results, it appears to be wildly implausible that 5,000 voters waited in line to cast a vote for an underfunded Democratic Supreme Court candidate and then declined to cast a vote for the most well-funded Democratic Presidential campaign in history. We would appreciate an answer to the following:

8. Have you examined how an underfunded Democratic State Supreme Court candidate could receive so many more votes in Butler County than the Kerry-Edwards ticket? If so, could you provide us with the results of

your examination? Is there any precedent in Ohio for a downballot candidate receiving on a percentage or absolute basis so many more votes than the Presidential candidate of the same party in this or any other Presidential election? Please let us know if any other County in Ohio registered such a disparity on a percentage or absolute basis.

#### *E. Unusual Results in Cuyahoa County*

Precincts in Cleveland have reported an incredibly high number of votes for third party candidates who have historically received only a handful of votes from these urban areas. For example, precinct 4F in the 4th Ward cast 290 votes for Kerry, 21 for Bush, and 215 for Constitution Party candidate Michael Peroutka. In 2000, the same precinct cast less than 8 votes for all third party candidates combined.

This pattern is found in at least 10 precincts throughout Cleveland in 2004, awarding hundreds of unlikely votes to the third party candidate. Notably, these precincts share more than a strong Democratic history: the use of a punch card ballot. In light of these highly unlikely results, we would like to know the following:

9. Have you investigated whether the punch card system used in Cuyahoga County led to voters accidentally voting for third party candidates instead of the Democratic candidate they intended? If so, what were the results? Has a third party candidate ever received such a high percentage of votes in these precincts?
10. Have you found similar problems in other counties? Have you found similar problems with other voting methods?

#### *F. Spoiled Ballots*

According to post election canvassing, many ballots were cast without any valid selection for President. For example, two precincts in Montgomery County 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. This is in stark contrast to the 2% of undervoting county-wide. Disturbingly, predominantly Democratic precincts had 75% more undervotes than those that were predominantly Republican. It is inconceivable to us that such a large number of people supposedly did not have a preference for President in such a controversial and highly contested election.

Considering that an estimated 93,000 ballots were spoiled across Ohio, we would like to know the following:

11. How many of those spoiled ballots were of the punch card or optical scan format and could therefore be examined in a recount?
12. Of those votes that have a paper trail, how many votes for President were undercounted, or showed no

preference for President? How many were overcounted, or selected more than one candidate for President? How many other ballots had an indeterminate preference?

13. Of the total 93,000 spoiled ballots, how many were from predominantly Democratic precincts? How many were from minority-majority precincts?

14. Are you taking steps to ensure that there will be a paper trail for all votes before the 2006 elections so that spoiled ballots can be individually re-examined?

#### *G. Franklin County Overvote*

On election day, a computerized voting machine in ward 1B in the Gaharina precinct of Franklin County recorded a total of 4,258 votes for President Bush and 260 votes for Democratic challenger, John Kerry. However, there are only 800 registered voters in that Gahanna precinct, and only 638 people cast votes at the New Life Church polling site. It was since discovered that a computer glitch resulted in the recording of 3,893 extra votes for President George W. Bush.

Fortunately, this glitch was caught and the numbers were adjusted to show President Bush's true vote count at 365 votes to Senator Kerry's 260 votes. However, many questions remain as to whether this kind of malfunction happened in other areas of Ohio. To help us clarify this issue, we request that you answer the following:

15. How was it discovered that this computer glitch occurred?

16. What procedures were employed to alert other counties upon the discovery of the malfunction?

17. Can you be absolutely certain that this particular malfunction did not occur in other counties in Ohio during the 2004 Presidential election? How?

18. What is being done to ensure that this type of malfunction does not happen again in the future?

#### *H. Miami County Vote Discrepancy*

In Miami County, with 100% of the precincts reporting on Wednesday, Nov. 3, 2004, President Bush had received 20,807 votes, or 65.80% of the vote, and Senator Kerry had received 10,724 votes, or 33.92% of the vote. Miami reported 31,620 voters. Inexplicably, nearly 19,000 new ballots were added *after* all precincts reported, boosting President Bush's vote count to 33,039, or 65.77%, while Senator Kerry's vote percentage stayed exactly the same to three one-hundredths of a percentage point at 33.92%.

