



January 5, 2010

Honorable Mike Cox, Michigan Attorney General
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

CERTIFIED U.S. MAIL RETURN RECEIPT

Dear Attorney General Cox:

Pursuant to MCR 3.303, MCL 168.861, MCL 600.4501, MC L 4505 and MCL 600.4545, this letter is to formally request that you initiate *Quo Warranto* proceedings against the City of Detroit, Janice Winfrey, Detroit City Clerk in her official capacity, the Detroit Election Commission and Mr. David Bing, all for the purpose of removing David Bing as mayor of the City of Detroit where there exists *no reasonable certainty* that he was elected by the people of Detroit.

Such proceeding would be based upon Mr. Bing's "usurpation" of the office of Mayor and is warranted due to the improprieties of absentee vote tampering, ballot box stuffing, electronic manipulation, gross error and employee malfeasance, of which Mr. Bing was the clear beneficiary. As a result, *any reasonable certainty* no longer exists as to the validity of the November 3, 2009 election results.

Indeed, the findings of the Wayne County Board of Canvassers and the other countless irregularities, breaches, failures to adhere to protocol and or statutes, not to mention the possible illegalities, are so numerous as to make for nothing other than a completely *uncertain outcome* which requires remediation.

In support of this request, the undersigned asserts that the facts supporting this request are those alleged below as well as those included in my formal "Complaint and Request For Investigation" filed with your office last week and attached hereto as *Exhibit I*. All of the facts are based upon events which occurred prior to the November 3, 2009 general election as well as those learned during the recently concluded recount by the Wayne County Board of Canvassers of December 23, 2009. These facts indicate that no reasonable certainty now exists that Mr. Bing has been validly elected.

During that recount, the Wayne County Board of Canvassers unanimously took the historically unprecedented move and *ordered* that the following City of Detroit Absentee Counting Boards be disallowed and excluded from any recount:

<u>Absentee</u> <u>Board</u>	<u>Votes</u> <u>Cast</u>	<u>Absentee</u> <u>Board</u>	<u>Votes</u> <u>Cast</u>	<u>Absentee</u> <u>Board</u>	<u>Votes</u> <u>Cast</u>	<u>Absentee</u> <u>Board</u>	<u>Votes</u> <u>Cast</u>	<u>Absentee</u> <u>Board</u>	<u>Votes</u> <u>Cast</u>
1	435	22	314	43	431	64	543	85	374
2	472	23	140	44	363	65	495	86	331
3	461	24	408	45	463	66	496	87	356
4	457	25	478	46	391	67	545	88	328
5	467	26	334	47	457	68	542	89	357
6	513	27	401	48	279	69	436	90	386
7	490	28	411	49	278	70	376	91	376
8	424	29	472	50	375	71	485	92	225
9	517	30	409	51	453	72	459	93	408
10	522	31	383	52	497	73	467	94	398
11	423	32	371	53	391	74	515	95	434
12	379	33	403	54	427	75	553	96	220
13	352	34	428	55	370	76	360	97	202
14	397	35	389	56	426	77	416	98	358
15	365	36	433	57	433	78	385	99	301
16	354	37	408	58	516	79	480	100	239
17	321	38	427	59	476	80	445		
18	328	39	463	60	437	81	468		
19	291	40	551	61	546	82	435		
20	404	41	506	62	534	83	392		
21	529	42	409	63	444	84	473		

These one hundred disallowed Absentee Counting Board Precincts total 41,485 elector's ballots and represents 100% of the city's absentee ballots cast in the November 3, 2009 election. Similarly such disallowed votes represent 100% of the absentee ballots cast for the office of mayor and removes any *reasonable certainty* that Mr. Bing could have been truthfully elected. Moreover, these votes represent a commanding 35% of the 118,744 ballots which had been sought to be recounted.

The independent Wayne County Board of Canvassers made their unanimous and unprecedented decision based upon the weighty evidence identified as a result of innumerable breaches of security seals, numerous security seal entries made by election night workers which did not match those reflected on the cases and in the poll books, repeated and recurrent poll book voter and ballot irregularities, missing ballots in cases which have been opened, and a general pattern of failure by the Detroit Elections Department to follow the Election Laws, regulations and statues of the State of Michigan relative to conducting secure and proper elections.

All of the failures identified by the Board of Canvassers benefitted Mr. Bing and removes any *reasonable certainty* that he was properly elected but has usurped the office and must now be removed. Further evidence to be considered is that the improper or unlawful activity surrounding the absentee voter containers indicates clearly that the absentee ballots have been tampered with,

valid ballots presumably removed and then replaced with new ballots, new seals applied, and thereby unlawfully affecting the outcome of the November 3rd election all to the benefit of David Bing.

