

IN THE SUPREME COURT OF OHIO

Rev. Bill Moss
1640 Franklin Ave.
Columbus, OH 43205

Case No.

04-2088

Ruth Carol Moss
1640 Franklin Ave.
Columbus, OH 43205

VERIFIED ELECTION CONTEST
PETITION

(R. C. 3515.08)

Bonnie L. Awan
4484 Willowbrook Road
Columbus, Ohio 44220

Mohammed S. Awan
4484 Willowbrook Road
Columbus, Ohio 44220

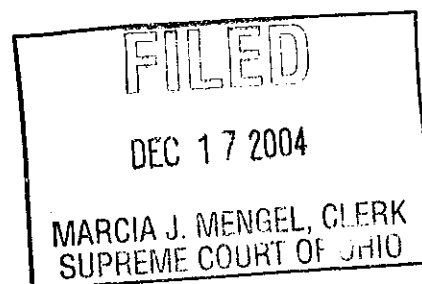
Eugene Beer
105 W. Kenworth
Columbus, Ohio 43214

Dr. Marilyn Blackwell
6408 Busch Blvd apt. 483
Columbus, Ohio 43229

Linda Byrket
2657 Brandon Rd.
Upper Arlington, Ohio 43227

Frank C. Cleveland, Jr.,
1445 Venice Drive
Columbus, Ohio 43207

Brian Conaway
1327 King Avenue
Columbus, Ohio 43212



Tracie R. Conner
2245 Concord Village Drive
Columbus, Ohio 43220

Deborah A. Crawford
33 Glencoe
Columbus, Ohio 43214

John M. Crawford
33 Glencoe
Columbus, Ohio 43214

Evan Davis
71 W. Como
Columbus, Ohio 43202

Gregory Donelson
3550 Fishinger Boulevard
Hilliard, Ohio 43026

Brian Edmiston
100 Webster Park
Columbus, Ohio 43214

Rhonda Frazier
3993 Maidstone Drive
Gahanna, Ohio 43230

Mandy J. Gollhofer
2381 Hardesty Drive, N.
Columbus, Ohio 43204

Dan Headapohl
1252 Hope Avenue
Grandview Heights, Ohio 43212

Mary Headapohl
1252 Hope Avenue
Grandview Heights, Ohio 43212

Mary Hooker-Myers
4796 Tussic Street Road
Westerville, Ohio 43082

Richard James
165 Rosslyn Avenue
Columbus, Ohio 43214

Marty Kuhn
1758 Northwest Boulevard
Columbus, Ohio 43212

Mark Lomax
7205 Kirkdale Drive
Blacklick, Ohio 43004

Jill A. McCaughan
4812 McFadden Road
Columbus, Ohio 43229

Gail Meese
15 E. Lakeview
Columbus, Ohio 43202

Jackie Mudgett
3987 Brelsford Lane
Dublin, Ohio 43016

Wilbert D. Neal
922 South Champion Avenue
Columbus, Ohio 43206

Suzanne Patzer
1240 Bryden Road
Columbus, Ohio 43205

Bruce Roberts
1162 Virginia Ave.
Columbus, Ohio 43212

Douglas S. Rookard, Sr.
6441 Commons Park Court
New Albany, Ohio 43054

Mary Anne Saucier
3030 North Star Road
Columbus, Ohio 43221

Tavarous Turner
763 South Chesterfield Road
Columbus, Ohio 43209

Martha J. Willow
922 South Champion Avenue
Columbus, Ohio 43206

Margaret Wright
162 Brevoort Road
Columbus, Ohio 43214

Stuart Wright
162 Brevoort Road
Columbus, Ohio 43214

Allen Zak
65 W. Como
Columbus, Ohio 43202

Leslie Zak
65 W. Como
Columbus, Ohio 43202

CONTESTORS,

-v-

George W. Bush
43 Prairie Chapel Ranch
Crawford, Texas 76638

Richard B. Cheney
242 West 14th Street
Casper, Wyoming 82601

Karl C. Rove
616 Crystal Creek Drive
Austin, Texas 78746

Bush-Cheney '04, Inc.
P.O.Box 684
Arlington, Virginia 22216

J. Kenneth Blackwell
180 East Broad Street
16th Floor
Columbus, Ohio 43215

Alex Arshinkoff
466 West Streetsboro Street
Hudson, Ohio 44236

Phil Bowman
20 Robin Hill Lane
Jackson, Ohio 45640

Merom Brachman
311 North Drexel Avenue
Columbus, Ohio 43209

William DeWitt, Jr.
5825 Drewry Farm Lane
Cincinnati, Ohio 45243

Billie Jean Fiore
995 Buckeye Avenue
Newark, Ohio 43055

Robert Frost
37 Kensington Oval
Rocky River, Ohio 44116

Owen Hall
7408 State Route 703
Celina, Ohio 45822

Katharina Hooper
627 East Wheeling Street
Lancaster, Ohio 43130

Joyce Houck
4506 Sherman-Norwich Road
Willard, Ohio 44890

David Johnson
570 Highland Avenue
Salem, Ohio 44460

Pernel Jones
7204 Cedar Avenue
Cleveland, Ohio 44103

Randy Law
1446 Clemmens Avenue, N.W.
Warren, Ohio 44485

Karyle Murphy
1195 Chanteloup Drive
Marion, Ohio 43302

Henry O'Neill
3050 Carriage Lane
Columbus, Ohio 43221

Kirk Schuring
1817 Devonshire Drive, N.W.
Canton, Ohio 44708

Betty Jo Sherman
19380 West Artzheim Lane

Elmore, Ohio 43416

Leslie Spaeth
389 Cloverwood Drive
Mason, Ohio 45040

Gary Suhadolnik
15046 Forestwood Drive
Strongsville, Ohio 44149

Elizabeth Wagner
3020 Daytona Avenue
Cincinnati, Ohio 43211

Carl Wick
861 Deer Run Road
Centerville, Ohio 45459,

CONTESTEES.

JURISDICTION

1. This Election Contest Petition is filed pursuant to R.C. §3515.08 et seq. The Ohio Supreme Court has jurisdiction over this action pursuant to R.C. §3515.08.

VENUE

2. Venue is proper in this court pursuant to R.C. §3515.09.

NATURE OF THE ACTION

3. This is an election contest filed pursuant to R.C. §3515.08 et seq. For the reasons set forth herein, the contestors contest the certification of the election of the electors pledged to George W. Bush and Richard B. Cheney for the offices, respectively, of President of the United States and Vice President of the United States for the terms commencing January 20, 2005.

PARTIES

4. Contestor Rev. Bill Moss is a citizen of the United States and Ohio and resides at 1640 Franklin Avenue, Columbus, Ohio 43205. Rev. Bill Moss is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America..
5. Contestor Ruth Carol Moss is a citizen of the United States and Ohio and resides at 1640 Franklin Avenue, Columbus, Ohio. Ruth Carol Moss is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.
6. Contestor Bonnie L. Awan is a citizen of the United States and Ohio and resides at 4484 Willowbrook Road, Columbus, Ohio 44220. Bonnie L. Awan is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.
7. Contestor Mohammed S. Awan is a citizen of the United States and Ohio and resides at 4484 Willowbrook Road, Columbus, Ohio 43205. Mohammed S. Awan is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.
8. Contestor Eugene Beer is a citizen of the United States and Ohio and resides at 105 West Kenworth, Columbus, Ohio 43214. Eugene Beer is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.
9. Contestor Dr. Marilyn Blackwell is a citizen of the United States and Ohio and resides at

6408 Busch Boulevard, Columbus, Ohio 43229. Dr. Marilyn Blackwell is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

10. Contestor Linda Byrket is a citizen of the United States and Ohio and resides at 2657 Brandon Road, Upper Arlington, Ohio 43227. Linda Byrket is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

11. Contestor Frank C. Cleveland, Jr., is a citizen of the United States and Ohio and resides at 1445 Venice Drive, Columbus, Ohio 43207. Frank C. Cleveland, Jr., is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

12. Contestor Brian Conaway is a citizen of the United States and Ohio and resides at 1327 King Avenue, Columbus, Ohio 43212. Brain Conway is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

13. Contestor Tracie R. Conner is a citizen of the United States and Ohio and resides at 2245 Concord Village Drive, Columbus, Ohio 43220. Tracie R. Conner is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

14. Contestor Deborah A. Crawford is a citizen of the United States and Ohio and resides at 33 Glencoe, Columbus, Ohio 43214. Deborah A. Crawford is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United

States of America..

