ORIGINAL

# IN THE SUPREME COURT OF OHIO

# **ON COMPUTER-ALM**

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

Ruth Carol Moss 1640 Franklin Ave. Columbus, OH 43205

Case No. 04-2088

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

NI.



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

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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 14<sup>th</sup> 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 16<sup>th</sup> 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

 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.

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..

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..

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 minuteby-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 cochair 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 defendantcontestees 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.

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 (<u>http://www.exit-poll.net/edisonmitofsky.html</u>) 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

(<u>http://www.mitofskyinternational.com/company.htm</u>): 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 agains (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 11<sup>th</sup> 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 1,18	6 votes;
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- 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;
- 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;
1.	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;
0.	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;
у.	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;

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:

- Add at least 130,656 votes to the official total reported in the Certified Results for the Kerry-Edwards ticket,
- Deduct at least 130,656 votes from the official total reported in the Certified
   Results for the Bush-Cheney ticket, and

 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 14<sup>th</sup> Amendment to the U.S.

Constitution, the voting rights provisions of the 15<sup>th</sup> 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.

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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

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. §3515.14.

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

Respectfully submitted,

Bill Mess Rev. Bill Moss

Puth Carol Mass Ruth Carol Moss

Bonnie L. Awan

Twan Mohammed S. Awan

Eugene Beer Eugene Beer

Eugene Boer

Marily Blackwell 47

Bour C 0 Linda Byrket

Frank C. Cleveland, Jr.

O

Brian Conaway

Main Monn

Tracie R. Connor

Jrach h, Compard Deborah A.

Jan Cufe John M. Crawford

Evan Davis

Sor Gregory Donelson

Anan Kolen Pen Brian Edmiston

Fajer q tru Rhonda Frazier

Mardy J. Bally Mandy Gollhofer 58

Dan Headoper Q

Mary Headapoll Mary Headapoll

Hola. Myers Mary Hooker 61

Richard James

Marty Kuhn Marty Kuhn

omax

Jul A. McCaughan

Mare  $\subset$ 

Gail Meese

Jackie Mudgett

em N, Maal t D. Neal a Wilbert D. Neal

Bruce Roberts

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SRoom SR

Douglas S. Rookard, Sr.

Mary Anne Saucier Mary Anne Saucier

Javarow Juner Tavarous Turner
Martha J. Willow

Margaret Wright

Stuart Wright Stuart Wright

Allen Zak

Leslie Zak

Contestors

Kno 0. Comber S.

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## VERIFICATION

I, Rev. Bill Moss, a Contestor, being duly sworn state as follows: I have read the foregoing Election Contest Petition and verify that the contents are true as I verily believe.

1 mass

### STATE OF OHIO :ss COUNTY OF FRANKLIN

Sworn and subscribed before me on this the 17 day of December, 2004.

Notary Public. tate of Ohio.

ROBERT J. FITRAKIS ATTORNEY AT LAW Notary Public, State of Ohio My Commission Has No Expiration Sec. 14730.03 RC

#### VERIFICATION

I, Ruth Carol Moss, a Contestor, being duly sworn state as follows: I have read the foregoing Election Contest Petition and verify that the contents are true as I verily believe.

aral Mass Ruth Carol Moss

STATE OF OHIO

:ss

COUNTY OF FRANKLIN

Sworn and subscribed before me on this the 1+47 day of December, 2004.

ROBERT J. FITRAKIS ATTORNEY AT LAW Notary Public, State of Ohlo My Commission Has No Expiration Sec. 14730.03 RC

Notary Public, State of Ohio.

#### PRAECIPE TO THE CLERK OF COURT

Pursuant to R.C. §3515.10, the Contestors hereby direct the Clerk of the Supreme Court to serve a copy of the Verified Election Contest Petition upon each other party at the addresses listed above with the exception that pursuant to Ohio Rule of Civil Procedure 4.3 the clerk is requested to forward the Verified Election Contest Petition and serve the Verified Election Contest Petition on the following parties at the addresses indicated below (instead of the address for these parties in the caption) by express mail post office to addressee for delivery on Saturday, December 18, 2004, return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered:

George W. Bush 1600 Pennsylvania Avenue, N.W. Washington, D.C. 20500

Richard B. Cheney One Observatory Circle, N.W. Washington, D.C. 20008

Respectfully submitted,

Ind U.I

Clifford O. Arnebeck Jr. (0033391) 1351 King Ave., 1st Floor Columbus, Ohio 43212 614-481-8416; Fax: 614-481-8387

COUNSEL FOR CONTESTORS

#### IN THE SUPREME COURT OF OHIO

Rev. Bill Moss, et al.,

## CONTESTORS

-v-

George W. Bush, et al.

CONTESTEES

## DETERMINATION OF BOND

Pursuant to R.C. §3515.09, I, the Clerk of the Ohio Supreme Court, hereby determine and

set the Amount of Bond to be posted in the above-styled case as \$

Clerk of Court



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Comments or questions directed to the author(s) are most appreciated and will be acknowledged accordingly.

Graduate Division, School of Arts & Sciences Center for Organizational Dynamics Working Paper #04-10 November 12, 2004 (revised November 23, 2004, additional grammatical and format changes December 9, 2004)

# Was the 2004 Presidential Election Honest? An Examination of Uncorrected Exit Poll Data

## Part I: The Unexplained Exit Poll Discrepancy

## Steven F. Freeman, PhD stfreema@sas.upenn.edu

Most Americans who listened to radio or surfed the internet on election day this year sat down to watch the evening television coverage thinking John Kerry won the election. Exit polls showed him ahead in nearly every battleground state, in many cases by sizable margins. Although preelection day polls indicated the race dead even or Bush slightly ahead, two factors seemed to explain Kerry's edge: turnout was very high, good news for Democrats,<sup>1</sup> and, as in every US presidential election with an incumbent over the past quarter-century,<sup>2</sup> undecided voters broke heavily toward the challenger.<sup>3</sup>

<sup>1</sup> Jack Citrin, Eric Schickler & John Sides, "What If everyone voted? Simulating the Impact of increased turnout in senate elections" American Journal of Political Science, 2003, 47-(1) 75-90: Nonvoters are generally more Democratic than voters. Democratic Party candidates generally benefit from higher turnout because the increase comes disproportionately from voters in socio-economic groups that traditionally vote Democratic.

<sup>2</sup> Guy Molyneux, "The Big Five-Oh", *The American Prospect Online*, Oct. 1, 2004: There have been four incumbent presidential elections in the past quarter-century. On average, the incumbent comes in half a point below his final poll result; challengers exceed their final poll result by an average of 4 points.

<sup>3</sup> Even the final "corrected" exit poll data presented on the CNN website – more on such corrected data later – indicate that those who decided in the last three days chose Kerry over Bush 55% - 42%. <a href="http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html">http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html</a> (Thursday Nov 14, 2004)

But then, in key state after key state, counts showed very different numbers than the polls predicted; and the differentials were all in the same direction. The first shaded column in Table 1.1 shows the differential between the major candidates' predicted (exit poll) percentages of the vote; the next shaded column shows the differential between their *tallied* percentages of the vote. The final shaded column reveals the "shift." In ten of the eleven consensus battleground states,<sup>4</sup> the tallied margin differs from the predicted margin, and in every one, the shift favors Bush.