Roger Kearney of Rhombus Technologies, Ltd., the reporting company responsible for vote results of Miami County, has stated that the problem was not with his reporting and that the additional 19,000 votes came before 100% of the precincts were in. However, this does not explain how the vote count could change for President Bush, but not for Senator Kerry, after 19,000 new votes were added to the roster. To

help us better understand this anomaly, we request that you answer the following:

19. What is your explanation as to the statistical anomaly that showed virtually identical ratios after the final 20-40% of the vote came in? In your judgment, how could the vote count in this County have changed for President Bush, but not for Senator Kerry, after 19,000 new votes were added to the roster?

20. Are you aware of any pending investigations into this matter?

#### *I. Mahoning County Machine Problems*

In Mahoning County, numerous voters reported that when they attempted to vote for John Kerry, the vote showed up as a vote for George Bush. This was reported by numerous voters and continued despite numerous attempts to correct their vote.

21. Please let us know if you have conducted any investigation or inquiry of machine voting problems in the state, including the above described problems in Mahoning County, and the results of this investigation or inquiry.

## **II. Procedural Irregularities**

### *A. Machine Shortages*

Throughout predominately Democratic areas in Ohio on election day, there were reports of long lines caused by inadequate numbers of voting machines. Evidence introduced in public hearings indicates that 68 machines in Franklin County were never deployed for voters, despite long lines for voters at that county, with some voters waiting from two to seven hours to cast their vote. The Franklin County Board of Elections reported that 68 voting machines were never placed on election day, and Franklin County BOE Director Mart Damschroder admitted on Nov. 19, 2004, that 77 machines malfunctioned on election day. It has come to our attention that a county purchasing official who was on the line with Ward Moving and Storage Company, documented only 2,741 voting machines delivered through the Nov. 2 election day. However, Franklin County's records reveal that they had 2,866 "machines available" on election day. This would mean that amid the two- to seven-hour waits in the inner city of Columbus, at least 125 machines remained unused on election day.

Franklin County's machine allocation report clearly states the number of machines that were placed "By Close of Polls." However, questions remain as to where these machines were placed and who had access to them throughout the day. Therefore, what matters is not how many voting machines were operating at the end of the day, but rather how many were there to service the people during the morning and noon rush hours.

An analysis revealed a pattern of providing fewer machines to the Democratic city of Columbus, and more machines to the primarily Republican suburbs. At seven out of eight polling places, observers counted only three voting ma-

chines per location. According to the presiding judge at one polling site located at the Columbus Model Neighborhood facility, at 1393 E. Broad St., there had been five machines during the 2004 primary. Moreover, at Douglas Elementary School, there had been four machines during the spring primary. In one Ohio voting precinct serving students from Kenyon College, some voters were required to wait more than eight hours to vote. There were reportedly only two voting machines at that precinct. The House Judiciary Committee staff has received first-hand information confirming these reports.

Additionally, it appears that in a number of locations, polling places were moved from large locations, such as gyms, where voters could comfortably wait inside to vote, to smaller locations where voters were required to wait in the rain. We would appreciate answers to the following:

22. How much funding did Ohio receive from the Federal government for voting machines?
23. What criteria were used to distribute those new machines?
24. Were counties given estimates or assurances as to how many new voting machines they would receive? How does this number compare to how many machines were actually received?
25. What procedures were in place to ensure that the voting machines were properly allocated throughout Franklin and other counties? What changes would you recommend be made to insure there is a more equitable allocation of machines in the future?

#### *B. Invalidated Provisional Ballots*

As you know, just weeks before the 2004 Presidential election, you issued a directive to county election officials saying they are allowed to count provisional ballots only from voters who go to the correct precinct for their home address. At the same time, it has been reported that fraudulent flyers were being circulated on official-looking letterhead telling voters the wrong place to vote, phone calls were placed incorrectly informing voters that their polling place had changed, "door-hangers" telling African-American voters to go to the wrong precinct, and election workers sent voters to the wrong precinct. In other areas, precinct workers refused to give any voter a provisional ballot. And in at least one precinct, election judges told voters that they may validly cast their ballot in any precinct, leading to any number of disqualified provisional ballots.

