

12/15/04

**New Mexico State Canvassing Board**

**Governor Bill Richardson:** We now will move on to a discussion and vote on the Green and Libertarian party application for a recount. And at this point in the agenda, the board will consider the application for a statewide recount of the presidential election filed by Michael Badnarik, Libertarian Party candidate for President, and David Cobb, Green Party candidate for President. If it suits the members, I would like to permit the applicants a total of five minutes to provide arguments in support of their application, and five minutes to official representatives of other candidates for president, if they choose to speak in opposition to the application. After that, I will entertain a motion and give us the opportunity to comment prior to a vote by the board. Accordingly, I will ask a representative of the Libertarian Party to make a statement.

**John Boyd:** Mr. Chairman, speaking on behalf, my name is John Boyd, and I speak on behalf of both candidates. And I'll be very brief under New Mexico, or applicable New Mexico Statutes 1-1-14 ad sic, the application was timely made, and the amount of the deposit, which I believe was \$114,000, has been confirmed as the appropriate amount of deposit for a statewide recheck as requested. And on that basis, and on behalf of those candidates, we would respectfully request that the board approve the application and allow the recount.

**Richardson:** Now you are speak...

**Boyd:** ...and issue the summonses, yes.

**Richardson:** You are speaking for both candidates?

**Boyd:** Yes I am, sir.

**Richardson:** Now I will ask for statements from representatives of the other candidates. Senator Kerry...President Bush...let's see, Ralph Nader...God, now I've entered a slippery slope, there are a whole bunch of other...(laughter, unintelligible)...and any other, any other candidate...no...

I'd like to make a few comments on the motion and the application. First of all I wanna commend the Green and Libertarian Parties for their sincerity in pursuing this issue. But I have to state that I believe a recount is not necessary. I don't think the recount will change the outcome of the race. President Bush carried New Mexico, according to certified results, by almost 6,000 votes. I think in New Mexico we need to be looking forward and not back. And that's why I will be proposing a comprehensive election reform with the Secretary of State, in the next legislative session. I will propose uniformity in our election code so every voter in every county will play by the same rules. I want a paper trail for all machine ballots cast. I want election officials properly trained. I want clear instructions for all voters, and I will consider a voter ID proposal. I don't think a recount will reform our election laws. We don't need any more lawsuits. We need to move forward. Now, I do appreciate, again, the frustration of many New Mexicans on election day, and the days following. Ensuring that every vote counts is a right of all Americans. But it's important that we work together to give our county clerks the tools and procedures that will allow them to report results in an accurate and timely manner. If the goal of the recount is to point out the discrepancies in the count, and in the way ballots were judged county to county, I applaud your intent. However, I can't

support a recount if the New Mexico taxpayers are left with a bill which could exceed over \$600,000. Accordingly, I will not support the petition unless the two petitioners pay the entire cost of the recount up front and meet all New Mexico statutory requirements. The key to protecting voters is election law reform, and not recounts, and not lawsuits. Before a motion, I would entertain any further discussion.

**S.O.S. Rebecca Vigil-Giron:** Mr. Chairman?

**Richardson:** Secretary...

**Vigil-Giron:** My office has put together a report on what it may cost the Green Party and the Libertarian Party to proceed, and us proceed here with the recount. Section 1-14-15 requires a deposit (unintelligible), a deposit for the recount of \$50 per precinct and \$10 per voting machine to be rechecked. We have 1,500 precinct boards which requires a deposit of \$75,000. There were 3,367 voting machines used, which requires a deposit of \$33,670. This is a total deposit required of 108,670. The applicants have submitted a deposit of 114,400. However, the minimum cost for a sheriff to deliver a summons is \$30. Mileage for summons delivery is also a cost that cannot be estimated at this time. With 8,054 precinct board members, that cost will be an additional \$241,620. The statute also provides for mileage and civil witness fees for the poll workers, which are the per diem and mileage fees allowed for non-salaried public officers, or \$95 a day. 8,054 poll workers times \$95 a day is \$765,130. In summary, with all of those three costs that I've identified, the total estimated cost, not including the ones that I did not mention, is \$1,115,420. The applicants for the recount have deposited less than ten percent of the estimated cost, and unless the recount reverses the outcome of the election, are required to pay the full cost after completion.

**Richardson:** Do I hear a motion?

**Vigil-Giron:** Mr. Chairman, because we do not have the sufficient amount of money as a deposit, I make a motion...(14 second pause)...having considered the application submitted by Michael Badnarik and David Cobb for a statewide recount and recheck of the votes cast for the office of President of the United States, I move that the State Canvassing Board issue an order denying Mr. Badnarik's and Mr. Cobb's application.

**Richardson:** I will...

**Chief Justice of NM Supreme Court Petra Maes:** I Second.

**Richardson:** Second. All those in favor, 'aye'.

**Vigil-Giron:** Aye.

**Maes:** Aye.

**Richardson:** All those opposed...the 'ayes' have it. The motion is carried.

**Zack Chandler, Attorney General's Office, Counsel to the Board:** Governor, as we know, there was litigation yesterday on this matter. And we think it's a possibility that there could be continued litigation on this. Wanna make sure it's okay with the Board that the Attorney General's office represents the Board and its wishes in court.

**Richardson:** ...yes.

**Chandler:** Okay, and seeing that nod, perhaps the Board can give some reasons that we can give to the court defending...in terms of the position.

**Richardson:** Right now?

**Chandler:** (unintelligible affirmation)

**Vigil-Giron:** Well I think that I made it very clear that the deposit was not enough. And where they came up with that number, I don't know how they calculated it without first

coming to my office and inquiring as to what, what are the fees, the possibility of the fees, so that we can give the 10 percent deposit that is supposed to be in my office in a timely fashion. And so that was not met.