	Bush predicted	Kerry predicted	Predicted differential	Bush tallied	Kerry tallied	Tallied differential	Tallied vs. predicted
Colorado	49.9%	48.1%	511KHA 1 /5	52.0%	46.8%	AL SIL	Edition S. 4
Florida	49.8%	49.7%	BUE OF	52.1%	47.1%	Bussin, 1.U	- Bush 4 gord
lowa	48.4%	49.7%	Katy 1.3	50.1%	49.2%	Blush 8	15 3 62 2
Michigan	46.5%	51.5%	Kenny 50	47.8%	51.2%	Searchy I al	BUS HID
Minnesota	44.5%	53.5%	Kienty (e.j.)	47.6%	51.1%	Kerny Bus	Bull & T
Nevada	47.9%	49:2%	Kerty e al	50.5%	47.9%	-1313131	BURN STR.
New Hampshire	44.1%	54.9%	1 Selfner 10 a	49.0%	50.3%	Kenny 13	an at a
New Mexico	47.5%	50.1%	Kierty 2 a	50.0%	48,9%	L. M. Harris	BIUSIA &
Ohio	47.9%	52.1%	《是代·时间》	51.0%	48.5%	BUNNE	10 AN
Pennsylvania	45.4%	54.1%	Kieldy at the	48.6%	50.8%	ET N	- to 10 10
Wisconsin	48.8%	49.2%	Kieft 24	49.4%	49.8%	HARRY (D. A.	No dif

Table 1.15: Predicted vs. tallied percentages in battleground states

The media has largely ignored this discrepancy (although the blogosphere has been abuzz), suggesting that the polls were either flawed, within normal sampling error, a statistical anomaly, or could otherwise be easily explained away. In Part I of this paper, I examine the validity of exit polls, the likelihood of sampling error, and the possibility of statistical anomaly and show that the exit poll discrepancy could not have been due to chance or random error. In Part II, I explore further whether the count was correct.

#### Exit Poll Data

The data I use for this paper are those posted on the CNN website election night. CNN had the data by virtue of membership in the National Election Pool (NEP), a consortium of news organizations that had pooled resources to conduct a large-scale exit poll (as was done in the 2000

4 These eleven are classified as battleground states based on being on at least two of three prominent lists: Zogby, MSNBC, and the Washington Post. Another sometimes-mentioned state, Oregon, did not have a comparable exit poll because voting in the state is by mail. (These twelve states did in fact turn out to be the most competitive in

the election; in no other state was the winning margin was within 7%.) 5 Source: CNN website. Wednesday November 3, 2004 12:21 am.

election). NEP, in turn, had contracted two respected firms, Edison Media Research and Mitofsky International,<sup>6</sup> to conduct the polls.

#### Calibrated and Uncalibrated Exit Poll Data

Part of the reason the issue went away for the media – and simultaneously raised suspicion on the web – is secrecy and confusion about the data and what exactly is being characterized as the exit poll. If you go to the CNN website or any other website on which 2004 exit poll data are available, you'll see numbers very different from those released on election day. That's because the survey results originally collected and presented to subscribers were subsequently "corrected" to conform to official tallies.

The pollsters explain this as a natural process: the "uncalibrated" data were preliminary; once the counts come in, they recalibrate their original data on the assumptions that the count is correct, and that any discrepancies must have been due to imbalanced representation in their samples or some other polling error. The pollsters have taken great pains to argue that their polls were not designed to verify election results,<sup>7</sup> but rather to provide election coverage support to subscribers – as one datum that networks could use to project winners and to explain voting patterns, i.e., who voted for whom, and why people voted as they did.

Whatever the merits of calibrating exit poll data, it obscures the issue of *why* the uncalibrated polls were so far off and mostly in the same direction. Although this calibration process may seem perfectly natural to NEP, it confuses nearly everyone else, even sophisticated analysts intimately involved in voting issues. The MIT-Caltech Voting Project, for example, issued a report concluding that exit poll data were consistent with state tallies and that there were no discrepancies based on voting method, including electronic voting systems. But they used these adjusted data to validate the process! In other words, they used data in which the count is

 6 Warren Mitofsky, the founder of Mitofsky International, is credited with having invented the exit poll. David W. Moore, Senior Gallup Poll Editor, "New Exit Poll Consortium Vindication for Exit Poll Inventor" 10/11/2003
7 Martin Plissner, "In Defense of Exit Polls: You just don't know how to use them" Slate Thursday, Nov. 4, 2004

assumed correct to prove that the count *is* correct. And, sadly, this report is being used to dismiss allegations that anything might be awry.<sup>8</sup>

It's an awful mistake, but entirely understandable -- few of us realized that these data were corrected. Neither the CNN website, nor any other site of which I am aware, gives any indication that the data were anything other than what nearly all of us imagine exit poll data to be -- data based solely on subjects surveyed leaving the polling place.

#### Data Used in This Report

For this report, I use data that apparently are based solely on subjects surveyed leaving the polling place. These data were reportedly not intended for public release,<sup>9</sup> and were available to late evening election night viewers only because a computer glitch prevented NEP from making updates sometime around 8:30 p.m. that evening.<sup>10</sup> They were collected by Jonathon Simon, a former political survey research analyst, and are corroborated by saved screen shots (see Figure 1.1). I happened to have sixteen exit poll internet pages stored in my computer memory, and in each case, his figures are identical to mine. The numbers are also roughly consistent with those released elsewhere (Appendix B shows *Slate* numbers at 7:28 EST).

To derive the "predicted values" used in Tables 1.1 and 1.5, I combine the male and female vote, weighted for their percentage of the electorate. Ohio exit poll data (Figure 1.1) indicate that 51% of men and 53% of women voted for Kerry. Since the electorate is 47% male/53% female, Kerry's overall share of the exit poll was calculated as  $(51\% \times 47\%) + (53\% \times 53\%)$  or 52.1%.<sup>11</sup> Doing the same for calculations for other battleground states and comparing these numbers with final tallies (*New York Times*, Nov. 7), I completed the columns in Tables 1.1 and 1.5.

<sup>8</sup> Tom Zeller, Jr. "Vote Fraud Theories, Spread by Blogs, Are Quickly Buried," New York Times (Front page); John Schwartz, "Mostly Good Reviews for Electronic Voting," New York Times; Keith Olbermann MSNBC Countdown. All three on November 12, 2004.

<sup>9</sup> Martin Plissner, "In Defense of Exit Polls: You just don't know how to use them" Slate Thursday, Nov. 4, 2004 10 Richard Morin, "New Woes Surface in Use of Estimates," Washington Post, Thurs, Nov. 4, 2004; Page A29

<sup>11</sup> Among the limitations of the CNN exit poll data is the lack of significant digits. Rounding errors mean that exit poll numbers for individual state analyses could be off by up to .5. This is unlikely because it comes from two groups, male and female, and it's unlikely that they are both rounded that much in the same direction. Regardless, the strength of the finding is such that even if all numbers had been rounded the full .5 in an unfavorable direction, the basic finding would still hold.