In Hamilton County, officials have carried this problematic and controversial directive to a ludicrous extreme: they are refusing to count provisional ballots cast at the correct polling place if they were cast at the wrong table in that polling place. It seems that some polling places contained multiple precincts which were located at different tables. Now, 400 such voters in Hamilton county alone will be disenfranchised as a result of your directive.

26. Have you directed Hamilton County and all other counties not to disqualify provisional ballots cast at the correct polling place simply because they were cast at the wrong precinct table?

27. While many election workers received your directive that voters may cast ballots only in their own precincts, some did not. How did you inform your workers, and the public, that their vote would not be counted if cast in the wrong precinct? How many votes were lost due to election workers telling voters they may vote at any precinct, in direct violation of your ruling?

28. Your directive was exploited by those who intentionally misled voters about their correct polling place, and multiplied the number of provisional ballots found invalid. What steps have you or other officials in Ohio taken to investigate these criminal acts? Has anyone been referred for prosecution? If so, what is the status of their cases?

29. How many provisional ballots were filed in the Presidential election in Ohio? How many were ultimately found to be valid and counted? What were the various reasons that these ballots were not counted, and how many ballots fall into each of these categories? Please break down the foregoing by County if possible.

#### *C. Directive to Reject Voter Registration Forms Not Printed on White Uncoated Paper of Not Less Than 80 lb Text Weight*

On Sept. 7, you issued a directive to county boards of elections commanding such boards to reject voter registration forms not "printed on white, uncoated paper of not less than 80 lb. text weight." Instead, the county boards were to follow a confusing procedure where the voter registration form would be treated as an application for a form and a new blank form would be sent to the voter. While you reversed this directive, you did not do so until Sept. 28. In the interim, a number of counties followed this directive and rejected otherwise valid voter registration forms. There appears to be some further confusion about the revision of this order which resulted in some counties being advised of the change by the news media.

30. How did you notify county boards of elections of your initial Sept. 7 directive?

31. How did you notify county boards of elections of your Sept. 28 decision to revise that directive?

32. Have you conducted an investigation to determine how many registration forms were rejected as a result of your Sept. 7 directive? If so, how many?

33. Have you conducted an investigation to determine how many voters who had their otherwise valid forms rejected as a result of your Sept. 7 directive subsequently failed to re-register? If so, how many?

34. Have you conducted an investigation to determine how many of those voters showed up who had their

otherwise valid forms rejected to vote on election day and were turned away? If so, how many? . . .

## Blackwell's Reply

*Ohio Secretary of State J. Kenneth Blackwell replied to the above Congressional letter on Dec. 14. Here are excerpts from his letter.*

My office will scrupulously review and assist in any matters referred to us by the Government Accountability Office or the Department of Justice in relation to Ohio election activities. I appreciate the concerns raised by some members of the U.S. House of Representatives Committee on the Judiciary and the interest in reviewing election issues raised at the state level. However, I strongly believe that Congress has already designated the Government Accountability Office and the Department of Justice to review election activities and empowered them with the authority to thoroughly investigate any matters brought forward by Ohio citizens. My office continues to be available to participate as needed in that process. . . .

## Conyers: Stop Stonewalling!

*From the Dec. 14 reply to Secretary Blackwell by Rep. John Conyers, Jr.:*

Your refusal to answer the 36 questions we posed to you is unfortunate and part of a pattern of decisions that have worked to obstruct and stonewall a search for the truth about Ohio voting irregularities. If these allegations are as obviously baseless as you have claimed, it would seem that you could perform a public service by dispelling them. The voters deserve no less.

I, therefore, renew my request for you to respond to these inquiries and remain faithful to the commitment you made, through your spokesman, to assist our search for the truth.

