

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<b>Anita Rios et al.</b>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. _____
	)	Judge _____
<b>J. Kenneth Blackwell, Secretary of State of Ohio</b>	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF SCOTT O. KONOPASEK**

1. My name is Scott O. Konopasek and I am a principal in ForeFront Election Solutions, a consulting firm that provides assistance with election issues. I have 12 years of election experience. I am a retired Counterintelligence and Security Officer from the U.S. Army and I have worked as a political consultant on political campaigns, and as Director of Elections in Salt Lake County, Utah; Snohomish County WA; and as Registrar of Voters in San Bernardino County, CA. I have procured and successfully implemented new voting technology in three counties and have operational experience with a wide range of voting technologies, including punch card, optical scan, and direct recording electronic (DRE) voting machines. I have a Bachelor of Arts from Brigham Young University in International Relations and a Masters of Arts in Political Science from the University of Utah. I am a member of the Election Center, NACRC, IACREOT, American Political Science Association and IEEE STG 1538 (Voting System Standards). I have served on various federal and state task forces for election reform and

administration and played a significant role in the drafting and passage of the Help America Vote Act (HAVA).

2. I have conducted recounts of elections using punch card and optical scanning and have conducted audits of elections using direct recording electronic (DRE) voting machines. For example, I directed a recount of the 1996 Presidential election in Salt Lake County, Utah, involving approximately 370,000 punch card ballots requiring individual inspection and resolution of each ballot for a persistent issue with the pre-scored chad. I conducted a machine recount of approximately 252,000 optical scan ballots for two statewide contests in the 2000 presidential election in Snohomish County, WA. I have conducted audits of ballot images from DRE machines in both San Bernardino County, CA and Snohomish County, WA. I was involved in piloting the first use of a voter verified paper audit trail with a DRE system in California. I have also conducted dozens of smaller recounts using punch card and optical scan ballots.

3. I have been asked to provide my opinion concerning the amount of time necessary for a recount of votes cast for the 2004 presidential election in Ohio. In my opinion, a minimum of ten calendar days must be allocated for the recount, as explained below.

4. This opinion is based on my experience conducting recounts and on information I have reviewed from the Ohio Secretary of State. Based upon the document attached as Exhibit A, I understand that 5,574,476 votes were cast in Ohio in the 2004 presidential election by Ohio's 11,360 precincts, which are spread over 88 counties. Based on the information provided identifying the voting technology used in each county, attached as Exhibit B, I understand that of the 88 counties in Ohio, 68 counties used

punch card voting machines, with 8,340 precincts, representing approximately 72% of votes cast; 13 counties used optical scan voting machines, with 1,479 precincts, representing approximately 12% of votes cast; and 7 counties used some form of DRE voting machine, with 1,541 precincts, representing approximately 16% of votes cast. On average it appears that 491 votes were cast per precinct. I have also reviewed Title 35, Chapter 15 of the Ohio Revised Code regarding recounts and the Secretary of State's outline of recount procedures attached as Exhibit C.

5. Any recount requires certain preparation before the votes can be counted. In this case, it is my opinion that the preparation for the recount will take five calendar days. That opinion is based on the amount of preparation necessary in the largest Ohio counties. In planning for a recount involving multiple counties, one must use the time required in the largest counties to ascertain the outside time limits of the process.

6. Prior to any recount, including a manual recount, the following steps must be completed:

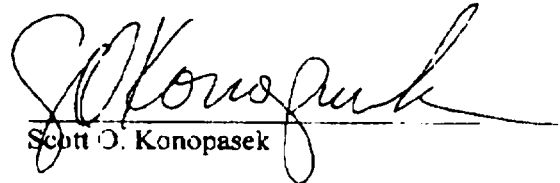
- (a) Providing appropriate notice as required by statute;
- (b) Unsealing, accounting for and consolidating ballots by precinct (if required);
- (c) Gathering and collating rosters, lists, inventories, accountability and canvass documentation;
- (d) Reviewing and updating procedures;
- (e) Reviewing and revising (if needed) count/no count criteria and voter intent guidelines; and
- (f) Assembling and training counting boards.