Beyond the disenfranchisement of Detroit’s 41,485 absentee voters, the Board of Canvassers also unanimously *ordered* that the following neighborhood precincts be similarly disallowed and excluded from being recounted:

<u>Votes</u>			<u>Votes</u>			<u>Votes</u>			<u>Votes</u>		
<u>Dist</u>	<u>Prec</u>	<u>Cast</u>	<u>Dist</u>	<u>Prec</u>	<u>Cast</u>	<u>Dist</u>	<u>Prec</u>	<u>Cast</u>	<u>Dist</u>	<u>Prec</u>	<u>Cast</u>
3	2	282	5	37	194	11	14	265	19	14	329
3	6	149	5	72	192	11	20	142	19	28	143
3	27	236	6	12	194	12	4	150	20	4	148
4	8	191	6	13	165	15	12	208	21	9	239
4	12	177	6	26	172	15	13	271	22	3	128
4	21	294	6	71	213	15	55	176	22	23	162
4	46	122	9	4	392	15	71	380	24	1	128
4	74	420	9	11	241	16	21	218			
5	13	311	9	21	168	16	71	140			
5	18	283	9	28	228	17	36	149			

The facts and events which led to the disallowance and exclusion of these additional 8,001 ballots were for reasons not unlike those mentioned surrounding the city’s absentee ballots and raises the grand total of disallowed ballots to 49,486 and increases the total of disallowed votes of those selected to be recounted to 42% . Such findings effectively amount to a thwarting of the will of the people of Detroit and thereby allowed the beneficiary to usurp the office of mayor. These facts leave Detroit voters with nothing other than an *uncertain outcome* on which no one could be expected to reasonably rely.

Further evidence of the gross error or possible fraud leading to the unreliability and uncertainty of the outcome is found in the fact that by the fourth day of the recount, Petitioner began to suspect that the source documents being viewed had been compromised. As a result, Petitioner asked and was permitted (going forward but not retroactively) to examine final tabulation result tapes printed at each polling site at the close of the polls and which comprise the “audit trail” contemplated by MCL 168.795 and MCL 168.795(1) and MCL 168.795(1)(j). These crucial tapes are the official record that shows the votes tallied by candidate as well as the date and time the affected poll was closed and is the *sole* evidence that the poll opened at 7am and closed at 8pm EST in compliance with MCL 168.720 and MCL 168.722.

On said fourth day, the source tapes began to be examined and immediately it was discovered that the city of Detroit Elections Department was routinely violating MCL 168.720; MCL 168.722 and electronically closing many polls early. This would have been undetectable by the poll workers and the general public.

The tapes of the precincts listed hereafter represent only a fraction of those examined during the recount because the gross errors and/or illegal activity only became palpable by said fourth day. Resultantly, numerous previously examined containers and their associated tabulation tapes which could represent an additional estimated 20,000 additional ballots were never examined. However, going forward the precincts below were examined and had closing times other than as required by statute at MCL 168.720:

<u>Dist</u>	<u>Prec</u>	<u>Votes Cast</u>	<u>Tabulator Tape Time</u>	<u>Dist</u>	<u>Prec</u>	<u>Votes Cast</u>	<u>Tabulator Tape Time</u>
3	6	149	7:49	15	25	176	12:25
4	12	177	3:13	15	40	205	4:11
4	21	294	12:14	15	45	176	6:26
4	72	392	3:03	15	48	104	10:03A
7	30	133	8:03AM	16	29	137	3:03
8	6	153	5:32	16	30	246	10:06A
8	27	172	7:42	16	40	196	6:30
9	2	341	9:13	17	5	117	6:11
9	11	241	2:39	17	12	310	7:56
11	6	180	4:04	17	20	312	7:55
11	20	142	11:15	17	32	140	3:10
12	8	145	7:40	17	73	209	7:55
12	32	159	7:24-11/4	18	1	54	3:05
12	42	119	00:07	18	4	158	3:09
12	44	180	7:50	19	5	116	3:08
13	1	144	7:50	19	7	145	1:03A-11/04
13	2	118	10:48p	20	4	148	No Tape
13	12	156	7:48	26	8	135	7 57p
13	18	78	12:28	21	1	145	5:08A
13	23	269	3:04	22	40	145	11/02/09
13	27	111	7:56	24	1	128	7:36
14	1	126	7:20	24	7	95	7:57
14	22	568	2:16	24	20	340	1:26
14	32	275	2:42	24	28	244	6:23
14	36	226	11:54A	25	38	110	0
15	14	142	7:57	26	6	151	0

These precincts, represent an additional 9,649¹ votes which clearly violate MCL 168.720 and thus cannot be said to be in compliance with the statute². This would bring the number of

¹Of these precincts, 1,279 ballots were held to not recountable anyway as they were also found to have violations of other state statutes making them not recount able.

