



Transcript of the Testimony of
Michael L. Connell

Taken On: November 3, 2008

Case Number: 2:06 CV 745

Case: King Lincoln Bronzeville Neighborhood Assn., et al., vs.
Ohio Secretary of State Jennifer Brunner, et al.,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
SOUTHERN DIVISION

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KING LINCOLN BRONZEVILLE)

NEIGHBORHOOD ASSN., et al.,)

Plaintiffs,)

vs.) CASE NO.

OHIO SECRETARY OF STATE) 2:06 CV 745

JENNIFER BRUNNER, et al.,)

Defendants.)

- - -

Deposition of MICHAEL L. CONNELL, a witness herein, called by the Plaintiffs for Examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Binnie Purser Martino, a Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, pursuant to Notice and agreement of counsel at the law offices of Benesch, Friedlander, Coplan & Aronoff, LLP, 200 Public Square, Suite 2300, Cleveland, Ohio, on Monday, the 3rd day of November, 2008, commencing at 12:03 o'clock p.m.

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I N D E X

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1 MICHAEL L. CONNELL

2 of lawful age, a witness herein, having been
3 first duly sworn, as hereinafter certified,
4 deposed and said as follows:

5 EXAMINATION

6 **BY MR. ARNEBECK:**

7 **Q.** Good morning, Mr. Connell.

8 **A.** I do. I guess, yes.

9 **Q.** Good afternoon, rather. Thank you for
10 being here today. Would you please state your
11 full name for the record?

12 **A.** Michael L. Connell.

13 **Q.** Would you give us your address?

14 **A.** 3046 Brecksville Road, Richfield, Ohio,
15 44286.

16 **Q.** And just for the routine, would you
17 describe your education subsequent to high
18 school.

19 **A.** I attended the University of Iowa,
20 graduated '86, no postgraduate work.

21 **Q.** And subsequent to your graduation from
22 college, would you briefly just summarize your
23 work experience?

24 **A.** 1986, worked for Congressman Jim Leach in
25 Iowa. 1987, I went to work for the Bush for

1 President campaign in Iowa, then was transferred
2 to the Washington office, worked for the
3 inaugural in '88. Is this the level of detail
4 you are looking for?

5 **Q.** Yeah.

6 **A.** Okay. Worked for the inaugural in 1988,
7 1989, worked a year in the Department of Energy,
8 then went to work for Dan Coats for Indiana.

9 Then in 1991, I returned to Iowa and worked
10 for a group called Iowans against
11 Gerrymandering, for redistricting, then went to
12 New Hampshire, worked for the Bill Hatch
13 campaign. Then after -- let's see, that would
14 have been the '92 cycle.

15 After the '92 election cycle, went to
16 Capitol Hill, worked for Congressman Martin
17 Hoke, and after that election cycle, I started
18 New Media Communications.

19 **Q.** And where do other entities in which you
20 are a key player fit into the history of
21 GovTech, for example?

22 **MR. ERVIN:** Are you asking just
23 about GovTech?

24 **BY MR. ARNEBECK:**

25 **Q.** Were you going to continue? I just

1 wanted --

2 **A.** No, I mean -- I worked for New Media ever
3 since starting it.

4 **Q.** Is GovTech a sister company, or what is the
5 relationship between New Media and GovTech?

6 **MR. ERVIN:** And we are -- just
7 off the record real quick?

8 **MR. ARNEBECK:** Sure.

9 (Thereupon, a discussion was held off
10 the record.)

11 **BY MR. ARNEBECK:**

12 **Q.** If you don't mind, would you explain where
13 GovTech fits into the picture?

14 **A.** There were governmental opportunities, and
15 we felt it made more sense to do that in a
16 separate company, as opposed to under the same
17 company as New Media Communications.

18 So really, a spin-off is a legal term, but
19 really a separate entity emerged and that was
20 GovTech.

21 **Q.** Okay. And when did that emerge?

22 **A.** I believe we started doing GovTech --
23 government work in maybe -- I think it was '99,
24 I think is when we started; and I think it was
25 around 2000 that we decided to form GovTech and

1 get it formally incorporated, or formally -- it
2 is an LLC. So I guess it would still be
3 incorporated. So 2000, 2001.

4 **Q.** And then you were involved in similar kinds
5 of activities politically in one forum, New
6 Media, and working for different governmental
7 entities under the GovTech umbrella?

8 **MR. EPSTEIN:** Object to the form
9 of the question. You can go ahead and answer.
10 I just have to say that for the record.

11 **MR. ERVIN:** He can object to a
12 question and I can object to a question.

13 **THE WITNESS:** Oh. Then what
14 happens?

15 **BY MR. ARNEBECK:**

16 **Q.** You can go ahead and answer.

17 **MR. ERVIN:** You can go ahead
18 and answer, unless I tell you otherwise.

19 **THE WITNESS:** Okay.

20 **MR. ERVIN:** If you understand
21 the question.

22 **THE WITNESS:** Yes, I just can't
23 remember what it was.

24 Similar, but different. The GovTech,
25 for instance, you know, pursued and obtained a

1 GSA, a schedule, which is a fairly in-depth
2 process where they kind of check you out, make
3 sure that you have got competitive rates, the
4 whole nine yards.

5 It is really to keep Federal
6 Government contracting, you know, aboveboard and
7 prevent cronyism, quite frankly.

8 So similar activities, but different,
9 I guess. Am I -- I mean, government, the
10 purpose of government is very different than the
11 purpose of a national organization or a campaign
12 or a different entity.

13 So, you know, but the programming
14 skill sets that were used at both were similar.

15 **BY MR. ARNEBECK:**

16 **Q.** Do you want to just briefly capsulize, as
17 you were doing up to 2000, follow that same
18 pattern of the basic kind of work that you are
19 doing, starting in 2000, where you are
20 functioning both in a New Media -- under a New
21 Media umbrella and GovTech's umbrella?

22 **MR. ERVIN:** Can you be more
23 specific when you say what type of functioning?

24 **BY MR. ARNEBECK:**

25 **Q.** For example, you are working on which

1 political campaigns and which governmental
2 entities from 2000 to present?

3 **A.** GovTech was not involved in any campaigns.
4 GovTech, again, is governmental. I can't --
5 quite frankly, I don't get passionate about
6 governmental work usually the way I do about
7 more of the types of work, the political work,
8 the national organization work that is done by
9 New Media.

10 So I would be more hands off in terms of my
11 day-to-day involvement, if that is what you are
12 drilling on, my day-to-day involvement.

13 **Q.** Sure. I mean, just a sense for your
14 background.

15 **MR. ERVIN:** Can you be more
16 specific? I don't understand the question that
17 you are asking.

18 **MR. ARNEBECK:** Well, I thought he
19 was doing a good job explaining his professional
20 activity over the course of time since college.
21 We got to 2000, we get the creation of GovTech,
22 and I was hopeful he could briefly capsulize the
23 same as he did before, from graduation to 2000,
24 just carry the timeline forward.

25 **MR. ERVIN:** You want him to

1 talk about every person he has worked for since
2 2000?

3 **MR. ARNEBECK:** No. Let me just
4 ask specifically.

5 **THE WITNESS:** Okay.

6 **BY MR. ARNEBECK:**

7 **Q.** Are we correct in understanding that you
8 did do work both in the Jeb Bush campaign for
9 governor of Florida and then subsequently, as
10 GovTech, do work for the State of Florida?

11 **MR. ERVIN:** Objection. We are
12 here about the Ohio 2004 and 2006 election. The
13 judge was --

14 **MR. ARNEBECK:** Jim, we have all
15 this stuff, so we don't have to do this. But in
16 terms of just a normal introduction, and if you
17 have an objection, we will go on.

18 **MR. ERVIN:** Please.

19 **BY MR. ARNEBECK:**

20 **Q.** Okay. Well, as you know, Mr. Connell, we
21 have some questions that we would like your help
22 in addressing.

23 The threshold question that we have is,
24 have you been threatened in regard to giving
25 truthful testimony about the election of 2004 in

1 Ohio?

2 **MR. ERVIN:** Before he answers,
3 this portion and that question must be sealed.

4 **MR. ARNEBECK:** And that is agreed.
5 We are sealed from this point forward.

6 **THE WITNESS:** No.

7 **BY MR. ARNEBECK:**

8 **Q.** And when I say "threatened," this is any
9 form of expression, even if it is, you know, in
10 hypothetical terms or subtle terms, anything to
11 cause you to believe that Mr. Rove, through
12 communicating through someone else, is telling
13 you that if you were to expose certain aspects
14 of the 2004 election that might implicate him or
15 others in improper activity, criminal activity,
16 nothing of that sort has been communicated to
17 you?

18 **A.** That's correct.

19 **Q.** And specifically, Mr. Jeff Averbeck has not
20 had any communications with you in regard to
21 testimony which you might give concerning the
22 2004 election in Ohio?

23 **MR. ERVIN:** Don't answer that.
24 Who is Jeff Averbeck?

25 **MR. ARNEBECK:** Jeff Averbeck is

1 President of SmarTech.

2 **MR. ERVIN:** You can answer the
3 question, if you know.

4 **THE WITNESS:** To the best of my
5 recollection, Jeff and I have not discussed
6 this.

7 **BY MR. ARNEBECK:**

8 **Q.** Okay. So were you aware that we -- you
9 have read the materials that we had received a
10 tip from someone purporting to be within the
11 McCain campaign, indicating that such a threat
12 had been communicated to you?

13 **MR. EPSTEIN:** Objection.

14 **MR. ERVIN:** Objection. What
15 materials are you -- objection to form. What
16 materials are you referencing?

17 **MR. ARNEBECK:** When we filed in
18 opposition to your motion to compel, and our
19 request for the immediate hearing, we attached
20 the declaration of Brett Kimberlin, part of
21 which he recited the series of tips that had
22 come into him, anonymous tips that had come into
23 him.

24 **BY MR. ARNEBECK:**

25 **Q.** I am just asking if you read that or are

1 familiar with that?

2 **MR. ERVIN:** Don't answer that
3 question. The judge said this is not about the
4 2008 election. This is about 2004 and 2006.
5 The judge indicated you had some leeway as it
6 pertained to Mr. Rove, but asking about the
7 McCain campaign involves the 2008 election.
8 That is outside the scope of the judge's order.

9 **MR. ARNEBECK:** My specific
10 question was in regard to testimony concerning
11 the improper activity in the 2004 Ohio election
12 that would implicate Mr. Rove or others in
13 improper activity.

14 **MR. ERVIN:** And Mr. Connell
15 answered no. Your follow-up question was
16 whether he had knowledge about a tip regarding
17 the McCain -- from the McCain campaign. That
18 deals with the 2008 election.

19 **MR. ARNEBECK:** No, the tip, I am
20 asking if he is familiar with the tip, the fact
21 that we received a tip, and that the tip was in
22 reference to Mr. Rove attempting to intimidate
23 Mr. Connell in regard to testifying about the
24 2004 Ohio campaign.

25 **MR. ERVIN:** So you are asking

1 if he read the information contained on the
2 memorandum in opposition?

3 **MR. ARNEBECK:** Yes.

4 **MR. ERVIN:** Did you read the
5 memorandum in opposition?

6 **THE WITNESS:** I read what you
7 provided to me. But there was nothing in there
8 about this.

9 **BY MR. ARNEBECK:**

10 **Q.** So you are not familiar --

11 **A.** No.

12 **Q.** -- by that means or any other means --

13 **MR. ERVIN:** Let him ask the
14 question.

15 **THE WITNESS:** Okay.

16 **BY MR. ARNEBECK:**

17 **Q.** -- that we were -- people working with us
18 received a tip indicating that you were being
19 threatened?

20 **MR. ERVIN:** Objection. Don't
21 answer that. Asked and answered. You are
22 asking -- you asked him if he was threatened.
23 He said "no." Now you are asking him if he
24 knows whether you got a tip. He indicated he
25 didn't read -- he doesn't know about that, and

1 he only read what I provided him.

2 **MR. ARNEBECK:** Okay. Are you
3 instructing him not to answer?

4 **MR. ERVIN:** I am instructing
5 him not to answer.

6 **BY MR. ARNEBECK:**

7 **Q.** All right. Would you describe how you were
8 involved in the 2004 Ohio Presidential election?

9 **A.** You are asking my personal involvement?

10 **Q.** Yeah.

11 **A.** Through New Media Communications, we were
12 the Web site developer to the Bush campaign, as
13 well as a vendor to the Republican National
14 Committee.

15 **Q.** And how else?

16 **A.** I am sorry, you asked --

17 **Q.** Any further involvement?

18 **A.** You mean -- I am sorry, ask the question
19 again.

20 **Q.** How were you involved in the 2004 Ohio
21 Presidential election?

22 **MR. ERVIN:** Personally or
23 professionally?

24 **MR. ARNEBECK:** Both.

25 **MR. ERVIN:** How were you

1 personally involved?

2 **THE WITNESS:** I am just trying to
3 think of how else. I mean, you know, I mean,
4 you know -- GovTech had --

5 **MR. ERVIN:** You can answer that
6 question.

7 **THE WITNESS:** Okay. As I think
8 you know, the election night reporting system
9 was -- GovTech was involved in the election
10 night reporting.

11 **BY MR. ARNEBECK:**

12 **Q.** And how were they involved?

13 **A.** Basically, the Secretary of State needed
14 help in a system that, one, would stay up on
15 election night. There had been problems
16 previously with the system being able to perform
17 under high traffic, and they also wanted
18 something that was attractive, that represented
19 the office well.

20 So it was a public -- I want to be clear on
21 this, it was a public reporting system, public
22 data.

23 **Q.** And in designing or helping, providing the
24 help that the Secretary of State wanted, would
25 you elaborate on what the sequencing of that was

1 and how you were involved personally and
2 professionally in that work.

3 **MR. ERVIN:** His answer must be
4 sealed from here on out.

5 **MR. EPSTEIN:** I am going to
6 object to the form of the question.

7 **THE WITNESS:** A number of pieces
8 were in place from previous elections.
9 Previously, it had been done internally by the
10 Ohio Secretary of State IT staff. And if memory
11 serves, the problem was, everything was in
12 Oracle and they were trying to allow Oracle
13 queries to be done in real-time, and it was
14 something, quite frankly, that it wasn't
15 designed to do. It wasn't -- it was a
16 resource -- quite frankly, it was a resource
17 hog.

18 **BY MR. ARNEBECK:**

19 **Q.** Resource hog?

20 **A.** Resource, resource hog. It was designed
21 for, you know, one person to go in and do
22 queries, so it uses up a lot of computer
23 resources.

24 So they wanted something, you know --

25 **Q.** I am sorry, was it resource hog, h-o-g?

1 **A.** Hog, yeah.

2 **Q.** Okay. Thank you.

3 **A.** So they wanted something so that the
4 public, the general public, the media, whoever
5 else, could come and, in real-time, get sort of
6 a snapshot or close to real-time, get a snapshot
7 of kind of the aggregate numbers that were
8 occurring in Ohio.

9 As I believe you know, many, if not all, of
10 the individual boards of elections can and will
11 publish their own results. And this was really
12 an aggregation of that data.

13 **Q.** In the work in that regard, were you
14 interacting with other contractors at the
15 Secretary of State's office?

16 **A.** Yes.

17 **Q.** And who were those contractors you were
18 interacting with?

19 **A.** I am trying to remember, because we did
20 this over a couple of different -- there were a
21 couple of different elections we did this. I am
22 trying to remember. I think GCR was there
23 starting in 2004. As I said, the Ohio Secretary
24 of State IT staff, SmarTech had been contracted
25 for the failover mirroring.

1 Q. I am sorry?

2 **A.** The failover, because there had been a
3 problem in the past, when they reached the point
4 prior to our involvement in previous elections
5 where they had crushing traffic, the system
6 failed, which means that Web pages were not
7 available.

8 So members of the public, members of the
9 media, other interested parties, when they tried
10 to get the results, it came up with the site was
11 down, which is embarrassing for any public
12 official, or anybody for that matter.

13 A lot of people, the one night they really
14 need you to be there is on election night. So
15 they needed to have a failover facility. And
16 that was as if the primary system failed, there
17 was a secondary location where the results would
18 be mirrored.

19 Q. And what was the evolution of the
20 involvement of that second location? As I
21 understand it, it is SmarTech as the backup
22 location?

23 **MR. ERVIN:** Objection; form.

24 You may answer, if you know.

25 THE WITNESS: Hmm?

1 **MR. ERVIN:** You may answer the
2 question.

3 **THE WITNESS:** He's just going to
4 ask it differently. Let's go back a bit. We
5 are in a post 9/11 environment, so a lot of
6 governmental agencies started to look at their
7 disaster planning a lot more carefully. And so
8 usually, it is pretty common in a disaster plan,
9 is if you have got basically a smoldering coal,
10 your primary facility is, what is your backup.

11 So normally, you identify something
12 that is removed from the primary servers that
13 are hosting a Web site, or whatever, whatever it
14 is you are hosting, where the data can be
15 mirrored. So it is like a real live backup.

16 And so my recollection is, like a lot
17 of different other government agencies,
18 Secretary of State's office looked to find a
19 facility that could mirror the data, discovered
20 it was very expensive. They did, to their
21 credit, look to Ohio firms first.

22 My understanding, although I was not
23 directly involved, is that they were cost
24 prohibitive, and they took a look at additional
25 firms outside the State of Ohio, and I believe

1 that is where they first came into interaction
2 with SmarTech.

3 But that never, apparently for
4 budgetary reasons, there was never a decision
5 made to do a broad based mirroring or failover.
6 Does that make sense?

7 BY MR. ARNEBECK:

8 Q. I didn't quite understand the broad based.

9 **A.** Like everything. If you took everything
10 that the entire agency, you know, everything
11 that is on the plain servers, and --

12 Q. In other words, a complete duplication of
13 the office IT versus this election function?

14 **A.** Yes.

15 0. As a specific backup?

16 **A.** Yeah. No, previously there had been --
17 they were looking for a complete solution. And
18 that is how they kind of started down that road.

19 Q. And are you involved in the management,
20 ownership, control of SmarTech?

21 **A.** I am not.

22 **MR. EPSTEIN:** Object to the form.

23 **MR. ERVIN:** You may answer.

24 **THE WITNESS:** I am not.

25

1 **BY MR. ARNEBECK:**

2 **Q.** And were you involved in any fashion in
3 steering the business to SmarTech or
4 recommending it -- recommending that SmarTech
5 get the business?

6 **MR. ERVIN:** Objection as to
7 form. When you say "steering the business," can
8 you be --

9 **BY MR. ARNEBECK:**

10 **Q.** To the extent you are in a professional
11 relationship as GovTech with the Secretary of
12 State, did you personally or professionally have
13 any role in recommending or speaking well of, or
14 helping SmarTech get this business?

15 **A.** I mean, they got the business on their own
16 merit. I want to be very clear on that.