15. Contestor John M. Crawford is a citizen of the United States and Ohio and resides at 33 Glencoe, Columbus, Ohio 43214. John M. Crawford is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

16. Contestor Evan Davis is a citizen of the United States and Ohio and resides at 71 West Como, Columbus, Ohio 43202. Evan Davis is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

17. Contestor Gregory Donelson is a citizen of the United States and Ohio and resides at 3550 Fishinger Boulevard, Hilliard, Ohio 43026. Gregory Donelson is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

18. Contestor Brian Edmiston is a citizen of the United States and Ohio and resides at 100 Webster Park, Columbus, Ohio 43214. Brian Edmiston is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America..

19. Contestor Rhonda Frazier is a citizen of the United States and Ohio and resides at 3993 Maidstone Drive, Gahanna, Ohio 43230. Rhonda Frazier is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America..

20. Contestor Mandy J. Gollhofer is a citizen of the United States and Ohio and resides at 2381

Hardesty Drive N., Columbus, Ohio 43204. Mandy J. Gollhofer is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

21. Contestor Dan Headapohl is a citizen of the United States and Ohio and resides at 1252 Hope Avenue, Grandview Heights, Ohio 43212. Dan Headapohl is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

22. Contestor Mary Headapohl is a citizen of the United States and Ohio and resides at 1252 Hope Avenue, Grandview Heights, Ohio 43212. Mary Headapohl is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

23. Contestor Mary Hooker-Myers is a citizen of the United States and Ohio and resides at 4796 Tussic Street Road, Westerville, Ohio 43082. Mary Hooker-Myers is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

24. Contestor Richard James is a citizen of the United States and Ohio and resides at 165 Rosslyn Avenue, Columbus, Ohio 43214. Richard James is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

25. Contestor Marty Kuhn is a citizen of the United States and Ohio and resides at 1758 Northwest Boulevard, Columbus, Ohio 43212. Marty Kuhn is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the

United States of America.

26. Contestor Mark Lomax is a citizen of the United States and Ohio and resides at 7205 Kirkdale Drive, Blacklick, Ohio 43004. Mark Lomax is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

27. Contestor Jill A. McCaughan is a citizen of the United States and Ohio and resides at 4812 McFadden Road, Columbus, Ohio 43229. Jill A. McCaughan is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

28. Contestor Gail Meese is a citizen of the United States and Ohio and resides at 15 East Lakeview, Columbus, Ohio 43202. Gail Meese is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

29. Contestor Jackie Mudgett is a citizen of the United States and Ohio and resides at 3987 Brelsford Lane, Dublin, Ohio 43016. Jackie Mudgett is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

30. Contestor Wilbert D. Neal is a citizen of the United States and Ohio and resides at 922 South Champion Avenue, Columbus, Ohio 43206. Wilbert D. Neal is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

31. Contestor Bruce Roberts is a citizen of the United States and Ohio and resides at 1162

Virginia Avenue, Columbus, Ohio 43212. Bruce Roberts is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

32. Contestor Douglas S. Rookard, Sr., is a citizen of the United States and Ohio and resides at 6441 Commons Park Court, New Albany, Ohio 43054. Douglas S. Rookard, Sr., is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

33. Contestor Mary Anne Saucier is a citizen of the United States and Ohio and resides at 3030 North Star Road, Columbus, Ohio 43221. Mary Anne Saucier is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

34. Contestor Tavarous Turner is a citizen of the United States and Ohio and resides at 763 South Chesterfield Road, Columbus, Ohio 43209. Tavarous Turner is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

35. Contestor Martha J. Willow is a citizen of the United States and Ohio and resides at 922 South Champion Avenue, Dublin, Ohio 43206. Martha J. Willow is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

36. Contestor Margaret Wright is a citizen of the United States and Ohio and resides at 162 Brevoort Road, Columbus, Ohio 43214. Margaret Wright is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United

States of America.

37. Contestor Stuart Wright is a citizen of the United States and Ohio and resides at 162 Brevoort Road, Columbus, Ohio 43214. Margaret Wright is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America..

38. Contestor Allen Zak is a citizen of the United States and Ohio and resides at 65 West Como, Columbus, Ohio 43202. Allen Zak is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

39. Contestor Leslie Zak is a citizen of the United States and Ohio and resides at 65 West Como, Columbus, Ohio 43202. Leslie Zak is a voter who voted in the November 2, 2004, election for or against a candidate for the offices of President and Vice President of the United States of America.

40. Contestee George W. Bush is a candidate for the office of President of the United States of America. Contestee Bush transacted business in Ohio in person on many occasions in 2004 and at other times by, among other things, seeking a job in person from potential employers by campaigning for the office of President of the United States of America for the term commencing January 20, 2005. On information and belief, contestors allege that George W. Bush participated personally and substantially (directly and/or through one or more agents as for example persons whose identity and exact minute-by-minute actions are presently unknown to contestors but who are identified herein as agents John Doe, Richard Roe, and Karl Roe 1-100) in devising and/or implementing the pattern of vote fraud and discrimination both of which are described below and both of which operated to deprive numerous Ohio citizens of their constitutional and statutory rights.

41. Contestee Richard B. Cheney is a candidate for the office of Vice President of the United

States of America. Contestee Cheney transacted business in Ohio in person on many occasions in 2004 and at other times by, among other things, seeking a job in person from potential employers by campaigning for the office of Vice-President of the United States of America for the term commencing January 20, 2005. On information and belief, contestors allege that Richard B. Cheney participated personally and substantially (directly and/or through one or more agents as for example persons whose identity and exact minute-by-minute actions are presently unknown to contestors but who are identified herein as agents John Doe, Richard Roe, and Karl Roe 1-100) in devising and/or implementing the pattern of vote fraud and discrimination both of which are described below and both of which operated to deprive numerous Ohio citizens of their constitutional and statutory rights.

42. Defendant-Contestee Karl Rove is an associate of defendants-contestees Bush and Cheney. Mr. Rove served in 2004 as a (or the) chief election strategist and tactician for the Bush-Cheney campaign. Contestee Rove transacted business in person in Ohio on many occasions in 2004. On information and belief, contestors allege that Karl Rove participated personally and substantially (directly and/or through one or more agents as for example persons whose identity and exact minute-by-minute actions are presently unknown to contestors but who are identified herein as agents John Doe, Richard Roe, and Karl Roe 1-100) in devising and/or implementing the pattern of vote fraud and discrimination both of which are described below and both of which operated to deprive numerous Ohio citizens of their constitutional and statutory rights.

43. Defendant-Contestee Bush-Cheney '04, Inc., ("Bush-Cheney Committee") was the political committee working in favor of the election of contestees Bush and Cheney. The Bush-Cheney Committee transacted business in Ohio in 2004 through its agents. On information and belief, the Bush-Cheney Committee participated substantially through its known agents, contestees Bush,

Cheney, and Rove and through its unknown agents, John Doe, Richard Roe, and Karl Roe 1-100, in devising and/or implementing the pattern of vote fraud and discrimination both of which are described below and both of which operated to deprive numerous Ohio citizens of their constitutional and statutory rights.