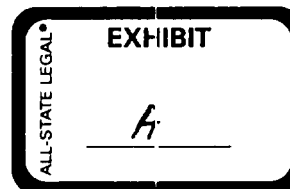
manual recount, if one is necessary. That is why it is my opinion that the recount will take at least ten days.

12. I arrive at my five calendar day estimate for a full manual recount as follows. There were approximately 5.5 million ballots cast in Ohio. With an average precinct size of 491 ballots, a team of two people can manually recount 1.5 precincts with punch card ballots per hour per team or 1.0 precinct with optical scan ballots per hour per team. Votes cast on DRE machines are not to be manually recounted according to the procedures set forth by the Secretary of State. Under those procedures, I estimate that 15 precincts using DRE machines can be processed per hour. For Cuyahoga County, for example, which used punch card ballots and is the largest county with the largest number of precincts, it will take approximately 970 team hours to complete the recount. With twenty-four teams working eight hour days, the recount in Cuyahoga County could be completed in five calendar days. These estimates are based upon the assumption that the legal notice requirement has been satisfied in advance, the counties have been given some forewarning of the requirement to conduct a recount and have initiated the preparations for the recount identified in Paragraphs 6 through 9 above.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

This 22nd day of November, 2004.

  
Scott O. Konopasek

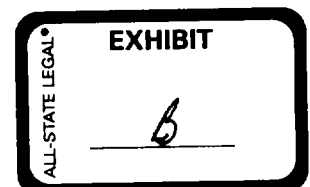

**Voter Turnout: November 2, 2004**  
 Unofficial Results

County Name	Total Precincts	Total Registered Voters	Total Votes Cast	Percentage of Votes Cast	Provisional Ballots Issued
Adams	35	17,696	12,094	68.34	184
Allen	139	68,174	48,121	70.59	1,374
Ashland	65	34,847	25,171	72.23	629
Ashtabula	127	62,926	45,474	72.27	1,142
Athens	69	45,100	27,960	62.00	2,504
Auglaize	39	33,094	22,528	68.07	647
Belmont	83	44,452	33,452	75.25	1,067
Brown	35	28,922	20,030	69.26	326
Butler	289	238,117	163,668	68.73	5,793
Carroll	26	20,076	14,172	70.59	304
Champaign	29	25,376	18,564	73.16	555
Clark	100	89,683	68,883	76.81	1,279
Clermont	191	125,823	88,018	69.95	1,818
Clinton	32	25,092	18,177	72.44	378
Columbiana	103	78,536	49,249	62.71	1,085
Coshocton	43	22,679	17,331	76.42	277
Crawford	46	29,591	21,906	74.03	424
Cuyahoga	1,436	1,005,807	665,334	66.15	24,788
Darke	43	38,290	26,379	68.89	710
Defiance	42	25,847	18,169	70.29	672
Delaware	123	100,676	79,691	79.16	1,891
Erie	62	55,517	39,690	71.49	972
Fairfield	118	91,498	67,632	73.92	1,306
Fayette	38	16,093	11,704	72.73	293
Franklin	788	845,720	515,472	60.95	14,446
Fulton	35	28,561	21,902	76.69	381
Gallia	35	23,567	13,944	59.17	574
Geauga	96	65,393	51,286	78.43	668
Greene	142	105,079	77,830	74.07	2,127
Guernsey	37	27,129	16,570	61.08	558
Hamilton	1,013	573,612	418,001	72.87	14,386
Hancock	62	49,607	35,087	70.73	791
Hardin	38	18,921	13,146	69.48	349