17 I also want to be clear, I mean, SmarTech
18 is a vendor. They provide a computer service,
19 just like Verizon, you know, provides cell
20 service and a lot of different people use
21 Verizon. SmarTech is a professional services
22 firm.

23 I mean, I was not involved in the
24 selection; I can't recall how they entered into
25 the picture. But an independent decision was

1 made to go with SmarTech.

2 **Q.** Do you have any sense for whether that
3 decision would have been made at the political
4 level or at -- the professional contractors that
5 were already involved, like yourself, were they
6 making that decision?

7 **MR. ERVIN:** Objection as to
8 form.

9 **MR. EPSTEIN:** Objection; form and
10 foundation.

11 **MR. ERVIN:** You can answer, if
12 you know.

13 **MR. ARNEBECK:** Off the record a
14 minute here.

15 (Thereupon, a discussion was held off
16 the record.)

17 **MR. ARNEBECK:** Mr. Ervin is
18 asserting that this discussion is under seal,
19 and we will reserve taking that up with the
20 judge whether that fits within trade secrets.

21 **BY MR. ARNEBECK:**

22 **Q.** Okay. If you recall the last question, go
23 ahead. Otherwise, I will restate it.

24 **A.** Just restate it, if you don't mind.

25 **Q.** Yeah. At the point -- you were already

1 working with the Secretary of State at the point
2 SmarTech comes into the picture?

3 **A.** That is correct.

4 **Q.** In your capacity of your business
5 relationship with the Secretary of State's
6 office, do you have a sense for whether the
7 selection of SmarTech to provide this backup
8 function originated with the internal Civil
9 Service folks at the Secretary of State's
10 office, or originated with the consulting
11 groups, including GovTech?

12 **MR. EPSTEIN:** Objection; form and
13 foundation.

14 **THE WITNESS:** My understanding --
15 and again, this is not firsthand -- is it was
16 based on professional capacity and cost and that
17 it was a nonpolitical decision.

18 **BY MR. ARNEBECK:**

19 **Q.** A decision by whom?

20 **A.** I believe it was the IT staff, Secretary of
21 State.

22 **Q.** And who was that at the time?

23 **A.** Joe Leonti was running it, Bob Mangan was
24 involved, Cliff -- I can't remember Cliff's last
25 name. Wow.

1 **Q.** Were the contractors, if they were not
2 primarily involved, were they consulted in that
3 decision?

4 **MR. ERVIN:** Objection; form and
5 foundation.

6 **MR. EPSTEIN:** Join in the
7 objection.

8 **BY MR. ARNEBECK:**

9 **Q.** You can answer.

10 **MR. ERVIN:** Yes, you can
11 answer.

12 **THE WITNESS:** Does that mean -- I
13 am still confused. If you guys both object, do
14 I have the right --

15 **MR. ERVIN:** If we make an
16 objection, unless we tell you not to answer, you
17 may answer his question to the best of your
18 ability.

19 **THE WITNESS:** Okay. What was the
20 question again?

21 **BY MR. ARNEBECK:**

22 **Q.** You have indicated in your previous answer
23 that you thought that the Secretary of State's
24 staff were the folks that made this decision.

25 My question was, were, to your knowledge,

1 were the -- was GovTech or other outside
2 contractors involved at all with the decision,
3 in terms of --

4 **MR. EPSTEIN:** Objection.

5 **THE WITNESS:** Not that I recall,
6 no.

7 **BY MR. ARNEBECK:**

8 **Q.** To what extent did you focus on any
9 questions of security of the system for counting
10 the votes, tabulating the votes, reporting the
11 votes in the 2004 election?

12 **A.** No, this was not a vote counting system.
13 It was just simply a reporting system. Do you
14 understand the distinction I am making?

15 **Q.** Yes. You are indicating your role in what
16 we are talking about is strictly GovTech?

17 **A.** Yes.

18 **Q.** And GovTech is strictly focused upon a Web
19 display of results that are being generated out
20 of the system, which you are saying you are not
21 involved otherwise?

22 **A.** Right, no.

23 **Q.** All you are doing is Web posting.

24 **A.** Right.

25 **Q.** But Web posting is Web posting?

1 **A.** Right.

2 **Q.** Now, if there was a discussion at the
3 Secretary of State's office the week preceding
4 the election about the scheduling of personnel
5 that would be on site on election night -- well,
6 let me put it this way: Were you at the
7 Secretary of State's office the week preceding
8 the election, at a meeting of both staff and
9 contractors in which there was a discussion
10 about who would be on site on election night?

11 **A.** No, I have no recollection. Quite frankly,
12 I don't think that would be the case.

13 **Q.** Okay. So to the best of your recollection,
14 you were not at a meeting where Bob Mangan was
15 informed that he would not be expected to be on
16 site on election night after 9:00?

17 **A.** After 9:00?

18 **Q.** Bob Mangan.

19 **A.** A.m. or p.m.?

20 **Q.** 9:00 p.m.

21 **A.** This is the first I have ever heard that.

22 **MR. ERVIN:** Is that a "no"?

23 **THE WITNESS:** That would be a
24 "no."

25

1 **BY MR. ARNEBECK:**

2 **Q.** What is the extent of your knowledge of the
3 protocol with the hierarchy of control and
4 management at the Secretary of State's office on
5 election night?

6 **MR. EPSTEIN:** Object to the form.

7 **BY MR. ARNEBECK:**

8 **Q.** As I understand it from the exhibit, the
9 exhibit called the architecture map, there is a
10 little place where GovTech, in the box for
11 GovTech, there are some names of individuals and
12 names of other entities.

13 To what extent are you familiar with the
14 reporting relationships, who is giving direction
15 and exercising management control at the
16 Secretary of State's office on election night?

17 **MR. ERVIN:** Objection as to
18 form. Do you have that document?

19 **MR. ARNEBECK:** Yes, yes. I would
20 like to make copies of this and mark it to this
21 deposition as Exhibit A.

22 **MR. ERVIN:** Do you want me to
23 make copies? Off the record, please.

24 (Thereupon, a discussion was held off
25 the record.)

1 (Thereupon, Plaintiff's Exhibit 1 of
2 the M.L. Connell deposition was
3 marked for purposes of
4 identification.)

5 **BY MR. ARNEBECK:**

6 **Q.** I have handed the witness what has been
7 marked for identification as Deposition Exhibit
8 1, and it is titled "SOS Election Production
9 System Configuration for Web Results Entry, EN
10 Staff Results Entry and Web Queries, 11/2/04."

11 Have you seen this exhibit, Mr. Connell?

12 **A.** That is Exhibit I.

13 **Q.** Right.

14 **A.** And you guys had it on Friday.

15 **Q.** Right. And had you previously been
16 familiar with this document?

17 **MR. ERVIN:** Before when?

18 **MR. ARNEBECK:** Before last Friday.

19 **THE WITNESS:** I think the staff
20 internally, I think it was produced by Ohio
21 Secretary of State IT staff, yeah. Prepared by
22 Bob Mangan. I am not sure that I have.

23 **BY MR. ARNEBECK:**

24 **Q.** Okay. While we are doing this, why don't
25 we mark the second exhibit as Exhibit 2 for the

1 election night -- or rather, as of 10/23/06 for
2 the 2006 election.

3 (Thereupon, Plaintiff's Exhibit 2 of
4 the M.L. Connell deposition was
5 marked for purposes of
6 identification.)

7 **BY MR. ARNEBECK:**

8 **Q.** I would like to ask the witness if he is
9 familiar with Exhibit 2?

10 **MR. ERVIN:** Again, is that
11 before last Friday?

12 **MR. ARNEBECK:** Yes.

13 **THE WITNESS:** I am not sure.

14 **MR. ERVIN:** Just tell him that.

15 **THE WITNESS:** All right. I am
16 not sure that I have seen it in this form. I
17 don't think I have seen this -- I don't know if
18 I have seen this.

19 **BY MR. ARNEBECK:**

20 **Q.** Were there -- to your knowledge, were there
21 multiple iterations of these exhibits? That is,
22 if they were being generated by the Secretary of
23 State's staff, were there a series of such
24 documents reflecting the development of the
25 plans for managing the system prior to these two

1 elections?

2 MR. ERVIN: Objection.

3 MR. EPSTEIN: Objection.

4 MR. ERVIN: Form and lack of
5 foundation.

6 MR. EPSTEIN: Same objections.

7 MR. ERVIN: You can answer the
8 question.

9 THE WITNESS: Again, I don't
10 know. I suspect as much. It is a common
11 practice.

12 MR. ERVIN: Don't speculate.
13 If you know it, you know it.

14 THE WITNESS: Okay.

15 BY MR. ARNEBECK:

16 Q. Again, of your personal knowledge, if you
17 maybe don't recall these specific documents, do
18 you recall other architecture maps for elections
19 of this nature?

20 MR. ERVIN: Objection as to
21 form and lack of foundation. You may answer, if
22 you know.

23 THE WITNESS: No.

24 BY MR. ARNEBECK:

25 Q. You mentioned -- in the lead-up to your

1 engagement or to the SmarTech engagement, you
2 mentioned a failure problem in a prior election.
3 What was that?

4 **A.** Essentially the system, the Web pages --
5 and this would have been prior to our
6 involvement, the internal staff was responsible
7 for the election night presenting the aggregates
8 to the public, and if memory serves, they were
9 doing a -- they were allowing the public to do
10 queries that were very resource intensive.

11 So if a lot of people came to the site all
12 at once and tried to take a look at a variety of
13 different counties, even though it was fairly
14 simple data, it overwhelmed the system, and the
15 Web site pages were not available.

16 So, again, you know, I want to be clear.
17 The primary objective here was to be up, to be
18 available to the public to see very simple
19 results, an aggregate of the counties.

20 **Q.** And when did this prior failure occur, was
21 that the 2002 election?

22 **A.** I believe it was -- I do not know for sure,
23 I think it was 2002.

24 **Q.** And was there any failure of the primary
25 system in 2004?

1 **MR. ERVIN:** When you say
2 "primary system," are we still talking about the
3 system that the public can view the results?

4 **MR. FITRAKIS:** The Secretary of
5 State site which would cause you to go to the
6 mirror-over site in Chattanooga.

7 **THE WITNESS:** None that I am
8 aware of.

9 BY MR. ARNEBECK:

10 Q. So to the best of your knowledge, your
11 system, your Web face, or Web design and Web
12 display functioned without problems the election
13 night 2004 and the primary, Secretary of State's
14 primary tabulation computers in their office
15 functioned without failure or problems also?

16 **MR. ERVIN:** Objection to form.
17 You have asked kind of two questions. One was
18 about whether, what he did in terms of
19 addressing the public system, if that worked,
20 and then you asked the second question about
21 whether or not the Secretary of State's voting
22 tabulating system, and I would say as to the
23 first question, he can answer. As to the second
24 question, I would object as to form and to lack
25 of foundation.

1 **MR. ARNEBECK:** Okay. Let's
2 rephrase.

3 BY MR. ARNEBECK:

4 Q. Everything worked fine in your system, your
5 Web design and display for the 2004 election; is
6 that correct?

7 **A.** Yes.

8 Q. And to your personal knowledge, in your
9 professional role in managing, being part of a
10 team that is managing the data system of the
11 Secretary of State on election night, are you
12 aware of any overload problem or failure problem
13 in the primary computers at the Secretary of
14 State's office that would have triggered the
15 backup capability that you described that
16 SmarTech was providing?

17 **MR. ERVIN:** Objection as to
18 form and foundation. You may answer.

19 **MR. EPSTEIN:** Join in the
20 objections.

21 **THE WITNESS:** Again, so you
22 understand, it is important that you understand,
23 it is election night on a Presidential election.
24 Okay. It is a simple reporting system.

25 **MR. ERVIN:** If you could just

1 answer his question.

2 **MR. FITRAKIS:** It is just the
3 real-time number system, I mean, reporting to --

4 **THE WITNESS:** Just aggregating
5 county data, that is all it was doing,
6 aggregating county data, so the people could go,
7 media could go to one spot and see what the
8 totals were, you know, the most recent numbers
9 were for Ohio.

10 So, you know, it is not really where
11 my focus was that night. You know, I think the
12 system performed fine. It took a lot of
13 traffic, given the interest in the State of Ohio
14 on that particular evening. But that is about
15 all I know.

16 To the best of my knowledge, there
17 was not a failover case scenario -- or it was
18 not a failover situation.

19 **BY MR. ARNEBECK:**

20 **Q.** That you had previously described that
21 prompted bringing in a backup, SmarTech?

22 **MR. ERVIN:** Objection.

23 **MR. EPSTEIN:** Objection.

24 **MR. ARNEBECK:** Maybe I could
25 rephrase.

1 **MR. ERVIN:** I think you have
2 two different things. There is the public
3 system that crashed, and that deals with just
4 reporting the aggregate numbers that come in
5 from the Board of Elections.

6 Then you asked a question about the
7 SmarTech system, and you asked that in reference
8 to tabulating the votes. So I think that you
9 are talking -- I think you are asking two --

10 **MR. FITRAKIS:** No, that is the
11 failover mirror, correct? You said that the
12 SmarTech system was the failover mirror, right?
13 So it is not the tabulators, it is the
14 real-time.

15 **THE WITNESS:** Well, don't use
16 "real-time," because we could spend the next
17 four weeks arguing about what real-time is.

18 **MR. FITRAKIS:** Okay.

19 **MR. ERVIN:** Stop. Can we go
20 off the record for a minute, please?

21 **MR. ARNEBECK:** Sure.

22 (Thereupon, a discussion was held off
23 the record.)

24 **BY MR. ARNEBECK:**

25 **Q.** On the record, you had previously

1 described --

2 **A.** Um-hum.

3 **Q.** -- a failover, I think was the term you
4 used, that had resulted in bringing SmarTech
5 into the picture; and I guess my question was,
6 on election night 2004, was there a problem that
7 was solved by having the SmarTech rollover or
8 backup, whatever, mirror, come into play, so in
9 the larger sense, there was not a problem,
10 because it was covered by SmarTech? Do you have
11 knowledge of whether that happened?

12 **MR. ERVIN:** Objection as to
13 form and lack of foundation. You may answer, if
14 you know.

15 **THE WITNESS:** I don't know.

16 **BY MR. ARNEBECK:**

17 **Q.** Okay. Going back to the question of the
18 selection of SmarTech, do you have personal
19 knowledge as to the other work that SmarTech
20 does in terms of Web hosting, or the server
21 function for what is its client base, are you
22 familiar with that?

23 **A.** They do hosting for us. I mean --

24 **MR. FITRAKIS:** Us being --

25 **THE WITNESS:** -- New Media. I

1 mean, I don't know really what you are asking.
2 I mean, again, it is like saying, "Do you know
3 who uses Verizon?"

4 **BY MR. ARNEBECK:**

5 **Q.** Well, you are a smart man, sir, and I mean,
6 you are aware that SmarTech, when you say "is
7 hosting for us as New Media," New Media is
8 serving Republican organizations, and that if we
9 looked at the list of entities that are being
10 served by SmarTech, they are the bluebloods of
11 Republican politics, you will not find any
12 Democratic -- partisan Democratic organizations
13 on their list, are you aware of that?

14 **MR. ERVIN:** Objection, move to
15 strike. Do not answer that question. This gets
16 outside the scope of what the judge set forth in
17 his order. And he alluded to this type of
18 issue.

19 **MR. ARNEBECK:** Well, what we are
20 talking about is --

21 **MR. FITRAKIS:** Can we go off the
22 record?

23 **MR. ARNEBECK:** -- is man in the
24 middle, which I was instructed to inquire
25 extensively about. We are talking about the

1 presence in a system of someone with an
2 interest, a partisan interest and a possible
3 position to manipulate a process to the
4 advantage of that partisan interest.

5 And I don't think the record, you
6 would suggest that the record should exclude the
7 fact that Mr. Connell, in his position as CEO of
8 New Media Communications, is not aware that he
9 is only, in that capacity, only serving
10 Republican clients and also not aware that
11 SmarTech, which is providing this backup
12 function, is in a similar position to be a
13 company that only serves partisan Republican
14 clients.

15 **MR. ERVIN:** I have no problem
16 with questions being asked about the man in the
17 middle concept, I will call it.

18 And clearly, the judge said that
19 could be asked. The question you posed was more
20 of a statement than a question, one.

21 Two, you haven't asked a question
22 about the man in the middle, and you haven't
23 laid a proper foundation by which my client can
24 respond to that issue.

25 And three, the judge clearly said the

1 fact of whether or not they are Republicans or
2 Democrats is not pertinent to the scope of the
3 questions that you have.

4 So if you want to address my client's
5 political affiliation, religious affiliation,
6 whether or not he is a member of a political
7 party has nothing to do with the limited scope
8 of what you may inquire about of him. And I
9 will instruct him not to answer questions that
10 begin or are framed in such a way.

11 If you want to ask about the man in
12 the middle, you are right, you have every right
13 to ask about that and explore that.

14 But when you lead off and attack my
15 client for being a Republican, that is outside
16 the scope of why we are here.

17 **MR. ARNEBECK:** Jim, far be it from
18 me to attack your client for being a Republican.
19 It is a very fine party with great traditions.

20 The only point is, he was describing
21 SmarTech as like Verizon. Verizon serves all
22 the political parties, it has no partisan focus
23 and if someone were to say that Verizon in the
24 way it is providing telephone services is
25 somehow slanting something in one partisan

1 direction or the other, in terms of its
2 affiliations or the client base it is serving,
3 there would be no basis.

4 He made the statement. This is
5 cross-examination, and I am free to inquire,
6 because it begins to get into the question of
7 man in the middle.

8 **MR. ERVIN:** I think he made the
9 statement as an analogy as to the best of his
10 knowledge what SmarTech does in serving a wide
11 variety of people. But you have asked no
12 question to start this -- do you want to take a
13 break and speak to him?

14 **MR. FITRAKIS:** Yes.

15 **MR. ERVIN:** Let's go off the
16 record. There is a conference room on the other
17 side, if you want to use that.

18 (Thereupon, a discussion was held off
19 the record.)

20 **BY MR. ARNEBECK:**

21 **Q.** Mr. Connell, are you aware or not aware
22 that the Web site for the George W. Bush
23 campaign 2004 was being hosted on the SmarTech
24 servers in Chattanooga, Tennessee?

25 **A.** Yes.

1 **Q.** And were you aware or unaware that the
2 servers for the Republican National Committee
3 were being hosted -- in the 2004 election were
4 being hosted on the SmarTech servers in
5 Chattanooga, Tennessee?

6 **MR. ERVIN:** One sec.

7 **THE WITNESS:** I don't know.

8 **MR. ERVIN:** Go ahead, answer
9 the question. That is all right. Go ahead and
10 answer.

11 **THE WITNESS:** Do you want it
12 sealed, just because it is client?

13 **MR. ERVIN:** No, answer the
14 question.

15 **THE WITNESS:** Yes.