44. Defendant-Contestee J. Kenneth Blackwell is the Secretary of State of Ohio and was the co-chair of the Bush-Cheney campaign in Ohio in 2004. On information and belief, contestors allege that Defendant-Contestee Blackwell participated personally and substantially (directly and/or through one or more agents) in devising and/or implementing the pattern of discrimination which operated to deprive numerous Ohio citizens of their constitutional and statutory rights. On information and belief as set forth in more detail below, as part of the fraudulent scheme devised by defendant-contestees Bush, Cheney, and Rove, Defendant-Contestee Blackwell using his official powers as Ohio Secretary of State participated personally and substantially in ordering and/or acquiescing in the commission of numerous instances of election fraud in violation of Ohio criminal law after November 2, 2004, which actions served to cover-up and delay disclosure of the fraudulent scheme.

45. Contestee Alex Arshinkoff is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

46. Contestee Phil Bowman is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

47. Contestee Merom Brachman is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

48. Contestee William DeWitt, Jr. is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

49. Contestee Billie Jean Fiore is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
50. Contestee Robert Frost is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
51. Contestee Owen Hall is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
52. Contestee Katharina Hooper is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
53. Contestee Joyce Houck is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
54. Contestee David Johnson is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
55. Contestee Pernel Jones is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
56. Contestee Randy Law is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
57. Contestee Karyle Mumper is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
58. Contestee Henry O'Neill is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.
59. Contestee Kirk Schuring is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

60. Contestee Betty Jo Sherman is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

61. Contestee Leslie Spaeth is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

62. Contestee Gary Suhadolnik is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

63. Contestee Elizabeth Wagner is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

64. Contestee Carl Wick is a citizen of Ohio and an elector for the Bush-Cheney ticket in the November 2, 2004 election.

CLAIM FOR RELIEF

65. A general election was held on Election Day November 2, 2004.

66. During the course of the day, a consortium named the National Election Pool (NEP) sponsored an exit poll or exit polls. The members of the NEP are a wire service (AP) and five (5) news organizations (ABC, CBS, CNN, Fox, and NBC) owned by five (5) conglomerates. An exit poll is conducted by interviewing voters immediately after they vote. Credit for inventing the exit poll is generally given to Warren Mitofsky a world recognized expert in exit polling in particular and public opinion polling in general. The NEP contracted with Mr. Mitofsky's firm (Mitofsky International) and another well-respected firm, Edison Media Research, to actually conduct the exit poll or polls.

67. This is what the NEP website (<http://www.exit-poll.net/edisonmitofsky.html>) states about Mitofsky International and Mr. Mitofsky's experience:

“Mitofsky International is a survey research company founded by Warren J. Mitofsky in 1993. Its primary business is conducting exit polls for major elections around the world. It does this work exclusively for news organizations. Mitofsky has directed exit polls and quick counts since 1967 for almost 3,000 electoral contests. He has the distinction of conducting the first national presidential exit polls in the United States, Russia, Mexico and the Philippines. is (sic!) record for accuracy is well known. ‘This caution in projecting winners is a Mitofsky trademark, one which has served him well,’ said David W. Moore, the managing editor of the Gallup Poll in his book, The Super Pollsters. Mitofsky International election research clients in the United States have included all the major television Networks, major newspapers such as NY Times, Washington Post and WSJ. Mitofsky also has a diverse roster of international Broadcast clients. Along with CESSI, Ltd., his was the sole exit poll for the Russian presidential elections in 1996 and 2000 as well as all other Russian elections since 1993. His was the only exit poll and quick count reported by the Mexican broadcast industry for its 1994 presidential Election. Since then he and Consulta S.A., have done all national and state exit polls for Televisa, Mexico's largest broadcaster. Warren Mitofsky started and directed the first network election pool, Voter

Research & Surveys, from 1990 to 1993, later to become known as Voter News Service (VNS). Mitofsky and Edison Media Research have recently conducted exit polls in D.C., NJ, NY and for the 2003 California recall election. With the dissolution of VNS in 2002, the election consortium has chosen Edison and Mitofsky International to be the sole provider of Exit Polls for all Primaries and General Elections. Mitofsky created the Exit Poll research model and its execution in 1967 at CBS News; he continued to bring his innovative and accurate view of election data to Political reporting and analysis within CBS as director of its election unit for the next 27 years and a founder of the CBS/New York Times Poll. Mitofsky is a vital member of the American Association for Public Opinion Research and a fellow of the American Statistical Association. He is currently working on a book about exit polls.”

68. This is what the Mitofsky International website

(<http://www.mitofskyinternational.com/company.htm>): states about Mitofsky International and

Mr. Mitofsky’s experience:

“Mitofsky International is a survey research company founded by Warren J. Mitofsky in 1993. Its primary business is conducting exit polls for major elections around the world. It does this work exclusively for news organizations. Mitofsky has directed exit

polls and quick counts since 1967 for almost 3,000 electoral contests in United States, Mexico, Russia and the Philippines. His record for accuracy is well known. 'This caution in projecting winners is a Mitofsky trademark, one which has served him well...', said David W. Moore, the managing editor of the Gallup Poll in his book, The Super Pollsters. Mitofsky International also specializes in legal proceedings. Its cases included the change of venue portion of the Amadou Diallo shooting by four New York City police; the challenge in the U.S. Senate to seating Diane Fienstein (sic) after her victory over Michael Huffington; the South Carolina video poker law suit; the First Amendment law suits by the news media challenging the anti-exit poll statutes of the states of Washington, Florida and Georgia; the change of venue portion of the Orange County, California, law suit against (sic) Merrill Lynch; a trade mark law suit concerning Billy Banks' Tae-Bo exercise video; an arbitration proceeding among 17 oil companies that banned together with DOJ approval to avoid takeover by Libya's Mu'ammar Al-Qadhafi; the authenticity of polling conducted for Oregon's assisted suicide vote; MI election research clients in the United States have included ABC, CBS, CNN, NBC, Wall Street Journal, New York Times, Washington Post, Los Angeles Times and Time; international clients include Televisa

and the National Chamber for Radio and Television Broadcasting (Mexico), RAI (Italy), ZDF (Germany), Fuji (Japan), NTV and RTR (Russia) and Austrian and Finnish television. MI conducted the only exit polls for the Russian presidential elections in 1996 and 2000. It also polled for the 1993 and 1999 Duma election. In 1994, MI conducted the only exit poll and quick count for the Mexican presidential election reported by the country's broadcast industry. Mitofsky received public commendation by President Carlos Salinas for his contribution to the election's credibility. MI and its Mexican partner, Consulta, have conducted exit polls for most governor elections between 1997-99 for Televisa, Mexico's largest television network. Consulta/Mitofsky also covered the first PRI national presidential primary in 1999. MI started the only public opinion poll in Sri Lanka. MI conducted exit polls for the 1994 mid-term U.S. elections for leading national newspapers. Since 1996, Mitofsky has done the electoral projections and analysis for president, governor and congress for CBS and CNN. MI's president, Warren Mitofsky started and directed Voter Research & Surveys from 1990 to 1993, which was the election consortium of the four major television networks, ABC, CBS, CNN and NBC. It is now known as Voter News Service (VNS). From 1967 to 1990, Mitofsky was executive director of the CBS