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CNN.com Election 2004 - Microsoft Internet Explorer	and the second			
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N.com: Home Page - Other sections:	ALC: NAME AND ADDRESS OF THE DREET		Live video coverage	Next poll closi
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	No. AND INC. NO. OF STREET, ST	PROPERTY AND		PRESIDENT
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DTE BY GENDER		BUSH	KERRY	PRESIDENT: MONT
				Bush (R) dereats Ke
Male (47%)	49%	-8	51%	PRESIDENT: 10%4
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White Women (45%)	53%	n/a	47%	
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Non-White Women (8%)	18%	n/a	82%	VOICES
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Figure 1.1. CNN web page with apparently "uncorrected" exit poll data (12:21 am Wed, Nov. 3, 2004)

#### Are the Data Valid?

Some commentators on an early draft of this paper rejected these data as unweighted, meaning that they have not been adjusted to appropriately weight demographic groups pollsters knowingly under- or over-sampled,<sup>12</sup> but it makes no sense that NEP would *ever* distribute unweighted data to anyone, let alone publish them on the web election night. NEP's predecessor, Voter News Service, warns in bold letters in its 2000 methodology statement never to use unweighted data for any reason (see Appendix A). Pollsters want to get it right. Their customers are depending on it. Broadcasters want to be alerted to probable outcomes, so as to plan their coverage accordingly

<sup>12</sup> Using unweighted data, Democrats would almost always outpoll Republicans. Pollsters oversample minorities so that they have a sufficient sample size of important demographic groups – but then they negatively weight respondents in these groups to adjust for their actual percentage of the electorate.

(e.g., pre-writing stories so they can be completed shortly after poll-closings, assigning top reporters to winners' headquarters, being prepared for when concession or victory speeches might be forthcoming, etc.). In this case, subscribers were taken by surprise. Anchor people were discussing who Kerry would choose for his cabinet, conservative radio hosts were warning how now we're going to see the true John and Teresa Heinz Kerry. Prominent pollster John Zogby trusted the data sufficiently to call the race for Kerry. In the end, network managers had to scramble for coverage; editors and journalists had to rewrite headlines and lead stories.

It is alternatively possible that the data were already partially calibrated to the count by 12:20 am, but given the *Washington Post* story and the abrupt change at 1:30 am, that seems unlikely. If, in fact, the data already had been partially calibrated, however, it would mean that the pure exit poll numbers favored Kerry to an even greater extent.

In summary, I'd rather have NEP data; lacking that (and unless NEP has a change of heart, no one is going to see those until well into 2005<sup>13</sup>), these CNN data look good, and can be used to generate some highly suggestive findings.

## On (Uncorrected) Exit Polls

Conducting an exit poll presents many challenges, several of which potentially might have caused errors that would have resulted in election day discrepancies. I'll discuss these at length in a later section of this report (along with a discussion of potential count errors), but in general, we have reason to believe that exit polls, by which I mean *uncorrected* exit polls, are accurate survey instruments. Exit polls are surveys taken of representative respondents from the overall voting population. Both the logic behind them and experience suggest that these surveys should be able to predict overall results within statistical limits. It is relatively easy to get a representative

<sup>&</sup>lt;sup>13</sup> When the data is finally released, it may also be unusable for these purposes, because that would require a weighting model that did not assume the correct. First, we won't know whether precincts were originally chosen randomly or to ensure balance, e.g., by oversampling a minority group. Second, we won't know whether individual respondents have been weighted to adjust for exit poll observations, e.g., African-Americans disproportionately participated in the poll, or to make the numbers match up with the tallies, e.g., African Americans *must have been* oversampled because otherwise Kerry's vote total would have been higher.

sample, and there is no problem with figuring out who is actually going to vote or how they will vote.

In Germany, the minute the polls close, polling agencies release prognoses that have proven highly reliable. In the three most recent national elections there, poll percentages diverged from official counts by an average of only 0.26% (Table 1.2). They have been almost as accurate for the German vote in the European Parliament Elections (Table 1.3), averaging 0.44% differential from tallied results over the past three elections.

Table 1.2<sup>14</sup>: Exit Poll Predictions vs. Official Counts in German National Elections

Average di	fferential		0.30%			0.18%		:	0.30%	0.26%
Rest	9.0%	8.6%		6.0%	5.9%		3.5%	3.6%		
PDS	4.0%	4.0%	0.0%	5.0%	5.1%	0.1%	4.0%	4.4%	0.4%	
FDP	7.5%	7.4%	0.1%	6.5%	6.2%	0.3%	7.0%	6.9%	0.1%	
Green	9.0%	8.6%	0.4%	6.5%	6.7%	0.2%	7.0%	7.3%	0.3%	
CDU/CSU	38.0%	38.5%	0.5%	35.0%	35.2%	0.2%	42.0%	. 41.4%	0.6%	
SPD	38.0%	38.5%	0,5%	41.0%	40.9%	0.1%	36.5%	36.4%	0.1%	
arties	2002 predicted	2002 tallied	2002 diff	1998 predicted	1998 tallied	1998 diff	1994 predicted	1994 tallied	1994 diff	average dif

Table 1.3: Exit Poll Predictions vs. Counts in European Parliament Elections (German part)

	2004	2004	2004	1999	1999	1999	1994	1998	1998	average
anies	predicted	tallied	diff	predicted	tallied	diff	predicted	tallied	diff	dif .
SPD	22.0%	21.5%	0,5%	31.0%	30.7%	0.3%	33.0%	32.2%	0.8%	
CDU/CSU	45.5%	44.5%	1.0%	48.0%	48.7%	0.7%	40.5%	38.8%	1.7%	
Green	11.5%	11.9%	0.4%	7.0%	6.4%	0.6%	10.0%	10.1%	0.1%	
FDP	6.0%	6.1%	0.1%	3.0%	3.0%	0.0%	4.0%	4.1%	0.1%	
PDS	6.0%	6.1%	0.1%	6.0%	5.8%	0.2%	4.5%	4.7%	0.2%	
REP	ſ						3.5%	3.9%	0.4%	
Rest	9.0%	9.8%	×*	5.0%	5.4%		4.5%	6.2%		
Average di	fferential		0.42%			0.36%			0.55%	0.44%

To make the numbers more comparable to the US presidential election, I have grouped the parties into their coalitions in Table 1.4.<sup>15</sup> The results are very accurate, in all cases predict correctly the winner, and show no systematic skew.

<sup>14</sup> Source: Election data: <u>http://www.bundeswahlleiter.de/</u> (English: <u>http://www.bundeswahlleiter.de/wahlen/e/index\_e.htm</u>) Prognoses: <u>www.forschungsgruppe.de</u> the predictions of another polling company can be found at <u>http://de.wikipedia.org/wiki/Prognosen/Hochrechnungen\_der\_Bundestagswahl.htm</u>; its predictions are in all cases within 1% of ZDF). I'd like to thank Dr. Andreas M. Wuest, Dr. Michael Morrissey, Kurt Gloos, and Lars Vinx for their help in compiling this data.