**Maes:** There's further, I think, reason, justification for the action taken by the board. And specifically, section 1-14-15-D, that based on the applicants' admission that error or fraud is very unlikely to be sufficient to change the winner of the presidential election, additional payment is necessary. I understand that from the hearing that was conducted yesterday before Judge Vigil. Further, the statute specifically requires under 1-14-15-B that security requires full payment of the estimated amount up front to protect the taxpayers of New Mexico.

(12 second pause, whispering)

**Richardson:** Okay. I recognize the Secretary of State for an additional motion.

**Vigil-Giron:** Thank you. Because the Greens made, and the Libertarians made a good faith effort to send a deposit to my office, I would like to make another motion to give them an opportunity to answer us. And that motion is: the State Canvassing Commission issue an additional order granting Mr...let me backtrack here, it's conditional...a conditional grant...having considered the application submitted by Michael Badnarik and David Cobb for a statewide recount and recheck of the votes cast for the office of President of the United States, I move that: the State Canvassing Commission issue a conditional order granting Mr. Badnarik's and Mr. Cobb's application, and that the State Canvassing Commission issue a summons to the precinct boards in every precinct in the the state of New Mexico commanding them to appear at the county seat of the county wherein the precinct is situated on Thursday December 16<sup>th</sup>, 2004, at 10 AM. If we receive...(whispering)...if they are able to provide us ten percent of the amount that I have just stated, the 1.1 million dollars...if they are willing to put up that deposit...

**Richardson:** Could I, could I, uh...(voices rise)

**Vigil-Giron:** I'm sorry ...

**Maes:** It's already been deposited...

**Vigil-Giron:** I'm sorry, I'm sorry.

**Richardson:** Will you withdraw the motion?

**Vigil-Giron:** Yes, I'm gonna withdraw my first motion...and...and so...(whispering)...yes all right...and adding to that conditional grant motion, a third item is that they deposit the total amount of 1.4 million dollars as a surety bond or cash up front. And we need to know that answer before the 16<sup>th</sup> of December.

**Richardson:** All right, is that a, is that an additional motion?

**Vigil-Giron:** That is an additional motion, yes sir.

**Richardson:** All right, why don't you repeat that so we...

**Maes:** Yeah.

**Vigil-Giron:** Okay. Having considered the application submitted by Michael Badnarik and David Cobb for a statewide recount and recheck of the votes cast for the office of president of the United States, I move that the State Canvassing Commission issue a conditional order granting Mr. Badnarik's and Mr. Cobb's application, and that the State Canvassing Commission issue a summons to the precinct boards in every precinct in the state of New Mexico commanding them to appear at the county seat of the county wherein the precinct is situated on Thursday December 16<sup>th</sup> 2004 at 10 AM, and also that

they provide a deposit of 1.4 million dollars in cash or a surety bond prior to December 16<sup>th</sup>, this Thursday December 16<sup>th</sup>.

**Richardson:** Okay, can, is there discussion, let me...(laughs)

**Vigil-Giron:** Please.

**Maes:** I'll second it for the purpose of discussion.

**Richardson:** Okay. But they've already put in a hundred thousand, right?

**Boyd:** 114 thousand.

**Vigil-Giron:** 114 thousand.

**Boyd:** We followed the statutory formula.

**Richardson:** So counsel, would it be appropriate that that be taken into account, right?

**Chandler:** That could be taken into account...

**Vigil-Giron:** Minus the 1.4 million.

**Chandler:** The Chief Justice's argument was the statute says there needs to be 'security', and so the Board is now determining 'what is appropriate security'.

**Richardson:** So December 16<sup>th</sup> would be the deadline.

**Vigil-Giron:** Thursday...this Thursday... to proceed. 10 AM on Thursday.

**Maes:** But they would have to pose the security bond before we could start with the count.

**Vigil-Giron:** That's correct.

**Maes:** So they... you want the security bond posted by...before the 10 o'clock.

**Vigil-Giron:** 10 AM on the 16<sup>th</sup>.

**Maes:** Okay, so before 10.

**Richardson:** What is...what's today, Tuesday?

**Vigil-Giron:** Tuesday.

**Voice:** Barely.

**Maes:** (laughs) Just barely Tuesday.

**Richardson:** Okay. All right, all those in favor say 'aye'

**Maes:** Aye

**Vigil-Giron:** Aye

**Richardson:** Aye. Those opposed, the 'ayes' have it. At this time, we can discuss when we should schedule another meeting to review the results of our decisions today. It's my suggestion that we call a meeting 72 hours after completion of the recounts, as required by the notice provisions and statute. Any discussion? Do I hear a motion?

**Vigil-Giron:** So move

**Maes:** Second.

**Richardson:** All in favor say 'aye'.

**Maes:** Aye.

**Vigil-Giron:** Aye.

**Richardson:** The 'ayes' have it. Do I now have a motion to adjourn?

**Vigil-Giron:** So move.

**Richardson:** Do I hear a second?

**Maes:** Second.

**Richardson:** All those in favor say 'aye'.

**Maes:** Aye.

**Vigil-Giron:** Aye.

**Richardson:** The 'ayes' have it. The meeting is adjourned. And I would ask the canvassing board to stay here to complete the signatures. Thank you all very much.

(chatter)

**Richardson:** So it's not 600-thousand, it's a million.

**Vigil-Giron:** 1.1 million, but there are some other costs associated with it, but we don't know what it is yet, that's why I said 1.4 million.