16 **MR. ERVIN:** We are going to
17 seal the last two questions and those answers,
18 please.

19 **MR. ARNEBECK:** And we are
20 reserving our disagreement with Mr. Ervin on
21 this being subject to seal.

22 **BY MR. ARNEBECK:**

23 **Q.** Are you aware or unaware that e-mails from
24 Mr. Rove are being processed on the server of
25 SmarTech in Chattanooga, Tennessee?

1 **MR. ERVIN:** Objection; lack of
2 foundation. You may answer.

3 **MR. EPSTEIN:** Join that
4 objection.

5 **MR. ERVIN:** You can answer his
6 question. This is under seal.

7 THE WITNESS: No.

8 BY MR. ARNEBECK:

9 Q. All right. To be more specific, are you
10 aware or unaware that the GWBush43.com Web site
11 was being hosted on the SmarTech servers in
12 2004, Chattanooga, Tennessee?

13 **MR. FITRAKIS:** GWB?

14 **MR. EPSTEIN:** Objection.

15 **MR. ERVIN:** Just answer his
16 question. Just answer his question.

17 **THE WITNESS:** I have heard
18 rumors, but I don't --

19 **MR. ERVIN:** If you know.

20 **THE WITNESS:** I have no direct
21 knowledge.

22 BY MR. ARNEBECK:

23 Q. Does New Media have any involvement in this
24 Web site, GWB43.com?

25 **A.** No, they do not.

1 **Q.** Did New Media or GovTech or you, in any
2 other professional capacity, have any
3 involvement in -- a Web site in which -- and a
4 service in which Mr. Rove's e-mails were being
5 processed?

6 **MR. EPSTEIN:** Object to the form.

7 **THE WITNESS:** No.

8 **MR. ERVIN:** Do you need to talk
9 to me?

10 **THE WITNESS:** Yeah.

11 **MR. ERVIN:** Can we go off the
12 record for a minute?

13 **MR. ARNEBECK:** Yes.

14 (Thereupon, a recess was taken.)

15 **MR. ERVIN:** Thank you.

16 **MR. ARNEBECK:** Did we have a
17 question outstanding?

18 **MR. ERVIN:** I don't believe so.

19 **THE WITNESS:** I answered it.

20 **BY MR. ARNEBECK:**

21 **Q.** Mr. Connell, was SmarTech at any time a
22 subcontractor or service provider to any of your
23 companies?

24 **A.** Yes.

25 **Q.** And what were they?

1 **A.** SmarTech performs the vast majority of our
2 hosting, so all of our hosting services that we
3 provide would be via SmarTech, or the vast
4 majority for New Media, for New Media
5 Communications.

6 **Q.** And with respect to GovTech, just some, not
7 all?

8 **A.** Most governmental entities host their own
9 stuff.

10 **Q.** So as to the GovTech relationship with
11 SmarTech in the Secretary of State's office,
12 that was their relationship, not your
13 subcontract, right?

14 **A.** I just have to think. I am not -- I am
15 looking -- I am not looking at you, I am looking
16 your direction. I mean, they may have been a
17 subcontractor. I would have to -- I don't know.
18 I would have to go back and look at the
19 contract. Sometimes for contracting purposes,
20 they are structured that way.

21 **Q.** Okay. But this seems a little odd in
22 relation to our earlier discussion about your
23 role or GovTech's role in bringing SmarTech into
24 the picture. Wouldn't you know if, in fact, at
25 the end of the day, regardless of how it

1 happened, they either were or were not a
2 subcontractor of your company?

3 **MR. ERVIN:** Objection; form.
4 You may answer.

5 **THE WITNESS:** No, I previously
6 said it is pretty common for us to use SmarTech
7 for hosting and that it is pretty common for us
8 to bundle that into a contract.

9 I mean, you are a vendor -- you want
10 a Web site, you come to us, you want a Web site
11 built, you want it hosted, you want to pay one
12 bill every month or whatever it is.

13 So I am not understanding why -- I am
14 not understanding your disconnect.

15 **BY MR. ARNEBECK:**

16 **Q.** Well, I just thought we had an earlier
17 discussion about how SmarTech came into the
18 picture, and you had indicated that it came in
19 through, you thought, the IT staff at the
20 Secretary of State's office and was not -- you
21 did not bring them in, and now you are saying
22 that they may well have been part of a bundled
23 service that GovTech provided to the Secretary
24 of State's office.

25 **A.** Your previous question really -- okay. One

1 part is introduction and how SmarTech was
2 introduced into the equation. Now we are moving
3 forward in time to 2004, and what I am saying is
4 I don't recall whether it was a direct contract
5 or it was through us.

6 Q. Okay.

7 A. But, again, it is not an uncommon practice
8 to ask a vendor who bundles services.

9 Q. Okay. Who was the point of contact or
10 points of contact at SmarTech for your work with
11 the Secretary of State?

12 A. I believe Jeff Averbeck was the primary and
13 I believe Alvin Garrison.

14 Q. Who worked -- Jeff Averbeck is the
15 President of SmarTech?

16 A. I -- yes.

17 Q. And what is Alvin Garrison's position, if
18 you know?

19 A. I do not know.

20 Q. Who worked on the project from SmarTech
21 with whom you or your firm interacted with?

22 MR. EPSTEIN: Objection.

23 MR. ERVIN: Objection as to
24 form. Can you --

25

1 **BY MR. ARNEBECK:**

2 **Q.** Besides Mr. Averbeck and Mr. Garrison, were
3 there others from SmarTech that you or other
4 personnel at GovTech would have regularly
5 interacted with?

6 **MR. ERVIN:** In relation to --

7 **MR. ARNEBECK:** -- the work with
8 the Secretary of State 2004.

9 **MR. ERVIN:** Just GovTech's
10 work?

11 **MR. ARNEBECK:** Right.

12 **THE WITNESS:** I do not know who
13 all would have been involved beyond those two.

14 **BY MR. ARNEBECK:**

15 **Q.** And who else besides yourself would be
16 involved in those -- in that work from GovTech
17 with SmarTech?

18 **MR. ERVIN:** Objection; form,
19 asked and answered. You may answer.

20 **THE WITNESS:** The primary
21 individual with probably the most exposure, the
22 most contact, would have been Mike Henry, who
23 was a contractor. Again, you know --

24 **BY MR. ARNEBECK:**

25 **Q.** Contractor, he is a GovTech person or a

1 contractor?

2 **A.** He was a contractor to GovTech.

3 **Q.** From what company is that?

4 **A.** It will come to me in a minute. They
5 change -- just like so many IT firms, they
6 changed ownership, changed names. It had
7 previously been Solutient. That is the problem
8 with these IT firms, they all come up with these
9 names. I will spell it to you on the next
10 break.

11 Anyway, the existing system relied heavily
12 on Oracle, and Mike Henry had an Oracle
13 background.

14 **Q.** Did your firm, that is, GovTech, provide
15 services on election night to the Secretary of
16 State?

17 **A.** Yes.

18 **Q.** Did you or members of your firm or firms
19 interact with the staff from SmarTech on
20 election night?

21 **MR. ERVIN:** Objection as to
22 form. Can you describe what you mean by
23 "interact"?

24 **BY MR. ARNEBECK:**

25 **Q.** Communicate, conduct business, coordinate

1 work.

2 **A.** Personally, no, for me, I did not. You
3 know, the one person who was on site from our
4 staff was Mike Henry. You know, he was down
5 there with the IT staff, basically he was doing
6 staff augmentation. So I cannot speak to that.

7 **Q.** And he would have been in Columbus at the
8 Secretary of State's office?

9 **A.** Yes.

10 **Q.** Would there have been anyone from your
11 company interacting with SmarTech in Tennessee
12 on election night?

13 **MR. ERVIN:** Is this 2004?

14 **BY MR. ARNEBECK:**

15 **Q.** Yes.

16 **A.** Which, from GovTech?

17 **Q.** GovTech.

18 **A.** No.

19 **Q.** And how about the media?

20 **A.** Not that I recall.

21 **Q.** Where were you on election night 2004?

22 **A.** Cleveland.

23 **Q.** Was Triad Corporation at any time a
24 subcontractor or service provider to any of your
25 companies?

1 **MR. EPSTEIN:** Objection to the
2 form.

3 **MR. ERVIN:** Objection; lack of
4 foundation as well.

5 **BY MR. ARNEBECK:**

6 **Q.** You can answer.

7 **A.** The only exposure to Triad was for a
8 centralized voter file project as a part of HAVA
9 compliance, to which we had a very minor role.
10 So the exposure would have been, you know, just
11 like our exposure to ES&S, and other people,
12 firms that had voter registrant applications,
13 software applications at the various Boards of
14 Elections, County Boards of Elections.

15 **Q.** And what would be the -- how would that
16 have originated?

17 **A.** Can you ask that differently?

18 **Q.** Well, did you -- did you seek bids for some
19 project or did you just choose Triad, just go to
20 Triad and say, "We would like you to do this for
21 us?"

22 **MR. EPSTEIN:** Objection; no
23 foundation.

24 **MR. ERVIN:** I join in that
25 objection.

1 **THE WITNESS:** You are
2 misunderstanding. There were 88 separate
3 counties, and they all had existing applications
4 in place, and this was early on.

5 **MR. FITRAKIS:** By "applications,"
6 you mean --

7 **MR. ERVIN:** I am sorry, I don't
8 mean to be rude, but we should just have one
9 person asking the questions, please.

10 **THE WITNESS:** Voter registration,
11 voter files. And so, again, the object was HAVA
12 required a real-time central voter file. The
13 goal was to do that as cost effectively as
14 possible, without requiring a lot of retraining.

15 So the approach that was taken was to
16 leverage the existing applications, and
17 basically have them, basically, you know, mirror
18 all their data to one central file in Columbus.

19 So the ES&Ses and the Triads of the
20 world were picked by virtue of the market share,
21 by the fact that they had already gone out and
22 independently earned the business of individual
23 Boards of Elections.

24 **BY MR. ARNEBECK:**

25 **Q.** And so you were, in effect, incorporating

1 their existing working relationships into the
2 project that you were undertaking as GovTech?

3 **A.** Their existing applications were being --
4 and let me be clear. This is a voter
5 registration system. Okay? Strictly voter
6 registration system. Their voter registration
7 data was being basically consolidated in
8 Columbus into a centralized file.

9 **Q.** And GovTech was managing that process?

10 **A.** No. We had -- our role was actually a
11 very, very, very minor role in the whole
12 process. Again, the objective was to come up
13 with a cost effective solution that did not
14 require a lot of retraining, a lot of new
15 software, a lot of new hardware.

16 **Q.** But this was a function that GovTech had
17 with the Secretary of State's office, above and
18 beyond the Web hosting, as you described it?

19 **A.** It was a separate contract.

20 **Q.** Okay. And what precisely was the contract,
21 to centralize the -- assist the Secretary of
22 State's office in providing a centralized
23 database, voter registration database as
24 provided under HAVA?

25 **MR. ERVIN:** We are still under

1 seal.

2 **THE WITNESS:** It was really to,
3 you know, in the broadest sense, it was kind of
4 the big thought, "Okay, let's arrive --" there
5 was a lot of people out there that had very,
6 very, very expensive systems.

7 But HAVA had not been completely
8 defined. It was kind of like, "Here is HAVA, go
9 implement HAVA." However, there was -- the
10 Secretary of State wanted to be careful as to
11 not make a bad decision, invest a lot of money
12 in Solutient that might later prove not to be
13 HAVA compliant.

14 So the objective was to put them more
15 on a glide slope, so that they could be
16 compliant and minimize the risk of wasting a lot
17 of money. So it was more in a big picture role
18 like that.

19 **BY MR. ARNEBECK:**

20 **Q.** And what was the sequence, the Web design
21 contract or the registration database contract?

22 **A.** Boy, I don't know. What year did HAVA get
23 passed? HAVA wasn't passed until -- can anybody
24 help me out here?

25 **Q.** Well, it was after the 2000 election, 2002?

1 **A.** Yeah, but the implementation wasn't -- by
2 the time it was passed --

3 **MR. ERVIN:** HAVA was passed, I
4 think in 2002, I think.

5 **THE WITNESS:** I don't remember
6 the sequence. I mean, I can't -- I want to
7 think that this came later, after 2004.

8 **BY MR. ARNEBECK:**

9 **Q.** Okay. That makes sense, because my
10 understanding is Triad has a much heavier
11 responsibility in the registration database
12 currently than they did in 2004. So that would
13 make sense.

14 **MR. EPSTEIN:** Objection.

15 **BY MR. ARNEBECK:**

16 **Q.** Who was your appointed contact, or points
17 of contact at Triad for your work with the
18 Secretary of State of Ohio?

19 **MR. ERVIN:** Objection; form,
20 lack of foundation.

21 **THE WITNESS:** We had limited
22 exposure to them. I don't really -- I don't
23 recall.

24 **BY MR. ARNEBECK:**

25 **Q.** Would it be safe to say it was a member of

1 the Rapp family?

2 MR. ERVIN: Objection; lack of
3 foundation.

4 MR. EPSTEIN: Same objection.

5 MR. ERVIN: You may answer, if
6 you know.

7 THE WITNESS: Now, when you say,
8 "You may answer," I don't --

9 MR. ERVIN: If I make an
10 objection, unless I tell you specifically, "Do
11 not answer," you may answer his questions to the
12 best of your knowledge.

13 THE WITNESS: Yeah, but "You may
14 answer," is different than, "You should or
15 should not answer."

16 MR. ERVIN: Do you need to
17 speak with me? If you do just -- do we need to
18 talk?

19 THE WITNESS: No.

20 MR. ERVIN: Could we go off the
21 record for a moment, please.

22 (Thereupon, a discussion was held off
23 the record.)

24 BY MR. ARNEBECK:

25 Q. You were going to answer?

1 **A.** Can you re-ask the question?

2 Q. Who was the point of contact, or did you
3 answer that? Would you read back the last
4 question?

5 (Thereupon, the Reporter read the
6 record as requested.)

7 BY MR. ARNEBECK:

8 **Q.** Then I asked, would it be safe to say it
9 was a member of the Rapp family?

10 **MR. ERVIN:** Objection; lack of
11 foundation.

12 MR. EPSTEIN: Same objection.

13 **MR. ERVIN:** You may answer.

14 **THE WITNESS:** One of their
15 representatives was a Rapp, but I don't remember
16 his name.

17 BY MR. ARNEBECK:

18 Q. And who worked on the project from Triad
19 insofar as your personal knowledge or your
20 understanding from your employees telling you
21 who they were working with?

22 **MR. EPSTEIN:** Object to the form.

23 **THE WITNESS:** We didn't -- it
24 wasn't that sort of project. There wasn't
25 really -- our employees would not have had

1 exposure to Triad. It was more of collecting
2 information surrounding their system
3 requirements.

4 Really what we were doing was making
5 sure that the various applications would be
6 compatible with the solution being discussed.

7 **BY MR. ARNEBECK:**

8 **Q.** But you were not interacting with Triad
9 personnel as such, you are saying that it would
10 be -- like, it would be through the Secretary of
11 State staff that these communications would be
12 occurring?

13 **MR. ERVIN:** Objection; form and
14 lack of foundation. You can answer.

15 **THE WITNESS:** We weren't an
16 implementer, so there really was no exposure
17 beyond the requirements gathering.

18 **BY MR. ARNEBECK:**

19 **Q.** Okay. Is the architecture map that we have
20 marked as Deposition Exhibit 1 an accurate
21 architecture of the system that was built for
22 the 2004 election, to the best of your
23 knowledge?

24 **MR. ERVIN:** Objection; lack of
25 foundation. You may answer.

1 **MR. EPSTEIN:** Join the objection.

2 **THE WITNESS:** I cannot speak to
3 the accuracy. I mean, I didn't create this, my
4 staff didn't create it.

5 **BY MR. ARNEBECK:**

6 **Q.** With respect to V.J. Masson, indicated as
7 primary and Alan Dillman as secondary for
8 technology issue escalation and resolution
9 decisions, do you know who those folks are?

10 **MR. ERVIN:** I am sorry, where
11 are you?

12 **MR. ARNEBECK:** At the top of the
13 page on Exhibit Number 1.

14 **MR. ERVIN:** Oh, thank you.

15 **THE WITNESS:** Yes.

16 **BY MR. ARNEBECK:**

17 **Q.** And who are they?

18 **A.** V.J. was a member of the staff for the Ohio
19 Secretary of State. Alan Dillman was a
20 contractor.

21 **Q.** And what company was Alan Dillman
22 associated with?

23 **A.** His company is GCR, Limited.

24 **Q.** And do you know if Mr. Dillman has any
25 other associations that you are personally aware

1 of?

2 **MR. EPSTEIN:** Objection; form and
3 foundation.

4 **MR. ERVIN:** I join in that
5 objection.

6 **BY MR. ARNEBECK:**

7 **Q.** Are you aware of his role at Cedarville
8 University?

9 **MR. ERVIN:** Objection; outside
10 the scope. Do not answer that question.

11 **BY MR. ARNEBECK:**

12 **Q.** Is this the kind of a map that you have
13 some sense for what it is describing and how it
14 purports to describe a system of which GovTech
15 was a part in 2004?

16 **MR. ERVIN:** Objection; lack of
17 foundation. You may answer.

18 **MR. EPSTEIN:** Same objection, and
19 object to the form.

20 **THE WITNESS:** I am familiar with
21 schematics like this in general, yes.

22 **BY MR. ARNEBECK:**

23 **Q.** Can you identify where any security
24 features were built into the system by your firm
25 or anyone else to protect the accuracy of the

1 processing of votes?

2 **MR. ERVIN:** Objection; form and
3 lack of foundation. You may answer.

4 **MR. EPSTEIN:** Same objection.

5 **MR. ERVIN:** You may answer, if
6 you can.

7 **THE WITNESS:** Again, I want to
8 reiterate, this is not a tabulation system. All
9 this was designed to do is take the 88
10 individual county results, in total -- again,
11 the purpose of this was a brief window on
12 election night when all the world is kind of
13 following the horse race and trying to figure
14 out what the results are in Ohio.

15 So, you know, rather than -- members
16 of the media, citizens of Ohio, don't want to go
17 to 88 different sites and see the public
18 results, they want to go to one place. So it is
19 taking the public results as they are currently
20 being reported and aggregating them into totals.

21 So, you know, it is not like we are
22 protecting nuclear secrets here, is what I am
23 trying to say. But, you know, also, this is a
24 schematic diagram, it is not -- it is more of a
25 hardware configuration. I don't think its

1 purpose is to convey security.

2 **BY MR. ARNEBECK:**

3 **Q.** So you are saying that there could have
4 been security systems that are part of this
5 Secretary of State's data processing that are
6 not displayed on this map?

7 **MR. ERVIN:** Objection; form and
8 lack of foundation.

9 **MR. EPSTEIN:** Objection.

