

December 30, 2009

Andrew G. Arena, Special Agent in Charge
Federal Bureau of Investigation
477 Michigan Avenue, Floor 26
Detroit, Michigan

BY CERTIFIED AND REGISTERED U.S. MAIL

Dear Special Agent Arena:

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 impossibility¹ 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.

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

¹The 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.

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 precincts². 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

²Complainant 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.

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 precincts³ 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.

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).

³Mr. 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.

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 Director⁴ 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 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

⁴Ms 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.

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 check⁵.

Facts Surrounding Probable Cause of Election Worker Malfeasance

52. The recount continued with numerous polling site transfer cases being disallowed and deemed un-countable⁶ as a result of seal differences, discrepancies and varied violations of state

⁵Although 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.

⁶Indeed, precinct 20-04 was an empty case with no voted, unused or spoiled ballots inside.

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.

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 containers⁷.

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 9,691⁸ (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 ballots⁹ and numerous

⁷Upon 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.

⁸Taken from City of Detroit Election Commission web site's official results.

⁹Indeed, Precinct 20-4 was empty of any voted ballots, voided or unused ballots...it was just empty

discrepancies. This led to the disallowance of another 8,001 ballots from the recount bringing 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 story¹⁰ 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,



Tommy Barrow, Candidate for Mayor

¹⁰County 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.