News election and survey unit, and was an executive producer of its election night broadcasts. He conducted the first exit polls for CBS in 1967, and developed the projection and analysis system used successfully by CBS and Voter News Service. He started the CBS News/New York Times Poll in 1975 and directed it for CBS for its first 15 years. Mitofsky was president of both the American Association for Public Opinion Research (AAPOR) and the National Council on Public Polls (NCPP). He currently is president of the Reserach (sic) Industry Coalition. He received KAPOR's Lifetime Achievement Award in 1999. He is a Fellow of the American Statistical Association and serves on the boards of the Roper Center and the NY State Committee on Open Government. In 1995 he was a fellow at Harvard's Kennedy School of Government. Later that year he was the Howard R. Marsh Visiting Professor at the University of Michigan. Mitofsky came to CBS News in 1967 from the Census Bureau where he designed many surveys during the early days of the poverty program and for presidential commissions including those investigating the selective service system and the Watts riots. He also designed many other demographic surveys. Along with Joseph Waksberg, he developed a highly efficient random digit dialing telephone sampling method, which has been widely adopted. At the

University of Minnesota, Mitofsky became a doctoral candidate in mass communications, but did not complete the degree. With Paul Sheatsley, he edited *A Meeting Place: The History of the American Association for Public Opinion Research*, and was an editor of *Campaign '76* and *Campaign '78*. He currently is working on a book about exit polls.”

69. Mr. Mitofsky’s work abroad (as acknowledged by then Mexican President Salinas) serves to protect against election fraud. In short, if there is a marked difference between the exit polls and the official results, other nations know enough to conclude that there was fraud or other irregularity in counting the votes which were cast by the same people who provided the information for the exit polls. The laws of statistics do not change when one crosses the United States border.

70. Under the direction of the respected and world-renowned Warren Mitofsky, the NEP conducted two basic types of exit poll in 2004. First, there were statewide exit polls which in total involved interviews with over 73,000 voters. Second, there was an entirely separate national poll which involved interviews with over 13,000 voters. This reported sample size of over 13,000, which is approximately six (6) times larger than that customarily employed in high quality pre-election national polls, yields a very small margin of error and results in a very high level of expected accuracy. Therefore, one would expect to find a very close congruence between exit poll results and actual vote results. As discussed below however, the lack of congruence in this election between the exit poll results and the actual vote results is dramatic.

71. Just before the first polls close, the only available information about the voters’ actual

choices comes from the exit polls. As the polls close and the votes are counted, “official” tabulated results become available. On November 2, 2004, following the closing of the polls in each venue, the NEP “corrected” its results by combining actual vote data with exit poll data to permit the exit poll results to conform to the reported “official” results. In the process, any evidence of fraud as shown by a difference between the exit polls and the “official” results was erased as the so-called exit poll results (as reported the day after the election on November 3, 2004) were forced to correspond to the “official” results.

72. The NEP did not post “corrected” results for several hours on the evening and early morning of November 3, 2004. The uncorrected NEP exit poll results were available on the CNN website until early on Wednesday, Nov. 3, 2004. Copies (screenshots) of the images from the website showing the uncorrected results of the exit polls in about 46 states were obtained. As discussed below, when these uncorrected results are compared to the “official” state-by-state results, it is clear that election fraud (or other irregularity) occurred in the counting of the vote in Ohio and a number of other states.

73. The pre-corrected exit poll data for Ohio predicted that Kerry would win 52.1% of the Ohio Presidential vote. The actual certified result shows Kerry winning 48.7% of the Ohio vote. The difference between the exit poll projection of Kerry’s share of the vote and the certified actual Kerry share of the Presidential vote is 3.4%. According to standard statistical analysis, assuming a random exit poll sample and an honest vote count, there is a probability of roughly one in a thousand (0.0012) that this certified election result would occur. This implies that there is a 999/1000 chance that the Ohio exit poll result is either not based on a random sample or that the election itself was not honest. The probability that a pollster with the experience, reputation,

and ability of Warren Mitofsky would not be able to draw a random sample is vanishingly small.

While there are some unconvincing red herrings which could be raised (e.g., disproportionate spoilage of ballots, alleged reluctance of Bush supporters to speak with exit pollsters), the inescapable conclusion is that there was election fraud in connection with the vote counting in Ohio.

74. The basic reason the statistics provide clear and convincing evidence of election fraud flows from the following general principles. An exit poll based on responses from a random sample of a given number of people has a margin of error determined by the sample size. The margin of error decreases (but not in a linear manner) as the sample size increases. The margin of error is generally stated in terms of the expected difference in percent between the poll result and the actual result which will occur 95% of the time. The other 5% of the time, the actual results will be outside the margin of error. That is, if a poll is taken from a random sample of a given population, 95% of the time the result obtained by sampling the entire population will be less than the margin of error away from the poll result. Given that the error can occur because the actual result is either above or below the poll result, half the errors occur in one direction and half in the other. For example, if the margin of error of a given sample is $\pm 1\%$ and the poll shows a given candidate receiving 50% of the vote, then 95 times out of 100, if all the people who actually voted were asked for their candidate preference (which is what happens when people cast a vote and the vote is counted) the candidate would receive with somewhere between 49% and 51% of the vote (both of which are exactly 1% away from the 50% poll result). With proper sampling methodology, as the difference between the exit poll result and the actual result increases substantially above the margin of error, the probability that there was election fraud

increases markedly and approaches a near certainty (over 98 or 99 chances out of 100).

75. Similar results occurred in Florida (27 electoral votes) and Pennsylvania (21 electoral votes) both of which were also key states in the election. The odds of all three states having shifts in the Kerry-Bush margin in the direction of Bush of 4.9% (Florida), 6.5% (Pennsylvania), and 6.7% (Ohio) have been estimated at about 662,000 to 1 by Prof. Steven F. Freeman of the University of Pennsylvania. A copy of Prof. Freeman's article is attached as Exhibit A.

76. Similar clear and convincing evidence of election fraud was found by Prof. Freeman when he compared the exit poll results with the "official" results in a group of 11 so-called "battleground" states (Colorado, Florida, Iowa, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Pennsylvania, and Wisconsin). There was an unusual shift in favor of Bush which occurred in 10 of the 11 "battleground" states. In these 10 key states, the unusual shift in favor of Bush ranged from 1.6% in Michigan to 9.5% in New Hampshire. If there were innocent errors involved, one would expect to see shifts in favor of both Bush and Kerry. In the 11th state (Wisconsin), there was no difference between the Kerry-Bush margin predicted by the exit poll and the "official" Kerry-Bush margin after the votes were counted.

77. Similar results also occurred in the separate NEP national exit poll conducted under the direction of the respected and world-renowned Warren Mitofsky. The exit poll data for the separate national poll (reported sample size 13,047) predicted that Kerry would win 50.8 % of the national Presidential vote. The actual result shows Kerry winning 48.1% of the national Presidential vote. The difference between the exit poll projection of Kerry's share of the vote and the certified actual Kerry share of the Presidential vote is 2.7%. Assuming a random exit poll sample (corrected for the effect of interviewing in clusters at targeted precincts instead of evenly

geographically distributed throughout the nation) and an honest vote count, there is a probability of roughly one in 45,000 that this official election result would occur (that is, that Kerry would receive 48.1% of the vote or less). This implies that there is a 44,999/45,000 chance that the national exit poll result is either not random or that the election itself was not honest. The probability that a pollster with the experience, reputation, and ability of Warren Mitofsky would not be able to draw a random sample is vanishingly small. On a national basis, there are even fewer red herrings which could be legitimately raised than there were with respect to the fraudulent certified Ohio results. The reasonable conclusion is that there was election fraud in connection with the vote counting on a national basis.