10 **MR. ERVIN:** You can answer, if
11 you can.

12 **THE WITNESS:** Yes. I mean, it is
13 certainly possible that they -- I mean, the
14 purpose of this is not -- yes, it is a simple
15 diagram.

16 **BY MR. ARNEBECK:**

17 **Q.** And are you aware of any such systems?

18 **MR. EPSTEIN:** Objection;
19 foundation.

20 **MR. ERVIN:** Systems being
21 security systems?

22 **MR. ARNEBECK:** Yes.

23 **THE WITNESS:** Does a major Ohio
24 agency have security in place to protect their
25 IT and data? Absolutely. But I cannot speak to

1 what is not on here.

2 **BY MR. ARNEBECK:**

3 **Q.** Okay. What is your understanding with
4 respect to the question of whether a SmarTech
5 computer in this configuration would be capable
6 of sending instructions, receiving instructions
7 and receiving information from both the county
8 level tabulators and the computers of the
9 Secretary of State's office?

10 **MR. ERVIN:** Objection as to
11 form and lack of foundation.

12 **MR. EPSTEIN:** Join the
13 objections.

14 **THE WITNESS:** You need to break
15 that question up.

16 **MR. ERVIN:** Do you understand
17 the question?

18 **THE WITNESS:** No.

19 **BY MR. ARNEBECK:**

20 **Q.** This goes to this man in the middle
21 concern. It is the understanding of our expert
22 that the SmarTech computer shown in this
23 configuration would be capable of sending
24 instructions, receiving instructions and
25 receiving information from both the county level

1 tabulators and the computers at the Secretary of
2 State's office. Is that your understanding of
3 this system as well?

4 **A.** No. Again, so you guys are clear, this is
5 not connected to the tabulators in any way.

6 **Q.** Have you read Mr. Spoonamore's declaration,
7 either of his two declarations or both, that
8 were filed in regard to our litigation over your
9 motion to quash the subpoena?

10 **A.** I have read the one that counsel provided
11 to me. I am not sure I am aware of a second.

12 **Q.** Okay. You are familiar with his assertion
13 that this structure appears to be conducive to a
14 man in the middle manipulation that he sees in a
15 commercial context?

16 **MR. ERVIN:** Just be clear, the
17 structure you are referring to is what is
18 conveyed in Exhibit 1.

19 **MR. EPSTEIN:** I am going to
20 object for lack of foundation.

21 **MR. ERVIN:** I join in that
22 objection. Can you read that question back,
23 please.

24 (Thereupon, the Reporter read the
25 record as requested.)

1 **MR. ERVIN:** Renew the objection
2 to form and foundation.

3 **MR. EPSTEIN:** Same objections.

4 MR. ERVIN: You may answer.

5 **THE WITNESS:** No.

6 BY MR. ARNEBECK:

7 Q. Did your firm hire any subcontractors or
8 work with any technology or consulting companies
9 or individuals beyond SmarTech and Triad?

10 **MR. ERVIN:** This is under seal.

11 I am going to object to the lack of foundation.

12 I think he stated he did not hire
13 Triad. And I guess I need some context when you
14 say "hired SmarTech."

15 **MR. ARNEBECK:** He indicated that
16 he may have hired SmarTech and that he did hire
17 Triad and it may be later than the 2004
18 election.

19 **MR. FITRAKIS:** There was also some
20 discussion about the GCR and Dillman as well,
21 that relationship, it was clearly on here.

22 **MR. EPSTEIN:** So you are asking
23 about hires at any time?

24 **MR. ARNEBECK:** No, we are talking
25 about the 2004 election.

1 **MR. ERVIN:** He identified
2 Dillman as a contractor from a company GCR,
3 Limited. If I am correct, I don't believe he
4 stated he hired Dillman.

5 **MR. ARNEBECK:** I didn't say that.
6 I am asking, did he hire any subcontractors that
7 worked with any technology or IT consulting
8 company beyond SmarTech and Triad.

9 **MR. EPSTEIN:** Object to the form.

10 **MR. ERVIN:** I agree with that
11 objection. You can answer it.

12 **THE WITNESS:** I mean, again,
13 their points are valid, because your question
14 assumes something that is -- but, anyway,
15 Solutient was previously mentioned.

16 **BY MR. ARNEBECK:**

17 **Q.** But not Dillman's company?

18 **A.** No.

19 **Q.** Was this architecture reflected on Exhibit
20 1 ever discussed or shared with any parties
21 outside the Secretary of State's office and any
22 subcontractor that you hired?

23 **MR. EPSTEIN:** Objection.

24 **MR. ERVIN:** Objection; lack of
25 foundation. He has already indicated he didn't

1 prepare this document and he may not have seen
2 it prior to Friday. You can answer the
3 question, if you can.

4 **THE WITNESS:** No.

5 **BY MR. ARNEBECK:**

6 **Q.** When the Ohio recount for the 2004 election
7 was undertaken, were you or your firm asked to
8 make any changes to the Secretary of State's
9 systems or any related systems involved in the
10 Secretary of State's work on the recount?

11 **A.** No.

12 **Q.** Were you aware of the effort by Triad
13 Systems to remove hard drives from county
14 tabulators after the 2004 election, but before
15 the recount of the election?

16 **A.** No.

17 **MR. EPSTEIN:** Objection.

18 **MR. ERVIN:** Objection; lack of
19 foundation.

20 **MR. EPSTEIN:** Lack of foundation.

21 **MR. ERVIN:** You may answer.

22 **MR. ARNEBECK:** He already did.

23 **THE WITNESS:** I said, "No."

24 **BY MR. ARNEBECK:**

25 **Q.** Do you have any professional opinion in

1 regard to the propriety of removing hard drives
2 after the 2004 election?

3 **MR. ERVIN:** Objection. Do not
4 answer that question.

5 **MR. EPSTEIN:** Objection.

6 **MR. ERVIN:** It is outside the
7 scope of the judge's order.

8 **MR. ARNEBECK:** I am sorry, did you
9 instruct him not to answer?

10 **MR. ERVIN:** Yes.

11 **BY MR. ARNEBECK:**

12 **Q.** Do you have any knowledge in any capacity,
13 personally or professionally, of what Triad did
14 with the removed hard drives in connection with
15 the recount of the 2004 election?

16 **MR. ERVIN:** Objection; lack of
17 foundation. He has already answered "no" to
18 that question in a different form.

19 **MR. EPSTEIN:** Join the objection.

20 **MR. ARNEBECK:** I didn't ask that
21 question.

22 **MR. ERVIN:** You said if he was
23 aware of removing hard drives. He said "no."

24 **MR. ARNEBECK:** I am asking now, he
25 might not be aware of removing hard drives, but

1 I am asking if he is aware of what happened to
2 the hard drives.

3 **MR. ERVIN:** You may answer, if
4 you know.

5 **THE WITNESS:** No.

6 **BY MR. ARNEBECK:**

7 **Q.** Are you aware of any computer systems
8 developed by your firm that are still in place
9 in the Ohio Secretary of State's office?

10 **A.** No.

11 **Q.** Are you aware of any system in place today,
12 through your contact in the industry, which is
13 capable of altering the outcome of a voting
14 result in an upcoming election?

15 **MR. ERVIN:** Objection. That
16 gets outside the scope of the judge's order.

17 **MR. ARNEBECK:** I am not asking for
18 his expert opinion. I am asking him of his
19 personal knowledge, is he aware of any system in
20 place today which is capable of altering an
21 outcome of a voting result in an upcoming
22 election.

23 **MR. ERVIN:** I renew the
24 objection. Answer the question, if you can.

25 **THE WITNESS:** No.

1 BY MR. ARNEBECK:

2 Q. To the extent that you have either direct
3 recollection of your conversations with
4 Mr. Spoonamore or from your understanding of
5 what he is saying about those conversations in
6 his declaration, do you share any of the
7 concerns that Mr. Spoonamore has expressed with
8 the security of electronic voting as in place in
9 2004, 2006 or in the upcoming election?

10 **MR. ERVIN:** Objection; outside
11 the scope of the judge's order. Do not answer
12 that question.

13 BY MR. ARNEBECK:

14 Q. Let me rephrase that question and limit it
15 to the scope of the 2004 Ohio election. Do you
16 share any of his concerns as he has expressed
17 directly to you or in his declaration that you
18 have reviewed as to the security of the system
19 that was in place in 2004 in Ohio?

20 **MR. ERVIN:** Objection; outside
21 of the scope of the judge's order. Do not
22 answer that question.

23 **MR. ARNEBECK:** Would you flag that
24 for discussion with the judge, that question and
25 instruction.

1 **MR. EPSTEIN:** If that is going
2 before the judge, I am going to join the
3 objection and also object to the lack of
4 foundation for the question.

5 **MR. ERVIN:** We will join in
6 that objection for the record.

7 **BY MR. ARNEBECK:**

8 **Q.** Are you familiar with a Trojan program that
9 an employee of one of your companies designed at
10 some time in the past?

11 **MR. EPSTEIN:** Objection; lack of
12 foundation.

13 **MR. ERVIN:** Objection; lack of
14 foundation, outside the scope of the judge's
15 order. Do not answer that question.

16 **BY MR. ARNEBECK:**

17 **Q.** Are you familiar with -- do you know of
18 your personal knowledge whether SmarTech was
19 hosting the Web site associated with the Swift
20 Boat campaign during the 2004 election?

21 **MR. ERVIN:** Objection; outside
22 the scope of the judge's order. Do not answer
23 that question. Also lack of foundation.

24 **BY MR. ARNEBECK:**

25 **Q.** Would you focus on the Exhibit marked

1 Deposition Exhibit 2.

2 (Witness complies with the request.)

3 **Q.** And would you describe your understanding
4 of your personal knowledge to what extent there
5 was a different picture in terms of the actual
6 operation of the system during the 2006
7 election?

8 **MR. ERVIN:** Objection; lack of
9 foundation.

10 **MR. EPSTEIN:** I join that
11 objection. I also object to the form of the
12 question.

13 **BY MR. ARNEBECK:**

14 **Q.** You can answer the question.

15 **A.** It was a simpler solution because it was an
16 off year election, it does not -- off years, you
17 don't -- it is not the same level of interest,
18 not the same amount of traffic.

19 **Q.** Was there a difference in the level of
20 outsourcing of the hosting of the system in the
21 2006 election?

22 **MR. ERVIN:** Objection; lack of
23 foundation.

24 **MR. EPSTEIN:** I join in the
25 objection.

1 **MR. ERVIN:** You may answer.

2 **THE WITNESS:** Not that I recall.

3 **BY MR. ARNEBECK:**

4 **Q.** Are you aware of any direct ties of this
5 system to Cedarville University in the 2006
6 election?

7 **MR. ERVIN:** Objection; outside
8 the scope of the judge's order.

9 **MR. EPSTEIN:** I join the
10 objection and object for lack of foundation.

11 (Pause.)

12 **MR. EPSTEIN:** You didn't instruct
13 him not to answer.

14 **MR. ERVIN:** I am sorry, do not
15 answer that question.

16 **BY MR. ARNEBECK:**

17 **Q.** Same question with respect to the 2004
18 election year. Are you aware of any direct ties
19 to Cedarville University to this system in the
20 2004 election in Ohio?

21 **MR. ERVIN:** Objection. Do not
22 answer that question, outside the scope of the
23 judge's order, lack of foundation.

24 **BY MR. ARNEBECK:**

25 **Q.** Okay. In the exhibit Mr. Dillman, who was

1 associated with Cedarville University, is listed
2 in a secondary role in the system. And we are
3 talking about man in the middle, we are talking
4 about conflicts of interest. My question is
5 within the scope of the judge's instruction, and
6 I would like to know if you know whether
7 Mr. Dillman, in his role within this system, has
8 any -- his involvement results in any connection
9 to Cedarville University, to the flow of this
10 system in the 2004 election.

11 **MR. EPSTEIN:** Object to the form,
12 object for lack of foundation.

13 **MR. ERVIN:** I join in that
14 objection. For clarification, we were looking
15 at Exhibit 2. Are we back to Exhibit 1 now?

16 **MR. ARNEBECK:** Yes, back to
17 Exhibit 1.

18 **MR. ERVIN:** I am going to
19 object to that question as outside the scope of
20 the judge's order as it pertains to the extent
21 of which one of these vendors or contractors may
22 be involved in an outside entity. I would
23 instruct you not to answer that question.

24 **MR. ARNEBECK:** Okay. Mark that as
25 another question for the judge.

1 **BY MR. ARNEBECK:**

2 **Q.** Are you aware of Cedarville University as
3 perhaps being by reputation a right-leaning
4 religious university?

5 **MR. ERVIN:** Objection; lack of
6 foundation and outside the scope of the judge's
7 order. Do not answer that question.

8 **MR. ARNEBECK:** Why don't we call
9 the judge and see if we can get some help on
10 these, I think, is it two questions?

11 But short of that, did you want to
12 inquire of anything?

13 **MR. EPSTEIN:** I do not intend to
14 inquire.

15 **MR. ARNEBECK:** Do you want to do
16 any Redirect, or should we just make a call? I
17 would like to get the judge's instructions.

18 **MR. ERVIN:** I have no Redirect.
19 I have got, I think there is a total of -- I
20 have got a total of four issues for the judge.
21 Do you want to address all four or just the
22 Cedarville questions?

23 **MR. ARNEBECK:** What do you have,
24 Jim?

25 **MR. ERVIN:** It goes back to

1 putting under seal the discussions about whether
2 or not -- what I am about to say, I would ask to
3 put under seal.

4 **MR. ARNEBECK:** That's right, we
5 had two discussions where I indicated all we
6 were talking about was routine business
7 dealings. There was no discussion of any
8 particular marketing method or any, you know,
9 secrets.

10 **MR. ERVIN:** I have four we need
11 to address with the judge.

12 **MR. ARNEBECK:** The last two are
13 specific questions?

14 **MR. ERVIN:** Right.

15 (Thereupon, a discussion was held off
16 the record.)

17 (Thereupon, the telephone conference
18 with Judge Oliver commenced at 2:10
19 o'clock p.m.)

20 **THE COURT:** This is Judge
21 Oliver.

22 **MR. ERVIN:** Hello, Your Honor.
23 This is James Ervin on behalf of Michael
24 Connell. I also have here Cliff Arnebeck and
25 Robert Fittrakis on behalf of the Plaintiffs and

1 Aaron Epstein with the Attorney General, on
2 behalf of Jennifer Brunner, the Secretary of
3 State.

4 **THE COURT:** My deputy told me
5 you had some questions about the scope of my
6 order. You do have a court reporter there,
7 right?

8 **MR. ERVIN:** Yes, sir, and she
9 is -- we have a court reporter, and she is
10 taking down this discussion with you, Your
11 Honor.

12 **THE COURT:** Okay. I wanted to
13 make sure, because I don't have one here, so,
14 all right. Go ahead.

15 My deputy told me generally. But go
16 ahead, and I will take them one at a time.

17 **MR. ERVIN:** Thank you, Your
18 Honor. This is James Ervin on behalf of Mr.
19 Connell. There are four issues -- one second,
20 Your Honor.

21 **THE COURT:** Sure.

22 **MR. ERVIN:** Thank you. We had
23 a small technical glitch. Ironical enough.

24 This is James Ervin on behalf of
25 Mr. Connell. There are four issues, Your Honor,

1 I will try and summarize, and I would definitely
2 want Mr. Arnebeck to assist and make sure I
3 clarify this properly.

4 The first issue is, during the course
5 of the deposition, Mr. Arnebeck asked a question
6 of Mr. Connell regarding his conversations with
7 his client, the Secretary of State, about a
8 vendor named SmarTech, and addressing the issue
9 as to how SmarTech became a vendor on behalf of
10 the Secretary of State.

11 I asked that that question and the
12 questions and answers from that be sealed. The
13 Secretary of State is a client of my client's,
14 and I was concerned that any conversations he
15 had as to how they do business or
16 recommendations he may have had could address
17 proprietary information strategies or other
18 issues that may provide them a competitive edge
19 in the marketplace. Mr. Arnebeck disagrees with
20 that, and I will let Mr. Arnebeck address his
21 position.

22 **THE COURT:** All right.

23 **MR. ARNEBECK:** Yes, Your Honor.

24 The discussion that followed this has nothing to
25 do with any kind of unique marketing scheme or

1 design or technical information of the kind that
2 is normally treated as a trade secret.

3 It merely dealt with the
4 communications concerning the setup in the
5 Secretary of State's office and the conduct of
6 public business. And we don't think it has
7 anything to do with trade secrets.

8 **THE COURT:** All right. Let me
9 go back to Mr. Ervin. The concern is that your
10 client, Mr. Connell, has the Secretary of State
11 as a client, your concern about confidences
12 between the two of them, is that what you are
13 concerned about?

14 **MR. ERVIN:** Yes, Your Honor.

15 **THE COURT:** May we have the
16 Assistant Attorney General Epstein who is
17 representing Secretary of State at this point in
18 time, do you have any comment on that?

19 **MR. EPSTEIN:** Thank you, Your
20 Honor. I believe it has been our office's
21 position, at least with respect to the issue of
22 what goes under seal, that we were not going to
23 take a position in that, that we were going to
24 let the other parties work that out as they saw
25 fit.

1 **THE COURT:** Okay. You are
2 representing the Secretary of State; is that
3 right?

4 **MR. EPSTEIN:** That is correct,
5 Your Honor. But the issue with respect to the
6 trade relationship would be the witness
7 Mr. Connell's concern. I don't know that the
8 Secretary of State has any proprietary or trade
9 information that she is concerned about, about
10 safeguarding this context. So I don't think we
11 have a position on the question.

12 **THE COURT:** Okay. If
13 Mr. Connell is not worried about the Secretary
14 of State, and the Secretary of State has no
15 concerns regarding confidences, then I would say
16 there is no reason to seal that. That would be
17 my ruling.

18 **MR. ERVIN:** Thank you, Your
19 Honor.

20 The next three issues, Your Honor,
21 are all related. There is an exhibit before
22 Mr. Connell, it is the same Exhibit I that was
23 attached to the memorandum in opposition filed
24 by the Plaintiffs.

25 It is a schematic, or purports to be

1 a schematic of the Election Production System
2 Configuration for Web Results, related to the
3 2004 election.

4 There is an individual listed on that
5 document, a gentleman named Alan Dillman, who is
6 a vendor, related to that system. Mr. Arnebeck
7 presented a series of questions as to whether
8 Mr. Connell could comment on Mr. Dillman's
9 involvement with -- if Mr. Connell could comment
10 on Mr. Dillman's involvement with the Secretary
11 of State's office, as well as his involvement
12 with Cedarville University, which Mr. Arnebeck
13 characterized as a possible right wing leaning
14 educational institution.

15 I objected to that series of
16 questions as it is, I believe, outside the scope
17 of the court's order. Mr. Dillman's
18 relationship with an educational institution,
19 regardless of its affiliation, we would contend
20 is not pertinent to the scope of the inquiry
21 that we are here about today.