<sup>15</sup> The FDP Freie Demokratische Partei (liberals) is aligned with the Christian Democratic Party, and the Social Democratic Party (SPD) is aligned with the Greens. PDS (socialists) and Republikaner (extreme right) are not in any coalition.

Election	Coalition	SPD/ Green predicted	CDU/CSU FDP predicted	Predicted differential	SPD/Gree n tallied	CU/FDP tallied	Tallied differential	Tallied vs. predicted
2004 Europea	an Parliament	33.5%	51.5%	CF 18.0	33.4%	50.6%	CF 17.2	SG 0.8
2002 National	election	47.0%	45.5%	SG 1.5	47.1%	45.9%	SG 1.2	CF 0.3
1999 Europea	an Parliament	38.0%	51.0%	CF 13.0	37.1%	51.7%	CF 14.6	CF 1.6
1998 National	election	47.5%	41.5%	SG 6.0	47.6%	41.4%	SG 6.2	SG 0.2
1994 Europea	n Parliament	43.0%	44.5%	CF 1.5	42.3%	42.9%	CF 0.6	SG 0.9
1994 National	election	43.5%	49.0%	CF 5.5	43.7%	48.3%	CF 4.6	SG 0.9
2004 Europea 2002 National 1999 Europea 1998 National 1994 Europea 1994 National	an Parliament election an Parliament election an Parliament election	33.5% 47.0% 38.0% 47.5% 43.0% 43.5%	51.5% 45.5% 51.0% 41.5% 44.5% 49.0%	CF 18.0 SG 1.5 CF 13.0 SG 6.0 CF 1.5 CF 5.5	33.4% 47.1% 37.1% 47.6% 42.3% 43.7%	50.6% 45.9% 51.7% 41.4% 42.9% 48.3%	CF 17.2 SG 1.2 CF 14.6 SG 6.2 CF 0.6 CF 4.6	SG 0 CF 0 CF 1 SG 0 SG 0 SG 0

#### Table 1.4: Exit Poll Predictions vs. Counts for Coalitions in German National Elections

In the US, exit polls have also been quite precise. Students at BYU have been conducting Utah exit polls since 1982.<sup>16</sup> They write:

[...] results are very precise; In the 2003 Salt Lake [City] mayoral race, the KBYU/Utah Colleges Exit Poll predicted 53.8 percent of the vote for Rocky Anderson and 46.2 percent for Frank Pignanelli. In the actual vote, Anderson carried 54 percent of the vote to Pignanelli's 46 percent.

True to their word, predictions in this year's contests were quite accurate. In the Utah presidential vote, for example, they predicted Bush 70.8%, Kerry 26.5%. The actual was Bush 71.1%, Kerry 26.4%. Consistently accurate exit poll predictions from student volunteers, including in this presidential election, suggest we should expect accuracy, within statistical limits, from the world's most professional exit polling enterprise.

Not only can exit polls accurately predict actual voting, they have been widely used to verify elections. When Mexico sought legitimacy as a modernizing democracy in 1994, Carlos Salinas instituted reforms designed to ensure fair elections, and central among these were exit polls.<sup>17</sup> Exit pollsters were hired again for the subsequent presidential election in 2000,<sup>18</sup> and not coincidentally, it was the first loss for the Institutional Revolutionary Party (PRI) in its 72-year history.

<sup>16</sup> http://exitpoll.byu.edu/2004results.asp. As far as I have been able to determine, this was the only other exit poll conducted on the 2004 presidential election, aside from an LA Times poll, for which I could not determine whether or not the data were corrected.

<sup>17</sup> Paul B. Carroll and Dianne Solis, "Zedillo's apparently clean win at polls diminishes threat of Mexican unrest." The Wall Street Journal August 23, 1994 pA2

<sup>18</sup> Rebeca Rodriguez, "U.S. political consultants signed to conduct exit poll in Mexico." Knight Ridder Newspapers, June 16, 2000

In Russia, and throughout the former Soviet block, exit polls have been used to verify elections. Last fall, international foundations sponsored an exit poll in the former Soviet Republic of Georgia during a parliamentary election. Just as happened recently in the Ukraine, exit polls projected a victory for the main opposition party, and when the sitting government announced that its own slate of candidates had won, supporters of the opposition stormed the Parliament and the sitting President resigned under pressure from the United States.<sup>19</sup>

## Statistical Analysis of the Three Critical Battleground States: Ruling out Chance or Random Error

#### Three Critical Battleground States

The conventional wisdom going into the election was that three critical states – Ohio, Pennsylvania, and Florida – would likely determine the winner of the presidential election. Typical analyst comments included:

Since Election 2000, Republicans and Democrats have banked their aspirations on an electoral trinity: Florida, Pennsylvania and Ohio. As the Big Three goes, so goes the nation. - David Paul Kuhn, CBS News: "High-Stakes Battle for the Big 3" Oct. 26, 2004

Conventional wisdom for months, including RCP's, had been that whoever won two of the "big three" Ohio, Pennsylvania and Florida would almost certainly become President.

- Real Clear Politics: posting 10/28/04

The accepted wisdom is that whoever wins two out of the three states of Ohio, Pennsylvania and Florida will win the election.

- Rob Watson, BBC News: October 28, 2004

The numbers and logic were straightforward. Of the other battleground states: Michigan and Minnesota leaned Democratic; Colorado and Nevada leaned Republican. Iowa, New Hampshire and New Mexico don't have many electoral votes. Wisconsin has a long tradition as a liberal state, and only 10 electoral votes compared to 20, 21, and 29 for the big three.

Campaign activities were also consistent with this logic. Ohio, Pennsylvania, and Florida were the three states the candidates visited most, and in which they spent the most money.<sup>20</sup>

19 Georgia President Eduard A. Shevardnadze resigned under pressure from both the US and Russia. (Martin Plissner, "Exit Polls to Protect the Vote." New York Times 10/17/04)

20 See stories cited above.

EXHIBIT A-9

The conventional wisdom proved correct. Bush won two of the three and ascended to electoral victory as a result. In each of these states, however, exit polls differed considerably from recorded tallies (Table 1.5).

Table 1.5: Predicted vs. tallied percentages in the three critical battleground states

	Sample size	Bush predicted	ikiehtave Narodijeleja	Predicted differential	Bush tallied	i≩ Kenver Najalinad M	Tallied differential	Tallied vs. predicted
Florida	2846	49.8%	49.79%	12101317(0 11	52.1%	之方:1%;三	المراجع والمراجع	E (Sa) + 9
Ohio	1963	47.9%	-3,2 V/-	Karty 4.2	51.0%	1143 5 % S	15 Bi 2 5	SUNA TA
Pennsylvania	1930	45.4%	8641% I	Kenyrs 7	48.6%	50 8 6 2	Kany 2.2	Bulshi Buist

#### A Statistical Anomaly?

A basic question to ask on looking at such a discrepancy is whether it is just a statistical anomaly. It can happen, for example, that a fair coin tossed ten times will land heads each time, but it doesn't happen often (1 out of 1,024 times). If we witness this, we will at least suspect that the coin might be adulterated, especially if the stakes are high and we are not permitted to inspect the coin carefully.