²Importantly, the Election Inspectors assigned to these precincts signed “*Election Inspector’s Preparation Certification[s]*” as required and adopted by the Michigan Secretary of State in its manual dated January, 2009 titled *Test Procedures for Optical Scan Voting Systems and Automark Voter Assist Terminals* . These documents certify that “All

questionable votes to 58,135 or approximately 51% of the ballots examined during the recount and approximately 46% of the total overall votes cast on November 3, 2009 all to the benefit of Mr. Bing and further removes any reasonable certainty of his valid election.

Indeed, but for the inability to examine all of the tabulation tapes prior to the fourth day, the total number of votes which could have been deemed un-recountable and assuming only one-third of the 20,000 non-examined ballots were improperly closed, the number of improperly and early closed precinct's ballots, non-recountable and disallowed ballots could easily have risen to as high as 64,802³ (20,000 times 33% or 6,667 plus the 58,135) votes or 57% of the voting precincts selected to be recounted and an astounding 50.2% of the total ballots cast on November 3, 2009.

Summary

The request for you to commence *Quo Warranto* proceedings challenging title to the office of mayor is fundamentally founded on the premise that the uncertainty of the outcome of this election is so great as to render it completely unreliable.

The evidence shows that at a minimum nearly 50% of the ballots are tainted by an electoral process gone bad either through gross error, fraud, or illegality. So tainted is the vote that it seems your office has no other choice but to pursue a remedy for the voters of Detroit. You are reminded that the vast majority of these findings which caused the disallowance of votes and the effective disenfranchisement of up to 50% of Detroit's citizens, were not my hysterical speculations, but were the findings and orders of the Wayne County Board of Canvassers.

The gravamen of my argument to initiate such proceedings is found in the real fact that

preparation tests of the tabulator and terminal have been completed and the equipment was found to be in *proper* [emphasis added] working order" P38 Indeed, Step 4 of that manual speaks directly to this crucial date and time synchronization requiring the Election Inspector to "Ensure that the date and time are properly set. " P39; . Then to make sure that the clock's time is never lost even in an electrical failure, step 5 of that same manual requires the Inspector to "ensure that the battery is fully charged" P39. All had been breached and the integrity of the "audit trail" destroyed and the efficacy of election at those precincts compromised.

³Over Petitioner's objections and because there were so many date and time violations, city elections department workers argued to the Wayne County Board of Canvassers that MCL 168.720 should somehow be inapplicable since it believed that because it had paid poll workers to work 13 hours of work on election day that that debatable fact alone satisfies its obligations as to compliance and, in their view, somehow proves that the polls were open from 7am until 8pm as required by MCL 168.720. Election Officials for the city argued that the requirements of MCL 168.720 can therefore be excused as long as the tapes can be shown to have a enough time that can be construed favorably as compliant suggests that there were at least 13 hours between an opening tape and the ending tape. Thus the board over Petitioner objection selected a statistically invalid 5 precincts and attempted to find an opening balance tape for comparison. Incredibly even using the incredibly invalid method, city officials could only find four of the five opening tapes, a 20% failure rate. However, Petitioner continued to object as to not only was the test invalid and in no way could anyone tell what 13 hours are being indicated but it performed was the same day and night when the location of the test itself had been breached by persons unknown. See Exhibit I, pgs 22-23.

only 9,691⁴ votes (70,166 minus 50,785=19,381 divided by 2) separated Mr. Bing and I. Further, given the *uncertain outcome* brought about by the breaches, disallowances, vote tampering, ballot box stuffing, violation of statutes and election worker malfeasance, there is no reasonable certainty that he was truthfully elected. Rather the will of the electorate of the City of Detroit has been thwarted and the office usurped by the clear beneficiary of the violations.

In closing, the efficacy of Detroit's election process is at stake as the will of the people has been disappointed by person(s) unknown but has now been discovered. Your office is duty bound and sworn to protect the citizens of this state and the city of Detroit from the events which have led to these invalid and uncountable votes and which have incontrovertibly affected the outcome of the general election to the benefit of David Bing.

This Petitioner respectfully requests that your office immediately initiate proceedings to challenge such title and to vacate the office of mayor of the City of Detroit; immediately seek a special election for the city's electors who are recorded as having voted in this contest and seek to permit a new election under the auspices of the Wayne County Clerk's Elections Department free from the tampering, ballot box stuffing, electronic manipulation and malfeasance set forth with particularity both above and supplemented by the attached *Exhibit I*.

Because of the significance of these matters, I would respectfully urge your quick review, investigation and advice as to when and whether you will be initiating such a proceeding. The Detroit City Charter provides that in the interim, the Detroit City Council President will function as interim Mayor.

In closing, in any court proceeding subsequent to this letter, I will be represented by Attorney Clarence B. Tucker Sr., 615 Griswold Ave, Ste 1215, Detroit, MI 48226, cbuttuckersr@comcast.net, telephone 313-363-3433 and Attorney Dennis Hayes, 1815 Ford Avenue, Wyandotte, Michigan 48192, dh1951@wowway.com, telephone 313-283-5394. Finally, if you should you have any questions or a need to contact or interview me, I may be reached at your convenience at 9110 Dwight St, Detroit, MI 48214, tombarrow@ANewVisionForDetroit.com, (313) 922-7769 extension 267 .

