

IN THE SUPREME COURT OF OHIO

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

Ruth Carol Moss
1640 Franklin Ave.
Columbus, OH 43205

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

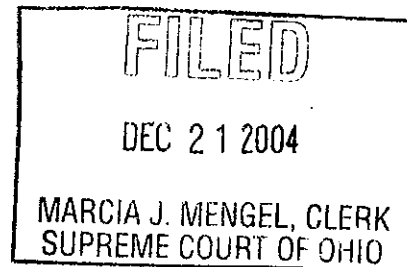
Brian Conaway
1327 King Avenue
Columbus, Ohio 43212

04-2106

Case No.

VERIFIED ELECTION CONTEST
PETITION

(R. C. 3515.08)



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

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

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

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-

Thomas J. Moyer
65 South Front Street
Columbus, Ohio 43215

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

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 Thomas Moyer for the office of Chief Justice of the Ohio Supreme Court for the term commencing January 1, 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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

12. Contestor Brian Conaway is a citizen of the United States and Ohio and resides at 1327 King Avenue, Columbus, Ohio 43212. Brian Conway is a voter who voted in the November 2, 2004, election for or against a candidate for the office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

35. Contestor Martha J. Willow is a citizen of the United States and Ohio and resides at 922

South Champion Avenue, Columbus, Ohio 43206. Marth J. Willow is a voter who voted in the November 2, 2004, election for or against a candidate for the office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

37. Contestor Stuart Wright is a citizen of the United States and Ohio and resides at 162 Brevoort Road, Columbus, Ohio 43214. Stuart Wright is a voter who voted in the November 2, 2004, election for or against a candidate for the office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

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 office of Chief Justice of the Ohio Supreme Court.

40. Contestee Thomas J. Moyer is a candidate for the office of Chief Justice of the Ohio Supreme Court. Contestee Moyer 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 Chief Justice of the Ohio Supreme Court. Contestee Moyer also worked in Ohio in 2004.

41. Defendant J. Kenneth Blackwell is the Secretary of State of Ohio and was the co-chair of the Bush-Cheney campaign in Ohio in 2004. Defendant Blackwell certified the results of the November

2, 2004, election for the position of Chief Justice of the Ohio Supreme Court. On information and belief, contestors allege that Defendant 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 in the election to fill the position of Chief Justice of the Ohio Supreme Court. On information and belief as set forth in more detail below, as part of the fraudulent scheme devised by Presidential candidate George W. Bush, Vice-Presidential candidate Richard B. Cheney, Karl C. Rove (an associate of Messrs. Bush and Cheney), and Bush-Cheney '04, Inc. (the main political committee working in favor of the election of Messrs. Bush and Cheney), Defendant 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 prima facie fraud in violation of the Ohio election laws in connection with the November 2, 2004, election for President and Vice-President and the November 2, 2004, election for Chief Justice of the Ohio Supreme Court.. These violations of Ohio law (which included violations of Ohio criminal law) after November 2, 2004, served to cover up and delay disclosure of the fraudulent scheme devised and/or implemented by Messrs. Bush, Cheney, and Rove and Bush-Cheney '04, Inc. which scheme had as its goal the rigging of the elections for President, Vice President, and Chief Justice of the Ohio Supreme Court. Thus, the cover up served to delay disclosure of the same fraudulent means used to produce false returns in at least three elections connected by being part of the same scheme: the Presidential election, the Vice-Presidential election, and the election of a Chief Justice of the Ohio Supreme Court. The deliberate fraud in connection with the race for President and Vice President affected the race for Chief Justice of the Ohio Supreme Court. The scheme was extended to the election for Chief Justice for reasons

including but not limited to the fact that the newly elected Chief Justice would be in a position to rule on contests of statewide elections on and after January 1, 2005 (as for example any contest of the 2004 election for President still in progress in early 2005 and any contest of the 2008 election for President and Vice President).

CLAIM FOR RELIEF

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

43. 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.

44. 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.”

45. 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 Feinstein (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' Te-Bo exercise video; an arbitration proceeding among 17 oil companies that banned together with DOJ approval to avoid takeover by Libya's Mu'ammarr 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. Consular/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."

46. 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.

47. 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.

48. 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.

49. 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.

50. 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 long experience, excellent reputation, and proven 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.

51. The statistics provide clear and convincing evidence of election fraud. 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).

52. 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.

53. 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.