Statistical significance, which means that the discrepancy is such that it is unlikely to occur by chance, depends on four factors – the size of the discrepancy, the sample size, sample characteristics, and the level of significance (just how unlikely does it have to be?). Table 1.5 provides sample size and discrepancy. For statistical purposes, these samples are quite large. Two thousand or so respondents is roughly the size of most national polls.

Without access to the data and methodology, we cannot model the sample characteristics precisely. But we do know the general procedures by which exit polls are conducted. Appendix A provides the 2000 presidential election exit poll methodology and a bibliography of articles on the process from that and other elections. Based on these we can make a reasonable approximation.

A random sample of a population can be modeled as a normal distribution curve. Exit polls, however, are not random samples. To avoid prohibitive expense, exit poll samples are clustered,

#### EXHIBIT A-10

page 10

<sup>21</sup> Earlier exit polls, including one released by Slate at 7:28 EST, 28 minutes after the Florida polls closed showed Kerry leading 50% to 49% (Appendix B)

page 11

which means that precincts, rather than individuals, are randomly selected. This increases variance and thus the margin of error because of the possibility that precinct voters share similar characteristics which differentiate them from the rest of the state in ways that past voting behavior would not predict. An analysis of the 1996 exit polls estimated that the cluster sample design adds "a 30 percent increase in the sampling error computed under the assumption of simple random sampling" (Merkle and Edelman, 2000, p. 72). That study is particularly apt because the 1996 state exit polls involved roughly the same number of precincts (1,468) as this year's polls (1,480).<sup>22</sup> Pollsters also have techniques to decrease variance, most notably stratification, which helps ensures that the sample is representative of the overall population.<sup>23</sup> In the analysis below, however, I conservatively assume no counterbalancing effects.

Figure 1.2 depicts the resulting distribution curve for samples of 1,936 randomly selected respondents from approximately 40 randomly selected precincts in a state in which 48.5% of the vote went for Kerry. The thin blue density curve is that of a simple random sample; the wider purple curve is of a clustered sample with no stratification. The horizontal double arrow below the curve indicates the poll's statistical margin of error, the corresponding 95% confidence interval.<sup>24</sup> If one hundred unbiased samples were drawn from this population, we would expect that in 95 (on average), Kerry would poll between 45.6% and 51.4%. And because half of the 1-

<sup>22</sup> http://www.exit-poll.net/fag.html#a7

<sup>&</sup>lt;sup>23</sup> Polisters also use a counterbalancing process that decreases variance -- stratification. Identifying voters by key characteristics that predict voting behavior (race, sex, age, income, ethnicity, religion, party affiliation, etc...) ensures that the sample is representative of the overall population, either by seeking out subjects with specific demographic characteristics and/or weighting groups depending on their representation in the sample compared with that of the overall voting population. By getting samples in which minorities are over-represented (but subsequently negatively weighted), polisters can ensure adequate sample sizes of each of these representative subgroups. Knowing exactly how much to weight over- or under-represented population depends on an accurate knowledge of overall demographics of the electorate. Historical data, census data, and registration roles, can be used to complement sampling site counts to try to weight the sample accurately.

An early draft of this paper based on an assumption that the effects of stratification could balance the effects of clustering, generated headline-grabbing probability of 250,000,000-to-one odds. In this analysis, I assume no counterbalancing effects at all due to stratification. Although, in principle, pollsters can ensure a more representative sample than chance alone would dictate, they face challenges in knowing exactly what weight to assign a group. The only measure of the demographics of actual voters on Election Day is the exit poll itself.

<sup>24</sup> To determine the margin of error, calculate the standard error of a random sample using the formula  $\sqrt{\frac{p(1-p)}{N}}$ where p = Kerry percentage of the vote and N is the sample size. (.0113). To adjust for the fact that this is a clustered sample, add 30% (.01466 or 1.47%). Sixty-eight percent of the time, a prediction from a sample this size would be within one standard error. Ninety-five percent of the time, it will be within 1.96 standard errors (2.87% in this case).

in-20 cases that fall outside the interval would be low rather than high, 97.5% of the time we would expect Kerry to poll no more than 51.4%. It turns out that the likelihood that Kerry would poll 52.1% from a population in which he receives only 48.5% of the vote is less than one-in-one-hundred (.0073).

Figure 1.2. Normal distribution curve for sample predictions based on Kerry's tally in Ohio If you were to conduct this poll 20 times, 19 times you should get a result between 45.6% and 51.4%. The likelihood of the NEP poll prediction exceeding the actual vote by as much as 3.6% is less than 1 in 100.



Conducting the same analysis for Florida, we find that Kerry's poll prediction of 49.7% of the vote is likewise outside the 95% confidence interval. Given a population in which he receives only 47.1% of the vote, the chances that he would poll 49.7% out of 2,846 respondent in an exit poll with no systematic error is less than two-in-one-hundred (.0164). In the third critical battleground state, Pennsylvania, Kerry's poll numbers are outside the 95% confidence interval as

well. Although he did carry the state, the likelihood that an exit poll would predict 54.1%, given 50.8% support of the electorate is just slightly more than one-in-one-hundred (.0126).

Assuming independent state polls with no systematic bias, the odds against any two of these statistical anomalies occurring together are more than 5,000:1 (five times more improbable than ten straight heads from a fair coin). The odds against all three occurring together are 662,000-to-one. As much as we can say in social science that something is impossible, it is impossible that the discrepancies between predicted and actual vote counts in the three critical battleground states of the 2004 election could have been due to chance or random error.

----- End of Part I -----

## Appendix A: How Exit Polls are Conducted

#### 2000 Voter News Service Exit Poll Methodology<sup>25</sup>

#### METHODOLOGY STATEMENT

The VNS exit poll was developed and conducted by Voter News Service. The exit poll results are based on interviews with a probability sample of voters exiting polling places on Election Day, 2002.

#### Sampling

The samples were selected in two stages. First, a probability sample of voting precincts within each state was selected that represents the different geographic areas across the state and the vote by party. Precincts were selected with a probability proportionate to the number of voters in each precinct. Each voter in a state had the same chance to have his or her precinct selected. There is one exception. In some states, precincts that have large minority populations were sampled at a higher rate than other precincts. The sample weighting (described below) adjusts the representation of these precincts to their correct share of the total vote. Second, within each precinct, voters were sampled systematically throughout the voting day at a rate that gives all voters in a precinct the same chance of being interviewed.

The National sample is a subsample of the state sample precincts. The probability of selecting these precincts was the same as if the sample had been selected at a uniform rate nationwide, with the exception that minority precincts were again selected at a higher rate.

#### Weighting

The exit poll results are weighted to reflect the complexity of the sampling design. That is, the weighting takes into account the different probabilities of selecting a precinct and of selecting a voter within each precinct. For example, states that were selected at a higher rate receive a smaller weight than other precincts of the same size. There is also an adjustment for voters who were missed or refused to be interviewed, which is based on their observed age, race and sex.

