

August 16, 2006

Robert Batchelor
Coshocton County Prosecuting Attorney
318 Chestnut St.
Coshocton, Ohio 43812

Mr. Batchelor,

This complaint filed this day, August 16, 2006 is a full and accurate accounting of events resulting from my first hand knowledge and direct involvement in the 2004 Presidential Vote Recount.

All allegations of misconduct are corroborated in public records, transcripts and correspondence between the Coshocton County Board of Elections and me. Due to your role as counsel for the Coshocton County Board of Elections, it is appropriate that a special prosecutor be named to investigate this matter immediately and that you neither begin an investigation nor serve as counsel for those named in this complaint. The appointment of a special prosecutor in matters concerning members and employees of county boards of election represented by the office of the County Prosecutor was reaffirmed by the Cuyahoga County Prosecutor with the appointment of Special Prosecutor Kevin Baxter of Erie County to investigate similar allegations filed against members and employees of the Cuyahoga County Board of Election, with subsequent indictments then issued in April, 2006 against three employees of the Cuyahoga County Board of Election due to that investigation.

It is also necessary that the presiding court immediately move to issue an order to preserve all documents pertinent to the General Election of November 2, 2004 and the 2004 Presidential Vote Recount in Coshocton County. This order should include all records at the Coshocton County Board of Election as well as the Office of The Ohio Secretary of State and any and all relevant records that may be stored elsewhere.

Although only those actions and events that transpired as verifiable acts of misconduct are addressed in this complaint, it is important to note the intent of the Coshocton County Board of Election, the Director of the Coshocton County Board of Election and the Deputy Director of the Coshocton County Board of Election to misrepresent the outcome of the General Election of November 2, 2004 as well as their intent to violate not only the "Outline of Recount Procedures" as directed by the Secretary of State, but the spirit of the Recount as well. In statements to the media by the Director intended to cover up the failure of tabulating equipment on Election Day, as well as official record documenting the Board's intent to ignore the Secretary of State's Directive requiring random selection of precincts to be recounted it is apparent that there was a sense among the Board and it's employees that they need not comply with the law.

Please contact me at your earliest convenience if you would like to discuss this complaint further.

Thank you for your prompt attention to this matter,

Timothy J. Kettler

29674 Township Road 30
Warsaw, Ohio 43844
(740) 824-3828

August 16, 2006

This document is my personal account of events that occurred prior to, during and subsequent to the official Presidential Vote Recount of the 2004 General Election in Coshocton County, Ohio, November 2, 2004. These events are a direct result of the actions of the Coshocton County Board of Election including members David Burns, Donald K. Andrews, Mary Fritz, and Kenneth Grewe and herein referred to as the Coshocton County Board of Election, Mary Fry, Director, Coshocton County Board of Election, herein referred to as the Director, Kathy Hendricks, Deputy Director, Coshocton County Board of Election, herein referred to as the Deputy Director, Ohio Secretary of State J. Kenneth Blackwell, Ms. Patricia Wolfe, Mr. Michael Hernon and Ms. Kathy Malot of the Ohio Secretary of State's Office and other possible unknown and unnamed persons.

The Coshocton County Board of Election, the Director and the Deputy Director willfully violated Secretary of State J. Kenneth Blackwell's Directive No. 2004-58, which included an "Outline for Recount Procedures" (Ohio Revised Code sections 3515.01 – 3515.07) which states, "at the time and place fixed for making a recount, the county Board of Election, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount them."

On December 8, 2004, the Coshocton County Board of Election scheduled the Presidential Vote Recount to be conducted December 14, 2004. On December 9, 2004 or December 10, 2004, with no prior notification to the candidates and no candidates' witnesses present, an illegal recount of the Presidential Vote Election Returns certified by the Ohio Secretary of State on December 6, 2004, was conducted by the Deputy Director. This deliberate, illegal action was the result of a decision made on December 9, 2004 after consultation with and at the direction of, the Coshocton County Board of Election, the Director and Mr. Michael Hernon and Ms. Patricia Wolfe and possible other unnamed and unknown persons. The Election Returns resulting from this illegal recount were then certified by Secretary of State J. Kenneth Blackwell on December 10, 2004 as the official totals of the Presidential vote of the 2004 General Election held November 2, 2004.