78. The vote fraud in connection with the national vote may also mean that the national exit poll is the most accurate representation of the votes actually cast. This means that candidate Bush probably did not win a “mandate” of 3.5 million votes but actually lost the national vote by a significant margin to John Kerry. The chance of Kerry receiving a greater percentage of the popular vote than Bush in an honest election was 98.7%.

79. Knowing that the evidence of the election fraud (the exit polls) would be in plain view for a short period of time, there was a further part of the plan to steal the election which plan was designed and/or implemented by defendants-contestees Bush, Cheney, and Rove acting through as yet unidentified agents (John Doe, Richard Roe, and Karl Roe 1-100). That part of the plan was to reduce or eliminate the amount of time the fraudulent results would be subjected to serious scrutiny by a well-funded adversary. Accordingly, Andrew Card, an associate of defendants-contestees Bush, Cheney, and Rove appeared on national television in the very early morning hours of November 3, 2004, to make a very nervous and shaky claim to victory in Ohio.

Mr. Card essentially called for a concession and an end to any inquiry into the results.

80. Unconstitutional discrimination served as a deliberate provocation which distracted attention from vote fraud needed to control absolutely the outcome of the election. The discrimination served to decrease the vote for candidates Kerry and Connally by an amount which could not be known precisely in advance. The vote fraud served to control precisely in certain critical counties the certified vote for candidates Bush, Cheney, Kerry, Moyer, and Connally by amounts which (when taken in the aggregate) could be known in advance and which would be sufficient to control the outcome of the election.

81. On information and belief, contestors allege that defendants-contestees Bush, Cheney, Rove and those acting on their behalf (e.g., the as yet unidentified John Doe, Richard Roe, and Karl Roe 1-100), used various means to change fraudulently the legitimate results of the election. While a variety of methods were used to perpetrate the election fraud of which there is clear and convincing evidence in the form of the exit polls, given the election fraud discussed below perpetrated or acquiesced in by Defendant-Contestee Blackwell through the misuse of his official powers and his abuse of the public trust, it is likely that traditional easily detectable means were one of the principal methods of the election fraud.

82. On information and belief, contestors allege that traditional means of vote fraud were used. On information and belief, contestors allege that unlawful ballots (not cast by a registered voter but merely added to the stack of ballots being counted) were added to those cast by lawful voters and that lawfully cast ballots were either destroyed or altered (as for example by adding a second vote to the one allowed vote for President and thereby invalidating the ballot).

83. On information and belief, contestors allege that a low technology traditional form of

election fraud occurred in Trumbull County which has 274 precincts. On information and belief, contestors allege that Dr. Werner Lange conducted a study of the poll books in some 106 precincts in the Trumbull County communities of Warren City, Howland Township, Newton Falls City, Girard City, and Cortland Township. According to the Lange study, 580 absentee votes were cast for which there was no notation of absentee voting in the poll books. These 106 precincts averaged 5.5 fraudulent absentee votes per precinct. If this trend prevailed throughout the 11,366 precincts in Ohio, it would mean that at least 62,513 fraudulent votes were cast in the November 2, 2004 election. The presence of fraudulent absentee ballots also give the Bush-Cheney campaign every reason to prevent interested persons from inspecting the poll books.

84. On information and belief, contestors allege that defendant-contestor Blackwell using his official powers as Secretary of State ordered all 88 boards of election to prevent public inspection of poll books until after certification of the vote on December 6, 2004. This alleged action by the co-chair of the Ohio Bush-Cheney campaign apparently caused violations of R.C. §§3599.161(B) and (C) and may have caused such violations by every board of elections in the state.

85. Each violation of any provision of Title XXXV (35) constitutes a separate prima-facie case of election fraud pursuant to R.C. §3599.42.

86. On information and belief, one of these means of changing the legitimate result to a fraudulent result included gaining physical or electronic access to the tabulating machines and systems. There are many ways to gain access to the voting and vote tabulating systems. In certain circumstances (for example when there is a modem attached to a vote tabulating computer or when a vote tabulating computer has a wireless access port), the confederate of defendants-contestees Bush, Cheney, and Rove who was actually changing the vote totals did not need

physical access to the computer. Electronic access can be obtained from almost anywhere in the world under the right circumstances. An illustrative explanation of how this change can be effected when, for example, the GEMS vote tabulating system is used appears on the World Wide Web at (www.chuckherrin.com/hackthevote.htm). A copy of this explanation is attached hereto as Exhibit B. Briefly, this method which has been demonstrated by Bev Harris on national television involves accessing the spreadsheet which contains the results, changing the votes actually received by one or more candidates in a race, leaving the total votes cast in the race unchanged, and erasing or falsifying the electronic audit trail which could show the access to the computer and the spreadsheet.

87. On information and belief, a second of these means of changing a legitimate result to a fraudulent result included inserting unauthorized and so far undetected operating instructions into the software used to operate either the vote tabulating machines or the voting machines (in the case of direct recording electronic voting machines without a voter verified paper audit trail (referred to herein as "DRE" machines)). On information and belief the undetected operating instructions were only operational on November 2, 2004. On information and belief, the logic and accuracy tests of the DRE machines did not include setting the system date of the machine forward to November 2, 2004, to test what would happen to the machine in actual operation on November 2 and 3, 2004. Without such a test, it would have been very difficult to detect the effect of the unauthorized operating instructions inserted into the software. On information and belief, some or all of the unauthorized operating instructions were pre-set to delete themselves a given amount of time after the election. Ohio counties using DRE machines include Auglaize, Franklin, Knox, Lake, Mahoning, Pickaway, and Ross.

88. Contestors allege election fraud in Greene County, Ohio.

89. R.C. §3599.161(B) provides in pertinent part that:

“No director of elections . . . shall knowingly prevent or prohibit any person from inspecting, under reasonable regulations established and posted by the board of elections, the public records filed in the office of the board of elections.”

90. R.C. §3599.161(C) provides that:

“Whoever violates division (B) of this section is guilty of prohibiting inspection of election records, a minor misdemeanor, and shall, upon conviction, be dismissed from his position as director of elections”

91. On information and belief, contestors allege that on December 10, 1004, Katrina Sumner and a colleague were inspecting public records filed in the office of the Greene County Board of Elections. Specifically, in an effort to determine how many minority voters were unable to vote or were denied the right to vote at the polls, Ms. Sumner and a colleague were inspecting precinct voting books and voter printouts received directly from Carole Garman, Director, Greene County Board of Elections. After Ms. Garman received instructions from Pat Wolfe, Election Administrator in the office of Defendant-contestee Blackwell, Ms. Garman stated she was withdrawing permission to inspect or copy any voting records and physically removed a precinct voting book from Ms. Garman’s hands.

92. R.C. §3599.42 provides:

“A violation of any provision of Title XXXV (35) of the Revised Code

constitutes a prima-facie case of election fraud within the purview of such Title.”

93. Ms. Garman’s action as set forth above constitutes a violation of Section 161 of Title XXXV (35) of the Revised Code and thus a prima facie case of election fraud in connection with the elections for President and Vice President of the United States.