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## Suing To Stop Bush Certification

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## Forty Ohio Voters File An Election Lawsuit

*What follows are excerpts from a lawsuit filed on Dec. 13, in the Supreme Court of Ohio, contesting the certification of the Presidential election results in that state. The suit was brought by 40 Ohio voters, led by the Rev. Bill Moss and Ruth*

*Carol Moss, against 26 defendants, led by George W. Bush, Richard B. Cheney, Karl C. Rove, Bush-Cheney '04, Inc., and J. Kenneth Blackwell, the Ohio Secretary of State.*

### Nature of the Action

3. This is an election contest filed pursuant to R.C. A73515.08 et seq. For the reasons set forth herein, the plaintiffs-contestors contest the certification of the election of the electors pledged to George W. Bush and Richard B. Cheney for the offices, respectively, of President of the United States and Vice President of the United States for the terms commencing January 20, 2005. For the reasons set forth herein, the plaintiffs-contestors contest the certification of the election of Thomas Moyer for the office of Chief Justice of the Ohio Supreme Court for the term commencing in 2005. . . .

[The first major section of the suit deals with the exit polls around the state, and the divergence in the official results from those polls—ed.]

85. Knowing that the evidence of the election fraud (the exit polls) would be in plain view for a short period of time, there was a further part of the plan to steal the election, which plan was designed and/or implemented by defendants-contestees Bush, Cheney, and Rove acting through as yet unidentified agents (John Doe, Richard Roe, and Karl Roe 1-100). That part of the plan was to reduce or eliminate the amount of time the fraudulent results would be subjected to serious scrutiny by a well-funded adversary. Accordingly, Andrew Card, an associate of defendants-contestees Bush, Cheney, and Rove, appeared on national television in the very early morning hours of November 3, 2004, to make a very nervous and shaky claim to victory in Ohio. Mr. Card essentially called for a concession and an end to any inquiry into the results.

86. Unconstitutional discrimination served as a smoke-screen to distract attention from vote fraud needed to control absolutely the outcome of the election. The discrimination served to decrease the vote for candidates Kerry and Connally [C. Ellen Connally, Democratic candidate for Ohio Supreme Court Chief Justice—ed.] by an amount which could not be known precisely in advance. The vote fraud served to control precisely in certain critical counties the certified vote for candidates Bush, Cheney, Kerry, Moyer, and Connally by amounts which (when taken in the aggregate) could be known in advance and which would be sufficient to control the outcome of the election.

87. On information and belief, plaintiffs-contestors allege that defendants-contestees Bush, Cheney, Rove and those acting on their behalf (e.g., the as yet unidentified John Doe, Richard Roe, and Karl Roe 1-100), used various means to change fraudulently the legitimate results of the election. While a variety of methods were used to perpetrate the election fraud, of which there is clear and convincing evidence in the form of the exit polls, given the election fraud discussed below, perpetrated or acquiesced in by defendant-contestee Blackwell through the misuse of his official powers and his abuse of the public trust, it is likely that traditional, easily

detectable means were one of the principal methods of the election fraud.

88. On information and belief, plaintiffs-contestors allege that traditional means of vote fraud were used. On information and belief, plaintiffs-contestors allege that unlawful ballots (not cast by a registered voter but merely added to the stack of ballots being counted) were added to those cast by lawful voters, and that lawfully cast ballots were either destroyed or altered (as, for example, by adding a second vote to the one allowed vote for President and thereby invalidating the ballot).

89. On information and belief, plaintiffs-contestors allege that a low-technology traditional form of election fraud occurred in Trumbull County, which has 274 precincts. On information and belief, contestors allege that Dr. Werner Lange conducted a study of the poll books in some 106 precincts in the Trumbull County communities of Warren City, Howland Township, Newton Falls City, Girard City, and Cortland Township. According to the Lange study, 580 absentee votes were cast for which there was no notation of absentee voting in the poll books. These 106 precincts averaged 5.5 fraudulent absentee votes per precinct. If this trend prevailed throughout the 11,366 precincts in Ohio, it would mean that at least 62,513 fraudulent votes were cast in the November 2, 2004 election. The presence of fraudulent absentee ballots also give[s] the Bush-Cheney campaign every reason to prevent interested persons from inspecting the poll books.

90. On information and belief, contestors allege that defendant-contestee Blackwell using his official powers as Secretary of State ordered all 88 boards of election to prevent public inspection of poll books until after certification of the vote on December 6, 2004. This alleged action by the co-chair of the Ohio Bush-Cheney campaign apparently caused violations of R.C. A7A73599.161(B) and (C) and may have caused such violations by every board of elections in the state.