On December 14, 2004, the official Presidential Vote Recount of the 2004 General Election in Coshocton County was held. As the candidates' witnesses assembled in the public access area of the Board of Election, prior to being admitted to the recount area, the ballots to be recounted were removed from their unsecured storage boxes and distributed randomly among the various tables to be recounted by the ten counting teams. At no time were the ballots stored in sealed containers, and handling and distribution of the ballots occurred on this date as well as on December 8, 2004 or December 9, 2004 or December 10, 2004, and other possible dates without the presence of the candidates' witnesses. When the candidates' witnesses were granted access to the recount area it was noted that ballots were already handled and distributed, blank ballots were in view among the haphazardly placed cardboard boxes in which the ballots were stored. Some of the boxes were taped shut with typical packaging tape. During the time candidates' witnesses were waiting in the public access area, volunteers assembled to form counting teams and other volunteers and board members distributed ballots and handled boxes of ballots.

As the recount began, the Director and Deputy Director distributed copies of precinct by precinct Election Returns of the Presidential Vote of the 2004 General Election. These Election Returns distributed to the candidates' witnesses were the Election Returns obtained by the illegal recount conducted on December 9, 2004 or December 10, 2004,

rather than the Elections Returns certified by Secretary of State J. Kenneth Blackwell on December 6, 2004, the Official Election Returns determined by the Secretary of State to be the Election Returns to be recounted. At no time did the Coshocton County Board of Election, the Director or Deputy Director inform the candidates' witnesses of the origin of the Election Returns presented to them, nor were these totals posted by the Coshocton County Board of Election or the Secretary of State for the general public prior to the recount. These totals were represented by the Coshocton County Board of Election, the Director and Deputy Director as the official Election Returns of the Presidential Vote of the 2004 General Election, November 2, 2004. Upon further examination and analysis subsequent to the completion of the recount held on December 14, 2004, inconsistencies were noted between Official Election Returns as certified by the Secretary of State on December 6, 2004 and those Election Returns supplied to candidates' witnesses on December 14, 2004 and represented as the Official Election Returns of the General Election, November 2, 2004. On December 19, 2004 I submitted a letter to the Coshocton County Board of Election inquiring into the true circumstances of the events found to be inconsistent with the requirements of the Ohio Revised Code section 3515.04. In a follow up telephone conversation with the Director I was informed that a reply to my letter would be forthcoming after the Board of Election met and drafted an official response. I subsequently received the Board of Election's official reply, dated December 27, 2004, which detailed the aforementioned events of December 9, 2004, December 10, 2004 and December 14, 2004.

ORC 3599.16, "Misconduct of Members of the Board of Election", states that, "No member, director or employee of a board of election shall: A) Willfully or negligently violate or neglect to perform any duty imposed upon him by law, or willfully perform or neglect to perform it in a way as to hinder the objects of the law, or willfully disobey any law incumbent upon him to do so." The Coshocton County Board of Election, the Director and the Deputy Director, with the full knowledge of and possibly at the direction of Mr. Michael Hernon and Ms. Patricia Wolfe, and other possible unnamed and unknown persons, violated ORC 3515.04 "Outline of Recount Procedures." By willfully conducting, concealing and misrepresenting the illegal recount of the Presidential Vote of the 2004 General Election on December 9, 2004 or December 10, 2004, the Coshocton County Board of Election, the Director and the Deputy Director violated ORC 3599.16. This action also violates ORC 3515 "Outline of Recount Procedures, D2, Notice to Candidates." and referred to in ORC 3599.32, "Violations by election official not otherwise specified."

On December 10, 2004, the Coshocton County Board of Election, the Director and the Deputy Director, with the full knowledge of Ohio Secretary of State J. Kenneth Blackwell, Mr. Michael Hernon, Ms. Patricia Wolfe, Ms. Kathy Malot and other possible unknown and unnamed persons violated ORC 3599.29, "Possession of False Records.", which states, "No person shall have in the person's possession a falsely made, altered, forged or counterfeited registration card, form or list, poll book, tally sheet or list of election returns of an election, knowing it to be such with intent to hinder, defeat, or prevent a fair expression of the popular will at such election." On December 10, 2004, false Election Returns generated due to the illegal recounting of Election Returns occurring on December 9, 2004 or December 10, 2004, were submitted to the Ohio Secretary of State for certification and subsequent submission to the Electoral College. These Election Returns were obtained due to the commission of an illegal act and cannot be construed as legal or certifiable. The only true, legal Election Returns of the Presidential Vote of the General Election of 2004 in Coshocton County are the Official Returns as certified by the Secretary of State on December 6, 2004 and the Official

Certified Election Returns resulting from the Presidential Vote Recount of the General Election of 2004, occurring on December 14, 2004.

