

## ***Electronic Voting***

### **American democracy hangs by a thread in Ohio**

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December 17, 2004 ([freepress.org](http://freepress.org))—As the whole world watches, American democracy may be hanging by a thread in Ohio.

Monday, December 13, saw a triple play that will live in electoral infamy. But every new day brings still more stunning revelations—this time from Toledo—of vote theft and fraud and a towering wall of resistance and sabotage against a fair recount of the votes that allegedly gave George W. Bush four more years in the White House.

Three major events made December 13 a monument to electoral theft: a lawsuit filed in the morning at the Ohio State Supreme Court demanding a recount of all Ohio ballots; a Congressional hearing held in Columbus City Council chambers filled with angry, high-profile testimony of vote fraud and disenfranchisement and the illegal sabotaging of a recount; and then, at noon, a block away at the statehouse, the vote of Ohio's twenty illegitimate electors designating their choice of George W. Bush to be president.

On Tuesday, demonstrators staged the latest in a long string of protests at the statehouse. And at an evening hearing in Toledo, stunning new sworn testimony revealed that Diebold technicians have tainted official voting machines before a recount could be done, irrevocably compromising the process.

The December 13 lawsuit was filed in the presence of Rev. Jesse Jackson, who compared it to the attempts to win voting rights for African-American citizens in the era of Dr. Martin Luther King.

The suit seeks to overturn Ohio's presidential vote. It asked an immediate court order to stop Republican presidential electors from meeting and voting for George W. Bush.

Republican election officials prevented a vote count from starting until that very morning. Supervised by Secretary of State Kenneth Blackwell, co-chair of the Bush-Cheney re-election campaign, Ohio simply ignored all challenges to the vote count and all requests for a recount. Within hours the Bush electors cast their votes, even though the bitterly contested ballots that allegedly gave them standing as electors had not been recounted.

In other words, while every legal remedy to determine who won Ohio's presidential election was being pursued, the state's Republican political machine blocked the rights of those seeking to verify the vote.

"Today, in the state capital of Ohio, we are witnessing a crime against democracy, a crime against the right to vote and a crime against the Constitution," said John Bonifaz, founder of the National Voting Rights Institute and attorney for the Green and Libertarian Parties in the recount. Ohio Republicans have "no right to convene a meeting of the presidential electors prior to the completion of the recount," he said.

Bonifaz's remarks came amidst testimony at the second field hearing on the 2004 election held by Democratic members of the House Judiciary Committee. Last week in Washington, the committee opened what it said would be the first in an ongoing series of investigations into what happened on

Election Day, when exit polls showed John Kerry heading toward victory but after midnight the returns shifted and network television declared Bush the victor.

“At the outset of this hearing, I would like to announce that 10 members of Congress, including myself, have written to (Ohio) Gov. Taft asking him to either delay or treat as provisional the vote of Ohio’s presidential electors,” Rep. John Conyers, the senior Democrat on the Judiciary Committee said at the outset. “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 it has something to hide.”

Ironically, Democratic State Senator Ray Miller of Columbus had secured the North Hearing Room in the statehouse. But Republicans cancelled that, and forced the gathering to convene at city hall, a block away.

Thus Ohio Republicans snubbed Conyers and Reps. Stephanie Tubbs-Jones (D-OH), Ted Strickland (D-OH), Jerold Nadler (D-NY), Maxine Waters (D-CA) as well as Rep. Jesse Jackson, Jr (D-IL).

Packed to overflowing, the nearly four hour hearing hosted new disclosures about election irregularities and fraud on Nov. 2, while also pursuing remedies to account for the vote and delay the Electoral College certification of the president.

Prime target in the hearings was GOP Secretary of State Kenneth Blackwell, who supervised the state's elections while also serving as co-chair of the Bush-Cheney campaign. Calls for Blackwell's removal were constantly repeated.

Conyers noted that Blackwell has ordered local election boards to not allow citizens to review poll registers of voters, a lockdown that is an apparent violation of Ohio state law.

David Cobb, the Green Party presidential candidate, told the panel that he had confirmed reports that an employee of one electronic voting machine manufacturer had come to one county election office and had taken apart the county tabulator of voting machine results, apparently replacing parts, before that county had conducted its recount. Such an action would taint any recount. “This could be a serious matter,” Conyers replied, asking Cobb to meet privately with committee staff to further investigate the matter.