94. Contestors allege on information and belief and based on the certified official results (hereinafter referred to the certified official results may be referred to as “Certified Results”) released on December 6, 2004, by Ohio Secretary of State J. Kenneth Blackwell, who is also a Contestee, that due to error, fraud, or mistake at least the following number of votes were deducted from the total number of votes actually cast for the Kerry-Edwards ticket and added to the number of votes actually cast for the Bush-Cheney ticket at the November 2, 2004, election for President and Vice-President of the United States of America for the terms beginning January 20, 2005:

- a. In Adams County, at least 1,186 votes;
- b. In Allen County, at least 2,312 votes;
- c. In Auglaize County, at least 3,429 votes;
- d. In Brown County, at least 2,221 votes;
- e. In Butler County, at least 23,392 votes;
- f. In Champaign County, at least 1,165 votes;
- g. In Clermont County, at least 11,765 votes;
- h. In Clinton County, at least 1,756 votes;
- I. In Crawford County, at least 1,969 votes;

- j. In Darke County, at least 3,856 votes;
- k. In Defiance County, at least 1,070 votes;
- l. In Delaware County, at least 5,354 votes;
- m. In Fairfield County, at least 2,110 votes;
- n. In Geauga County, at least 2,269 votes;
- o. In Greene County, at least 4,855 votes;
- p. In Hamilton County, at least 7,886 votes;
- q. In Hancock County, at least 2,863 votes;
- r. In Highland County, at least 1,845 votes;
- s. In Holmes County, at least 1,221 votes;
- t. In Lawrence County, at least 1,320 votes;
- u. In Licking County, at least 3,043 votes;
- v. In Logan County, at least 1,892 votes;
- w. In Madison County, at least 1,237 votes;
- x. In Medina County, at least 1,954 votes;
- y. In Mercer County, at least 3,748 votes;
- z. In Miami County, at least 4,597 votes;
- aa. In Morrow County, at least 1,034 votes;
- bb. In Pickaway County, at least 1,352 votes;
- cc. In Preble County, at least 1,575 votes;
- dd. In Putnam County, at least 2,709 votes;
- ee. In Richland County, at least 1,689 votes;

- ff. In Shelby County, at least 3,853 votes;
- gg. In Union County, at least 2,240 votes;
- hh. In Van Wert County, at least 1,750 votes;
- ii. In Warren County, at least 12,750 votes; and,
- jj. In Williams County, at least 1,389 votes.

95. The number of votes listed above which were deducted from those cast for the Kerry-Edwards ticket and then added to those actually cast for the Bush-Cheney ticket is at least 130,656 votes. In the Certified Results, Defendants-Contestees Bush and Cheney (as a ticket) received 118,775 more votes than candidates Kerry and Edwards (as a ticket). After correcting for the at least 130,613 votes improperly and unlawfully deducted from those actually cast for the Kerry-Edwards ticket and the at least 130,613 votes improperly and unlawfully added to those actually cast for the Bush-Cheney ticket, the true result was that the Kerry-Edwards ticket won Ohio by at least 142,537 votes. Accordingly, contestors seek an order directing the Secretary of State to:

- a. Add at least 130,656 votes to the official total reported in the Certified Results for the Kerry-Edwards ticket,
- b. Deduct at least 130,656 votes from the official total reported in the Certified Results for the Bush-Cheney ticket, and
- c. Issue certificates of election to the Electoral College electors representing the Kerry-Edwards ticket.

96. As set forth below, the conduct of contestees (other than the 20 electors) resulted in numerous violations of the equal protection provisions of the 14th Amendment to the U.S.

Constitution, the voting rights provisions of the 15th Amendment to the U.S. Constitution, and the Voting Rights Act, 42 U.S.C. §1973. These violations affected voting and rendered an erroneous result or rendered the result uncertain because of irregularities in registration, the designation of precincts, the effective denial of the right to cast a provisional ballot and have that provisional ballot counted, the use of absentee ballots, the discriminatory assignment of voting machines to precincts, voting machine errors, improperly discarded ballots, and intimidation.

97. These constitutional and statutory violations included, but were in no way limited to, the following incidents:

98. In Auglaize County there were voting machine errors. In a letter dated Oct. 21, 2004, Ken Nuss, former deputy director of the County Board of Elections, claimed that Joe McGinnis, a former employee of ES&S, the company that provides the voting systems in Auglaize County, had access to and used the main computer that is used to create the ballot and compile election results. Mr. McGinnis' access to and use of the main computer was a violation of county board of election protocol. After calling attention to this irregularity in the voting system, Mr. Nuss was suspended and then resigned.

99. In Cuyahoga County there were irregularities in the registration process. The Cuyahoga County Board of Elections botched the registrations of more than 10,000 voters, preventing them from voting.

100. In Cuyahoga County there were voting machine errors. In precinct 4F, located in a predominantly black precinct, at Benedictine High School on Martin Luther King Jr. Drive, Kerry received 290 votes, Bush 21 and Michael Peroutka, candidate of the ultra-conservative anti-immigrant Constitutional Party, received 215 votes. In precinct 4N, also at Benedictine High

School, the tally was Kerry 318, Bush 21, and Libertarian Party candidate Michael Badnarik 163.

On information and belief, contestors allege that these results were the result of fraud, error, or mistake.

101. In Cuyahoga County there was an effective denial of the right to cast a provisional ballot and have that provisional ballot counted. 8,099 provisional ballots (about 1/3 of those cast) have been ruled invalid incorrectly because the voter allegedly wasn't registered or voted in the wrong precinct. In 2000, about 17% were ruled invalid.

102. In Cuyahoga County and Franklin County there were voting machine errors with respect to absentee ballots. The arrows on the absentee ballots did not align with the correct punch hole. On information and belief, this led to voters casting a vote for a candidate other than the candidate they intended to support.

103. In Cuyahoga County, voters were misled when they received phone calls incorrectly informing them that their polling place had been changed.

104. In Franklin County there were reports that about a dozen voters were contacted by someone claiming to be from the county Board of Elections who allegedly stated falsely that the voters' voting location was changed.

105. In Franklin County there was a discriminatory assignment of more voting machines per registered voter to precincts with more white voters than African-American voters and fewer voting machines per registered voter to precincts with more African-American voters than white voters. The disparate impact of this assignment of voting machines had the effect, if not the intent, of discriminating against African-American voters.

106. In Knox and Hamilton Counties there was a discriminatory assignment of more voting

machines to precincts with a majority of white voters than to precincts which had a majority of African-American voters.

107. In Hamilton County, there were voting machines errors when voters could not insert their ballots all the way into certain machines. Initially in Hamilton County some absentee ballots which omitted the names of candidates John Kerry and John Edwards were mailed to voters.

108. In Hamilton County, voters and vote monitors complained that the Republican precinct judge was questioning every voter about his or her address and "being a jerk about it."

109. In Jefferson County there were irregularities in the registration process when some challenged voters were not notified that their registration was challenged and their right to vote was in question. Their names were merely published in a nearly unreadable list in the local newspaper.

110. In Knox County there were not enough voting machines assigned to certain precincts.

111. In Lake County, some voters received a memo on bogus Board of Elections letterhead informing voters who registered through Democratic and NACCP drives that they could not vote.

112. In Lucas County there was a discriminatory assignment of voting machines to precincts.

113. In Lucas County there were voting machine errors when technical problems snarled the process throughout the day. Jammed or inoperable voting machines were reported throughout the city. Lucas County Election Director Paula Hicks-Hudson said the Diebold optical scan machines jammed during testing in the weeks before the election.

114. In Mahoning County, there were voting machine errors when, for example, one precinct in Youngstown, Ohio, recorded a negative 25 million votes.

115. In Mahoning County there were voting machine errors when 20 to 30 ES&S iVotronic

machines needed to be recalibrated during the voting process because some votes for a candidate were being counted for that candidate's opponent.

116. In Mahoning County, about a dozen ES&S iVotronic machines needed to be reset because they essentially froze.

117. In Mercer County, there were apparent voting machine errors. For example, one voting machine showed that 289 people cast (punch card) ballots, but only 51 votes were recorded for president. The county's Web site appeared to show a similar conflict, reporting that 51,818 people cast ballots but 47,768 ballots were recorded in the presidential race, including 61 write-ins. It would appear that about 4,000 votes (nearly 7%) were not counted for a candidate.