Harrison	24	11,769	8,410	71.46	89
Henry	33	19,685	15,188	77.16	250
Highland	31	28,243	18,323	64.88	494
Hocking	32	18,378	13,258	72.14	251
Holmes	19	18,089	11,542	63.81	170
Huron	55	37,436	25,584	68.34	670
Jackson	38	23,997	14,332	59.72	422
Jefferson	91	49,655	36,528	73.56	650
Knox	56	36,971	26,661	72.11	689
Lake	217	160,165	119,657	74.71	1,975
Lawrence	84	41,424	27,376	67.29	599
Licking	122	111,387	78,376	70.81	1,565
Logan	52	29,406	21,135	71.87	650
Lorain	239	196,601	139,069	70.74	4,134
Lucas	495	302,136	216,453	71.64	6,719
Madison	44	23,477	17,451	74.33	392
Mahoning	312	194,673	131,338	67.77	2,717
Marion	84	43,323	28,762	66.39	928
Medina	149	118,330	84,725	71.60	1,266
Meigs	27	15,205	10,313	71.11	240
Mercer	37	31,306	20,478	65.41	931
Miami	82	72,169	50,562	70.06	1,609
Monroe	29	10,350	7,357	75.91	132
Montgomery	588	391,914	279,301	71.39	9,227
Morgan	22	9,358	6,770	72.34	160
Morrow	36	24,249	16,403	67.64	314
Muskingum	85	51,552	38,317	75.30	871
Noble	27	8,879	6,715	75.63	75
Ottawa	78	30,251	23,052	76.20	469
Paulding	30	14,226	9,381	69.46	243
Perry	46	23,480	15,328	65.28	428
Pickaway	53	30,045	22,579	75.15	553
Pike	24	19,661	12,708	64.64	285
Portage	129	109,565	76,306	69.64	1,445
Preble	45	28,137	21,226	75.44	493
Putnam	35	24,572	18,348	77.11	246
Richland	126	95,359	61,307	64.92	1,357
Ross	76	43,463	31,402	72.25	563

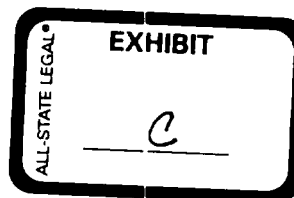
Sandusky	72	39,408	32,433	82.30	760
Scioto	106	48,012	35,317	73.56	867
Seneca	54	37,974	27,148	71.49	494
Shelby	35	28,460	22,688	79.72	791
Stark	364	267,939	186,252	69.51	6,653
Summit	475	368,858	275,551	74.70	5,932
Trumbull	274	142,548	108,533	76.14	2,700
Tuscarawas	81	55,656	42,871	77.03	987
Union	46	30,200	22,515	74.55	436
Van Wert	39	21,100	15,252	72.28	297
Vinton	20	8,527	6,059	71.06	129
Warren	157	125,919	93,321	74.11	1,465
Washington	56	40,881	29,707	72.67	643
Wayne	97	69,672	51,898	74.49	818
Williams	44	26,772	18,324	68.44	694
Wood	105	91,492	61,865	67.62	2,655
Wyandot	24	15,834	10,785	68.11	138
TOTAL	11,360	7,979,639	5,574,476	69.86	155,428

County	Voting System	Vendor
Adams	PUNCHCARD	ES&S
Allen	SCAN	ES&S
Ashland	SCAN	ES&S
Ashtabula	PUNCHCARD	TRIAD
Athens	PUNCHCARD	ES&S
Auglaize	ELECTRONIC	ES&S
Belmont	PUNCHCARD	ES&S
Brown	PUNCHCARD	TRIAD
Butler	PUNCHCARD	ES&S
Carroll	PUNCHCARD	TRIAD
Champaign	PUNCHCARD	TRIAD
Clark	PUNCHCARD	TRIAD
Clermont	SCAN	ES&S
Clinton	PUNCHCARD	TRIAD
Columbiana	PUNCHCARD	TRIAD
Coshocton	SCAN	ES&S
Crawford	PUNCHCARD	ES&S
Cuyahoga	PUNCHCARD	ES&S
Darke	PUNCHCARD	TRIAD
Defiance	PUNCHCARD	TRIAD
Delaware	PUNCHCARD	ES&S
Erie	SCAN	ES&S
Fairfield	PUNCHCARD	ES&S
Fayette	PUNCHCARD	ES&S
Franklin	ELECTRONIC	DANAHER/ES&S
Fulton	PUNCHCARD	TRIAD
Gallia	PUNCHCARD	TRIAD
Geauga	SCAN	ES&S
Greene	PUNCHCARD	TRIAD
Guernsey	PUNCHCARD	TRIAD
Hamilton	PUNCHCARD	ES&S
Hancock	SCAN	ES&S
Hardin	SCAN	DIEBOLD
Harrison	PUNCHCARD	TRIAD
Henry	PUNCHCARD	TRIAD
Highland	PUNCHCARD	TRIAD
Hocking	PUNCHCARD	TRIAD
Holmes	PUNCHCARD	TRIAD
Huron	PUNCHCARD	DIS
Jackson	PUNCHCARD	TRIAD
Jefferson	PUNCHCARD	ES&S
Knox	ELECTRONIC	MICROVOTE
Lake	ELECTRONIC	TRIAD/ SEQUOIA
Lawrence	PUNCHCARD	ES&S
Licking	PUNCHCARD	ES&S
Logan	PUNCHCARD	TRIAD
Lorain	PUNCHCARD	TRIAD
Lucas	SCAN	DIEBOLD
Madison	PUNCHCARD	TRIAD
Mahoning	ELECTRONIC	ES&S