25 http://webapp.icpsr.umich.edu/cocoon/ICPSR-STUDY/03527.xml or http://www.ropercenter.uconn.edu/usvns2002\_2.html



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ChuckHerrin.com

Computer Security Stuff

FAQ/Feedback

HackTheVote Contact Me

# How to Hack the Vote: the Short Version

## HackTheVoteFAQ HERE

11/10/2004 rev. 12/04/2004

Chuck Herrin, CISSP, CISA, MCSE, CEH

http://www.chuckherrin.com

Enron was a conspiracy theory, too. Were their whistleblowers "Crackpots"? Were the people who lost their retirements to those corporate criminals just "sore losers"? I've never been part of the "Tin Foil Hat" conspiracy theory crowd. I'm just a voter

I've never been part of the "Tin Foll Hat" conspiracy theory crowd. I'm just a voter who happens to be a Professional IT Auditor.

Author's Note – Did our votes count? More importantly, will they count next time? We in Information Security have been protesting the use of the poorly designed voting machines from Diebold and others, and as a result of their poor implementation and widespread use, our election remains in question and our country remains bitterly divided. Many people feel that their votes didn't count, and for good reason. THESE SYSTEMS ARE NOT WORTHY OF OUR TRUSTI In an effort to bring this to your attention, I have put together this shortened document that will show you exactly how easy it would be to break into Diebold's GEMS software, which is the software used to tabulate regional voting results. This software runs on regular Windows machines and counts the votes from multiple precincts that may have used the new voting machines (with or without touch screens, these "DREs" have their own problems) or optically scanned ballots, including absente ballots. It is responsible for the accurate reporting of tens of millions of votes cast using these different types of ballots.

That's right – even if you used the older systems like optically scanned ballots, your vote can still be Hacked when the numbers all come together. Wanna see how easy it is?

I am going to show you, step by step and with screenshots, how an attack against our election system could very easily steal a Statewide or even a National election without leaving a trace. This attack would be easy to carry out, difficult to detect, and exert enormous influence on the results, leaving the humble voter coldly left out of the decision-making process.

Here we go .... Oh wait - let me do some CYA stuff first.

\*\*Important\*\* - I would like to stress that this demonstration was performed locally on a system totally under my control, and no unauthorized access to any computer system occurred. The voting database used was the sample obtained from <u>www.blackboxvoting.org</u>, and this election does not reflect data for any election currently taking place. I want to be very clear that this is only a proof-of-concept demonstration, and at no time was actual Main Page HackTheVote Biogical Opinions Hacks Miscellany Complete CISSP Kit FAQ/Feedback Contact Me

**Complete CISSP Kit** 



Check Out My HackTheVote FAQ HERE!

My take on the Affidavit....

Wanna know why everyone's bitching about Ohlo? Find out HERE

I have some Questions for our Elected Officials! (You can use them too :-))

Watch this footage of Republican Congressman Peter King Predicting the Outcomel \*\*Must Seel\*\*

Volusia County Lawsuit at BBV.org! "According to a statement by the Supervisor of Elections on November 17, 2004, the GEMS computer is not networked, and is "stand alone." The furnished computer logs show evidence of at least two attempts to remotely access the **GEMS** central tabulator, which is claimed to be secure. A computer screen shot printout on

voter fraud committed in order to prove a point. THIS IS A DEMONSTRATION ONLY, very similar to the well-documented demonstration Bev Harris performed for Governor Howard Dean recently on National television. Also, GEMS software is a trademark of Diebold, and Windows and Access are both copyrights of Microsoft, Inc.\*\*

## **REQUIREMENTS:**

Windows-based PC with 150megs free disk space and 128megs RAM (minimum)

A copy of MS Access. ("The Windows interface also means you can use your familiar office programs in conjunction with GEMS. For example, you can type and spell-check propositions or measures, in word-processing programs such as Microsoft Word® or WordPerfect®, then paste the text directly into the GEMS ballot layout screen"--http://www2.diebold.com/dieboldes/GEMS.htm).

#### The GEMS software -

http://freespeech.metacolo.com/GEMSIS-1-18-17.zip is one place to get it. There are plenty of other places on the web.

#### A Sample Election Database -

http://www.blackboxvoting.org/coloradospringscityelection.mdb is one from Colorado Springs, CO. Again, there are several out there.

With all that out of the way - OKI Let's get started!

"Those who cast the votes decide nothing. Those who count the votes decide everything" - Josef Stalin

## Step One: The Before Picture.

This is the summary report run based on our sample election from Colorado-Springs, CO. This is what the actual, official results looked like before I decided to cast "my vote".

To get the results, we open GEMS, (username "admin", password "password")



November 17, 2004 (found in the trash) shows that the GEMS computer at that time had two networked hard drives."

How'd you get involved with this? Aren't you a Republican?

Why GEMS? Why not target the TouchScreens?

Why did you post this? Won't this tell the Hackers what to do?

Where can we see more Diebold memos?

My Open Letter of Thanks to You

Breaking News From Blackboxvoting. org - Check Out The Latest, then Support Them HERE!

Live video version of this demo by Jim March available HERE!!!

Yet Another Version, by Bevi I just saw this....

More ....

Do You Have a guestion?

EXHIBIT B-2

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Figure 2: Choose the Election Summary Report for our Before Pictures

and here we go! The official Election Summary Report, as of right now. Note the timestamp at 23:59:07 - we'll come back to that in the Audit Log section.

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#### Figure 3: Election summary report - before.

Pay attention to District 3. Here we have Sallie Clark in District 3 winning by a 2/3 majority. But let's say that for this scenario, Sallie's daughter Is my ex, or she supports gay marriage, or maybe she's against deficit spending. Whatever – let's say maybe she's just too moral and upstanding for public office, so let's have some fun.....

\*Note - I do not actually know Sallie Clark or any of these election participants, and therefore cannot speak to her character. Again, this is just a demonstration.\*

OK - now we know how the election was supposed to turn out. I do not need the

EXHIBIT B-3

GEMS software to see the results - I could use a software package called JResult (included with the GEMS software) to poll it, or as we'll see below, just go straight to the backend database and view the numbers from there. Having a copy of the GEMS software is not required to Hack the votes. It does show us what the Election Workers can see and what the ultimate vote counts will be.

## Step 2: Getting in. The "Hard" Part.

The biggest part of step two is getting into the Windows PC in question, either locally or over a network. This is the hardest part, but if anybody thinks that hacking into a Windows PC is hard, you should not be online right now. As anyone confronted with the continuing barrage of viruses, worm, and Hackers can attest, this part is not really a problem. In fact, let's run through a few sample ways in, just off the top of my head:

If the GEMS machine is networked - (For remote facilities, the votes are transmitted to the central tabulation facility via a closed "Intranet", the Internet or modem.--

http://eff.org/Activism/E-voting/20040818 diebold accuvote-ts v0.8.pdf)

1) Wander into the building, and quietly put a wireless access point on the same network segment as the Tabulation PC, maybe behind a copier somewhere, and then casually come in from across the street using a laptop and wireless card.