22 In addition, there was a previous
23 question regarding Mr. Connell's familiarity
24 with Mr. Dillman. Mr. Connell indicated he was
25 aware that Mr. Dillman was a vendor, but

1 otherwise, did not have, I believe, specific
2 involvement with him.

3 So we objected to that series of
4 questions relating to Mr. Dillman and Cedarville
5 University and how that relates to the 2004
6 election.

7 **THE COURT:** All right.

8 **MR. ARNEBECK:** Your Honor, Cliff
9 Arnebeck on behalf of the Plaintiffs.
10 Mr. Dillman is listed as the person in secondary
11 control of the Secretary of State's Web site and
12 tabulation and so forth activities, at the
13 Secretary of State's office in November 2004.

14 We have information that he is a
15 gentleman that runs a company called GCR,
16 Limited, but he is also a professor at this
17 Cedarville University, and we understand that
18 there was a direct connection between the
19 Secretary of State's office and Cedarville
20 University on election night 2004, and we feel
21 that the probing of Mr. Connell's knowledge of
22 this, in his capacity in this system, is within
23 the scope of your advice to us that we were free
24 to explore the man in the middle in the Ohio
25 2004 election.

1 We submit that Mr. Dillman and his
2 connection to Cedarville is one aspect of a
3 possible man in the middle situation that we
4 should be able to probe Mr. Connell's personal
5 knowledge of that subject.

6 **MR. ERVIN:** Your Honor, this is
7 James Ervin again, on behalf of Mr. Connell. I
8 would comment that there was no foundation laid
9 as to Mr. Connell having some type of knowledge
10 about Mr. Dillman's relationship to Cedarville
11 University, there was no foundation laid to
12 support the position that Cedarville University
13 was linked to the 2004 election in some way.

14 We believe the court's order was
15 clear that the questions were to avoid
16 speculation, to have Mr. Connell speculate or
17 provide unfounded opinions, and we believe that
18 those questions fall within that prohibition by
19 the court.

20 **MR. ARNEBECK:** Your Honor, if I
21 may, Cliff Arnebeck again. I did not ask for
22 Mr. Connell's expert opinion about a
23 hypothetical, if there were a connection, or if
24 Mr. Dillman had these relationships. I was
25 asking of his personal knowledge whether he had

1 knowledge of any such connections, any such
2 relationship, inasmuch as it is part of this map
3 of the structure in the Secretary of State's
4 office.

5 Mr. Dillman is part of the map and so
6 is Mr. Connell through GovTech.

7 **THE COURT:** Okay. Let me just
8 make a few comments and then maybe a few
9 clarifying questions, and I think we can get to
10 a quick resolution.

11 The man we are talking about is Alan,
12 is it Dillman?

13 **MR. ARNEBECK:** Yes, Your Honor.

14 **THE COURT:** Okay. He has some
15 involvement with the system that was used in
16 2004. Now, obviously the things that are
17 clearly in bounds is Mr. Dillman's role in that
18 process and any background information that
19 would bear on that.

20 I would be concerned about covering
21 other areas unless there was a foundation laid
22 and there is no question about it. You,
23 Mr. Arnebeck, said something about Cedarville
24 University, not only something about right wing
25 leaning, but it was somehow involved or

1 connected with the 2004 election or the
2 Secretary of State's office in that election.

3 I don't know enough -- I don't know
4 how I measure that. How does Cedarville
5 University become involved in this process?

6 **MR. ARNEBECK:** Mr. Fitrakis can
7 address that.

8 **MR. FITRAKIS:** Through Mr. Dillman
9 and on their Web site it was publicly displayed
10 that they were providing backup services for
11 SmarTech on that night, as well as people in the
12 Secretary of State's office who said there was a
13 direct connection on election night to
14 Cedarville University, which they also wrote
15 about on their Web site.

16 **THE COURT:** All right. You are
17 helping me some. But when you say "a direct
18 connection," you know, you have to understand --

19 **MR. FITRAKIS:** Transmission of
20 data.

21 **THE COURT:** That there was data
22 being transmitted by or to Cedarville University
23 relative to the 2004 election?

24 **MR. FITRAKIS:** Yes. And that
25 their students were monitoring the SmarTech

1 site, according to the Cedarville Web site, in
2 fact, they were very proud of their activity on
3 that night.

4 **THE COURT:** Now, that is
5 something they are being paid to do?

6 **MR. FITRAKIS:** We are not sure
7 whether he was doing it through his company or
8 in his capacity as a professor there. We know
9 there was a connection to the university.

10 **THE COURT:** What would be their
11 role, what would they be seeking to do or ensure
12 in their role, just explain that.

13 **MR. FITRAKIS:** Well, they on their
14 Web site indicated they were monitoring for
15 possible crashes of the site, and they were
16 looking at data transmissions.

17 **THE COURT:** Okay. Well, I
18 think your questions are going to have to -- I
19 am not saying they aren't, but they are going to
20 have to be focused as they relate to the
21 computer system 2004 and the election.

22 And so if you have got questions you
23 can ask based on information that you have
24 elsewhere, as long as you put those in a
25 pinpoint way to the witness, you can ask them.

1 But if he doesn't know the answer or
2 has no familiarity with it, then there is really
3 nowhere to go, so the question, one, would be
4 whether he knows Mr. Dillman, which I take it
5 the answer is "yes." What role did Mr. Dillman
6 play, if any, in the 2004 election, in the
7 system, the computer system that was involved
8 during that election.

9 I am not telling you exactly what
10 questions, but those seem to make all the sense
11 in the world.

12 And then the question is, does he
13 know -- you can ask him the question, does he
14 know whether he was employed by Cedarville
15 University or what have you, and does he know
16 whether Cedarville University played any role in
17 assisting Mr. Dillman or a backup in his system
18 and what is his knowledge about what role they
19 played, all those things seem appropriate.

20 Now, if on the other hand, a question
21 just got off into, you know, was it a right wing
22 university and down that line, without laying
23 any foundation, if you have some concerns about
24 what Cedarville was doing and you really had
25 some background information that suggested that

1 because of the nature of the university, the
2 kind of university they are, if they would have
3 incentives to do certain things during the
4 course of the election, that might be
5 permissible too. But it can't be an open-ended
6 process.

7 As long as you keep it tied to the
8 election and the questions that you ask are
9 somehow related to finding out information about
10 that, that this witness, Mr. Connell, may know
11 about. That is really what you have got, is his
12 knowledge.

13 I am not sure that is helpful. But
14 let me go back to Mr. Ervin, because I have kind
15 of laid out some guidance. But I want to go
16 back to you so I make sure I have addressed your
17 concerns. What do you think they are asking
18 about here that go beyond what I have just said?

19 **MR. ERVIN:** I think, Your
20 Honor, there were some questions that were asked
21 previously that inquired of Mr. Connell's
22 knowledge or involvement with SmarTech, and I
23 think his answers to that indicated that he did
24 not have a substantive involvement.

25 Obviously his answers speak for

1 themselves, but in addition, there were
2 questions about his relationship or rather
3 working relationship with Mr. Dillman. I think
4 these questions as to Mr. Dillman's involvement
5 with Cedarville, I think, go beyond his answers
6 and, because of a lack of foundation, I think do
7 not permit Mr. Arnebeck to continue to inquire
8 as to that involvement.

9 In addition, Mr. Arnebeck did make a
10 comment about Cedarville having right wing
11 leaning, I guess, philosophies, and I think that
12 all ties back into this political theory that I
13 think that we conveyed to the court on Friday is
14 being driven through Mr. Connell's desire by the
15 Plaintiffs to give testimony.

16 The relationship of Cedarville to
17 SmarTech, as to whether Cedarville is monitoring
18 election results, goes beyond what Mr. Connell
19 has indicated was his involvement with the 2004
20 election. He has clearly stated that his job
21 was to design and facilitate a Web site that
22 posted public information and did not get into
23 voting tabulation, that he has no ownership
24 interest in SmarTech. Neither he nor any of his
25 employees or anyone that he was aware of related

1 to his companies were on site at the SmarTech
2 facility in Tennessee.

3 So I think these questions about
4 Mr. Dillman's involvement with Cedarville
5 University and what Cedarville University did as
6 it relates to the election are outside the scope
7 of what the court has ordered.

8 I think this is an example of a
9 fishing expedition, and we would ask the
10 court -- we have instructed Mr. Connell not to
11 answer those questions and we would ask the
12 court to sustain the objection.

13 **MR. ARNEBECK:** Your Honor, if I
14 may? Cliff Arnebeck again for the Plaintiffs.
15 If I am not mistaken, while Mr. Ervin is
16 accurate in his description of Mr. Connell's
17 initial testimony in relation to SmarTech,
18 subsequently he indicated that SmarTech is the
19 company that he regularly has host, do the
20 server hosting on all of his business, his New
21 Media business, his political business, and that
22 the contract for the Secretary of State's office
23 with SmarTech may well have been a bundled
24 contract, where SmarTech was a subcontractor to
25 GovTech, which is Mr. Connell's company.

1 So this is relevant, it is within the
2 scope, and we would ask that we be permitted to
3 explore this within the scope of his honor's
4 ruling that we were free to explore with respect
5 to this man in the middle situation in this map
6 in the 2004 election.

7 If I may, Your Honor, I would like --
8 because of the fact that my co-counsel,
9 Mr. Fitrakis, has written several books on this
10 subject, I would ask that if his honor permits
11 this line of further questioning, that we be
12 able to, for this one area, that he be permitted
13 to ask the questions.

14 **MR. ERVIN:** Your Honor, this is
15 James Ervin on behalf of Mr. Connell. In all
16 due respect to Dr. Fitrakis, you know, we
17 addressed this on Friday, that there would be
18 one person asking questions, and the fact that
19 Mr. Fitrakis has written books about this or has
20 represented that the Plaintiffs have
21 information, there has been no such information
22 presented here to Mr. Connell that lays a proper
23 foundation for him to answer any questions about
24 Cedarville University or Mr. Dillman's relation
25 to that.

1 This is, again, the personal opinion
2 of the attorneys being pushed through this
3 procedure. As we indicated on Friday, the
4 political machinations of the Plaintiff should
5 not be facilitated through this legal process.

6 **THE COURT:** Okay. Mr. Arnebeck
7 said something about SmarTech and its contract
8 may have been bundled through or with a contract
9 for GovTech.

10 And that is Mr. Connell's company. I
11 guess the question is, what does he mean by
12 that, and did he have any knowledge of that?
13 Because if he didn't, and he had no relationship
14 that he was aware of between himself and
15 Mr. Dillman, then, of course, at some point that
16 questioning has to stop.

17 It may give you some information
18 which you can pursue further with the Secretary
19 of State or with somebody else, but the
20 interesting thing, I find very interesting that
21 some of these things can be gotten at in other
22 ways.

23 For example, Cedarville University,
24 whether it is a right wing leaning university,
25 that doesn't depend on any testimony by

1 Mr. Connell. If you got some sense that it is,
2 I am sure you could fairly quickly find that out
3 or you already have some ideas about that,
4 without using this as the basis for doing that.

5 I don't want to preclude you from
6 any, Mr. Arnebeck, from any area which naturally
7 flows from what I have allowed you to do, but I
8 would say that the fact that he has some
9 relationship to SmarTech in another context
10 doesn't necessarily make this a situation where
11 you can kind of do a free for all on SmarTech.

12 It seems to me what we are doing is
13 focusing on the 2004 election, and the question
14 is, what happened during 2004, and what
15 knowledge does this witness have that bears on
16 that in a nonspeculative way.

17 And so, you know, I am just
18 struggling here to try to give you the right
19 parameters. But if I were sitting there and I
20 were hearing the questions, I guess I would say
21 that when you get to the point where he says,
22 "What Mr. Dillman did really had no relationship
23 to what I was doing," that I had no -- if he
24 were to say, "I had no knowledge, particular
25 knowledge, specific knowledge of what

1 Mr. Dillman was doing during the election, I
2 don't know whether Cedarville was backing him
3 up, and I have no independent knowledge of any
4 of those matters," then it would seem to me that
5 you would have to stop.

6 I mean, I suppose for purposes of
7 discovery, if he says, "I do know X, Y and Z,"
8 so it turns out that it is not something that is
9 admissible, but would lead to admissible
10 information, that might be a possibility as
11 well. But it is not open-ended. You have got
12 to have some basis for further pursuing his
13 information.

14 So I think discovery -- I know
15 discovery would be broader than what is
16 admissible. But at the same time, you can't
17 just put it to a witness and ask him to
18 speculate. Let me see if I can just lay down a
19 rule here.

20 Where are you now? I guess what else
21 do you want to ask him that might be more
22 beneficial than where we have been, or what
23 questions were asked that were not answered?
24 Either way.

25 **MR. ARNEBECK:** What was the other

1 question? You had a list, Jim.

2 **MR. ERVIN:** I think, Your
3 Honor, there were four points. The questions
4 regarding Cedarville comprise three of those
5 four points. I think the court addressed the
6 first issue and said that that would not be
7 under seal. We instructed our client not to
8 answer three questions related to the Cedarville
9 issue, and I don't believe that there are other
10 matters that have been contested about sealing
11 the record, Your Honor.

12 **THE COURT:** Okay. Other than
13 whether Cedarville is a right wing leaning
14 university and Mr. Dillman's relationship to it,
15 what else is outstanding that you instructed him
16 not to answer?

17 **MR. ARNEBECK:** There was a
18 question, Your Honor, I asked if he was aware
19 that the Swift Boat campaign was being hosted on
20 the SmarTech servers in Chattanooga, Tennessee,
21 along with all the other Republican
22 organizations. And he was instructed not to
23 answer that question.

24 **MR. ERVIN:** This is James
25 Ervin, Your Honor, that is correct. And I think

1 that question, Your Honor, was an issue that
2 Mr. Arnebeck raised during the hearing on
3 Friday, and the court stated then that that was
4 outside the scope of today's deposition. We
5 believe that clearly falls outside your order,
6 Your Honor.

7 **THE COURT:** Okay. Anything
8 else?

9 **MR. ARNEBECK:** I believe that is
10 all, Your Honor.

11 **THE COURT:** Okay. Just one
12 moment.

13 (Pause.)

14 **THE COURT:** Mr. Arnebeck, how
15 would this SmarTech hosting -- what did you say?

16 **MR. ARNEBECK:** Swift Boat Veterans
17 for Truth.

18 **THE COURT:** What issue does
19 that go to in regard to the 2004 election, as it
20 relates to your case?

21 **MR. ARNEBECK:** Well, the whole
22 point was to explore this man in the middle and
23 SmarTech as a possible man in the middle. And
24 the point is that they are hosting the George W.
25 Bush for President campaign, the Republican

1 National Committee's campaign, a whole bevy of
2 other Republican partisan campaigns.

3 And Swift Boat Veterans for Truth, if
4 you recall, Your Honor, was one of these phony
5 front groups that was attacking John Kerry on
6 the theory that it was independent of the
7 campaign. But it is on one side of the
8 campaign, there is no question about that.
9 Whether it is independent is another question.

10 But it shows that this SmarTech that
11 is performing this backup function, supposedly
12 for the Secretary of State's office, is itself a
13 fundamentally partisan organization, and very
14 well could be -- have the motive and opportunity
15 to be performing the corrupt man in the middle
16 function that Mr. Spoonamore, our expert
17 witness, is talking about.

18 **MR. ERVIN:** Your Honor, this is
19 James Ervin. Again, this is fishing and trying
20 to tie a bunch of different concepts together
21 and using this man in the middle concept as a
22 basis to ask a wide variety of questions.

23 **MR. ARNEBECK:** Your Honor, let me
24 cut to the short -- I will withdraw the
25 question, because we have this as a matter of

1 record, and whether Mr. Connell knows it or not,
2 he knows enough that solidifies my point.

3 So let's limit it to the inquiry in
4 regard to Cedarville's connection to this and
5 Mr. Dillman's role and Mr. Connell's personal
6 knowledge of that situation.

7 **THE COURT:** Okay. I think that
8 would be entirely appropriate then. That would
9 solve the issue, because that is, I think, where
10 I should be.

11 All right. Anything further?

12 **MR. ARNEBECK:** May Mr. Fittrakis
13 ask the questions on this one line of
14 questioning, Your Honor?

15 **MR. ERVIN:** Your Honor, we
16 would object to that. We addressed this with
17 the court on Friday that it is one person asking
18 the questions on behalf of the Plaintiffs.

19 **THE COURT:** All right. I would
20 like to continue with what we said,
21 Mr. Arnebeck, but you can -- I will give you an
22 extra ten minutes, if you want to confer with
23 him about areas to ask. You can obviously
24 confer with him as you go.

25 **MR. ARNEBECK:** Right.

1 **THE COURT:** I will give you an
2 extra ten on top of what you have, if you want
3 to confer with him on that.

4 **MR. ARNEBECK:** Thank you, Your
5 Honor. I want it noted for the record, that we
6 were completed, our deposition, except for this
7 discussion with his honor at 2:00. So we kept
8 within our bounds.

9 THE COURT: All right.

10 **MR. ERVIN:** Your Honor, I guess
11 I would ask the court that Mr. -- these last
12 questions regarding the Cedarville issues will
13 be the last questions asked for the purposes of
14 the deposition. I think that we --

15 **THE COURT:** I think that is
16 what Mr. Arnebeck was representing, that he was
17 essentially done except for these; is that
18 right?

19 **MR. ARNEBECK:** That's correct,
20 Your Honor.

21 **THE COURT:** All right. Now,
22 let me just make one other comment. I was
23 thinking about when you asked me about sealing
24 the record, which, of course, I ruled on the
25 other day. Ultimately, depositions don't

1 necessarily get filed over here in court, simply
2 because they have been taken. There is no
3 requirement that that happen.

4 So ultimately, when you go back to
5 Judge Marbley, I guess the question is, once
6 this is done, he may have some views on how this
7 can be used, if at all, in his case, and what
8 rules should attach to that. So I just make
9 that comment, because that is something I
10 thought of.

11 **MR. ERVIN:** Your Honor, this is
12 James Ervin on behalf of Mr. Connell. I guess
13 for procedural purposes, would we have a
14 deposition filed with you under seal and then
15 transferred to Judge Marbley, to address how
16 those unsealed portions are set forth in a
17 separate document?

18 **THE COURT:** You know, I am not
19 even sure -- candidly, I am not sure you want to
20 file it with me. It is not a public record, and
21 at that time, I don't know what the best process
22 is.

23 **MR. ERVIN:** Then I would offer
24 this suggestion, Your Honor, once the deposition
25 is completed, since there are portions that we

1 have asked to be placed under seal, that have
2 not been objected to by Plaintiff's counsel, we
3 would ask that the entire deposition be filed
4 under seal, that the parties to the deposition
5 be held to a gag order in effect until the
6 parties can address the deposition with Judge
7 Marbley and let him make a decision as to how
8 its contents can be released to the public, for
9 lack of a better phrase.