54. 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 55,000 that Kerry would receive 48.1% of the vote or less. This implies that there is a 54,999/55,000 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.

55. 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 George 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%.

56. 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. That plan was designed and/or implemented by Messrs. Bush, Cheney, Rove, and Bush-Cheney '04, Inc., 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 Messrs. 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.

57. 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.

58. On information and belief, contestors allege that Messrs. 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 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.

59. 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).

60. 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.

61. 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 or the somewhat earlier date upon which each county Board of Election certified results for its county. This alleged action by Secretary Blackwell, 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.

62. Pursuant to R.C. §3599.42, each violation of any provision of Title XXXV (35) constitutes a separate prima facie case of fraud within the purview of Title XXXV which relates to elections.

63. On information and belief, one of the 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 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.

64. On information and belief, another 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.

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

66. 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.”

67. 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”

68. 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.

69. 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.”

70. 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 and Chief Justice of the Ohio

Supreme Court.

71. Contestees allege on information and belief and based on the certified official results (hereinafter the certified official results may be referred to as "Certified Results") released on December 6, 2004, by Ohio Secretary of State J. Kenneth Blackwell, 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 Ellen Connally for Chief Justice of the Ohio Supreme Court for the term beginning January 1, 2005, and added to the number of votes actually cast for Thomas Moyer at the November 2, 2004, election for Chief Justice of the Ohio Supreme Court:

- a. In Ashtabula County, at least 1,138 votes;
- b. In Athens County, at least 2,000 votes;
- c. In Cuyahoga County, at least 63,980 votes;
- d. In Erie County, at least 6,829 votes;
- e. In Franklin County, at least 37,802 votes;
- f. In Huron County, at least 1,027 votes;
- g. In Jefferson County, at least 1,121 votes;
- h. In Lorain County, at least 9,360 votes;
- i. In Lucas County, at least 15,267 votes;
- j. In Mahoning County, at least 16,100 votes;
- k. In Montgomery County, at least 5,884 votes;
- l. In Ottawa County, at least 1,156 votes;
- m. In Portage County, at least 2,754 votes;
- n. In Sandusky County, at least 1,069 votes;

- o. In Stark County, at least 15,101 votes;
- p. In Summit County, at least 22,750 votes; and,
- q. In Trumbull County, at least 13,440 votes;

72. The number of votes listed above which were deducted from those cast for Ellen Connally and then added to those actually cast for Thomas Moyer is at least 216,778 votes. In the Certified Results, Contestee Thomas Moyer received 284,230 more votes than Ellen Connally. After correcting for the at least 216,778 votes improperly and unlawfully deducted from those actually cast for Ellen Connally and the at least 216,778 votes improperly and unlawfully added to those actually cast for Thomas Moyer, the true result was that Ellen Connally won the election for Chief Justice of the Ohio Supreme Court by at least 149,326 votes. Accordingly, contestors seek an order directing the Secretary of State to:

- a. Add at least 216,778 votes to the official total reported in the Certified Results for Ellen Connally,
- b. Deduct at least 216,778 votes from the official total reported in the Certified Results for Thomas Moyer, and
- c. Issue a judgment that Ellen Connally was elected to the position of Chief Justice of the Ohio Supreme Court for the term commencing January 1, 2005.

73. As set forth below, the conduct of defendant Blackwell 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.

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

75. 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.

76. 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.

77. In Cuyahoga County there were also 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.

78. 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.

79. 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.

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

81. 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.

82. 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.

83. 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.

84. 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.

85. 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."

86. 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.

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

88. 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.

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

90. 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.

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

92. 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.

93. In Mahoning County, about a dozen ES&S iVotronic machines needed to be reset

because they essentially froze.

94. 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.

95. 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.

96. 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.

97. 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.

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

99. 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.

100. 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.

101. 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.

102. 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).

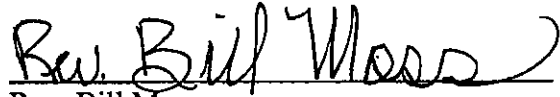
PRAYER FOR RELIEF

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 Ellen Connally the winner of the position of Chief Justice of the Ohio Supreme Court for the term commencing on January 1, 2005, and that the certificates of election to Thomas Moyer 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. §3515.14.

2. Contestors seek such other relief, at law or equity, as the Court deems proper.

Respectfully submitted,


Rev. Bill Moss