[The next numbered items detail instances whereby minority voters were unable to vote or were denied the right to vote at the polls, concluding with a tabulation of a minimum number of votes which were deducted from the total cast for the Kerry-Edwards ticket, and added to the number of votes cast for the Bush-Cheney ticket—ed.]

101. The number of votes listed above which were deducted from those cast for the Kerry-Edwards ticket and then added to those actually cast for the Bush-Cheney ticket is at least 130,656 votes. In the Certified Results, defendants-contestees Bush and Cheney (as a ticket) received 118,775 more votes than candidates Kerry and Edwards (as a ticket). After correcting for the at least 130,613 votes improperly and unlawfully deducted from those actually cast for the Kerry-Edwards ticket, and the at least 130,613 votes improperly and unlawfully added to those actually cast for the Bush-Cheney ticket, the true result was that the Kerry-Edwards ticket won Ohio by at least 142,537 votes. Accordingly, plaintiffs-contestors seek an order directing the Secretary of State to:

- a. Add at least 130,656 votes to the official total reported in the Certified Results for the Kerry-Edwards ticket,
- b. Deduct at least 130,656 votes from the official total reported in the Certified Results for the Bush-Cheney ticket, and
- c. Issue certificates of election to the Electoral College electors representing the Kerry-Edwards ticket.

104. As set forth below, the conduct of defendants-contestees (other than the electors and defendant-contestee Moyer) resulted in numerous violations of the equal protection provisions of the 14th Amendment to the U.S. Constitution, the voting rights provisions of the 15th Amendment to the U.S. Constitution, and the Voting Rights Act, 42 U.S.C. A71973. These violations affected voting and rendered an erroneous result or rendered the result uncertain because of irregularities in registration, the designation of precincts, the effective denial of the right to cast a provisional ballot and have that provisional ballot counted, the use of absentee ballots, the discriminatory assignment of voting machines to precincts, voting machine errors, improperly discarded ballots, and intimidation.

105. These constitutional and statutory violations included, but were in no way limited to, the following incidents:

106. In Auglaize County, there were voting machine errors. In a letter dated Oct. 21, 2004, Ken Nuss, former deputy director of the County Board of Elections, claimed that Joe McGinnis, a former employee of ES&S, the company that provides the voting systems in Auglaize County, had access to and used the main computer that is used to create the ballot and compile election results. Mr. McGinnis' access to and use of the main computer was a violation of County Board of Election protocol. After calling attention to this irregularity in the voting system, Mr. Nuss was suspended and then resigned.

107. In Cuyahoga County, there were irregularities in the registration process. The Cuyahoga County Board of Elections botched the registrations of more than 10,000 voters, preventing them from voting.

108. In Cuyahoga County, there were voting machine errors. In precinct 4F, located in a predominantly black precinct, at Benedictine High School on Martin Luther King, Jr. Drive, Kerry received 290 votes, Bush 21, and Michael Peroutka, candidate of the ultra-conservative anti-immigrant Constitutional Party, received 215 votes. In precinct 4N, also at Benedictine High School, the tally was Kerry 318, Bush 21, and Libertarian Party candidate Michael Badnarik 163. On information and belief, plaintiffs-contestors allege that these results were the result of fraud, error, or mistake.

109. In Cuyahoga County, there was an effective denial of the right to cast a provisional ballot and have that provisional ballot counted; 8,099 provisional ballots (about one-third of those cast) have been ruled invalid incorrectly because the voter allegedly wasn't registered or voted in the wrong precinct. In 2000, about 17% were ruled invalid.

110. In Cuyahoga County and Franklin County, there

were voting machine errors with respect to absentee ballots. The arrows on the absentee ballots did not align with the correct punch hole. On information and belief, this led to voters casting a vote for a candidate other than the candidate they intended to support.

111. In Cuyahoga County, voters were misled when they received phone calls incorrectly informing them that their polling place had been changed.

112. In Franklin County, there were reports that about a dozen voters were contacted by someone claiming to be from the County Board of Elections who allegedly stated falsely that the voters' voting location was changed.