10 **MR. ARNEBECK:** Your Honor, if I
11 may address this, this is Cliff Arnebeck for the
12 Plaintiffs. Your Honor has ruled on the sealing
13 of the discussions with the Secretary of State.
14 So the only matter that by agreement is under
15 seal is my question and Mr. Connell's answer in
16 regard to whether or not there has been an
17 attempt to intimidate him as a witness in this
18 case.

19 That is the only thing that is at
20 issue as being under seal, and we are in
21 agreement. So there is no reason to place
22 anything else under seal.

23 **MR. ERVIN:** Your Honor, there
24 has been a series of questions and some
25 questions based upon Mr. Connell's answers, I

1 think those lines of questions that relate to
2 the scope that the court set forth were
3 indicated to be under seal, that Plaintiff's
4 counsel did not object to those, and those
5 haven't been presented to the court.

6 And I would ask that until we can
7 have the -- have the deposition transcribed and
8 address this with Judge Marbley, that no portion
9 of the deposition be released to the public by
10 any of the attorneys until we can address this
11 with Judge Marbley.

12 Obviously, Your Honor, there are
13 portions of the deposition that we have not
14 asked to be under seal that we believe fall
15 within the scope of the court's order.

16 But until we can find a mechanism by
17 which you can parcel out those sealed portions
18 and not sealed portions, I think until Judge
19 Marbley can address that, no portion of the
20 deposition should be released.

21 I think, as we have indicated to the
22 court, this close to the election, with some of
23 the things that Mr. Connell has gone through
24 prior to his deposition being taken and related
25 to his deposition, I don't think the Plaintiffs

1 are prejudiced by addressing this issue with
2 Judge Marbley and letting Judge Marbley come up
3 with a mechanism for releasing those unsealed
4 portions.

5 I mean, it is going to get out there,
6 but I think until Judge Marbley decides how to
7 do it, I think all the parties' interests are
8 protected and none would be burdened by that
9 process.

10 **THE COURT:** Well, you know, I
11 have got, as I said before, kind of a delicate
12 role here. But part of my responsibility is to
13 make sure that trade secrets are protected, also
14 to make sure that if information, for example,
15 such as possible threats and so forth are
16 revealed, that that would not create problems
17 for Mr. Connell. When I say problems for him, I
18 mean possible problems with threats or other
19 kinds of things in the context of this election.

20 On the other hand, you know, there is
21 the common practice that depositions and trial
22 testimony not be sealed because of the public
23 interest. I would have a concern that there may
24 actually be public entities that may very well
25 be interested.

1 I am not into drumming up any
2 publicity, anybody who knows me would
3 understand. But at the same time, you know, I
4 have got to be sure that I protect, strike the
5 right balance.

6 When I was talking about Judge
7 Marbley, what I am saying is when we get back to
8 the case in a different context in which this
9 information may be raised, whether it is a
10 summary judgment motion or a motion for class
11 certification or whether it is in another
12 context, those rulings will be for Judge
13 Marbley. He may very well determine in a
14 defined context that certain information is
15 relevant or not relevant, what have you.

16 But I am not inclined to go beyond
17 what I did the other day, and that is to say
18 that the information relative to any threat be
19 not disseminated, and that is an order of this
20 court, that the parties not do that.

21 So it is not a suggestion, that is an
22 order. And that if there are any trade secret
23 information issues or problems, that, again,
24 that not be revealed. That is an order. It is
25 not a suggestion.

1 So I don't think I can go any further
2 than that. So if the order is disobeyed, then
3 there are sanctions which can be meted out, and
4 I would not hesitate to do so under proper
5 circumstances. That is the best I can do.

6 So I would like the parties to go
7 back and complete the deposition, and let me say
8 that I do commend you on both sides for your
9 professionalism and the way you have conducted
10 yourself in the light of issues that I know are
11 of not only emotional importance to both sides,
12 but which does cause people to become tense and
13 excited, especially in the context of an
14 election season. So I do appreciate your
15 professionalism.

16 **MR. ERVIN:** Thank you, Your
17 Honor.

18 **MR. ARNEBECK:** Thank you, Your
19 Honor.

20 **MR. ERVIN:** I guess as a final
21 question, Your Honor, in compliance with the
22 court's order about what is sealed and not
23 sealed, what recommendation does the court have
24 for logistically being able to pick apart the
25 deposition, where it is scattered throughout

1 different questions that pertain to different
2 issues?

3 **THE COURT:** Well, the main
4 issue, I thought, would have been covered at one
5 time. I don't know, because I don't have the
6 deposition. Mr. Arnebeck, I would have thought,
7 would have pursued the issue of threats, and
8 would have concluded that issue all at one time.
9 Now, if he didn't do that --

10 **MR. ARNEBECK:** I did, Your Honor.

11 **THE COURT:** So whatever number
12 of pages those are, they should be redacted.

13 **MR. ERVIN:** Would the parties
14 have the ability, with the court's
15 recommendation, to have the deposition
16 transcribed and then confer as to what should be
17 redacted, and if there is a problem, contact the
18 court?

19 **THE COURT:** You certainly can
20 call me if there is an issue.

21 **MR. ERVIN:** And would the
22 court --

23 **THE COURT:** I would be happy to
24 intercede if there is a problem.

25 **MR. ERVIN:** If the court is

1 willing, we would then ask to have a copy of the
2 deposition sent to the court, have the
3 deposition transcribed and then allow the
4 counsel to go through it and try and confer on
5 what portions --

6 **THE COURT:** It is just a
7 question of time. I don't know how long the
8 deposition is. But it won't be that long. I
9 don't know what the Plaintiffs is seeking to do
10 in terms of getting the deposition printed up,
11 how long that will take, whether that will be
12 this afternoon or some other time. So I guess
13 without that information, I don't want to be in
14 a position to be the centerpiece of the process,
15 if there is an expedited process that is
16 underway.

17 **MR. ARNEBECK:** It is a somewhat
18 expedited process, Your Honor, as I understand,
19 it was four or five hours.

20 **THE COURT:** That's when you
21 intend to get it?

22 **MR. ARNEBECK:** Yes.

23 **MR. ERVIN:** Well, I think the
24 court reporter would have to weigh in on what
25 her ability is to transcribe it on an expedited

1 basis. I would not want to speak for her, Your
2 Honor.

3 (Thereupon, a discussion was held off
4 the record.)

5 **MR. ARNEBECK:** Your Honor, we were
6 poised to do it on an extraordinarily expedited
7 basis. But it is probably going to be available
8 tomorrow at some time, as the last hearing was,
9 and we are at about the same length, so I expect
10 we will have it tomorrow.

11 **THE COURT:** But I don't know
12 what use you intend to make of it. I really
13 don't want to get directly involved in anybody's
14 strategy as to what use they may or may not make
15 of it. All I am trying to do is make sure that
16 I don't get in the way, that somehow I don't
17 become the point of delay, because I don't know
18 why there would be a big reason for me to be
19 involved, although I am willing to, if there is
20 a real issue. I mean, you could clearly agree
21 on the questions related to the threat. They
22 seem discreet enough.

23 **MR. ARNEBECK:** Your Honor, I will
24 professionally represent that we certainly are
25 able to comply strictly and completely with the

1 court's order with respect to the threat.

2 And there has been no other -- there
3 has been no discussion of trade secrets in my
4 view, even in the broadest understanding of what
5 is a trade secret. I do have some familiarity
6 with that area of the law. So I don't think we
7 really have an issue here.

8 **MR. ERVIN:** Your Honor, this is
9 James Ervin. I would indicate to the court, at
10 various times through the deposition, I asked
11 the court reporter to identify that a question
12 or a line of questioning and answers would be
13 sealed, and then when we got to a point that I
14 thought should be unsealed, I indicated that to
15 her. And Mr. Arnebeck did not object.

16 So I would think when this deposition
17 is transcribed, there are going to be sections
18 that have been indicated as sealed that
19 Mr. Arnebeck may want to address or may not
20 address. So I believe there are portions of the
21 deposition that have been sealed that do fall
22 within the court's order that have not been
23 addressed thus far, that Mr. Arnebeck may want
24 to address. If we can't come to a meeting of
25 the minds --

1 **THE COURT:** Let me just give
2 you some guidance. And then, like I said
3 before, I just don't want to be in the place
4 where things are stopped unnecessarily in terms
5 of the process going forward. I really don't.

6 Now, you can agree on things that go
7 beyond my order, if you want to, in terms of
8 sealing more, although generally I would not be
9 in favor of that.

10 But what I would be concerned about
11 is that -- let me just tell you two things. One
12 is that the Secretary of State is a party to
13 this litigation. They have counsel in the
14 litigation and the case is about what happened
15 in 2004.

16 So there are not too many aspects of
17 that that could qualify as trade secret or trade
18 secret not waived. I don't see much to that
19 argument, because your client may be concerned
20 about the Secretary of State, Secretary of State
21 isn't concerned about itself.

22 **MR. ERVIN:** Well, Your Honor,
23 to respectfully interrupt, my client is
24 concerned about the release of information as to
25 how he does business with the client that may

1 give a competitive edge to other individuals,
2 and in place at the time, when there was a
3 different Secretary of State, the agreement that
4 my client had included a confidentiality clause.

5 And I am not aware if counsel for the
6 Secretary of State has waived that formally.

7 **THE COURT:** Well, when they say
8 that they have no objection, they basically are
9 taking the position, they are sitting right
10 there, that there is no Secretary of State --
11 the Secretary of State from 2004 is behind,
12 behind us. He doesn't have any standing, he is
13 not around anymore.

14 So it seems to me that the new
15 Secretary of State succeeds to whatever
16 agreements and understandings. And I am sure
17 there are many of them that they may repudiate
18 or reject or have chosen not to follow. And so
19 with that said, I mean, it would be kind of an
20 odd situation to have someone asserting their
21 concern about confidentiality and then have the
22 Secretary of State say, "We have no such
23 concern."

24 I understand that that is a good
25 place to start with, because if you have an

1 agreement with somebody, and it is going to be
2 confidential, it is legitimate that Mr. Connell
3 would say, "Well, I don't want to talk about
4 that because I am precluded." And then the
5 Secretary of State, says, "Well, we really don't
6 care."

7 You know, basically, it is like
8 attorney-client privilege which the client
9 waives, and the lawyer is still saying, "I don't
10 want to talk about it," and the client is
11 saying, "Talk about it if you want. It is
12 okay."

13 I mean, that is the way I kind of see
14 that issue.

15 **MR. ERVIN:** Thank you, Your
16 Honor.

17 **MR. ARNEBECK:** Thank you, Your
18 Honor.

19 **THE COURT:** All right. But I
20 am going to be available. So when you get the
21 transcript and you share with each other, it is
22 fine if you want to send one to me. But it is
23 less important that you send one to me, that you
24 confer once the two of you receive it and if you
25 have any issues, then you should call me right

1 away before you disseminate it.

2 **MR. ERVIN:** Yes, sir.

3 **MR. ARNEBECK:** Thank you, Your
4 Honor.

5 **THE COURT:** All right. Thank
6 you.

7 **MR. ERVIN:** Thank you.

8 **THE COURT:** Good-bye.

9 (Thereupon, the telephone conference
10 with Judge Oliver was concluded at
11 2:57 o'clock p.m.)

12 **MR. ERVIN:** All right. Why
13 don't we -- do you need a minute before we get
14 to this?

15 **MR. ARNEBECK:** Yes. Take five
16 minutes.

17 (Thereupon, a recess was taken.)

18 **BY MR. ARNEBECK:**

19 **Q.** I am going to do my best in recalling
20 exactly what the judge said.

21 Mr. Connell, are you familiar with Mr. Alan
22 Dillman?

23 **A.** Yes.

24 **Q.** And are you familiar with what role
25 Mr. Dillman played in the 2004 Presidential

1 election in Ohio?

2 **A.** Relevant to his being a vendor for the
3 election night project. I know nothing beyond
4 that.

5 **Q.** In other words, you do not know of your
6 personal knowledge whether or not he is employed
7 by Cedarville University?

8 **MR. ERVIN:** Objection; lack of
9 foundation. You may answer that question.

10 **THE WITNESS:** I think he was a
11 part-time instructor, yes.

12 **BY MR. ARNEBECK:**

13 **Q.** Do you have any knowledge of your personal
14 knowledge whether or not, through Mr. Dillman or
15 otherwise, that there was any direct connection
16 between the Secretary of State's office and
17 Cedarville University on election night?

18 **MR. EPSTEIN:** Objection.

19 **MR. ERVIN:** Is that other than
20 him knowing Dillman was a part-time professor at
21 a university?

22 **MR. FITRAKIS:** Yes, I think just
23 was there a direct connection? You know, we
24 have reason to believe that there was a direct
25 connection between the Secretary of State's

1 office and Cedarville University for data and/or
2 imaging transmission.

3 **MR. ARNEBECK:** All my question is,
4 he said that all he knows besides the fact that
5 Dillman had the contract, had a role in the
6 Secretary of State's office, he knows he had a
7 part-time position with Cedarville University,
8 and I am just asking, and perhaps by implication
9 he said he wouldn't know this, but I am asking
10 specifically does he have any knowledge of his
11 personal knowledge of any role, or any
12 connection between the Secretary of State's site
13 and Cedarville University on election night.

14 **MR. EPSTEIN:** Object to the form.

15 **MR. ERVIN:** I object to the
16 form. Answer the question.

17 **THE WITNESS:** I am not aware of
18 any connection between Cedarville University and
19 the Ohio Secretary of State on election night.

20 **BY MR. ARNEBECK:**

21 **Q.** Okay. One last question. Are you aware of
22 any connections between SmarTech and Cedarville
23 University on the election night 2004?

24 **A.** No.

25 **MR. EPSTEIN:** Object to form and

1 foundation.

2 **MR. ARNEBECK:** I think that
3 concludes our deposition. If you have nothing?

4 **MR. EPSTEIN:** I have no
5 questions.

6 **MR. ERVIN:** I have no Redirect.
7 You have the right to read the transcript, to
8 make any corrections that you see fit. You
9 can't change the substance, but you can change
10 spelling. You have the right to waive that. If
11 you want to instruct the court reporter that you
12 want to read, just tell her you want to read.

13 **THE WITNESS:** I would like to
14 read.

15 (Thereupon, the M.L. Connell
16 deposition was concluded at 3:07
17 o'clock p.m.)

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STATE OF OHIO,)

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) SS:

SUMMIT COUNTY,)

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5 I, Binnie Purser Martino, a Registered
6 Diplomat Reporter, Certified Realtime Reporter
7 and Notary Public within and for the State of
8 Ohio, duly commissioned and qualified, do hereby
9 certify that the within named witness, MICHAEL
10 L. CONNELL, was by me first duly sworn to
11 testify the truth, the whole truth and nothing
12 but the truth in the cause aforesaid; that the
13 testimony then given by him was by me reduced to
14 Stenotype in the presence of said witness,
15 afterwards prepared and produced by means of
16 Computer-Aided Transcription and that the
17 foregoing is a true and correct transcript of
18 the testimony so given by him as aforesaid.

19 I do further certify that this deposition
20 was taken at the time and place in the
21 foregoing caption specified, and was completed
22 without adjournment.

23 I do further certify that I am not a
24 relative, employee of or attorney for any party
25 or counsel, or otherwise financially interested
in this action.

I do further certify that I am not, nor is
the court reporting firm with which I am
affiliated, under a contract as defined in Civil
Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Akron,
Ohio on this 10th day of November, 2008.

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Binnie Purser Martino, RDR, CRR

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My commission expires June 26, 2009.

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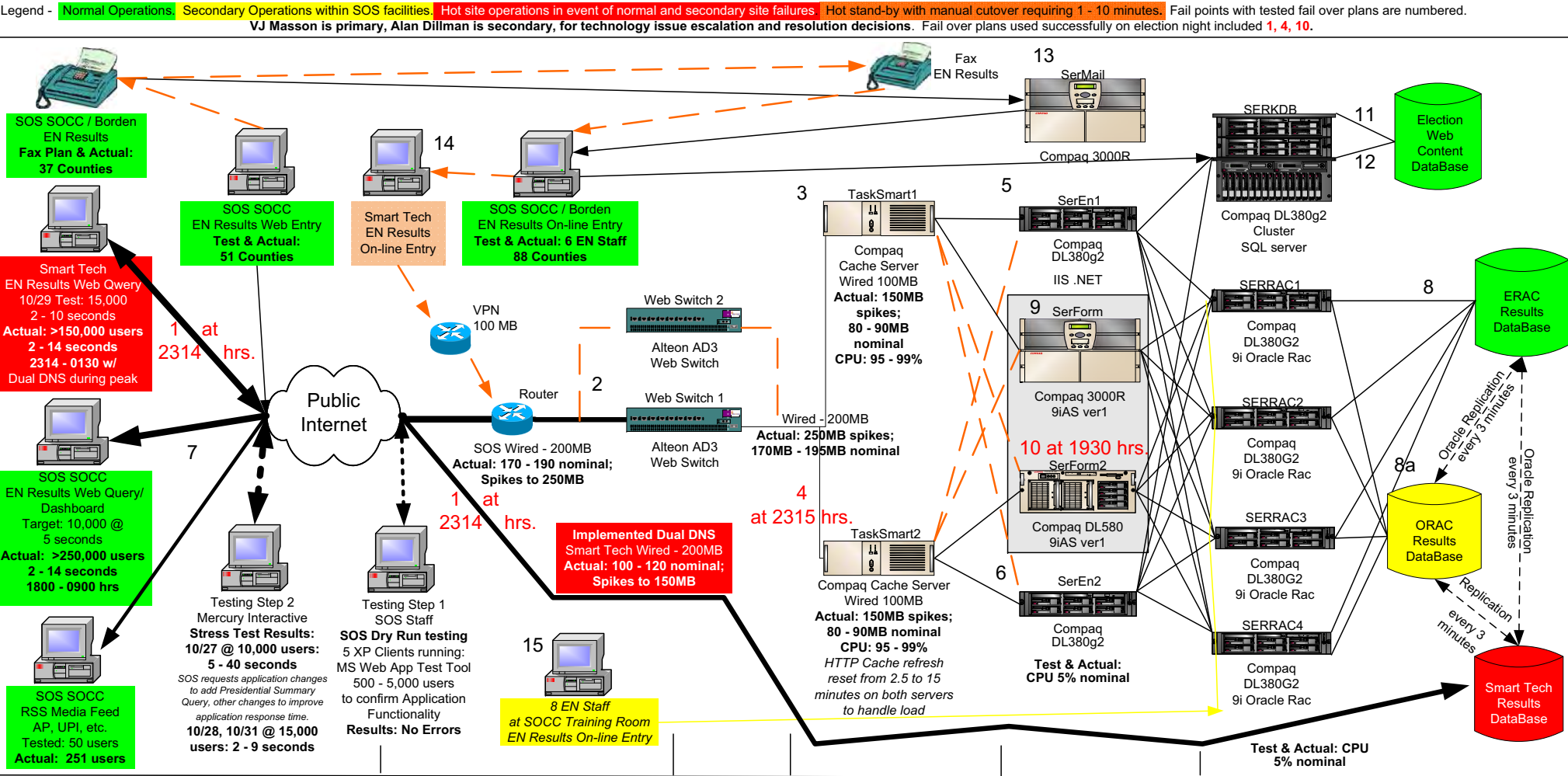
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SOS Election Production System Configuration for Web Results Entry, EN Staff Results Entry and Web Queries 11/02/04



GFF D200

PERSONAL SERVICE CONTRACT
Secretary of State Contract Number 124

This Contract is between the **Office of the Ohio Secretary of State**, located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215 (hereinafter the "Secretary"), and **GovTech Solutions, LLC**, an Ohio limited liability company, with offices at 3046 Brecksville Road, Richfield, Ohio 44286 (hereinafter the "Contractor") (Secretary and Contractor each referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, on or about March 27, 2003 the Secretary will issue a Request for Proposals ("RFP") to provide the Secretary with a Computerized Statewide Voter Registration List Application (the "Statewide Voter List Application") in compliance with the Help America Vote Act of 2002 ("HAVA"); and

WHEREAS, Secretary desires to retain the services of Contractor to assist in developing the RFP and defining an optimal Statewide Voter List Application that is HAVA compliant and assisting in the selection of a HAVA compliant application; and.