Marion	PUNHCARD	TRIAD
Medina	PUNHCARD	F/C
Meigs	PUNHCARD	TRIAD
Mercer	PUNHCARD	TRIAD
Miami	SCAN	ES&S
Monroe	PUNHCARD	TRIAD
Montgomery	PUNHCARD	TRIAD
Morgan	PUNHCARD	TRIAD
Morrow	PUNHCARD	F/D
Muskingum	PUNHCARD	TRIAD
Noble	PUNHCARD	TRIAD
Ottawa	SCAN	ES&S
Paulding	PUNHCARD	TRIAD
Perry	PUNHCARD	TRIAD
Pickaway	ELECTRONIC	MICROVOTE
Pike	PUNHCARD	TRIAD
Portage	PUNHCARD	TRIAD
Preble	PUNHCARD	TRIAD
Putnam	PUNHCARD	TRIAD
Richland	PUNHCARD	ES&S
Ross	ELECTRONIC	MICROVOTE
Sandusky	SCAN	ES&S
Scioto	PUNHCARD	ES&S
Seneca	PUNHCARD	TRIAD
Shelby	PUNHCARD	ES&S
Stark	PUNHCARD	ES&S
Summit	PUNHCARD	VOTEC
Trumbull	PUNHCARD	ES&S
Tuscarawas	PUNHCARD	ES&S
Union	PUNHCARD	TRIAD
Van Wert	PUNHCARD	TRIAD
Vinton	PUNHCARD	ES&S
Warren	PUNHCARD	TRIAD
Washington	SCAN	ES&S
Wayne	PUNHCARD	ES&S
Williams	PUNHCARD	ES&S
Wood	PUNHCARD	TRIAD
Wyandot	PUNHCARD	ES&S

PUNHCARD	68
SCAN	13
ELECTRONIC	7
	88



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## Provisions for Recounts

### Outline Of Recount Procedures (R.C. 3515)

#### A. ELIGIBILITY

##### 1. Automatic Recount

- a) A recount is required in any district, county, municipal or township election if the number of votes cast for the declared winning candidate (or winning side on an issue) does not exceed the number of votes cast for the defeated candidate (or issue) by a margin of one-half of one percent or less of the total vote. The board of elections orders the recount for county, municipal, township and school district elections. The Secretary of State orders the recount for all other elections.
- b) In a statewide election a recount is required if the margin of votes is one-fourth of one percent or less.

##### 2. Requested Recount

- a) Any candidate who was not declared elected may request, in writing, a recount of the votes cast in any precinct for all candidates for the particular office. Such request is necessary only in races in which the margin of votes was more than one-half of one percent.
- b) Any group of five or more qualified electors who declare that they voted "for" an issue that was defeated, or "against" an issue that passed may request a recount. One member of the group must be designated as chairman of the group.