Respectfully submitted,



Tommy J Barrow, Candidate -Mayor of Detroit

cc: Honorable Virgil C. Smith, Chief Judge
Wayne County Circuit Court

⁴Taken from City of Detroit Election Commission web site's official results.

Exhibit I



December 30, 2009

Hon. Mike Cox, Michigan Attorney General
Voter Fraud and Election Investigations Section
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

BY CERTIFIED AND REGISTERED U.S. MAIL

Dear Attorney General Cox:

Complaint and Request For Investigation

I, Tommy Joe Barrow, (hereinafter “**Complainant**”) having been a candidate for the office of mayor in the city of Detroit’s November 3, 2009 general election and believing that probable cause exists that a crime has been committed hereby formally requests that an investigation be initiated based on the crimes of “vote tampering” , “ballot box stuffing” and “electronic vote manipulation” . Such crimes have been committed by persons unknown and in concert with “malfeasance” by certain city of Detroit employees in furtherance of the crime. Such probable crime having occurred in the city of Detroit, County of Wayne.

Complainant believes that the parties of interest include Mr. Daniel Baxter, Director of the Detroit Department of Elections and other un-named employees and individuals who acted under the direction and control of employees of the Detroit Department of Elections and other persons unknown.

Complainant asserts that these individuals, acting alone or together, conspired to deprive Detroit voters, of which over 85% are African-American and Latino, of rights guaranteed under provisions of the Constitution of the United States and the 1965 Voting Rights Act.

Complainant further asserts that the probable cause contained in the allegations below is based upon observations by credible witnesses on election night in the Cobo Hall absentee voter counting area and facts which were adduced during the recently concluded recount conducted by the Wayne County Board of canvassers as well as events which occurred from November 3, 2009 through December 23, 2009.

During this period, the Wayne County Board of Canvassers unanimously, and in a

historically unprecedented move, *ordered* that 100% of the Absentee ballots be disallowed and excluded from any recount. This meant that 41,485 votes sought to be re-counted or roughly 37% were disallowed. The disallowed absentee ballots included 100% of Detroit's minority absentee voters whose average age is 73 years and whose racial composition is 85% African American, Latino, Arab and Vietnamese.

The Wayne County Board of Canvassers reached their decision and made their order on the weighty evidence identified in innumerable breaches of security seals, security seal entries made by election night workers which did not match, repeated and recurrent poll book irregularities, missing ballots in opened cases, and a general pattern of failure to follow the regulations and statutes relative to conducting secure and proper elections.

Furthermore, no reasonable explanation for these egregious failures was forthcoming from the Detroit Elections office. Indeed, any initial responses from that office were often later reversed on presentation of other evidence by Complainant. The Wayne County Board of Canvassers seemed as frustrated by the Detroit Elections Department's responses as this Complainant.

Beyond the disallowance of the 41,485 absentee ballots, the Wayne County Board of Canvassers also voted unanimously and *ordered* that another 8,001 votes from various neighborhood precincts be similarly disallowed for reasons not unlike those mentioned above, bringing the total of disallowed ballots to 49,486 and raising the total of disallowed votes to 43% of the ballots sought to be recounted from the November 3, 2009 election.

The breach of the security seals was the most probable means to "vote tamper", "ballot box stuff" and provide motivation to certain city employees to engage in "malfeasance". Clearly if the "bottom" absentee voter container seals had been tampered with, presumably removed and then replaced unlawfully with new seals, those entering the boxes unlawfully, affected the outcome of the November 3rd election.

Further, Complainant's allegations below sets forth facts that indicate probable cause exists that malfeasance by city employees may have occurred when these employees engaged in acts designed to conceal the "vote tampering" and "ballot box stuffing" crime.

The malfeasance occurred between November 3, 2009 and December 9, 2009 and again on Wednesday-Thursday, December 16 and 17, 2009. The facts below indicate that probable cause exists which would constitute a conspiracy to deprive Detroit voters of their rights in contravention of the 1965 Voting Rights Act.

In support hereof, Complainant states that the following facts establishes probable cause that a crime was committed:

Factual Background

1. On May 12, 2009, Complainant became a candidate for the office of mayor of the city of Detroit.

2. The Primary election for such office was held on August 4, 2009 and Complainant became one of two semi-finalists.
3. The results of **that** election indicated that the incumbent mayor, Mr. David Bing received 73.90% and Complainant 11.09% with the remainder being distributed among others.
4. That as is allowed under MCL 168.862, Complainant, having felt that the he had been aggrieved based on electronic manipulation, computer fraud and vote tampering, on August 14, 2009, filed a request to recount 29 precincts, paying the required fee and filing the properly notarized petition required by MCL 168.864; MCL 168.865; MCL 168.867.
5. Such request was properly given to Mr. Daniel Baxter, Director of Elections as he is the Clerk's representative of the Detroit Board of Canvassers and as is required by MCL 168.866.
6. Despite Baxter's duties as clerk being ministerial under MCL 168.866, stating in pertinent part that "...a copy shall be transmitted within 24 hours to the clerk of the board of county canvassers by the appropriate local clerk if the recount fee has been paid" MCL 168.866. Baxter on his own, failed to notify either the Detroit or the Wayne County Board of Canvassers but on his own summarily denied the request.
7. Mr. Baxter's reasoning in a letter to Complainant was that, in his view, Complainant was not aggrieved since he finished second.
8. Mr. Baxter's position was not contemplated or implied as a condition to be aggrieved under Michigan Election Law which states clearly "a candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided in this chapter." MCL 168.862
9. Mr. Baxter's decision was challenged in writing by Complainant who asked the basis for his definition and from where it arises, a letter to which Baxter never responded.

10. Complainant learned a few days later in a conversation with former Detroit Board of Canvasser, Mohammed Okdie and his conversation with the then Chairman of the Detroit Board of Canvassers that the Detroit Board had been unaware of Complainant's request for a recount as Mr. Baxter had never informed them.

11. On November 3, 2009, the city of Detroit conducted its general election with Complainant having been improperly denied his August 14, 2009 request for a recount. Thus Complainant believed that the primary results had been subjected to "electronic manipulation" and "vote tampering" which had illegally affected the outcome of the August 4, 2009 primary election.

12. On November 3, 2009, Messrs Patrick O'Hara, Ronald Butler and Ms Susan McDonald, all of *Citizen's for Fair Elections*, were assigned to observe as challengers in the absentee voter counting area.

13. Throughout the day, O'Hara, McDonald and Butler reported observing numerous individuals with large bags and back packs entering and remaining in the absentee counting station area. They also reported that at 8pm, the counting room security completely broke down and the general public was permitted to freely access the restricted access areas of the counting room even as ballot counting was still going on.

14. The group also observed that one individual who was **NOT** a city employee [believed to be a person name Byron Ware] was seen repeatedly moving absentee voter containers around on a cart and exercising more influence and control over the area than even Mr. Arthur Whiting, the absentee voter supervisor from the Detroit Elections Department, as people quickly responded to his spoken orders.

15. At approximately 9:49 p.m., the Detroit Elections Commission announced to the public

that Mr. David Bing had been re-elected with 56.22% of the vote and that the challengers, including write-in and under voters had received 43.78%.

16. On November 4, 2009, the day after the election, Complainant believing he recognized the percentages from the prior evening as statistically the same as that he had received in the **1989** general election, when he had been a candidate before, visited the Detroit Elections Commission to obtain the 1989 data for verification.

17. Upon asking at the counter, an employee searched but could not locate the 1989 data. She easily located all years both before and after but not 1989 it was missing.

18. When it became clear a day or so later that no data on 1989 would be forth coming, Complainant contacted Patrick O'Hara, a CPA and member of *Citizen's for Fair Elections* and who had been involved in the 1989 campaign. Mr. O'Hara searched his files and a day or so later located the 1989 data.

19. Mr. O'Hara and Complainant verified that in 1989, Coleman A. Young had indeed received 56.26% and the challenger (Complainant), write-ins and under votes 43.74% a difference four one-thousandths of a percent. A statistical impossibility⁵ except by electronic manipulation.

20. On November 9, 2009 and pursuant to state statute and the Manual for Boards of Canvassers issued by the Michigan Secretary of State - Elections Bureau, at page 3, Complainant filed a request with the Clerk of the Detroit Board of Canvassers alleging that he believed that the main computer had been defective and needed to be tested due to the 1989 percentage similarities.

⁵The impossibility is seen in that in 1989 in excess of 252,000 Detroiters went to the polls and over 52,000 voted by absentee. In last months election, only 129,000 Detroiters went to the polls and 41,485 of them voted by absentee. Moreover, the city's population has declined from 1.125 million in 1989 to arguably just over 900,00 now. Thus the variables affecting the election were completely different but the results remained unchanged.