WHEREAS, Contractor desires to provide Secretary with such services.

THEREFORE, the parties, for good and valuable consideration and based on the mutual promises recited herein, do agree as follows:

Article I. STATEMENT OF WORK

The Secretary hereby retains Contractor to assist the Secretary in drafting a RFP for a Statewide Voter List Application, in defining an optimal and HAVA-compliant Statewide Voter List Application and assisting the Secretary in selection of a HAVA compliant Voter List Application and Contractor hereby accepts such retention by Secretary.

The Secretary shall provide Contractor the Secretary's physical architecture inventory from which the Contractor would assess the current environment. The Contractor will use the assessment to assist in identifying an optimal physical environment that utilizes industry standards and would provide compliance to the Help America Vote Act ("HAVA") by supporting a Statewide Voter List Application. In identifying the optimal physical environment, the Contractor shall address the following:

- (a) Technical Environment:

- (i) Assess operating system requirements for the client (e.g. versions, browsers).
- (ii) Assess system architectural requirements for printing such items as reports (i.e. management, voter lists, walking lists, etc) (physical, network, products/tools). Provide diagram of desired state.
- (iii) Assess communication's recommendations for the organization. Identify network protocol (e.g. TCP/IP, SNA), bandwidth needs, and other LAN/WAN requirements).

Assess optimal messaging architecture and support for standard messaging protocols (e.g. MQSeries).

(b) Physical Network

- (i) Assess the current physical network. Provide network diagram (e.g routers, switches, T1).
- (ii) Assess physical server architecture. Identify desired state of applicable server components; web, application, database servers, database platforms.

Assess back up procedures if network goes down

(c) System Performance:

- (i) Assess requirements for scalability (roadmap for increased volume)
- (ii) Identify load balancing measures and recommendations.

Assess configuration to support system redundancy (high availability failover, DRP).

Assess method or tool recommendation for obtaining stress test results (all layers – workstation, servers, middleware, database). Assess stress test environment.

(d) Security:

- (i) Assess security approach

Assess optimal encryption methods. Assess audit trail methodology

Assess access control (i.e., roles, etc).

Assess user data storage requirements.

1.03 The Contractor shall provide a recommendation regarding connectivity providers.

The Contractor shall provide recommendation of hardware for SOS and Counties based on identification of optimal environment as stated above.

Contractor shall assist the Secretary in drafting selection criteria of vendors who respond to the Statewide Voter List Application.

The Contractor shall provide recommendation regarding network architecture between SOS and eighty-eight (88) counties to support peak volumes of data exchange. Recommendation is expected to address network connectivity reliability, speed of data transfer, security and business continuation issues.

Using the optimal physical environment defined above as a baseline, Contractor will assist SOS with the evaluation of responses to RFP for Statewide Voter List Application.

In performing the above activities, Contractor shall work with the Secretary's Project Manager.

Assessment for Section 1.02 is due by March 26, 2003. Recommendations for Sections 1.03 through 1.05 are due by April 8, 2003. The network assessment as identified in Section 1.06 is due by April 22, 2003.

This Contract shall be the complete and exclusive statement between the parties and shall supersede all proposals, oral or written, and all other communications between the parties related to the subject matter of this Contract, unless otherwise provided herein or amended and attached to this Contract.

The Contractor shall also deliver, assign, transfer and convey to the State all rights, title and interest to all documents, data, materials, information and other materials and property prepared or developed or created under or in connection with this Contract as described in this Article I above (the "Deliverable").

The Contractor shall furnish professional services in accordance with industry standards necessary for satisfactory performance and pursuant to the time-table established by the Secretary, as referred to in Article II.

The Contractor shall furnish his own support staff necessary for the satisfactory performance of the work hereunder.

The Secretary may, from time to time as it deems appropriate, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this Contract. Unless specifically defined herein, Contractor makes no guarantee that any such instructions or requests will be fulfilled.

The Contractor shall consult with the personnel of the Secretary and other appropriate persons, agencies and instrumentalities as necessary to assure understanding of the work and timely and satisfactory completion thereof.

Article II. TERM

This Contract is effective as of the 18th day of March 2003. This Contract will automatically expire on June 30, 2003. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the Secretary and the Contractor is paid. Satisfaction of the Secretary shall be judged on a reasonable standard. The current General Assembly cannot commit a future General Assembly to an expenditure. The Secretary, however, may renew this Contract in the next biennium by issuing written or electronic notice to the Contractor of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Project continues.

Timeliness of Performance. Contractor understands that prompt performance of all services hereunder is required by Secretary in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting Secretary's deadlines or scheduled completion dates are caused by the unacceptable performance of any Contractor employee or any other cause within the reasonable control of Contractor, Contractor shall provide additional temporary personnel, as requested by Secretary and at no charge to Secretary, in order to complete the assignment involved in a timely manner. Neither party, however, shall be responsible for any delays that are not due to such party's fault or negligence or that could not have reasonably been foreseen or provided against.

Article III. CERTIFICATION OF FUNDS

It is expressly understood by the parties that none of the rights, duties or obligations described in this Contract shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07 of the Ohio Revised Code, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies, and when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that federal funds are used, until such time that the Secretary gives the Contractor written notice that such funds have been made available to the Secretary, by the Secretary's funding source.

Article IV. COMPENSATION

In consideration for the promises and performance of the Contractor as set forth herein, the Secretary agrees to:

- (a) Pay the Contractor, upon submission of appropriately detailed and accurate invoices for services performed by the Contractor in accordance with Article I of this Contract at the following hourly rates:

RETECH	RE Technical Specialist Services	\$165.00
REPMGR	RE Project Manager Services	\$165.00
RESRNET	RE Senior Network Architect	\$125.00

- (b) In no event shall the cost to the Secretary under this contract for goods delivered and services performed as detailed in Article I plus any applicable expenses exceed **FIFTEEN THOUSAND DOLLARS AND 00/100 CENTS (\$15,000.00)**.

Any Deliverables shall be accompanied by an appropriately detailed and accurate invoice for services performed and expenses incurred.

An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify the Contractor within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety.

Contractor shall first forward all Invoices and Deliverables to David Kennedy, Director of Legislative Affairs, for review and approval at the following location:

Secretary of State of Ohio
Attn: David Kennedy, Director of Legislative Affairs
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

The Invoices and Deliverables shall thereafter be forwarded for final payment to Dilip Mehta, Chief Financial Officer, who is located at the 16th Floor at the same address in section 4.04.

Section 126.30 of the Ohio Revised Code is applicable to this Contract and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month which equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

- 4.07 Unless expressly provided for elsewhere in this Contract, the Contractor shall be responsible for and assume all office and business expenses that are incurred as a

result of the performance of this Contract

- 4.08 The Secretary is exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor, and the Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

Article V. RELATED CONTRACTS

The Contractor shall not enter into other subcontracts for work required to be performed under this Contract without prior written approval by the Secretary. All work subcontracted shall be at the expense of the Contractor.

Article VI. CONFLICTS OF INTEREST

No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Secretary in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless the Secretary shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

**Article VII. RIGHTS, IN DATA, PATENTS AND COPYRIGHTS
PUBLIC USE**

Except for the Contractor Software, all materials, products, and modifications developed or prepared by Contractor under this Contract, including, without limitation, forms, images and text viewable on the Internet, any HTML elements relating thereto, and software, including the Deliverables and any Upgrades thereto, are the property of Secretary and all right, title and interest therein shall vest in Secretary and shall be deemed to be a "work made for hire" under United

States copyright law (17 U.S.C. § 101 et seq.) and made in the course of this Contract. To the extent that title to any such works may not, by operation of law, vest in Secretary or such works may not be considered to be work made for hire, all right, title and interest therein are hereby irrevocably assigned to Secretary. All such materials shall belong exclusively to Secretary with Secretary having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor agrees to give Secretary and any person designated by Secretary, any reasonable assistance required to perfect and enforce the rights defined in this Section.

Neither the Contractor nor any of the Contractor's employees, agents, subcontractors or assignees shall make a disclosure for the purpose of securing a patent or other proprietary interest in the United States or any other country for any of the Deliverables unless such disclosure is approved in writing by the Secretary prior to application for the patent. In the event that such patent or other proprietary interest is obtained, the Contractor shall, at the request of the Secretary, provide the Secretary written authorization for the Secretary and any other person, agency, or instrumentality contributing financial support to the work contemplated hereunder to make use of the subject of the said patent or other proprietary interest disclosure without payment thereof.

Except with respect to the Contractor Software, the fees and costs associated with obtaining intellectual property protection of any of the materials, products, or modifications developed or prepared under this Contract shall be the sole responsibility of Secretary.

Contractor acknowledges that the Secretary may make any Deliverables freely available to the general public.

Article VIII. CONFIDENTIALITY

The Secretary may disclose to the Contractor written material or oral or other information that the Secretary treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the Secretary delivers to the Contractor will remain with the Secretary. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the Secretary, or individuals or organizations about whom the Secretary keeps information. By way of example and by no means by way of limitation, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing

information. Such also includes police and investigative records, files containing personal information about individuals or employees of the Secretary, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

- 8.02 The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to do the Project. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Project. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent or accidental, unless otherwise provided below.

The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to preserve and safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or where the disclosure nevertheless results in liability to the Secretary.

Subject to Article X, Suspension and Termination, of this agreement, the Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will cause or have caused all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating obligations the same as those in this Article.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession prior to disclosure by the Secretary, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the Secretary; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor: (a) notifies the Secretary of such order immediately upon receipt of the order, and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this Article.

Article IX. USE IN ADVERTISING OR MARKETING MATERIAL

The Contractor shall not identify, without prior written or electronic approval, the Secretary in any of the Contractor's advertising or marketing material, sales presentations, or scholarly papers or presentations.

Article X. SUSPENSION AND TERMINATION PROVISIONS

- 10.01** The Secretary may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceedings) has been filed by or against the Contractor. The Secretary may also terminate this Contract in the event that the Contractor violates any law or regulation in doing the Project, or if it appears to the Secretary that the Contractor's performance is substantially endangered through no fault of the Secretary. In any such case, the termination will be for cause, and the Secretary's rights and remedies will be those identified below for termination for cause.

On written or electronic notice, the Contractor will have thirty (30) days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within thirty (30) days after written or electronic notice or if the breach is not one that is curable, the Secretary will have the right to terminate this Contract. The Secretary may also terminate this Contract in the case of breaches that are cured within thirty (30) days but are persistent. "Persistent" in this context means that the Secretary has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three (3) times. After the third notice, the Secretary may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than thirty (30) days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

- 10.03** The Secretary may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, the Secretary may also terminate this Contract should that third party fail to release any Project funds.

- 10.04 The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor will immediately cease all work on the Project and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to the Secretary. The report must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in doing the Project to that date, and any Deliverables completed or partially completed but not delivered to the Secretary at the time of termination. The Contractor will also deliver all the completed and partially completed Deliverables to the Secretary with its report. But, if delivery in that manner would not be in the Secretary's interest, then the Contractor will propose a suitable alternative form of delivery.
- 10.05 If the Secretary terminates this Contract for cause, it will be entitled to cover for the Project by using another Contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to the Secretary for all costs related to covering for the Project to the extent that such costs, when combined with payments already made to the Contractor for the Project before termination, exceed the costs that the Secretary would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.
- 10.06 If the termination is for the convenience of the Secretary, the Contractor will be entitled to compensation for any work on the Project that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the Secretary to be owing to the Contractor. The Secretary will make that determination based on the lesser of the percentage of the Project completed or the hours of work performed in relation to the estimated total hours required to perform the entire Project.
- 10.07 The Secretary will have the option of suspending rather than terminating the Project where the Secretary believes that doing so would better serve its interests. In the event of a suspension for the convenience of the Secretary, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Project rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the Secretary reinstates the Project after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the Secretary resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the Secretary from the default or other event giving rise to the suspension.

- 10.08** In the case of a suspension for the Secretary's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the Secretary's convenience. The Contractor will not be entitled to compensation for any costs associated with a suspension for the Secretary's convenience, but the Contractor will immediately notify the Secretary of any such costs and cooperate with the Secretary in minimizing or eliminating them. No payment under this provision will be made to the Contractor until the Contractor submits a proper invoice.
- 10.09** Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. And the Contractor will prepare a report concerning the Project just as is required by this section in the case of termination. After suspension of the Project, the Contractor will perform no work without the consent of the Secretary and will resume work only upon receipt of a written or electronic notice from the Secretary to do so. In any case of suspension, the Secretary retains it right to terminate this Contract rather than to continue the suspension or resume the Project. If the suspension is for the convenience of the Secretary, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.
- 10.10** The Secretary will not suspend the Project for its convenience more than once during the term of this Contract, and any suspension for the Secretary's convenience will not continue for more than thirty (30) calendar days. If the Contractor does not receive notice to resume or terminate the Project within the thirty (30) day period, then this Contract will terminate automatically for the Secretary's convenience at the end of the thirty (30) calendar day period.
- 10.11** Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Secretary for any liability to them. Each subcontractor will hold the Secretary harmless for any damage caused to them from a suspension or termination. They will look solely to the Contractor for any compensation to which they may be entitled.

Article XI. WARRANTIES

Contractor hereby warrants and represents to Secretary as follows:

- 11.01** Each of Contractor's employees assigned to perform services under this Contract shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be performed in

accordance with this Contract

- 11.02** Secretary shall receive free, good and clear title to all materials, deliverables and products developed under this Contract.

Each and every deliverable, including software deliverables, contemplated by this Contract shall conform to the specifications for same as mutually agreed to in writing by Secretary and Contractor.

Article XII. INDEMNITY AND INSURANCE

Contractor shall indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all liabilities, obligations, losses, claims, damages, costs, charges or other expenses of any kind (including, but not limited to, reasonable attorneys' fees and legal costs) (collectively, "Claims") which arise out of or result from any breach or alleged breach of any representation or warranty made by Contractor hereunder or any Claim that any of the Services or any portion thereof violates any copyright, patent, trademark, trade secret, license, or other proprietary right of any third party. Contractor shall reimburse the State for any judgments for infringement of patent or copyright rights. Contractor shall also indemnify, defend and hold Secretary, its officers, directors and employees harmless from and against any and all Claims for personal injury or damage to property arising out of the furnishing, performance or use of the Services provided hereunder as well as any Claim for payment of compensation or salary asserted by an employee of Contractor. Secretary shall provide Contractor with written notice of any Claim which Secretary believes falls within the scope of this Article XII. Secretary expressly reserves the sole right, at Secretary's option, to control the defense of any such Claim and, in such event, in addition to Contractor's other obligations in this Article XII, Contractor agrees to provide reasonable assistance to Secretary, at Contractor's expense, in the defense of any such Claim. Contractor shall not settle any Claim without the prior written consent of Secretary.

- 12.02** Contractor shall procure and maintain for itself and its employees all insurance coverages as required by federal or state law, including workers' compensation insurance. Contractor also agrees to maintain One Million Dollars (\$1,000,000.00) combined single limit general liability insurance. Contractor shall furnish to Secretary a certificate of insurance evidencing such coverage and naming Secretary as additional insured. Said certificate shall include a provision whereby notice must be received by Secretary thirty (30) days prior to coverage cancellation by either Contractor or Insurer.

Article XIII. COMPLIANCE WITH LAW

13.01 The Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the work authorized by this Contract. The Secretary shall not be liable for any taxes under this Contract.

Article XIV. LIMITATION OF LIABILITY

IN NO EVENT SHALL SECRETARY BE LIABLE, IN LAW OR EQUITY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF SECRETARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SECRETARY'S AGGREGATE LIABILITY TO CONTRACTOR FOR ANY AND ALL MATTERS RELATED TO THIS AGREEMENT OR OTHERWISE EXCEED THE TOTAL OF PAYMENTS DUE AND OWING TO CONTRACTOR BY SECRETARY HEREUNDER. THE LIMITATIONS IN THIS ARTICLE APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF AGREEMENT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

Article XV. CHANGE CONTROL

During the Term, Secretary shall have the right to request from Contractor changes from the scope of work as set forth in this Contract or as determined by an accepted Deliverable. Contractor shall, within a reasonable time not to exceed ten (10) business days after receipt of the proposal, inform Secretary in writing of the impact, if any, of the proposed change on the Production Schedule and/or the cost of the Services or Deliverables. Contractor shall evaluate the impact of the requested change, and use best efforts to respond with a proposal to effectuate the change without any material impact on the Production Schedule, or on the cost of the Services or Deliverables. To the extent that the proposed change has an impact on the cost of the Services, Contractor shall include in its response an option to perform the requested change both on a fixed price basis and an hourly rate basis (with an overall cap). Upon Secretary's written approval of Contractor's written response, such response shall be deemed to be an approved change (an "Approved Change"), and shall be deemed an amendment to this Contract.

Article XVI. GOVERNING LAW; VENUE AND JURISDICTION

This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio, without reference to the choice of law provisions thereof.

- 16.02 The parties hereto hereby consent to the exclusive jurisdiction and venue of the Ohio Court of Claims for any action that may be brought in connection with this Agreement other than a cross-claim for indemnification brought in response to a claim of infringement filed in another court. In the case of a cross-claim for indemnification, Contractor agrees to be subject to the jurisdiction and venue of the court in which the infringement claim is brought, provided that Secretary is also subject to jurisdiction and venue in that court.