Rev. Jesse Jackson told the congressmen that over the weekend he had spoken to John Kerry, who has since sent a letter to each of the state’s 88 county election boards, saying he supported three areas of inquiry in the recount. Jackson said Kerry wanted “forensic computer experts” to examine voting machines, especially those using optical scan technology, because in other states, notably New Mexico, Bush had won all the precincts with that voting system in place. Kerry also wanted to examine 92,000 ballots that recorded no vote for president, and 155,000 provisional ballots that were rejected.

But early responses from the counties to Freedom of Information Act requests for their voting records indicate such an effort may already have been sabotaged. Shelby County officials have admitted to discarding key election data. One county referred requesters to the software company that programmed the county's voting machines, saying the company's permission would be required for access to a recount, as the code is proprietary.

New reports of voter suppression and fraud corroborated the Supreme Court filing, which presented a detailed analysis of where votes were incorrectly counted for Bush instead of Kerry. An election challenge must prove the wrong presidential candidate was declared the winner. The challenge lawsuit asks the Ohio Supreme Court to declare Kerry the victor. Numerous witnesses offered testimony to support that conclusion.

A second brief was also filed Monday, seeking a temporary restraining order to block Republican presidential electors from meeting until the recount was done and the challenge was litigated. It focused

on “overwhelming statistical evidence” that pointed to “statewide fraud allegedly conducted at the direction of Secretary of State J. Kenneth Blackwell.”

The TRO filing was primarily based on national and statewide exit poll data, which was the extensive, non-partisan polling done by a consortium of the nation’s major news organizations. Expert affidavits accompanying the brief said an analysis of exit poll data found that the final vote tallies in all but the most contested battleground states mirrored the exit poll’s predictions. The experts said it was unlikely the exit polls could be so accurate in some states while significantly wrong in others. They said election fraud was the only plausible explanation for the discrepancy.

The TRO filing identified exactly when they believe the fraud occurred—at about 12.30 a.m. on Wednesday, Nov. 3. At that time of night, Ohio’s final voting returns were being tabulated at regional and county offices. It was about this time that the Ohio exit poll data—posted on websites such as CNN—put Bush ahead of Kerry, even though the exit polls expected Kerry to win with 52.1 percent of the vote.

What experts like Steven Freeman, Ph.D. of the University of Pennsylvania say happened was at this time the raw poll data, showing Kerry ahead, was replaced online and on television by “calibrated” data. This adjusted data was intended to reflect the total vote counts, once the results came in from late-reporting precincts—if it didn’t match the raw exit poll results. Ohio’s results didn’t match, and the likely reason is because across the state, in a variety of ways, the reported vote totals were being manipulated. If Bush votes were added to the total, or votes were taken away from Kerry, this shift was first noticed at about 12:30 a.m., when the networks started to report ‘calibrated’ figures, not the raw data.

“The media has largely ignored this discrepancy (although the Blogosphere has been abuzz), suggesting the polls were either flawed, within normal sampling error, or could otherwise be easily explained away,” Freeman wrote in an article, cited in the TRO filing. Instead, it simply reported Bush’s final tally as 51 percent to Kerry’s final tally of 48.5 percent.

As Rev. Jackson and election attorneys explained to the packed hearing, the election challenge suit describes how votes were added to Bush’s total, or in many cases, taken away from Kerry—because they were added to the totals of other Democratic candidates further down the ballot.

The Democrat whose totals were most likely to have been boosted by this kind of ‘vote-shifting’ was C. Ellen Connally, an African-American candidate for Ohio Chief Justice, who was little-known and outspent in the southern part of the state, the challenge complaint says. Because Secretary Blackwell has obstructed most efforts to examine ballots and poll records, it has been almost impossible to investigate and explain anomalies like Connally’s strong showing in the southern part of the state.

"What are they hiding?" asked Rev. Jackson. One after the other, witnesses argued that by making a recount virtually impossible, Blackwell has offered firm indication that the Republicans have something to hide.

"The secrecy of the ballot has been converted to the secrecy of the vote count," added Ronnie Dugger, founder of the Alliance for Democracy. Now based in Massachusetts, the legendary Dugger is founder of the Texas Observer. He said when Texas Republicans heard complaints that voting machines could be corrupted, "they knew that had found what they were looking for." Voting machines, he said, are the "most anti-democratic technology ever employed."

Dr. Ron Baiman, a statistician from the University of Illinois, Chicago, confirmed that the odds on vote counts diverting from exit polls as they did the night of November 2 were on the order of magnitude of millions to one. Baiman told [freepress.org](http://freepress.org) that the odds of the exit polls being wrong in the key battleground states of Florida, Pennsylvania and Ohio alone were "155,000,000 to one."