21. The request was again given to the Clerk of the Detroit Board of Canvassers [MCL 168.866], Mr. Daniel Baxter, where upon his advice, the request was denied although they had been statutorily required to perform such a test before proceeding with any canvass.
22. At 8am on November 12, 2009, and unaware it was a city of Detroit furlough day and the city closed, Mr. Pat O'Hara, CPA unexpectedly arrived at the Detroit Elections Department to meet and ask Mr. Daniel Baxter about the 1989 data.
23. Arriving and signing the building security log at 8:00am, Mr. O'Hara, CPA noted that three people from ES&S, (the voting equipment computer company) had just signed in at 7:55 am along with one more individual from Premiere (the parent company of ES&S). Complainant was called and arrived and immediately took pictures of the sign in log.
24. Thereafter, a few days later and upon a perfunctory certification by the Detroit Board of Canvassers, on November 14, 2009, Complainant filed a request for recount identical in all respects to that filed after the August primary except it sought to recount all 100 of the city's absentee voter precincts but only 400 of the city's 529 voting precincts. This time, however, Complainant gave his request directly to City Clerk, Ms. Janice Winfrey. She immediately forwarded the request, as required, to the Wayne County Board of Canvassers.
25. Being concerned about ballot security until the recount could begin, Complainant inquired of the Detroit Board of Canvassers during its meeting and was told by Mr. Daniel Baxter in the presence of that Board and the public that the only person who had a key to the room which contained all of the voter cases was Mr. Jerome Allen, the building janitor.
26. Baxter then angrily told the crowded room that not even he or the City Clerk had a key to the most important room in the city which housed all of the voted and un-voted ballot containers and cases. His seeming over reaction stuck all present as strange since MCL 168.715 and MCL

168.741 required the city clerk herself to maintain control over such voted and unvoted materials.

27. Prior to that time, Complainant had become aware of Mr. Mohammed Okdie, a losing candidate for Detroit City Council, who also believed that his absentee vote count had been artificially suppressed.

28. Resultantly, Mr Okdie also filed a petition to recount 15 precincts⁶. A request identical in all respects to that filed by Complainant and also included his fee. However, unlike Complainant, he gave his request to Mr. Baxter's office as clerk to the Detroit Board of Canvassers.

29. Baxter again proceeded to summarily deny the request on his own volition and without notifying either the Detroit or the Wayne County Board of Canvassers in violation of MCL 168.866 as cited above.

30. In addition, Mr. Albert Barrow, brother of Complainant, an elector as to "Proposal S" which was on the November 3, 2009 ballot also filed a request for a recount of 15 precincts⁷ also including the appropriate fee, a request identical in all respects to Complainant's except it was based on his being an elector of "Proposal S". He too gave it to Mr. Baxter's office.

31. Mr. Baxter, again in violation of MCL 168.866, proceeded to summarily deny that request too on his own volition and without notifying either the Detroit Board of Canvassers or the Wayne County Board of Canvassers.

32. On or about November 23, 2009, the Wayne County Board of Canvassers approved Complainant's request and set December 9, 2009 as the date when the recount would begin.

⁶Complainant urged Mr Okdie to file such a petition because it could serve as a cross check and safeguard against "vote tampering" as it would have required any mischief makers to also manipulate his counts to agree with the computer and therefore make tampering a difficult task without being detected.

⁷Mr. Barrow's request would have had the same effect as that described in the preceding footnote and make "vote tampering" too difficult and nearly impossible without detection.

33. On December 9th , the first of several absentee voter containers were opened. The absentee voter container has two entry points, one at the top of the case and the other at the bottom both are sealed with a single “State of Michigan” metal seal required by MCL 168.735.

34. Immediately, Complainant noticed that the cases did not have the required “Election Inspector Certificates”.

35. Upon opening the first absentee voter container, Complainant observed staff from the county verify the top seal which was one of two seal numbers he saw recorded in the poll book as required by MCL 168.735(3).

36. County recount staff then proceeded to open the case but without looking at or verifying the bottom seal even though it too was recorded in the poll book by the election night workers.

37. Complainant challenged the failure to verify the 2nd seal and was vigorously and viciously verbally assaulted by recount election staff. Complainant was advised extremely harshly by Ms. Cynthia Hawthorne, Wayne County Elections Director, that “we never look at the bottom seal in a recount and are not about to start now just for you.”

38. Complainant, nonetheless defiantly challenged the case and objected and the ballot count resumed without bottom seal verification.

39. Another absentee voter case was brought in but this time Complainant got down on his hands and knees in order to see the security seal number on the “State of Michigan” metal seal at the bottom of the case.

40. When the county recount staff verified the top seal, Complainant looked over Ms Hawthorne’s shoulder and into the poll book and noted that the bottom seal number again did not agree with that recorded in the poll book. Complainant challenged the container and was again verbally assaulted.

41. Now even more suspicious, as more and more absentee voter cases were brought out, Complainant again got on his hands and knees noting the bottom seal numbers and again observed that they did not agree with the election night poll book.

42. Cynthia Hawthorne sternly advised Complainant that she had been told previously by Mr. Baxter that a list of the bottom seal numbers was in the possession of Mr. Baxter's office at the Detroit Election Commission. She advised that we should go there and get the list if we want, but county recount election staff would definitely not be checking these seals numbers as part of this recount.

43. Subsequently, case after case was brought out and with Complainant on his knees, noting most of the seals did not agree with the poll book. Nonetheless, county recount election staff ignored Complainant's objections, recorded his challenges but nonetheless proceeded to open the cases.

