

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Ninth Congress

January 14, 2005

The Honorable John D. Ashcroft  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

Over the last several months, we have conducted an extensive investigation concerning irregularities in the Ohio presidential election, including holding forums in Washington, D.C. and Columbus, Ohio. The results of this investigation are summarized in the attached Status Report. In the course of that investigation, we have come across a number of instances of misconduct which we would ask that you to investigate for possible federal legal violations.

In brief, we learned of numerous instances of voter intimidation and misinformation, improper purging, caging of minority voters, misuse of Help America Vote Act (HAVA) funds, voting machine tampering, perjury, and most recently, potential misuse of the federal seal in a campaign solicitation by Ohio Secretary of State Blackwell. Since this and other apparent violations by the Secretary of State presents such an obvious conflict for your office, we would ask that you appoint a special counsel to investigate this matter.

While the Report contains numerous possible violations of state, federal and constitutional requirements that warrant your attention, we would like to draw your attention in particular to several specific apparent violations of federal law:

Voter Intimidation and Misinformation

Numerous instances of intimidation and misinformation occurred across the state of Ohio that would appear to violate the Voting Rights Act:

- The NAACP testified that it received over 200 calls regarding incidents of suspected voter intimidation or unusual election related activities, particularly actions taken by challengers who intimidated poll workers and voters. Other specific incidents involved a caller who reported that someone was going door-to-door telling people they were not registered to vote. A voter in Franklin County received information in the mail identified as being from the state that said he would have to vote by provisional ballot because he had moved; in fact, the voter had not moved and

had lived at the address for 10-15 years. One polling place worker was reportedly only asking African American voters for their address.<sup>1</sup>

- In Franklin County, a worker at the Holiday Inn observed a team of 25 people who called themselves the “Texas Strike Force” using payphones to make intimidating calls to likely voters, targeting people recently in the prison system. We understand the “Texas Strike Force” members hotel accommodations were paid for by the Ohio Republican Party, whose headquarters is across the street. The hotel worker heard one caller threaten a likely voter with being reported to the FBI and returning to jail if he voted. Another hotel worker called the police, who came but did nothing.<sup>2</sup> There were also reports of phone calls incorrectly informing voters that their polling place had changed.<sup>3</sup>
- The *Cleveland Plain Dealer* found that several Lake County residents received an official-looking letter on Board of Elections letterhead informing them that their polling place had changed or that they were not properly registered to vote.<sup>4</sup> A fake voter bulletin from Franklin County Board of Elections was posted at polling locations, and fliers were distributed in the inner city, telling Republicans to vote on Tuesday and Democrats to vote on Wednesday due to unexpected heavy voter registration.<sup>5</sup>
- In Cleveland, the *Washington Post* reported that unknown volunteers began showing up at voters’ doors illegally offering to collect and deliver complete absentee ballots to the election office.<sup>6</sup> The Election Protection Coalition testified that in Franklin County, voters received fliers informing them that they could cast a ballot on November 3.<sup>7</sup> Also, in Franklin County there were reports that about a dozen voters were contacted by

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<sup>1</sup>*Preserving Democracy - What Went Wrong in Ohio, Judiciary Democratic Forum*, (Dec. 8, 2004) (statement of Hilary Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People).

<sup>2</sup>*Judiciary Democratic 2004 Election Forum* (Dec. 13, 2004) (statement of Prof. Robert Fittrakis); see also Bob Fittrakis et al., *Startling New Revelations Highlight Rare Congressional Hearings on Ohio Vote*, THE FREE PRESS, Dec. 13, 2004.

<sup>3</sup>Jo Becker & David Finkel, *Now They’re Registered, Now They’re Not*, WASH. POST, Oct. 31, 2004, at A22.

<sup>4</sup>Grant Segall, *Voters Told to Ignore Hoax*, THE PLAIN DEALER, Oct. 29, 2004.

<sup>5</sup>Bob Fittrakis, *None Dare Call it Voter Suppression*, THE FREE PRESS, Nov. 7, 2004.

<sup>6</sup>See Becker & Finkel, *supra*.

<sup>7</sup>See *Judiciary Democratic Forum* (Dec. 8, 2004) (statement of Jon Greenbaum, Director, the Voting Rights Project).

someone claiming to be from the county board of elections, telling them their voting location was changed,<sup>8</sup> and “door-hangers” telling African-American voters to go to the wrong precinct were distributed.<sup>9</sup>

Improper Purging and Other Misconduct.