We know they're connected by modems, so:

2) Find the telephone number of the office the PC is located in, and use a "war-dialing" program such as ToneLoc to dial all of the numbers in that exchange looking for a hanging modem. This technique was made famous by the 1983 movie "Wargames" and it still works today. These machines typically have hanging modems installed, so this should be a fairly easy way in.

3) Come in through the Internet. It is reported that many of these machines are connected to the Internet to enable results to be queried using Jresult to pull data from the central PCs. Windows PCs on the Internet are inherently vulnerable, particularly if they're not behind a firewall. Since a firewall would prevent the legitimate Jresult queries from being made, these machines are likely NOT firewalled and therefore at extreme risk for being compromised through their

Internet connection. ("GEMS' standard Internet and reporting capabilities allow the election administrator to quickly report results" – <u>http://www2.diebold.com/dieboldes/faq.htm</u>)

Then there are the REALLY easy ways .....

4) If you're an insider, you already have the phone numbers and any usernames and passwords you may need. Dial into the machine, authenticate normally, and then manipulate the data as explained below.

5) Again, if you're an insider - walk up to the machine and use the keyboard and mouse. (Bey Harris and Herbert Thompson recently demonstrated for the state of CA how a 5-line (!) VB Script could change votes and then delete itself - all you need is Notepad -

http://www.wired.com/news/evote/0,2645,65031,00.html?tw=rss.TOP.)

(Note to other IT Pros: I intentionally didn't go Into detail on methods 1-3, since most people's eyes will glaze over if I start lecturing on specific methods of breaking in, how long it would take to wardial an exchange, etc. Since 80% of all attacks come from insiders, that's where I'm focusing with methods 4 & 5. When you see who the insiders are in the <u>HackTheVoteFAQ</u>, you'll know why.)

Most poll workers, despite being good, caring people, tend to be political enough to motivate them to volunteer. It's just human nature to use the tools at your disposal to your advantage, and people have a remarkable knack for justifying even the worst acts if they can convince themselves that the cause is worthwhile.

Then again, some poll workers, like in Gaston County, NC are actual Diebold Employees! (Worst quote: "The county pays a technician from Diebold to operate its systems on Election Day. That person was in charge of transferring early votes from electronic storage to the counting computer.") (More in the HackTheVote FAQ) http://www.charlotte.com/mld/observer/news/local/10192340.htm For more on physical access and ways in, check out Jim March's excellent review at

#### http://www.egualccw.com/dieboldtestnotes.html#appendixB

With a little time and creativity, other ways in are possible. You have probably already thought of a couple more, haven't you?

Diebold's best defense to this point, as pointed out by following the link above, is the physical security - if you can't get to them, you can't hack them. But we KNOW that election workers, poll volunteers, and Diebold staff all have access and CAN get in. it would be very easy to write a little script to call into the GEMS machines or have the GEMS machines call back out and modify the results at any time. As Mr. March also points out, the IP address listed in the memo referenced on his site is part of a known block of addresses that would have bridged that machine to the Internet when it connected. Let's face it, a lot can go on when a machine is connected to a big bank of modems and a lot of people have the numbers, usernames, and passwords.

Also, there is home video of voting machines being taken home and stored by election volunteers. Watch the video at <u>www.votergate.tv</u>. No physical security in that case.

Side note for non-technical folks - did you know that in Windows, C: drives are shared out by default? No? Well, they are. But there's a super-secret Hacker trick to connect to them. You have to call it C\$ instead of just C. The \$ means it's a "hidden" drive, but it is still accessible via the network! Pick any Class C (classes are how network addresses are broken up) range of network addresses on the Internet and I'll guarantee that you can simply "map" someone else's C: drive over the Internet and browse their hard drives without their knowledge.

Think this couldn't happen? Are you kidding? This happens every minute of every single day. American companies spend Billions of dollars a year trying to protect corporate computer systems from attack - would they do that for no reason?

In any case, once we have access we simply browse the C: drive of the server and go to the C:\program files\GEMS\localDB directory. Here we will find an Access database for each election named <NameOfElection>.mdb. With a copy of Microsoft Access, we open it and find that no, it is not even password protected. The directory it's in isn't protected or restricted in any way. The data is not encrypted or even encoded. It is as open as an email message, and this is where all of our voting data is stored. From here, you could add candidates, drop them from the ballots, or delete entire precincts, but all of that is too obvious. A very simple trick would be to switch candidate IDs (see Figure 5 to see what candidate IDs look like), which would cause the vote tallies to simply reverse. In fact, this looks like what may have happened in some Florida counties, where the vote totals were fine, but the party affiliations were almost exactly the reverse of the vote counts. This type attack would be unlikely to raise much suspicion, since the total number of votes cast and turnout numbers would not change. And since Hacking rule #1 is to not get caught, rather than add Homer Simpson to the race and have him win, we'll be more "subtle" and just change the results.



# Figure 4: The c:\program files\GEMS\localDB folder where all of our valuable data is stored.

This is the Access database that is the back end for the entire system. Potentially hundreds of thousands of votes could be stored here on a central computer with no access control, no passwords, etc. When we open the database and view the Candidate table inside, we see:

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#### Figure 5: The Candidate table

Ah ha! Look at the first and second columns - Sallie's opponent, Linda Barley, was assigned 550 as a candidate number, and Sallie is candidate number 551.

From the CandV Table in the same database, we see that the Race ID is 221, and that their Key IDs are 541(Linda) and 542 (Sallie). The Key IDs are what we need to change the vote counts for. Remember that the original vote results were 4209 to 8291, Linda to Sallie. Let's change that from a 2/3s victory to a shutout victory for the candidate who should have lost.

#### Step 3: Changing the Votes

1

I located the Linda's ID, #541, in the CandidateCounter table and simply by clicking on the cell and typing with my number keys, I gave Linda 111 votes for every reporting unit. This isn't really hacking – this is changing values in a table. Anybody who's ever used an Excel spreadsheet has done this before.

There were 71 reporting units, so she should have 7881 votes now, an increase of over 3600 votes. I finally found a way to make my vote count! We'll come back and check the math later to make sure there are no surprises. When you're stealing an election, you want to make sure it comes out the right way!

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Figure 6: Changing the votes inside the CandidateCounter table. This is repeated in the SumCandidateCounter table, since some records are cross-linked, and I want to know exactly how many votes I'm changing. \*\*Note – since I've tried this, I have found that you can change the totals simply by changing the SumCandidateCounter table, but the results are less predictable due to the sloppy cross-linking and "Dirty" field in the Access DB.\*\*

Once I was done adding 3672 votes to Linda's tally, I decide to just wipe out all of Sallie's votes, making her total 0. Pay attention – I just added 3672 votes to one candidate's results and deleted 8291 votes from another in about 45 seconds! Just click the cell, type 0, click the cell, type 0; I'm wiping out votes by the hundreds. Sallie now has 0 votes - hopefully she was so over-confident that she didn't bother to vote for herself;-). A real attacker would likely be more subtle to avoid suspicion, but again, this is a demonstration. Unfortunately, since many of the new machines do not produce a paper ballot, a manual recount would be <u>very difficult</u>, if not altogether impossible. This is a clear violation of many state election laws, but elections officials put them in place anyway. I wouldn't withdraw \$20 from an ATM without a receipt, but I guess my vote isn't worth that much trouble. Even though Diebold makes ATMs, they refuse to create a paper trail with their voting machines. Wonder why that Is?