Dr. Norman Robbins of Cleveland testified that over 10,000 voters in Cuyahoga County alone were disenfranchised by various means, and that nearly all were "youth, poor and minorities."

In one Cleveland ward, he said, 51% of the provisional votes cast were thrown in the trash, virtually all of them from African-Americans.

Eve Roberson, a former election official from Santa Rosa, California, testified that while working as observer at precinct 354 in Wilberforce, home of Central State University, she witnessed conscious fraud aimed at a student body that went 95% for Kerry. Election officials used an inconsistent, discriminatory set of demands for Wilberforce students to register as opposed to those used in white precincts in Greene County.

Roberson and others also testified that after the election they discovered ballots sitting open, on unguarded tables where manipulation and random disposal could easily have occurred. It was, she said "a serious breach" of election security.

Riveting testimony followed from Clinton Curtis, a Tallahassee-based computer programmer who told the hearing he had been hired by US Rep Tom Feeney, then Speaker of the Florida House, to write a program that would conceal the theft of an election. Curtis said Feeney was then a lobbyist for a major computer company as well as Speaker. Curtis said Feeney wanted a program that could use voting machines to "flip an election" without being detected. Curtis said he wrote a prototype program, then quit.

Under questioning Curtis said a program could be written that would protect the security of voting machines, but that it had not been deployed in Ohio. He said it would be a simple matter, involving perhaps 100 lines of code and some simple switches, to turn an entire election.

"One person in a simple tab machine can affect thousands of votes," Curtis testified. "There is absolutely no assurance of anything on those machines."

Given what he had seen, he said, the Ohio election was "probably hacked."

The last hour of the Columbus hearing was filled with testimony from local voters who were harassed, intimidated and made to stand in long lines to cast votes that may well have been pitched in the trash.

Similar sworn testimony surfaced Tuesday at a citizens' hearing in Toledo. Among other things eye witnesses confirmed that a Diebold programming team entered the Lucas County (Toledo) Board of Elections to "reprogram" the opti-scan voting machines on the day the recount began.

Catherine Buchanan, a Democratic Party observer, testified that one of the sample precincts chosen as a control for the recount—Sylvania Precinct 3—had the programming card reprogrammed prior to the ballot testing. While the observers watched, nearly seven out of fifteen test ballots were rejected at least three times before the machine would read them.

Janet Albright told hearing officers she had been voting at the same Lucas County polling place for fourteen years but that the polling place was changed this year without notification to a station farther away. Machines throughout Lucas County malfunctioned in tests through the week prior to the election, and on election day. Thousands of Ohioans—primarily in Democratic precincts—thus lost their right to vote.

During the Lucas County reprogramming, election observers were shocked when they were denied the right to look at sheets that had target test results on them, or the reprogramming of the opti-scan machines used in the recount. Diebold-leased machines and software malfunctioned in the weeks prior to the election.

That echoed similar testimony from Green Party candidate David Cobb in the Columbus hearing. Witnesses said an unauthorized programmer from the Triad Corporation dismantled at least one voting machine in rural Hocking County. Conyers referred to the incident as "pretty outrageous" and asked the Federal Bureau of Investigation, and a county prosecutor, to investigate "inappropriate and likely illegal election tampering" in Hocking and perhaps several other Ohio counties.

Brett Rapp, president of Triad, told the New York Times it might be unusual to do what was done in Hocking County, but that Triad was involved in voting machines in 41 of Ohio's 88 counties.

The Hocking County investigation was spurred in particular by testimony Sherole Eaton, the deputy elections director. Such testimony will be transcribed and presented at [www.freepress.org](http://www.freepress.org) as it becomes available. But in the interim the battle of Ohio rages on, machine by machine and hearing by hearing. Because the recount process has been so severely tainted, the call for a revote is growing.

On January 6, Congress is scheduled to vote on whether or not to approve the tally of electors, including Ohio's tainted 20 votes. Conyers and the other US Representatives present made it clear more public hearings will be held before then.

In 2001, a host of US Representatives, most from the Black Caucus, asked that the tainted Bush electors be challenged. This year at least 14 members of the House of Representatives will demand an immediate "investigation of the efficacy of the voting machines and new technologies used in 2004 election, how election officials responded to the difficulties they encountered, and what we can do in the future to improve our elections systems and administration."

Their action requires the consent of a single Senator, which did not come in 2001. As the battle to save democracy rages in Ohio and elsewhere, January 2005, could be very different.

*Bob Fittrakis, Steve Rosenfeld and Harvey Wasserman are co-authors of the upcoming "Ohio's Stolen Election: Voices of the Disenfranchised," 2004 (<http://freepress.org>).*