44. It is important to note that, notwithstanding the seal differences, nearly all of the cases opened were disallowed and deemed not able to be recounted because there were significant discrepancies between the number of voters in the poll books and the number of voter ballots in the case along with other violations.

45. The next day, Thursday, December 10, 2009, Mr. Patrick O'Hara, CPA, of *Detroit's for Fair Elections*, visited the Detroit Election Commission office on West Grand Boulevard and met with Ms. Gina C. Avery, the *new* Deputy Elections Director⁸ and requested the bottom seal number list.

46. On Friday, December 11, 2009, not knowing why we were inquiring, Ms Avery advised Mr. O'Hara that after checking with Mr. Baxter and others, there existed no bottom seal number

⁸Ms Avery became deputy Director on or about November 13, 2009. The prior deputy of over 20 years, Ms. Rachel Jones retired on election day, November 3, 2009.

list nor has there ever existed any such list and that the only place the bottom seal numbers were recorded was in the election night poll books. Numbers which Complainant knew did not agree.

47. Complainant and Mr. O'Hara immediately informed county recount election staff who after about 40-50 cases and nearly as many challenges and discrepancies stopped bringing in absentee voter containers altogether.

48. Now broadly suspicious, Complainant without anyone's knowledge created his own informal security system to reveal to him of any breaches to the building after hours.

49. In furtherance, he placed a large pile of leaves behind each of the three rear entry points of the building where the absentee voter containers were being stored during the recount. Each day before the days count began he checked the leaves for any disturbance.

50. Complainant now knew that the absentee voter containers appeared to have been routinely re-entered from the bottom and resealed. However, because of county wide "Proposal D", the County Elections Department had unexpectedly seized the poll books from every city through out the county immediately after the election and before any requests for recount.

Resultantly the new, unauthorized, seal numbers could not be entered into the poll books to cover the alleged vote tampering crime.

51. Now to create his own cross-check, Complainant then purchased 10 hand tally counters from Staples and Office Max and assigned one counter to each of his 10 observers who proceeded to count the votes cast for Detroit's "Proposal S" and certain city council candidates as a cross check⁹.

Facts Surrounding Probable Cause of Election Worker Malfeasance

52. The recount continued with numerous polling site transfer cases being disallowed and

⁹Although not a part of the mayoral recount, the "No" votes for "Proposal S" as counted by members of the Team were significantly understated by as much as 100% and had seemingly had been manipulated. The same was true for votes cast for certain Detroit council candidates.

deemed un-countable¹⁰ as a result of seal differences, discrepancies and varied violations of state statutes.

53. Complainant ended each day by verifying that his informal “security system” , the leaves he had placed behind the exit doors, had not been disturbed so he could be assured no one had entered the building by the rear after hours.

54. It bears noting here that from December 9, 2009, the start of the recount, until December 16, 2009, no one from Detroit’s Election Department had attended the recount process.

55. Election officials now knowing that the bottom seals on the absentee voter containers were being discovered to be in disagreement with entries in the poll books as recorded by election night workers and that the containers were being repeatedly challenged, took a next step to apparently conceal the alleged tampering.

56. On Wednesday and Thursday, December 16-17, 2009, unexpectedly, four people from Detroit’s Election Department arrived at the recount location in the Flynn Pavilion on Belle Isle and walked onto the premises. Two were recognized by Complainant as supervisors and two were not known.

57. The supervisors greeted county recount election staff, stood around for a few minutes as if watching the counting process and then all four went into the back room alone where the absentee voter containers were being stored.

58. The supervisors consistently came into and out of the public counting room while the other two were rarely or never seen. No one suspected anyone of engaging in any malfeasance.

59. The next day, Friday, December 18, 2009, the Wayne County Board of Canvassers met to consider Complainant’s absentee voter container challenges whose seal numbers did not match.

¹⁰Indeed, precinct 20-04 was an empty case with no voted, unused or spoiled ballots inside.

60. At the start, one member of the Canvassers, inquired about whether there existed a recorded list of bottom seals anywhere and was advised by county recount election staff that none existed.

61. Almost instantly, one of the two Detroit city election supervisors who had appeared at the recount the day prior, rose to his feet and exclaimed “yes here is...I have it”.

62. Both county recount election staff and Complainant were incredulous as they had already been told that no such list ever existed. Complainant quickly surmised that this was the reason why the four Elections Department employees had appeared unexpectedly the previous two days...ostensibly to write down the absentee voter container seal numbers.

63. Complainant immediately stated loudly “fraud...the list is a fraud and that this is why these people had appeared unexpectedly and that is why they went into the back room, to write down seal numbers”.

64. Canvasser chairman Larkins inquired of county recount election staff whether these people had indeed arrived over the last two days unexpectedly and whether they had gone into the back storage room by themselves and was told “yes” to both queries.

