# Complete Ohio 2004 Presidential Recount

*Rios v. Blackwell (James G. Carr, N.D. Ohio 3:04-cv-7724), Ohio ex rel. Yost v. National Voting Rights Inst. (Edmund A. Sargus, S.D. Ohio 2:04-cv-1139), and Delaware County Prosecuting Attorney v. National Voting Rights Inst. (James G. Carr, N.D. Ohio 3:05-cv-7286)*

On Monday, November 22, 2004, the Green and Libertarian candidates for President, Common Cause Ohio, and seven voters filed a federal action against Ohio's secretary of state in the Northern District of Ohio's Toledo courthouse seeking a complete recount of the presidential vote in Ohio.[1] The plaintiffs were concerned that the secretary's certification timetable left only one day between certification of election results and the deadline for resolution of disputes before the Electoral College vote.[2] With their complaint, the plaintiffs filed motions for a temporary restraining order[3] and a preliminary injunction.[4]

The court assigned the case to Judge James G. Carr, who was spending Thanksgiving week with family in Boston.[5] After a teleconference with the parties on Tuesday, Judge Carr denied immediate injunctive relief.[6] The only plaintiffs who had standing to demand a recount were the two candidates, and "[n]either candidate plaintiff can credibly maintain that he possesses even a remote chance of victory through a recount."[7]

The candidates were pursuing recounts with each county's elections board; on November 23, Delaware County filed an action in state court to enjoin their "vain, purposeless, meaningless, wasteful, and useless" pursuit.[8] One week later, the candidates removed this action to the U.S. District Court for the Southern District

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1. Complaint, Rios v. Blackwell, No. 3:04-cv-7724 (N.D. Ohio Nov. 22, 2004), D.E. 1; Rios v. Blackwell, 345 F. Supp. 2d 833, 834 (N.D. Ohio 2004); *see* Terry Kinney, *Ohio Recount Suits Are Frivolous, Official Says*, Cincinnati Post, Nov. 23, 2004, at A13; Diane Suchetka, *Suit Asks Court to Hasten Ohio Presidential Recount*, Cleveland Plain Dealer, Nov. 23, 2004, at B5.

2. Complaint, *supra* note 1; *Rios*, 345 F. Supp. 2d at 834–35.

3. Temporary Restraining Order Motion, *Rios*, No. 3:04-cv-7724 (N.D. Ohio Nov. 22, 2004), D.E. 4; *Rios*, 345 F. Supp. 2d at 834.

4. Preliminary Injunction Motion, *Rios*, No. 3:04-cv-7724 (N.D. Ohio Nov. 22, 2004), D.E. 5; *Rios*, 345 F. Supp. 2d at 834.

5. Transcript at 18, *Rios*, No. 3:04-cv-7724 (N.D. Ohio Nov. 23, 2004, filed Dec. 22, 2004), D.E. 13 [hereinafter *Rios* Transcript].

Tim Reagan interviewed Judge Carr for this report by telephone on June 18, 2012.

6. *Rios*, 345 F. Supp. 2d 833; *Rios* Transcript, *supra* note 5, at 32–34; *see* Mary Beth Lane, *Delaware County Court Blocks Recount*, Nov. 24, 2004, at 7B.

7. *Rios*, 345 F. Supp. 2d at 836.

8. Complaint at 5, State *ex rel.* Yost v. National Voting Rights Inst., No. 04-CVH-11-827 (Ohio C.P. Nov. 23, 2007), *attached to* Notice of Removal, Ohio *ex rel.* Yost v. National Voting Rights Inst., No. 2:04-cv-1139 (S.D. Ohio Nov. 30, 2004), D.E. 1

of Ohio,[9] which assigned the case to Judge Edmund A. Sargus.[10] On the morning after removal, Judge Sargus held a telephone conference with the parties.[11]

Two days later, after the county had obtained a temporary restraining order from a state judge, Judge Sargus heard oral arguments on both sides' motions for preliminary injunctions.[12] That day, the campaign for John Kerry and John Edwards moved to intervene in support of the recounts.[13] At the hearing, however, the campaign backed away from the recount effort.[14]

Judge Sargus denied the motions.[15] Judge Sargus found that the county was not subject to irreparable harm; all an injunction would do is prevent the filing of a lawsuit.[16] As for the candidates' request, Judge Sargus was reluctant to reach a conclusion different from Judge Carr's.[17] "The Court has a high regard for Judge Carr and his abilities. But more importantly, the parties have a right to finality; that once a matter is decided by a judge, that the same issues aren't being relitigated before another judge, hoping to get another result."[18] In addition, time was fast running out for performance of a recount.[19]

On May 9, 2005, Judge Sargus transferred his case to the Northern District of Ohio for joinder with Judge Carr's case.[20]

After Judge Carr's ruling in the first case, Ohio's Republican Party and two voters sought to intervene.[21] The following June, they withdrew their motion because the Republican candidate for President had been inaugurated.[22]

In 2006, Judge Carr granted the secretary's motion to dismiss the actions on sovereign immunity grounds.[23]

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9. Notice of Removal, *supra* note 8; *see* Transcript at 2, *Yost*, No. 2:04-cv-1139 (S.D. Ohio Dec. 3, 2004, filed Dec. 15, 2004), D.E. 28 [hereinafter *Yost* Transcript].

10. Docket Sheet, *Yost*, No. 2:04-cv-1139 (S.D. Ohio Nov. 30, 2004).

Tim Reagan interviewed Judge Sargus for this report by telephone on August 8, 2012.

11. *Yost* Transcript, *supra* note 9, at 2.

12. Minutes, *Yost*, No. 2:04-cv-1139 (S.D. Ohio Dec. 3, 2004), D.E. 19; *Yost* Transcript, *supra* note 9; *see* Lane, *supra* note 6; Mark Niquette, *Parties Ask Court to Get Ohio Going on Recount*, Columbus Dispatch, Dec. 3, 2004, at 4A.

13. Intervention Motion, *Yost*, No. 2:04-cv-1139 (S.D. Ohio Dec. 3, 2004), D.E. 16.

14. Interview with Hon. Edmund A. Sargus, Jr., Aug. 8, 2012.

15. Order, *Yost*, No. 2:04-cv-1139 (S.D. Ohio Dec. 3, 2004), D.E. 21; *see* Mark Niquette, *Recount OK'd But Will Be Too Late*, Columbus Dispatch, Dec. 4, 2004, at 1A.

16. *Yost* Transcript, *supra* note 9, at 83–84.

17. *Id.* at 84–88.

18. *Id.* at 85.

19. *Id.* at 85–86.

20. Order, *Yost*, No. 2:04-cv-1139 (S.D. Ohio May 10, 2005), D.E. 58; *see* Docket Sheet, Delaware Cnty. Prosecuting Att'y v. National Voting Rights Inst., No. 3:05-cv-7286 (N.D. Ohio July 8, 2005).

21. Intervention Motion, Rios v. Blackwell, No. 3:04-cv-7724 (N.D. Ohio Nov. 24, 2004), D.E. 10.

22. Order, *id.* (June 16, 2005), D.E. 18.

23. Rios v. Blackwell, 433 F. Supp. 2d 848 (N.D. Ohio 2006); *see* Rios v. Blackwell, 433 F. Supp. 2d 851 (N.D. Ohio 2006) (denying a motion to amend the judgment); *see also* John McCarthy, *Judge Dismisses Election Lawsuit*, Cincinnati Post, Feb. 10, 2006, at A6.