#### B. DETERMINING ONE-HALF OF ONE PERCENT

##### 1. One To Be Elected

Where there are two or more candidates for a single office, such as mayor, the votes for all candidates in that race are added to obtain the total vote. For example:

Candidate A	2,845 votes	(declared electec)
Candidate B	2,815 votes	(defeated)
Candidate C	2,795 votes	(defeated)

The total vote for the office is 8,455. Of that total, 1/2 of 1% is 42 votes. Candidate A defeated Candidate B by 30 votes, which is less than 1/2 of 1%. Candidate A defeated Candidate C by 51

votes, which exceeds  $\frac{1}{2}$  of 1% of the total vote cast for the office of mayor. However, because one of the defeated candidates was within the margin, the entire race is automatically recounted.

## 2. Several To be Elected

The "declared winning candidate" refers to the candidate whose election is disputed, rather than to all of the candidates declared elected. Thus, if five candidates seek election as council members-at-large, with three to be elected, only the votes cast for Candidates 3, 4, and 5 are regarded as the total number of votes cast for the third council seat in computing the margin for an automatic recount. For example:

Candidate 1	4,200 votes	(elected)
Candidate 2	4,100 votes	(elected)
Candidate 3	2,300 votes	(declared elected)
Candidate 4	2,275 votes	(declared defeated)
Candidate 5	2,250 votes	(defeated)

Do not include the votes cast for Candidates 1 and 2 in computing the "total vote" cast for the third council seat. The votes cast for Candidates 3, 4, and 5 total 6,825. Of that total,  $\frac{1}{2}$  of 1% is 34 votes. Candidate 3 defeated Candidate 4 by 25 votes, which is less than  $\frac{1}{2}$  of 1%. Candidate 3 defeated Candidate 5 by 50 votes, which exceeds  $\frac{1}{2}$  of 1% of the "total vote" cast for the third council seat. An automatic recount must be ordered on the basis of the margin of votes cast for Candidates 3 and 4. Only the votes for Candidates 3, 4, and 5 are recounted, not all five candidates.

## C. APPLICATION

### 1. Written Application for a Requested Recount

A written application for a requested recount must be filed within 5 days after the certification of the official count with the county board of elections for elections within the county, with the board of elections of the most populous county in multi-county district elections, or with the Secretary of State for recount of a statewide race or issue.

### 2. Deposit

- The applicant(s) must file a deposit equal to ten dollars (\$10) for each precinct to be recounted.
- The deposit is to cover the cost of the recount, any unused balance is refundable to the applicant if all precincts are not counted.

## D. BEFORE THE RECOUNT

### 1. Establish Time of the Recount

No recount may be held prior to the official canvass and certification. The board

must fix the time, method and place of the recount. A recount must be held within 10 days after the declaration of official results or 10 days after an application is filed.

2. Notice To Candidates

The director must notify all candidates or issue chairpersons in the race of the time and place by certified mail not later than five days before an automatic or requested recount is held.

3. Witnesses

- a) Each candidate or issue chairperson in the race is entitled to one witness for each counting team or tabulating unit.
- b) A witness may observe, but not interfere with the recount nor touch the ballots.
- c) Appointments of witnesses must be in writing signed by the candidate or issue chairperson.

E. STOPPING A RECOUNT

1. At anytime after a recount is ordered but before the recount is held, the declared losing candidate or issue chairperson may file a written request to stop the recount. If more than one losing candidate is entitled to the recount, each of the candidates must file such written request. The board must grant the request.
2. At any time during a recount, the declared losing candidate or candidates or issue chairperson may file a written request to stop the recount. If the board finds that results of the recount at that point will not change the official results, the recount is stopped. If the board finds otherwise, the request to stop recounting must be denied and the recount continued until all ballots from the precincts involved have been counted.

F. RECOUNT PROCEDURES

1. All Voting Systems

- a) The recount must be conducted by teams having equal numbers of Democrats and Republicans.
- b) Total votes cast must be compared to the number of voters listed in the pollbook, poll list, or signature pollbook records. In the presence of at least two election officials of different political parties, the records must be available for visual inspection by witnesses. The witnesses shall not be permitted to handle the records.
- c) Absentee ballot envelopes returned after the polls closed may be viewed by the witnesses. The observer may *not* see the actual ballots, only the ballot envelopes, which must still be sealed.
- d) Disputed ballots may be settled as they arise by the board or by a majority of the employees designated as teams, if so delegated by the board.