65. Member Joseph Xureb (pronounced “*Schwerb*”) asked for and then examined the list, he noted that it appeared to just be a sorted “excel” list of numbers. There was no designation of any “District” or “Precinct” whatsoever or any indication as to which container each number applied. The plain unofficial looking piece of paper had typed across the top in 12 point type “Detroit Election Commission” . But what struck Xuereb was the fact that it was just a sorted list of numbers from lowest number to highest.

66. Canvasser Xureb inquired where the list had come from, when was it prepared and where had it been and who gave it to him.

67. All of the questions were answered “I don’t know”.

68. Mr. Xureb then asked, what case does each number apply to and was told there are 100 sets of numbers on the paper and each line is in the same position on the list as the case to which it applies [i.e position one would have been AVCB 1, position 2 AVCB 2, position 3 AVCB 3 etc] ...in truth the list had merely been sorted numerically and bore no relationship to the containers¹¹.

69. Then, based on what seemed to all present was a manufactured list created by city employee malfeasance during the visits to the premises over the previous two days, the Wayne County Board of Canvassers determined that due to the numerous bottom seal discrepancies, repeated differences between the number of voters recorded in the poll books and the number of ballots in the cases as well as the now manufactured false list of bottom seal numbers seemingly created to cover up the bottom seal discrepancies moved unanimously to disallow 100% of Detroit’s absentees and deem them to be un-countable. A move unprecedented in this state and the country.

70. Thus all of the city’s 41,485 absentee voter ballots were excluded from the recount. This when only 9,691¹² (Bing received 70,166 minus Barrow’s 50,785=19,381 divided by 2) votes had separated the two candidates.

71. In addition, through out the recount, neighborhood precinct transfer case after precinct transfer case was found to also have security seal breaches, missing voted ballots¹³ and numerous discrepancies. This led to the disallowance of another 8,001 ballots from the recount bringing

¹¹Upon request, attorney for the Wayne County Board of Canvassers, Ms. Janet Anderson-Davis, gave Complainant a copy of the list . Complainant compared the numbers with the list of the cases he had challenged. The city employee had been untruthful as the numbers were in no such container order.

¹²Taken from City of Detroit Election Commission web site’s official results.

¹³Indeed, Precinct 20-4 was empty of any voted ballots, voided or unused ballots...it was just empty

the total of excluded ballots to 49,486 or nearly 43% of those sought to be recounted.

Other Malfeasance

72. That as a direct and proximate cause of the improper denial of Messrs Okdie and Barrow's recount petitions by Mr. Baxter which would have served as a cross-check on any computer manipulation, Complainant had his Team Members use their hand tally counters throughout the recount to verify the numbers being shown for "Proposal S" and various city council candidates. Nearly all were found to be significantly different from the official results.

73. Complainant asserts that any investigation which may follow this Complaint should consider the use of this methodology of counting the Proposal and certain council votes and comparing them to the results announced to the public. Complainant believes this cross check will clearly demonstrate that criminal manipulation has occurred.

74. Finally, on Monday, December 21, 2009, Complainant and his Team arrived at the recount location to obtain an explanation of why numerous time clocks on numerous polling computers showed dates and times which seemingly indicated that the polls had been electronically closed hours before the statutory required 8pm poll closing time.

75. However, before entering the building as was his daily ritual, Complainant did his normal walk around of the building but this time discovered that the rear door leaves had been pushed back and were now in a straight line. The door had been opened and the building had been entered!

76. Complainant immediately confronted county recount election staff who called the weekend security guard. After speaking with the guard in full sight of the room of observers, Ms Cynthia Hawthorne, explained to the room of over 30 people that the guard just admitted to her that 2 people had indeed come to the door, the door was opened and the guard invited the strangers in and allowed them to tour the "secure" area including the room containing the ballot

cases. The guard admitted that she had permitted the strangers to freely walk throughout the entire "secure" area.

77. The guard also admitted that they were two people whom she explained she did not know. Curiously, no explanation was given for the rear door breach.

78. On December 23, 2009, before the Wayne County Board of Canvassers, Ms Hawthorne, recanted the story¹⁴ of her conversation with the security guard saying that the people never came in but just walked around the outside of the building. It was too late. The true conversation had already been disclosed.

79. Complainant is available for Interview at your convenience. My contact information is 9110 Dwight Street, Detroit, MI 48214. Complainant's telephone number is 313-999-0677.

Conclusion

Based on the foregoing, Complainant formally requests that a investigation be immediately commenced as both state and federal laws have been broken and Detroit's election of November 3, 2009 has been manipulated by person(s) unknown and the results changed from that which the city's electors voted. Further, there is compelling evidence that probable cause exists that city employees engaged in malfeasance under the color of law in an effort to cover up the criminal activity.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom Barrow". The signature is written in a cursive, slightly slanted style.

Tommy Barrow, Candidate for Mayor

¹⁴ County recount election staff and the guard apparently realizing the seriousness of the breach and concerned for the guards job, modified the story completely but the original contemporaneously told story was witnessed by dozens.