118. In Miami County (Concord Southwest precinct), voter turnout was a highly suspect and improbable 98.55%. In Concord South precinct, there was a highly improbable 94.27% voter turnout. Miami County election results indicated that 18,615 votes came in after 100% of the precincts had reported. It is statistically suspicious that the extra votes came in at essentially the same percentage for candidates Bush and Kerry both before and after the extra 18,615 votes were counted.

119. In Montgomery County, there were voting machine errors. Two precincts had 25% presidential undervotes. This means no presidential vote was recorded on 1/4 of the ballots. The overall undervote rate for the county was 2%. The undercount amounted to 2.8 percent of the ballots in the 231 precincts that supported candidate Kerry, but only 1.6 percent of those cast in the 354 precincts that supported candidate Bush.

120. In Sandusky County there were voting machine errors when what appeared to be an overcount resulted when a computer disk containing votes was accidentally inserted into the vote

tabulating machines twice by an election worker.

121. In Sandusky County, elections officials also discovered some ballots in nine precincts were counted twice.

122. In Stark County, there was an effective denial of the right to cast a provisional ballot and have that provisional ballot counted. The Election Board rejected provisional ballots cast at the wrong precinct in the right polling place. In earlier elections, a vote cast in Stark County in the wrong precinct at the proper polling location would be counted.

123. In Trumbull County, a voter in Warren Township precinct D arrived at the polls to discover that someone had already voted in her name. The person who used her name apparently forged her signature and wrote that she lived at a different address. The Board of Elections allowed the registered voter (the second to appear) to cast a ballot.

124. In Warren County there were irregularities in the counting on Election Night when officials locked down the county administration building and blocked anyone from observing the vote count.

125. In a number of counties (including Franklin and Mahoning), there were numerous reported instances of vote hopping (in which a voter selecting Kerry for President saw the choice displayed on the machine "hop" to Bush for President).

PRAYER FOR RELIEF

1. Wherefore Contestors ask the Court to set a hearing as provided in R.C. §3515.10. Contestors further ask the Court to determine that the number of votes affected by the irregularities identified herein are sufficient to declare the Kerry-Edwards ticket the winner of

Ohio's electoral votes for the office of President and Vice President for the terms commencing on January 20, 2005, and that the certificates of election to the Bush-Cheney electors named as Defendants-Contestees be cancelled by operation of law as set forth in R.C. §3515.14, or, in the alternative, that such irregularities, errors, frauds, and mistakes make the results of the election so uncertain that the Court should order the results of the election be set aside pursuant to R.C.

IN THE SUPREME COURT OF OHIO

Moss, et al.,

Contestors,

-v-

Bush, et al.,

Contestees.

Case No. **04-2088**

Original Action to Contest Election

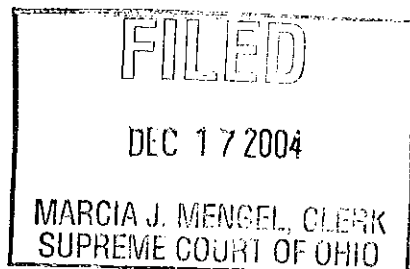
**CONTESTORS' EMERGENCY MOTION FOR EMERGENCY EXPEDITED HEARING
AND EMERGENCY EXPEDITED RELIEF TO PREVENT SPOILIATION OF
EVIDENCE AND TO PRESERVE DOCUMENTARY AND ELECTRONIC EVIDENCE**

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IN THE SUPREME COURT OF OHIO

Moss, et al.,

Contestors,

Case No.

v.

Bush, et al.,

Contestees.

**CONTESTORS' EMERGENCY MOTION FOR AN EMERGENCY EXPEDITED
HEARING AND EMERGENCY EXPEDITED RELIEF TO PREVENT SPOILIATION OF
EVIDENCE AND TO PRESERVE DOCUMENTARY AND ELECTRONIC EVIDENCE**

Pursuant to Ohio Supreme Court Rule 14(A) and 14 (C) and Ohio Rule of Civil Procedure 7, the Contestors respectfully request that this Court issue an emergency order preventing spoliation of evidence and preserving evidence for the captioned contest and providing as follows:

- (1) Pursuant to R.C. 3599.34 and 3506.14, the Secretary of the State, his employees, all county Boards of Election, and all of their employees and contractors and anyone acting in concert with them is hereby ordered not to re-program, erase, modify or otherwise tamper with any data on or in or contained in any storage device which is or was attached to any electronic voting machines owned at present or on November 2, 2004, by Ohio or any county Board of Elections.
- (2) All county Boards of Election are directed to impound under seal all voting machines, all vote tabulating machines, all vote tabulating computers, all memory

cards, all results slips or tapes produced by any of the foregoing types of equipment, all test results or test decks of any equipment used in the November 2, 2004, election, and all precinct or other poll books used in connection with the November 2, 2004, election.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Susan Truitt", written over a horizontal line.

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MEMORANDUM IN SUPPORT OF EMERGENCY MOTION

Contestors' have filed a petition under R.C. 3515.08 to contest the certified results of a statewide election. The contested election is the election for electors to vote for the President and Vice President of the United States for the terms commencing January 20, 2005 and between Contestees Bush and Cheney and the competing ticket of John Kerry and John Edwards. This motion is being filed to protect evidence relevant to the contests.

R.C. 3599.34 prohibits the destruction of ballots until the time has expired for using them in a recount or in a contest of election. Under R.C. 3515.08 et seq., the time for using ballots and related electronic information as evidence in the contests has not expired.

The Affidavit of Sherole Eaton, Deputy Director of the Hocking County Board of Elections, dated December 13, 2004 (attached hereto as Exhibit A), establishes that a representative of Tri Ad (which per the affidavit maintains the voting machines and vote tabulators in Hocking County) manipulated the tabulator and related computer prior to the commencement of the recount in Hocking County. (N.b. Counsel is advised that the company involved is known as Triad.)

The transcript of the sworn testimony of Catherine L. Buchanan (attached hereto as Exhibit B) given on December 14, 2004, at a community public hearing in Toledo, Ohio, establishes that the Diebold OptiScan machines were being re-programmed. The re-programming involves deleting information from the memory cards in the central tabulating machine.

Further, in a December 2, 2004, letter from Kay E. Baker, Director, Shelby County Board of Elections to Harvey Wasserman of Columbus, Ohio (Exhibit C attached hereto), Ms. Baker writes that "tabulator test decks were discarded after [the] election. . ." The destruction of these

test decks appears to be a violation of R.C. 3506.14.

Accordingly, contestors request emergency relief as set forth in the motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Susan Truitt', is written over a horizontal line.

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December 13, 2004

Sherrie Eaton

Re: General Election 2004, Hocking County - Tri Ad
Dell Computer about 14 years old - No tower

On Friday, December 10, 2004, Michael from Tri Ad called in the AM to inform us that he would be in our office in the PM on the same day. I asked him why he was visiting us. He said, "to check out your tabulator, computer and that the attorneys will be asking some tricky questions and he wanted to go over some of the questions they may ask". He also added that there would be no charge for this service.