Our investigation uncovered numerous instances of improper purging and other official misconduct in apparent violation of the Voting Rights Act, the National Voter Registration Act, and HAVA.

- A *Washington Post* investigation found that many longtime voters discovered their registrations had been improperly purged.<sup>10</sup> Numerous voters were incorrectly listed on roster as felons, and thus not allowed to vote.<sup>11</sup> The NAACP testified to receiving over 1,000 calls related to voter registration issues, generally from individuals who were not on the voter rolls even though they had voted in recent elections and individuals with concerns about not receiving a voter registration card.<sup>12</sup> The Election Protection Coalition found that “Individuals frequently reported having “disappeared” from the voter rolls ... Many individuals expressed concerns that they had registered but never received confirmation or were not listed on the voter rolls at the precincts.”<sup>13</sup>
- The NAACP reported that many voters complained they were asked to show ID when it was unnecessary. At several locations in Cuyahoga County, all voters were being asked for ID, not just new voters as permitted by HAVA.<sup>14</sup>

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<sup>8</sup>See *Judiciary Democratic 2004 Election Forum* (Dec. 13, 2004) (statement of Prof. Robert Fitrakis, Editor, The Free Press).

<sup>9</sup>E-mail from Cincinnati-area election volunteer, on file with the House Judiciary Committee Democratic Staff.

<sup>10</sup>See Michael Powell & Peter Slevin, *Several Factors Contributed to “Lost” Voters in Ohio*, WASH. POST, Dec. 15, 2004 at A1.

<sup>11</sup>Bob Fitrakis, *None Dare Call it Voter Suppression*, THE FREE PRESS, Nov. 7, 2004.

<sup>12</sup>See *Judiciary Democratic Forum* (Dec. 8, 2004) (statement of Hilary Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People).

<sup>13</sup>See PEOPLE FOR THE AMERICAN WAY ET AL., *ELECTION PROTECTION 2004, SHATTERING THE MYTH: AN INITIAL SNAPSHOT OF VOTER DISENFRANCHISEMENT IN THE 2004 ELECTIONS* 21.

<sup>14</sup>See *Judiciary Democratic Forum* (Dec. 8, 2004) (statement of Hilary Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People).

Caging of New Minority Voters.

The Ohio Republican Party engaged in “caging,” whereby it sent registered letters to newly registered voters in minority and urban areas, and then sought to challenge 35,000 individuals who refused to sign for the letters or the mail otherwise came back as undeliverable (this includes voters who were homeless, serving abroad, or simply did not want to sign for something concerning the Republican Party). These tactics – which were found to be unlawful by three federal courts<sup>15</sup> – would seem to constitute a violation of both the Voting Rights Act and the Civil Rights Act of 1968, particularly given the racial disparities involved.

Misuse of HAVA Funds.

We received an affidavit from Rhonda J. Frazier, a former employee of Secretary Blackwell, describing several irregularities concerning the use of HAVA money and the acquisition of election machinery by the state (attached). She states that Secretary Blackwell’s office failed to comply with the requirements of the voting reform grant that required all of the voting machines in Ohio to be inventoried and tagged for security reasons. Ms. Frazier also asserts that she “was routinely told to violate the bidded contracts to order supplies from other companies for all 17 Secretary of State offices throughout the State which were cheaper vendors, leaving a cash surplus differential in the budget” and that, when she inquired as to where the money differential was going, she was essentially told that this was not her concern and that she should not inquire about where that money went.<sup>16</sup> The affidavit appears to demonstrate a prima facie violation of HAVA due to the fact that the monies that were given under the act had been diverted without being reported.<sup>17</sup>

Tampering of Voting Machinery and Records

The voting computer company Triad has essentially admitted that it engaged in a course of behavior during the recount in numerous counties in Ohio of unilaterally altering voting machines outside of the presence of election observers in order to provide “cheat sheets” to those counting the ballots. The cheat sheets informed election officials of 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, the election officials could avoid doing a full county-wide hand recount mandated by state law. These tactics appear to violate 42 U.S.C. §1973, which provides for criminal penalties for any person who, in any election for federal office, “knowingly

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<sup>15</sup>DNC v. RNC, No. 04-4186, slip. op. (3d Cir. 2004) (upholding DNC v. RNC, No. 81-cv-3876, slip op. (D.N.J. 2004)); Summit County Democratic Central and Executive Committee v. Blackwell, 4004 U.S. Dist. LEXIS 22539 (N.D. Ohio 2004); Spencer v. Blackwell, 2004 U.S. Dist. LEXIS 22062 (S.D. Ohio 2004).

