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Congress of the United States

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COMMITTEE ON THE JUDICIARY

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December 15, 2004

Mr. Kevin R. Brock
Special Agent in Charge
John Weld Federal Building
550 Main Street, Suite 900
Cincinnati, OH 45202

Attorney Larry E. Beal
Hocking County Prosecutor
Hocking County Courthouse
88 South Market Street
Logan, OH 43138

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 December 13, my staff met with Ms. Eaton who explained to them that last Friday, December 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.

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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 twenty-two 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 4 provisions of the Ohio Revised Code make it a felony to tamper with or destroy election records or machines.¹ Clearly, modifying election equipment in order to make

¹OHIO REV. CODE ANN. §3599.27 provides "[n]o person shall tamper or attempt to tamper with, deface impair the use of, destroy or otherwise injure in any manner any voting machine...No person shall tamper or attempt to tamper with, deface, impair the use of, destroy or otherwise change or injure in any manner any marking device, automatic tabulating equipment or any appurtenances or accessories thereof."

OHIO REV. CODE ANN. §3599.24 provides "[n]o person shall...destroy any property used in the conduct of elections."

OHIO REV. CODE ANN. §3599.34 provides "[n]o person, from the time ballots are cast or voted until the time has expired for using them in a recount or as evidence in a contest of election, shall unlawfully destroy or attempt to destroy the ballots, or permit such ballots or a ballot box or pollbook used at an election to be destroyed; or destroy, falsify, mark, or write in a

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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,² and that “Teams of one Democrat and one Republican must be present with ballots at all times of processing.”³

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

name on any such ballot that has been voted.”.

OHIO REV. CODE ANN. §3599.33 provides “[n]o person, from the time ballots are cast or counted until the time has expired for using them as evidence in a recount or contest of election, shall willfully and with fraudulent intent make any mark or alteration on any ballot; or inscribe, write, or cause to be inscribed or written in or upon a registration form or list, pollbook, tally sheet, or list, lawfully made or kept at an election, or in or upon a book or paper purporting to be such, or upon an election return, or upon a book or paper containing such return the name of a person not entitled to vote at such election or not voting thereat, or a fictitious name, or, within such time, wrongfully change, alter, erase, or tamper with a name, word, or figure contained in such pollbook, tally sheet, list, book, or paper; or falsify, mark, or write thereon with intent to defeat, hinder, or prevent a fair expression of the will of the people at such election.”.

²Mehul Srivastava, *Greene County elections board scrutinized; Office containing ballots found unlocked overnight*, DAYTON DAILY NEWS, Dec. 12, 2004 at B1.

³Ohio Secretary of State J. Kenneth Blackwell, Directive 2004-48, Oct. 29, 2004, “Absentee/Provisional Counting and Ballot Security”.

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Rapp family, and its founder Tod A. Rapp has been a consistent contributor to Republican causes.⁴ 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, 2142 Rayburn House Office Building, Washington, D.C. 20515 (tel 202-225-6504, fax 202-225-4423).

Sincerely,

John Conyers, Jr.

Enclosures

cc: The Honorable F. James Sensenbrenner, Jr.

⁴Contributions of Tod A. Rapp

National Republican Congressional Committee

3/16/1998	\$250
2/15/1999	\$350
9/11/2000	\$350

Ohio State Central and Executive Committee

3/1/2001	\$200
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Bush-Cheney 2004

2/2/2004	\$500
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Republican National Committee

8/8/2003	\$250
2/3/2004	\$500

Source: WWW.FEC.GOV

AFFIDAVIT
December 13, 2004
Sherole Eaton

Re: General Election 2004, Hocking County - Tri Ad
Dell Computer about 14 years old - No tower

On Friday, December 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". He also added that there would be no charge for this service.

He arrived about 12:30PM. 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 fourteen 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 problem 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 3:00PM and then asked me which precinct and the number of the precinct we were going to count. I told him, Good Hope 1 #17. He went back into the tabulation room. Shortly after that he ~~was~~ 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 tests 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 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 5:00PM.

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.