He arrived about 12:30PM. I hung his coat up and it was very heavy, I made a comment about it being so heavy. He Lisa Schwartz, Director, and I chatted for a few minutes. He proceeded to go to the room where our computer and tabulation machine is kept. I followed him into the room. I had my back to him when he turned the computer on. He stated that the computer was not coming up. I did see some commands at the lower left hand of the screen but no menu. He said that the battery in the computer was dead and that the stored information was gone. He said that he could put a patch on it and fix it. My main concern was - what if this happened when we were ready to do the recount. He proceeded to take the computer apart and call his office to get information to input into our computer. Our computer is fourteen years old and as far as I know it has always worked in the past. I asked him if the older computer, that is in the same room, could be used for the recount. I don't remember exactly what he said but I did relay to him that the computer was old and a spare. At some point he asked if he could take the spare computer apart and I said "yes". He took both computers apart. I don't remember seeing any tools and he asked Sue Wallace, Clerk, for a screwdriver. She got it for him. At this point I was frustrated about the computer not performing and feared that it wouldn't work for the recount. I called Gerald Robbette, board chairman, to inform him regarding the computer problem and asked him if we could have Tri Ad come to our office to run the program and tabulator for the recount. Gerald talked on the phone with Michael and Michael assured Gerald that he could fix our computer. He worked on the computer until about 3:00PM and then asked me which precinct and the number of the precinct we were going to count. I told him, Good Hope 1 #17. He went back into the tabulation room. Shortly after that he ~~and~~ stated that the computer was ready for the recount and told us not to turn the computer off so it would charge up.

Before Lisa ran the tests, Michael said to turn the computer off. Lisa said, "I thought you said we weren't to turn it off". He said turn it off and right back on and it should come up. It did come up and Lisa ran the tests. Michael gave us instructions on how to explain the rotation, what the tests mean, etc. No advice on how to handle the attorneys but to have our Prosecuting Attorney at the recount to answer any of their legal questions. He said not to turn the computer off until after the recount.

He advised Lisa and I on how to post a "cheat sheet" on the wall so that only the board members and staff would know about it and what the codes meant so the count would come out perfect and we wouldn't have to do a full hand recount of the county. He left about 5:00PM.

My faith in Tri Ad and the Xenia staff has been nothing but good. The realization that this company and staff would do anything to dishonor or disrupt the voting process is distressing to me and hard to believe. I'm being completely objective about the above statements and the reason I'm bringing this forward is to, hopefully, rule out any wrong doing.

Sherrie L. Eaton

Ex. A

J. Alice Stahl
Notary Public

2-15-06

1 CATHERINE L. BUCHANAN,

2 A witness called on behalf of the complaintant having
3 been duly sworn by the reporter was examined and
4 testified on her oath as follows:

5

6 DIRECT EXAMINATION Cont.

7

8 MS. BUCHANAN: But then it was lunchtime.
9 So, we ate lunch and then came back and we
10 waited, and then that's when they told us that
11 Dibolt was coming to reprogram the computer,
12 which doesn't make any sense. I mean, if you're
13 going to recalibrate a machine, you calibrate it
14 before you do testing to make sure that it's
15 going to go okay.

16 MR. FITRAKIS: So they tested, did they
17 count anything after they tested it?

18 MS. BUCHANAN: They just counted the
19 results, supposedly, in another room--

20 MR. FITRAKIS: - (inaudible) -

21 MS. BUCHANAN: --but we didn't witness
22 that.

23 MR. FITRAKIS: And then as a result of
24 that, then afterwards you were told that Dibolt
25 was coming in to reprogram the machines?

Ex B-1

1 MS. BUCHANAN: Yes. Why? If they're
2 performing fine, if all the test results are
3 fine, why do they need to reprogram the machine?
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Ex B-2

1 THE STATE OF OHIO)

2 COUNTY OF LUCAS)

3

4 I, Michelle L. Schnapp, a stenotype reporter and
5 notary public in and for Lucas County, Ohio, hereby
6 certify that the matters set forth in the caption to the
7 foregoing hearing are true and correct; that the
8 witness, CATHERINE L. BUCHANAN appeared before me at the
9 time and place set forth; that said witness was first
10 duly sworn by me to tell the truth, the whole truth, and
11 nothing but the truth, and thereupon proceeded to
12 testify in said cause; that the questions of counsels
13 and the answers of said witness was taken down in
14 machine shorthand by me and thereafter reduced to
15 type-writing under my direction; and that the foregoing
16 pages comprise a true and correct transcript of the
17 testimony given and the proceedings had during the
18 taking of said hearing.

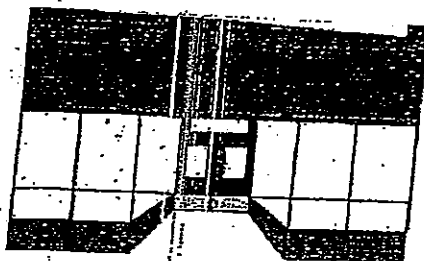
19 I further certify that I am not a relative or
20 employee or attorney or counsel of any of the parties
21 hereto, nor a relative or employee of such attorney or
22 counsel; nor do I have any interest in the outcome or
23 events of the action.

24 WITNESS MY HAND AND SEAL OF OFFICE, this the 15th
25 day of December, A.D., 2004.

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Michelle L. Schnapp
Court Reporter and Notary Public
in and for Lucas County, Ohio
My Commission Expires 12/11/06

Ex B-3



SHELBY COUNTY BOARD OF ELECTIONS

129 East Court St., Sidney, Ohio 45355
Phone (937) 498-7207 FAX (937) 498-7326
Email: sbdelec@bright.net

BOARD MEMBERS:
Ralph W. Erickman, Chairman
Ellen D. Joslin

Ralph A. Bauer
Donald W. Lochard

OFFICE STAFF:
Kay B. Baker, Director
Dawn Billing, Deputy

CLERK:
Trina Riebrun

December 2, 2004

Harvey Wasserman
735 Euclidean Ave.
Columbus, OH 43209-2409

Dear Mr. Wasserman:

We have received your faxed Public Records Request, and will attempt to answer your questions as follows:

1. None exist -- no problems during that time period
2. No results slips (ballots are not counted at the precinct level)
3. Not Applicable (N/A)
4. N/A
5. Unofficial results available (copies made -- 17 pages)
6. Have individual precinct reports (copies made -- 76 pages)
7. Have none already generated, don't know if this can be done, or how to do it
8. Copies made -- 4 pages
9. N/A
10. Sheet typed up -- 1 page
11. Sheet typed up (see no. 10)
12. N/A

Ex C-1

14. Have a March 1989 Operator's Guide from Business Records Corporation (now ES&S) on file for inspection (44 pages, two-sided—did not copy)
15. N/A
16. Tabulator test deck reports were discarded after election, to reduce paperwork and confusion with official results
17. This is not a record we would generate for our use in the office, nor do we know how
18. Same as no. 17
19. Copies made (5 pages)
20. N/A
21. Copies made (26 pages)
22. Already made available (see no. 5)
23. Already made available (see no. 21)

The 155 pages of copies listed above will amount to \$15.50 (\$0.10 per page) and will be available for pick-up as soon as copies are paid for. Additional charge to disassemble spiral-bound Election Tabulation System Operator's Guide and make copies, if requested. Our office is open from 9:00 a.m. until 4:00 p.m. Monday through Friday. We will be closed Monday, December 13, for a District Meeting, and also closed Friday, December 24 and 31.

Sincerely,

Kay E. Baker

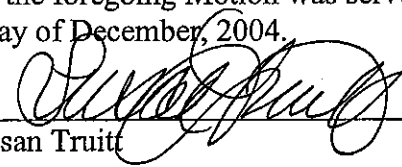
Kay E. Baker
Director

KEB

Ex C-2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion was served upon all the following by U.S. mail, postage prepaid, this 17th day of December, 2004.



Susan Truitt

Richard N. Coglianese
Assistant Attorney General
Constitutional Section
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

George W. Bush
43 Prairie Chapel Ranch
Crawford, Texas 76638

Richard B. Cheney
242 West 14th Street
Casper, Wyoming 82601

Karl C. Rove
616 Crystal Creek Drive
Austin, Texas 78746

Bush-Cheney '04, Inc.
P.O. Box 684
Arlington, VA 22216