<sup>16</sup>See Affidavit of Rhonda Frazier.

<sup>17</sup>42 U.S.C. § 13501.

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.” In addition, Triad’s conduct would seem to violate 42 U.S.C. § 1974’s requirement concerning the retention and preservation of all voting records and papers for a period of 22 months from the date of a federal election and makes it a felony for any person to “willfully steal, destroy, conceal, mutilate, or alter” any such record.

Perjury by a County Board of Elections Official.

At one time, the Franklin County Board of Elections reported 81 voting machines were never placed on election day.<sup>18</sup> However, a county purchasing official who was on the line with Ward Moving and Storage Company, documented only 2,741 voting machines delivered through the November 2 Election Day,<sup>19</sup> while Franklin County’s records reveal that they had 2,866 “machines available” on Election Day.<sup>20</sup> This would mean that an even larger number of at least 125 machines remained unused on Election Day. Yet Matt Damschroder, Chair of the Board of Elections for Franklin County, informed a federal court on Election Day that the county had no additional voting machines.<sup>21</sup> Such testimony would appear to be perjurious on its face.

Misuse of Great Seal of the United States on Secretary of State Blackwell’s Personal Campaign Materials.

We also learned that Secretary of State Blackwell, the co-chair of the Bush-Cheney Campaign in Ohio, recently sent a campaign solicitation that uses a mock U.S. seal (attached). This partisan replica may violate 18 U.S.C. § 713, which prohibits the unofficial use of the great seal of the United States or its likeness. It is our understanding that the Justice Department has

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<sup>18</sup>Bob Fittrakis, *How the Ohio Election Was Rigged for Bush*, THE FREE PRESS, Nov. 22, 2004.

<sup>19</sup>*Id.*

<sup>20</sup>Franklin County Board of Elections 2004 Election Abstract, [www.co.franklin.oh.us/boe/content/electionAbstract.htm](http://www.co.franklin.oh.us/boe/content/electionAbstract.htm)

<sup>21</sup>Bob Fittrakis *et al.*, *Startling New Revelations Highlight Rare Congressional Hearings on Ohio Vote*, THE FREE PRESS, Dec. 13, 2004.

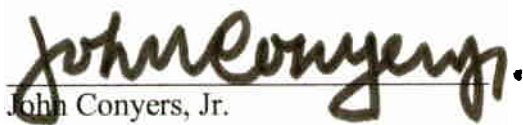
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intervened when similar seals were used in past campaigns.<sup>22</sup> As to this point, we request that you appoint a special counsel to investigate whether charges should be brought against Secretary Blackwell. This is because the criteria set forth for appointing a special counsel have been met,<sup>23</sup> and the public interest is best served by having an independent individual investigate whether charges should be pursued. We hope you will agree that asking the Bush Administration to investigate the individual who takes credit for it's reelection – J. Kenneth Blackwell – creates an apparent, if not actual, conflict of interest.

While the election is over, we believe it is important that the American people understand that our nation will not tolerate the intimidation of a single vote, and that where election misconduct occurs, it will be vigorously investigated, regardless of the political party involved. Given the importance of these issues, we would ask that you meet with us at your earliest convenience so that we may understand the procedures you will undertake to respond to our concerns. Such a meeting is particularly important given that the Government Accountability Office has recently found that the Department has failed to appropriately track or respond to complaints of voting irregularities in past elections.<sup>24</sup>

Please respond to us at your earliest convenience, and by no later than January 28, 2005 if at all possible. Please forward any correspondence through our Judiciary Committee staff, 2142 Rayburn House Office Building, Washington, D.C. 20515 (tel. 202-225-6504, fax 202-225-4423).

Sincerely,



John Conyers, Jr.  
Ranking Member



Jerrold Nadler



Robert C. Scott



Sheila Jackson Lee

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<sup>22</sup>Stephen Koff, *Blackwell's phony seal raises funds, legal issue*, THE PLAIN DEALER, Jan. 12, 2005.

<sup>23</sup>28 C.F.R. § 600.1 (2004). The Attorney General must appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."

<sup>24</sup>GAO, Dept. of Justice's Activities to Address Past Election-Related Voting Irregularities, September 14, 2004, GAO-04-1041R.