Sherole L Eaton

James Stahl
Notary - Expires 2-15 06

Apelbaum, Perry

Subject: FW: Monroe County OH -- Suspended Recount, Machine "swap"

Monroe County (Woodfield) OH:
3% Hand-count failed to match machine count
Repairman from Triad summoned to bring new machine
Recount suspended & reconvened for Wednesday at 9:30 AM

Details Below
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I am the Recount Regional Coordinator for the Eastern Ohio / PA Border region.

The following was relayed to me by Richard Rodefer, who was the Cobb observer today (Tuesday 12/14) in Monroe County. Mr. Rodefer spoke with me via cell phone as he was driving from the Wheeling WV area, shortly before 4 PM.

Monroe County BOE convened a "meeting" Tuesday 12/14 for purpose of recount
6 BOE people present. Director Margaret Hansen, Deputy Director Ann Block, 4 Directors.
Also present: Richard Rodefer representing David Cobb, Herman _____ (have name but will have to search) representing John Kerry, and one person (unknown name) representing George Bush. Thomas Waters, a volunteer observer for Michael Badnarik, had credentials sent to Monroe BOE via fax (which they said they would accept). Mr. Waters did leave for Woodfield, but he did not arrive, possibly due to bad weather in the area.

Precinct 11 was pre-chosen to be counted. The reason for choosing this precinct was due to its being only 4 votes above the 3% number.

The following took place, in this order:

Run of test deck (was accurate; the machine count DID equal test deck)

Inspection of all Ballot Cards
Hand Count of Precinct 11
Machine Count of Precinct 11

** Machine count did NOT equal hand count

Pat-down of cards, flex cards, etc to improve feed followed by at least two additional machine runs of the hand-counted ballots

** No two runs were alike and no run equaled the hand count, however the machine did operate and produce a count each time according to Mr. Rodefer

Did not proceed to full hand count, suspended recount, contacted their "supplier" near Xenia (Triad?) for a repairman to bring a new reader and/or "fix" this machine

They knew the problem was in the machine at this point; Triad called, to send repair person immediately (4 or more hours to arrive) to fix or bring new machine

BOE did not proceed to full hand count, but voted to suspend the recount and "continue meeting" tomorrow (Wednesday 12/15) at 9:30 AM with fixed machine or new machine from Triad.

Decision that because this is "continued" meeting, ONLY those observers present today may be present tomorrow. (Basically if anyone can not come back that candidate will have no representation.)

Mr. Rodefer (who is a native of Bellaire OH) left Monroe County approximately 11 AM; visited friends in the Bellaire-Wheeling area and is now enroute to his home near Pittsburgh.
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I also called the Monroe BOE and spoke with Deputy Director Ann Block. She basically confirmed the above, except that she stated that the recount was suspended due to "broken reader", and said that a repairman is on the way from the Cincinnati area to "swap out" the broken reader for a good one. As of approximately 4:10 PM the repair person is still coming and is still enroute.

Ms. Block also stated that K. Blackwell's office was called after the machine "broke" and that the decision to not allow any change of observers was the SOS office's decision (as per conversation with Blackwell's legal counsel.) To her knowledge all observers present today can and will come back tomorrow.

Monroe BOE (voice): (740) 472-0929; (fax) (740) 472-2517
.....

I have reported this fully to Lynne Serpe; she gave me your e-mail and requested that I forward this information to you. If you have questions, you can reach Mr. Rodefer, or please contact me (I will be glad to help in any way, although I personally was not present in Monroe County today and am only forwarding information as related to me.)

Marybeth Kuznik
Eastern OH - PA Border Region Recount Coordinator

**Addendum to Declaration of Evelyn Roberson dated December 12, 2004
Re: Incidents of December 10, 2004**

This is to add to the approximately 1:15 p.m. portion of the visit with Deputy
Director of Elections Lyn McCoy with respect to the following comment:

“She said they would have their computer technician check over their computers
on Monday in case they had been tampered with.”

The addition is that Lyn McCoy also mentioned to me at the same time that her
computer technician was with Triad.

I declare under penalty of perjury the foregoing is true and correct.

Dated: Dec. 14, 2004 Evelyn Roberson *Evelyn Roberson*