- e) Ballots must be handled only by members of the board, director, deputy director or other designated employees of the board.
- f) Votes cast for write-in candidates must be checked to determine if the candidate is a qualified write-in candidate and for an overvoted ballot.
- g) Witnesses may observe the inspection of the ballots.

## 2. Paper Ballots

- a) Count as on election night, or
- b) Sort the ballots using the stack method, then count each stack. The stack method means sorting by candidate, yes or no vote, for or against vote, and overvote or no vote.

## 3. Voting Machines (including those with printer-packs)

- a) Check the public and protective counters to verify that the numbers correspond with the poll book records.
- b) Check the candidate counters and rotation to verify that they match the proper candidate, question or issue.
- c) Record the votes cast.

## 4. Punchcards

### Test the Program

- a) Prepare a new test deck of ballot cards that are punched and then manually count them. This deck must not be the same test deck used for the official count.
- b) Process the test deck through the computer to verify that the computer count matches the hand count.
- c) If the hand count and the computer count do *not* match, but the hand count is accurate, all ballots must be manually counted.

### The Recount

- a) Ballot cards must be inspected for hanging, chad attached by one or two corners, mutilations, and other invalidities. If a chad is attached by three or four corners, a vote shall not be counted for that particular candidate, question or issue.
- b) Overvotes and blank ballots may be separated from the stack at this time and placed at the top of the stack after the header cards.
- c) Ballot page assemblies and rotation header cards must be checked for each precinct for candidate positions to verify that each candidate, question, or issue has been properly identified.

- d) The board must randomly select whole precincts whose total equals at least 3% of the total vote. These precincts' ballots must be manually counted.
- e) Run the manually counted precincts through the computer.
- f) If the computer count does not match the hand count, and after rechecking the manual count the results are still *not* equal, *all ballots must be hand counted*. If the results of the computer count and the hand counted ballots are equal, the remainder of the ballots may be processed through the computer and results tabulated electronically.
- g) At the conclusion of the recount, the program must be retested using the pre-audited test deck.

## 5. Optical Scan

### Test the Program

- a) Prepare a test stack of ballots that are pre-marked and then manually count them.
- b) Process the test stack through the tabulator to verify that the tabulator total matches the hand count.

### The Recount

- a) If the hand count and the computer count do not match, but the hand count is accurate, all the ballots must be manually counted.
- b) Ballots must be inspected for mutilations and other invalidities.
- c) Ballots must be checked for proper candidate position and to verify each candidate, question, or issue has been properly identified.
- d) The board must randomly select whole precincts whose total equals at least 3% of the total vote and must manually count those precincts' ballots.
- e) Run the manually counted precincts through the tabulator.
- f) If the tabulator count does not match the hand count, and after rechecking the manual count the results are still *not* equal, *all ballots must be hand counted*. If the results of the tabulator count and the hand counted ballots are equal, the remainder of the ballots may be processed through the tabulator.
- g) At the conclusion of the recount, the program must be retested using the pre-audited test stack of ballots.

## 6. Direct Record Electronics (DRE)

### Test the Program

- a) Prepare a test cartridge.
- b) Process the cartridge through the computer
- c) Verify that the cartridge results match the pre-determined votes cast for candidates, issue and questions.
- d) If the totals do not match, check programming and rerun the test program until the totals match.

#### The Recount

- a) Check the public counters and protective counters to verify that the numbers on those counters correspond to verify that the numbers on those counters correspond with the pollbook, poll list, or signature pollbook records.
- b) Check the rotation on those machines to verify that they match the proper candidates, questions, or issues.
- c) Process cartridges through the tabulator. If the totals are different than the totals of the official count, compare cartridge totals against paper audit trail report.
- d) At the conclusion of the recount, the program must be retested using the pre-audited cartridge.

The procedures described in this outline are the basic requirements for conducting a recount. If the board of elections feels the results warrant further investigation at any period during the conduct of the recount, it may institute more rigorous recounting procedures, such as hand counting a larger percentage of precincts, using programming options which total overvotes and/or undervotes, hand counting all precincts, etc.