On December 14, 2004, the Coshocton County Board of Election, the Director and the Deputy supplied Election Returns in a document titled "Precinct Totals by Race Report" to candidates' witnesses. These Election Returns were represented as the official Election Returns of the Presidential vote of the General Election, November 2, 2004. These election returns were in fact the "amended official" referred to in the official Board of Election minutes of December 9, 2004, and generated by the illegal handling and recounting of Election Returns on December 9, 2004 or December 10, 2004. This action constitutes a violation of ORC 3599.29, "Possession of False Records."

On December 9, 2004 or December 10, 2004, and again on December 14, 2004, the Coshocton County Board of Election, the Director and the Deputy Director, violated ORC 3515.04 which states in part, "...the county Board of Election, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and recount them." The handling and recounting of the ballots not in the presence of the candidates' witnesses is a violation of ORC 3599.16, "Misconduct of Members of the Board of Election." The failure to store ballots in "sealed containers", as required by ORC 3515.04, is referred to in ORC 3599.32, "violations by election official not otherwise specified.", which states, "No official upon whom a duty is imposed by an election law for the violation of which there is no other penalty otherwise provided shall knowingly disobey such election law. Whoever violates this section is guilty of a misdemeanor of the first degree."

The events of December 9, 2004 and December 10, 2004, specifically the illegal recount of the Presidential vote of the General Election of 2004, and failure to notify candidate no later than five days prior to a recount are corroborated in a letter (exhibit A) to me from the Director dated December 27, 2004 and written at the direction of the Coshocton County Board of Election. Additional corroboration is contained in the official minutes of an emergency special meeting of the Coshocton County Board of Election (exhibit B), held December 9, 2004.

The events of December 10, 2004, specifically the possession of false election returns for submission to the Office of the Secretary of State for recertification and subsequent submission to the Electoral College are also corroborated in the above mentioned letter (exhibit A)

The events of December 9, 2004 or December 10, 2004, and again on December 14, 2004, specifically the handling and distribution of the ballots to be recounted, not in the presence of the candidates' witnesses are corroborated in both exhibit A and exhibit B.

The events of December 14, 2004, specifically the possession and distribution of false Election Returns to candidates' witnesses is corroborated in the document "Precinct Totals by Race Report" "Official-November 2, 2004" dated 12/10/2004 10:25:28 AM (Exhibit C)

Failure to store ballots in "sealed containers" is acknowledged in exhibit A in the description of security procedures and corroborated by eyewitnesses including myself.

In the interim period of December 19, 2004 to December 28, 2004 the Coshocton County Board of Election held a Board meeting via telephone conference call to discuss official

Board business. The purpose of that business being to discuss the draft response to be prepared by the Director at the direction of the Coshocton County Board of Election to answer questions submitted by me in a letter dated December 19, 2004. (Exhibit D) In a conversation with the Director on September 15, 2005, I was informed that a request to the Board of Election for comment on the draft response was made by the Director via fax on December 21, 2004 and December 28, 2004. Copies of the fax cover letters were supplied to me during the September conversation and are included here (exhibit E). Copies of the letter submitted by me (exhibit D) were also supplied to me at that time. During the September 15, 2005 conversation the Director informed me that a Board of Election meeting was then held via telephone conference call. The copies (2) (exhibit F) of the letter(exhibit D) and supplied to me on September 15, 2005 by the Director contain penciled in notes made by the Director during the Board Meeting conducted via conference call. As of September 15, 2005 there are no recorded minutes of this official business or of any official business relevant to my letter (exhibit D) or the draft response (exhibit A). This is a violation of ORC 3501.13, "Duties of director, oath; notice posted." which states in part "...the director of the board of elections shall keep a full and true record of the proceedings of the board." This is also a violation of ORC 3599.32, "Violations by election officials not otherwise specified." As of September 15, 2005 there are copies and originals of the documents mentioned in this paragraph maintained in a file at the Coshocton County Board of Election under the heading "Timothy J. Kettler".

As Prosecutor for the County of Coshocton, I ask for your immediate attention to this matter.

Thank You,
Timothy J. Kettler

29674 Township Road 30
Warsaw, Ohio 43844
740-824-3828