113. In Franklin County, there was a discriminatory assignment of more voting machines per registered voter to precincts with more white voters than African-American voters and fewer voting machines per registered voter to precincts with more African-American voters than white voters. The disparate impact of this assignment of voting machines had the effect, if not the intent, of discriminating against African-American voters.

114. In Knox and Hamilton Counties there was a discriminatory assignment of more voting machines to precincts with a majority of white voters than to precincts which had a majority of African-American voters.

115. In Hamilton County, there were voting machine errors when voters could not insert their ballots all the way into certain machines. Initially in Hamilton County, some absentee ballots which omitted the names of candidates John Kerry and John Edwards were mailed to voters.

116. In Hamilton County, voters and vote monitors complained that the Republican precinct judge was questioning every voter about his or her address and "being a jerk about it."

117. In Jefferson County, there were irregularities in the registration process when some challenged voters were not notified that their registration was challenged and their right to vote was in question. Their names were merely published in a nearly unreadable list in the local newspaper.

118. In Knox County, there were not enough voting machines assigned to certain precincts.

119. In Lake County, some voters received a memo on bogus Board of Elections letterhead informing voters who registered through Democratic and NAACP drives that they could not vote.

120. In Lucas County, there was a discriminatory assignment of voting machines to precincts.

121. In Lucas County, there were voting machine errors when technical problems snarled the process throughout the day. Jammed or inoperable voting machines were reported throughout the city. Lucas County Election Director Paula Hicks-Hudson said the Diebold optical scan machines jammed during testing in the weeks before the election.

122. In Mahoning County, there were voting machine errors when, for example, one precinct in Youngstown, Ohio, recorded a negative 25 million votes.

123. In Mahoning County, there were voting machine

errors when 20 to 30 ES&S iVotronic machines needed to be recalibrated during the voting process because some votes for a candidate were being counted for that candidate's opponent.

124. In Mahoning County, about a dozen ES&S iVotronic machines needed to be reset because they essentially froze.

125. In Mercer County, there were apparent voting machine errors. For example, one voting machine showed that 289 people cast (punch card) ballots, but only 51 votes were recorded for president. The county's website appeared to show a similar conflict, reporting that 51,818 people cast ballots, but 47,768 ballots were recorded in the presidential race, including 61 write-ins. It would appear that about 4,000 votes (nearly 7%) were not counted for a candidate.

126. In Miami County (Concord Southwest precinct), voter turnout was a highly suspect and improbable 98.55%. In Concord South precinct, there was a highly improbable 94.27% voter turnout. Miami County election results indicated that 18,615 votes came in after 100% of the precincts had reported. It is statistically suspicious that the extra votes came in at essentially the same percentage for candidates Bush and Kerry both before and after the extra 18,615 votes were counted.

127. In Montgomery County, there were voting machine errors. Two precincts had 25% presidential undervotes. This means no presidential vote was recorded on one-quarter of the ballots. The overall undervote rate for the county was 2%. The undercount amounted to 2.8% of the ballots in the 231 precincts that supported candidate Kerry, but only 1.6% of those cast in the 354 precincts that supported candidate Bush.

128. In Sandusky County, there were voting machine errors when what appeared to be an overcount resulted when a computer disk containing votes was accidentally inserted into the vote tabulating machines twice by an election worker.

129. In Sandusky County, election officials also discovered some ballots in nine precincts were counted twice.

130. In Stark County, there was an effective denial of the right to cast a provisional ballot and have that provisional ballot counted. The Election Board rejected provisional ballots cast at the wrong precinct in the right polling place. In earlier elections, a vote cast in Stark County in the wrong precinct at the proper polling location would be counted.

131. In Trumbull County, a voter in Warren Township precinct D arrived at the polls to discover that someone had already voted in her name. The person who used her name apparently forged her signature and wrote that she lived at a different address. The Board of Elections allowed the registered voter (the second to appear) to cast a ballot.

132. In Warren County, there were irregularities in the counting on Election Night when officials locked down the county administration building and blocked anyone from observing the vote count.

133. In a number of counties (including Franklin and Mahoning), there were numerous reported instances of vote hopping (in which a voter selecting Kerry for President saw the choice displayed on the machine "hop" to Bush for President).