Anyway, now that our results are changed, we save the database, and violal

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Step 4: Run the new summary report and declare my candidate the winner!

Figure 7: The new summary report with the results the way I wanted them.

Note the final numbers for District 3 – 7881 to 0. Just as I expected, I was able to override the wishes of 11,963

1

## voters and replace their ballots with my own. How hard was that?

My candidate wins in a landslide, although the voters actually voted 2-to-1 for her opponent. This took me about 5 minutes and a moderate exercise of skill. There were no passwords to crack, and all I had to do was figure out the way things were stored in an unprotected, clear text Access database, which fortunately, has been available on the web for quite some time for Hacker-types to practice on. In fact, with the widespread availability of the GEMS software, you can go in and create your own elections to practice on before ever venturing out to touch the real thing.

Step 5: Those Pesky Audit Trails.

But what if someone notices? Now that my work fixing the election is done, all that remains is clearing up the audit trail.

From within the GEMS software, let's look at the audit log:

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#### Figure 8: GEMS > Audit Log

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Figure 9: Looking for evidence of tampering. See anything? Above, we see at 23:59 where I viewed the summary report (Figure 3), then closed the GEMS software at 00:00:16. The next entry is at 00:44:56, when I logged back into GEMS and ran another summary report (Figure 7) at 00:45:08 showing the Hacked results. Note the timestamps on the 2 Summary reports earlier in this document - they correspond exactly to the Election Summary Reports that show our candidate winning, and then losing in a shutout. Do you see any evidence AT ALL in the Audit Logs that the votes were tampered with? We know they were - I just showed you step by step that it was done.

Nope! No evidence - so feel free to ridicule anyone who complains as a conspiracy theorist or whining sore loser!

Now, Diebold officially insists that this cannot be done, but as with this example, this has repeatedly been shown to be false. Diebold's staff knows it - in fact, in a memo by Diebold principal engineer Ken Clark in 2001, he says "Being able to end-run the database has admittedly got people out of a bind though. Jane (I think it was Jane) did some fancy footwork on the .mdb file in Gaston recently. I know our dealers do it. King County is famous for it. That's why we've never put a password on the file before."

(http://www.blackboxvoting.org/Oct2001msg00122.html and for more detail, http://www.blackboxvoting.org/bbv\_chapter-13.pdf)

In a particularly humorous and distressing response to Diebold's assertion that "Generated entries on the audit log cannot be terminated or interfered with by program control or by human intervention", the folks at <u>www.blackboxvoting.org</u> actually trained a chimpanzee to delete the audit logs from an election database. You read that right – a chimp. Well, since it wasn't a human or computer, I guess they're technically correct. Here's a link.

http://blackboxvoting.org/baxter/baxterVPR.mov

Another audit log Incident occurred during the Washington State primary just six weeks ago. Two interesting events took place here:

1) all entries are absent from the audit log between 9:52 pm and 1:31 am. This includes records of summary reports being printed during that time frame, which is something that is always logged by the system (like the ones in our example - note that they ARE in the audit logs here). The printed reports show up in the audit logs when they are printed before and after that missing block of time. Here is the audit log: <u>http://www.blackboxvoting.org/auditlog.PDF</u>

2) Here are copies of the 5 sets of summary reports printed off during that missing time period, complete with timestamps showing that they were printed during that block of time and were then signed by the elections chief, Dean Logan.

http://www.blackboxvoting.org/resultspages.PDF

Can anybody guess what it means when you are missing audit logs for a specific block of time, and known events took place that should be reflected in the logs?

# Look at our results again. It means you were Hacked.

## **Conclusions:**

11

Would you trust your bank account balance if their systems were this easy to hack? As a result of my hands on testing, I have absolutely no faith that my vote was counted or will be in future elections where this software is used. It is simply too easy to change! Any motivated insider or Hacker of moderate skill can change hundreds of thousands of votes with very little effort and almost no chance of being caught.

The best part is that if anyone tries to question the results, you can ridicule them and call them sore losers! Conspiracy theorists! But won't this be caught in a recount? First off, if you're going to the trouble, you'll want to make sure you add enough votes so you can call a recount a waste of time, and with the new machines, recounts are <u>very difficult</u>, if not impossible! There's no paper trail, and a recount of the DREs will only tell you what the software has been programmed to report. It's the perfect crime.

This is the democracy we're exporting to the rest of the world.

Here are more links for your reference:

http://www.blackboxvoting.org

http://www.blackboxvoting.com

http://www.equalccw.com/dieboldtestnotes.html

http://www.missoulanews.com/News/News.asp?no=4508

http://www.consortiumnews.com/2004/110604.html

http://www.onlinejournal.com/Special Reports/112504Madsen/112504madsen.html -I haven't seen any evidence regarding this one, but <u>if</u> it's true, it's huge.

http://www.scoop.co.nz/mason/stories/HL0309/S00150.htm

http://www.votescam.com/

http://www.whatreallyhappened.com/flawfound.html

http://ustogether.org/Florida Election.htm

http://ustogether.org/election04/FloridaDataStats.htm

http://www.rubberbug.com/temp/Florida2004chart.htm

http://ustogether.org/election04/PA vote patt.htm

http://www.thehill.com/morris/110404.aspx

http://www.makethemaccountable.com/

http://www.votergate.tv/

http://www.thomhartmann.com/

http://www.rense.com/general59/wastheohioelectionhonest.htm

http://www.ejfi.org/Voting/Voting-18.htm

http://www.raba.com/press/TA Report AccuVote.pdf

http://eff.org/Activism/E-voting/#info-sheets

http://www.mutanteggplant.com/singleagent.htm

http://www.dallykos.com/story/2004/11/16/225713/53

http://www.wired.com/news/evote/0,2645,61243,00.html?tw=wn story related

http://www.pcworld.com/news/article/0,aid,115608,00.asp

"SpeedHacking the Vote" - For Those With a Flair For the Overly Dramatic. 1.6 Million votes, 3 time stamped reports, 6 minutes. No traces.

Also, check out the HackTheVote FAQ.

You are free to distribute this document in its entirety or link to this page to help get the word out and change the system. Good luck! Let's get this stupid, stupid system fixed and get our democracy back!

Anybody who wants to try this themselves can get the GEMS software and this same sample database from <u>www.blackboxvoting.org</u> or the links earlier in the document. Go for it! Try it yourself - you'll see that it works. For any wannabe Hackers reading this, it doesn't get any easier than that!

Chuck Herrin, CISSP, CISA, MCSE, CEH

CISSP - Certified Information Systems Security Professional

CISA - Certified Information Systems Auditor

MCSE - Microsoft Certified Systems Engineer

**CEH - Certified Ethical Hacker** 

11

Email: me at chuckherrin.com

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11

2