Article XVII. COUNTERPARTS; TRANSMITTED COPIES

- 17.01 This Contract may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. To expedite the process of entering into this Contract, the parties acknowledge that Transmitted Copies of the Contract will be equivalent to original documents until such time as original documents are completely executed and delivered. "Transmitted Copies" will mean copies that are reproduced or transmitted via photocopy, facsimile or other process of complete and accurate reproduction and transmission.

Article XVIII. RELATIONSHIP OF PARTIES

The relationship between Contractor and Secretary under this Contract shall be that of independent contractors. Nothing in this Contract shall be construed to create the relationship of employer and employee, a joint venture, a partnership, or association between Contractor and Secretary.

Article XIX. REPRESENTATIONS OF THE PARTIES

- 19.01 Each party to this Contract represents to the other party that it has full power and authority to enter into this Contract and the execution, delivery and performance of this Contract do not violate the terms of any other Contract to which it is a party; or any law or regulation to which it is subject.

Article XX. CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS AND ELECTION LAW REQUIREMENTS FOR NONCOMPETITIVE BID CONTRACTS

- 20.01** Contractor by signature on this Contract certifies that Contractor is currently in compliance and will continue to adhere to the requirements of Ohio Ethics Laws as provided by Sections 102.03 and 102.04 of the Ohio Revised Code.

Contractor by signature on this Contract certifies that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party, has made as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Secretary of State of Ohio or to his campaign committees.

Article XXI. MISCELLANEOUS

The Recitals to this Agreement are not merely precatory but are fully incorporated into and constitute a substantive part of this Agreement.

- 21.02** The rights and responsibility arising under this Contract may not be assigned or delegated by either party hereto in whole or in part, without the prior written approval of the other party hereto.
- 21.03** If any provision of this Contract is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any other provision of this Contract
- 21.04** The parties agree that this Contract is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee, vendor, or customer of either party, and that there are no third party beneficiaries as to this Contract or any part or specific provision of this Contract.

This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

No waiver of any breach or of any of the terms or provisions of this Contract shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.

- 21.07** Any notices required or permitted by this Contract shall be sent by courier facsimile, or by registered or certified mail with return receipt requested. Notices shall be deemed given upon personal delivery to the addressee, or three days after the date of mailing if sent by registered or certified mail.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

Facsimile: (614) 644-0649

Notices to Contractor shall be sent to:


GovTech Solutions, LLC
3046 Brecksville Road
Richfield, Ohio 44286

Facsimile: (216) 781-3089

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates appearing below.

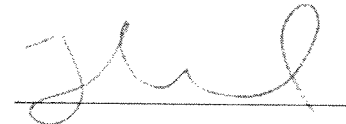
SECRETARY:

CONTRACTOR:


Monty Lobb

Assistant Secretary of State

Date: 3/18/03

By: 

Title: OPERATIONS MANAGER

Date: 3-29-03


FEDERAL TAX I.D. NUMBER

FEB-04-2004 06:06 PM

P. 02

AMENDMENT NO. 1
TO SECRETARY OF STATE CONTRACT NUMBER 180 (the "Contract")
BETWEEN
THE OFFICE OF THE OHIO SECRETARY OF STATE ("Secretary")
AND
GovTech Solutions, LLC ("GovTech")

WHEREAS, on July 1, 2003 Secretary and Contractor entered in to a Contract (SOS Contract No. 180);

WHEREAS, Secretary and Contractor hereby enter into this Amendment to add additional work to the Scope of Work and to extend the term of the Contract; and

NOW THEREFORE, the Parties agree as follows:

1. The Contract is amended to add the below tasks and deliverables:
 - a. Keeping same general theme as was introduced during the November 2003 election, GovTech shall expand the Election Night "dashboard" to allow for reporting of multiple races;
 - b. GovTech shall complete graphical changes to the site that will accommodate programmatic and race reporting requirements;
 - c. GovTech resources shall conduct appropriate levels of testing for changes/enhancements made to the application as well as for the environment;
 - d. GovTech shall provide onsite resources on the day and night of Election Night, March 2, 2004, to assist the Secretary to troubleshoot the application, if necessary;
 - i. Resource provided will be Mike Henry;
 - e. GovTech shall provide stress testing of the Installed Application by simulating the number of hits expected during election night. Should the initial tests have negative results, GovTech will work with the Secretary's IT Department to arrive at an acceptable solution to allow for this traffic level;
 - f. GovTech shall deliver the application for installation and testing by the Secretary's resources two (2) weeks in advance of the March 2, 2004 election;
 - g. GovTech shall continue to provide hosting services for the mirrored application;

Amendment No 1 to GovTech Contract No 180.doc

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P. 03

i. The Parties agree that GovTech shall subcontract its hosting responsibilities under this SOW to SMARTech Corporation, with offices located at 801 Broad Street, Suite 220, Chattanooga, TN 37402. GovTech may subcontract to another entity, but must first receive Secretary approval;

2. This Amendment is effective as of the 15th day of January 2004 and amends Section 4.01 of the Contract to extend the expiration date from January 15, 2004 to April 1, 2004.

3. Section 5.01 (b) of the Contract is amended to include an additional \$48,620.00 for the work identified in Section 1.a. to 1.f. of this Amendment. The total not to exceed rate listed in Section 5.01(b) is amended to be \$109,070.00.

4. Section 5.01 (c) of the Contract is amended to include the below additional rates (for a total of \$9,750.00), and the total not to exceed rate listed in 5.01(c) for hosting is amended to be \$20,425.00:

Description	Qty	Setup 1 Time	Monthly	Qty	Mo	Monthly Unit \$	MR Total	Total
Dell 2650 or Equiv (Oracle Svr)	1	\$750.00	\$750.00	1	2	\$850.00	\$1,700.00	\$2,450.00
Dell 1750 or Equiv (Web Server)	1	\$500.00	\$500.00	2	2	\$750.00	\$3,000.00	\$3,500.00
VPN Device	1	\$500.00	\$500.00	1	2	\$150.00	\$300.00	\$800.00
Shared MS SQL DB	1	\$500.00	\$500.00	1	2	\$300.00	\$600.00	\$1,100.00
Oracle SQL DB (Customer Provided SW)	1	\$500.00	\$500.00				\$0.00	\$500.00
Load Balanced Web Node	1	\$0.00	\$0.00	2	2	\$150.00	\$600.00	\$600.00
Nightly Backups (up to 50GB)			\$0.00	1	2	\$150.00	\$300.00	\$300.00
Short Term Contract Teardown	1	\$500.00	\$500.00				\$0.00	\$500.00
		\$3,250.00					\$6,500.00	\$9,750.00

5. Section 5.01 (f) of the Contract is amended to include an additional \$1,500.00 for travel and expenses. The total not to exceed rate listed in Section 5.01(f) is amended to be \$3,500.00.

6. Section 5.01 (g) of the Contract is amended to add \$59,870.00 to the total not exceed rate for the above additional fees. The total not to exceed rate listed in Section 5.01(g) is amended to be \$132,995.00.

7. This Amendment is effective only for the term of the Contract.

Amendment No 1 to GovTech Contract No 180.doc

FEB-04-2004 06:07 PM

P. 04

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the date shown below by their respective duly authorized representatives.

Office of the Ohio Secretary of State:

GovTech Solutions, LLC:

By: Monty Lobb
Monty Lobb

By: [Signature]

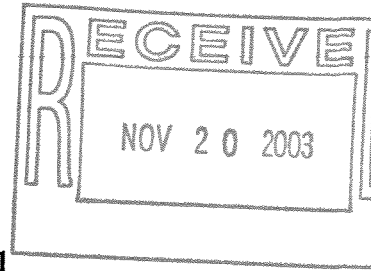
Title: Assistant Secretary of State

Title: OPERATIONAL MANAGER

Date: 1/15/04

Date: 1-15-04

FEDERAL TAX I.D. NUMBER OR
SOCIAL SECURITY NUMBER



STATEMENT OF WORK

UNDER STATE TERM SCHEDULE NUMBER 533384-1

Secretary of State Contract Number 180

This Statement of Work is between the **Office of the Ohio Secretary of State** (hereinafter the "Secretary"), located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215, and **GovTech Solutions, LLC**, an Ohio limited liability company, with offices at 3046 Brecksville Road, Suite D, Richfield, Ohio 44286 (hereinafter "GovTech") (Secretary and GovTech each referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Secretary currently maintains an election night system; however, the current system requires an updated customer facing presentation layer (hereinafter the "Application").

WHEREAS, Secretary wishes to update it's Application with a browser based and user friendly interface that does not require the installation of software on the end-user's machine.

WHEREAS, GovTech is in the business of providing Internet World Wide Web development, programming and related services, including technical and creative services;

WHEREAS, Secretary wishes to retain the services of GovTech to perform certain Application planning and design related services, including, providing technical and creative services in connection with the development of the new interactive Election Night Web site as described more fully herein; and

WHEREAS, GovTech wishes to provide Secretary with such services;

THEREFORE, the parties, for good and valuable consideration and based on the mutual promises recited herein, do agree as follows:

Article I. STATE TERM SCHEDULE

1.01 This Statement of Work ("SOW") is entered into under the authority of State Term Schedule **533384-1** (the "STS") and incorporates by reference the Terms & Conditions of the STS.

Article II. DEFINITIONS

2.01 “Acceptance” or “Accepted” when used in this Agreement means signoff by the Secretary for GovTech’s completion of either the Planning Phase or Application Design Phase.

2.02 “Application” shall mean the updated customer facing presentation layer over the Secretary’s current election night system.

2.03 “Application Design” shall mean the Application Look and Feel of the User Interface including the general workflow that the end-user would experience. The Application Design does not include integration with the Secretary’s back end databases and systems. However, the Application Design does take into consideration the Secretary’s Election Night Database and systems in development of the Application Design.

2.04 “Application Design Phase” shall mean the phase in which the GovTech develops the Application’s Look and Feel and general workflow.

2.05 “Application Design Phase Deliverables” shall mean those items described below that the GovTech commits to provide to Secretary at the completion of the Application Design Phase:

- (a) Key screens of the User Interface for the GovTech’s proposed Election Night Application, to include both 2003 and 2004 screen sets;

- (b) General workflow for the GovTech’s proposed Election Night Application;

- (c) Project plan, time and cost estimate for development phase, should Secretary so desire to proceed with project.

2.06 “Look and Feel” shall mean the general appearance and operation of the Application Web site.

2.07 “Election Night System” shall mean the Secretary’s Election Night System comprised of the front-end, customer facing presentation layer, administrative content management interface and supporting databases.

2.08 “Election Night Database” shall mean the Secretary’s Election Night Database that is a component of the Secretary’s Election Night System.

2.09 “Planning Phase” shall mean the initial phase during which GovTech performs basic research in consultation with the Secretary to establish the information base for the creation of the Application Design.

2.10 “Planning Phase Deliverables” shall mean those items described below which GovTech commits to provide to Secretary at the completion of the Planning Phase:

- (a) A written description of the “Scope of Work” that describes the Project idea, time frame, constraints, and available resources;
- (b) A written description of the “Requirements” that describes the high-level business requirements for the application;
- (c) A written description of the “Functional Specifications” that describes in detail how the Requirements will manifest in the Application; the Functional Specifications may include screen shots, process flows, and other resources to assist in communicating the expected behavior of the Application;
- (d) A written description of the “Project Plan Schedule” for the design phase containing the detailed work items, resources, relationships, and timeline for building the Application. The plan should also include plans for testing and application evaluation, as well as escalation and disaster recovery plans.

2.11 “Project” shall mean the undertaking by GovTech to work with Secretary to develop an Application Design for Secretary’s Election Night Application, that is preliminarily described in the Draft Requirements, and as will be further defined in the Functional Specifications and shall progress as procedurally described in this Agreement.

2.12 “User Interface” shall mean the junction between a user of the Election Night Application and the Election Night System.

Article III. SCOPE OF WORK

3.01 “Engagement” Secretary hereby retains GovTech to develop an Application Design (as further described in this Article) for the Secretary’s Election Night System, effective as of the Effective Date defined in Article IV, and GovTech hereby accepts such retention by Secretary.

3.02 “Acceptance of Engagement” GovTech will complete the Project and deliver the Components as described in the Specifications.

3.03 Planning Phase The first portion of the Project shall be the Planning Phase. The GovTech shall also deliver to the Secretary the Planning Phase Deliverables.

3.04 Application Design Phase Concurrent with the development of Project Plan shall be the Application Design Phase. GovTech shall undertake the activities as outlined in the Project Plan Schedule, as developed in the Planning Phase. GovTech shall also deliver to the Secretary the Planning Phase Deliverables.

3.05 Application Design Parameters GovTech shall develop the Application Design with the following parameters such that the Election Night Application will:

- (a) Meet the expectations of typical Internet users and will not require any additional software installation;
- (b) Comply with all requirements stated in section 3517.106 and divisions (C)(6)(b) and (D)(6) of section 3517.10 of the Revised Code;
- (c) Be based on the known data structures and relationships in the Secretary's existing Election Night Database;
- (d) Provide for appropriate authentication procedures; and
- (e) Be in accordance with the other requirements listed in Exhibit A.

3.06 Installation Phase Upon completion and Acceptance of the Application, GovTech shall install the Application on a Server owned and designated by the Secretary.

- (a) GovTech shall provide an onsite resource for the Installation of the Application.
- (b) GovTech shall provide stress testing of the Installed Application by simulating the number of hits expected during election night. Should the initial tests have negative results, GovTech will work with the Secretary's IT Department to arrive at an acceptable solution to allow for this traffic level.
- (c) GovTech shall also provide an onsite resource on the day and night of the election, November 4, 2003, to assist the Secretary to troubleshoot the Application, if necessary.

3.07 Mirror Application GovTech shall install and host (as set forth in Exhibit B) a Mirror site of the Application to provide a failover solution in the event of failure of the primary installation on Election Day.

- (a) GovTech shall perform stress testing of the Mirror site.
- (b) The Parties agree that GovTech shall subcontract its hosting responsibilities under this SOW to SMARTech Corporation, with offices located at 801 Broad Street, Suite 220, Chattanooga, TN 37402. GovTech may subcontract to another entity, but must first receive Secretary approval.

3.08 In addition to the Planning Phase Deliverables, the Application Design Deliverables, and the Installation and Mirroring Deliverables, GovTech shall provide timely status reports to Secretary.

Article IV. TERM

4.01 This SOW is effective as of the 1st day of July 2003. This SOW will automatically expire on January 15, 2004. Unless this SOW is terminated or expires without renewal, it will remain in effect until the Services are completed to the satisfaction of the Secretary and GovTech is paid. Satisfaction of the Secretary shall be judged on a reasonable standard. The current General Assembly cannot commit a future General Assembly to expenditures. The Secretary, however, may renew this SOW in the next biennium by issuing written or electronic notice to GovTech of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Services continues.

4.02 Timeliness of Performance. GovTech understands that prompt performance of all services hereunder is required by Secretary in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting Secretary's deadlines or scheduled completion dates are caused by the unacceptable performance of any GovTech employee or any other cause within the reasonable control of GovTech, GovTech shall provide additional temporary personnel, as requested by Secretary and at no charge to Secretary, in order to complete the assignment involved in a timely manner. Neither party, however, shall be responsible for any delays that are not due to such party's fault or negligence or that could not have reasonably been foreseen or provided against.

Article V. COMPENSATION

5.01 In consideration for the promises and performance of GovTech as set forth herein, the Secretary agrees to:

(a) Pay GovTech, upon submission of appropriately detailed and accurate invoices for services performed by GovTech in accordance with Article III, Sections 3.01 to 3.06, and Exhibit A of this SOW at the hourly rates as follows:

- i.) RE-SRV-DEV2 Application Developer II \$135/hour
- ii.) RE-SRV-DEV3 Application Developer III \$175/hour
- iii.) RE-SRV-MRG1 Project Manager I \$160/hour
- iv.) RE-SRV-MRG2 Project Manager II \$185/hour
- v.) RE-SRV-INSTALL2 System Integrator II \$175/hour

(b) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article III, Sections 3.01 to 3.06, and Exhibit A exceed **SIXTY THOUSAND FOUR HUNDRED AND FIFTY DOLLARS AND 00/100 CENTS (\$60,450.00).**

(c) Pay GovTech, upon submission of appropriately detailed and accurate invoices for services performed by GovTech in accordance with Article III, Section

3.07, and Exhibit B of this SOW at the rates as follows:

Description	Qty	Setup 1 Time	Monthly	Qty Mo	MR Total	Total
Dell 2650 or Equiv (Oracle Svr)	1	\$750.00	\$850.00	2	\$1,700.00	\$2,450.00
Dell 1750 or Equiv (Web Server)	2	\$1,500.00	\$1,500.00	2	\$3,000.00	\$4,500.00
VPN Device	1	\$500.00	\$150.00	2	\$300.00	\$800.00
Shared MS SQL DB	1	\$500.00	\$150.00	2	\$300.00	\$800.00
Oracle SQL DB (Customer Provided SW)	1	\$950.00	\$ -			\$950.00
Load Balanced Web Node	1	\$125.00	\$125.00	2	\$250.00	\$375.00
Nightly Backups (up to 50GB)			\$150.00	2	\$300.00	\$300.00
Short Term Contract Teardown	1	\$500.00				\$500.00
		\$4,825.00			\$5,850.00	\$10,675.00

(d) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article I and Exhibit A exceed **TEN THOUSAND SIX HUNDRED SEVENTY FIVE DOLLARS AND 00/100 CENTS (\$10,675.00)**.

(e) Pay GovTech, upon submission of appropriately detailed and accurate itemization of expenses. GovTech must submit original receipts for all expenses. GovTech's expenses shall comply with the requirements outlined in the attached Schedule A.

(f) In no event shall the cost to the Secretary under this contract for expenses exceed **TWO THOUSAND DOLLARS AND 00/100 CENTS (\$2,000.00)**.

(g) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article I plus any applicable expenses exceed **SEVENTY-THREE THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS AND 00/100 CENTS (\$73,125.00)**.

5.02 Any Deliverables shall be accompanied by an appropriately detailed and accurate invoice for services performed and expenses incurred.

5.03 An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify GovTech within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to

correct the defect or impropriety.

5.04 GovTech shall first forward all Invoices and Deliverables to Dilip C. Mehta, Chief Financial Officer, for review and approval at the following location:

Secretary of State of Ohio
Attn: Dilip C. Mehta, Chief Financial Officer
180 East Broad Street, 17th Floor
Columbus, Ohio 43215

5.05 Section 126.30 of the Ohio Revised Code is applicable to this SOW and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month that equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

5.06 Unless expressly provided for elsewhere in this SOW, GovTech shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this SOW.

5.07 The Secretary is exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on GovTech in connection with the Services, such will be the sole and exclusive responsibility of GovTech, and GovTech will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

Article VI. MISCELLANEOUS

6.01 The rights and responsibility arising under this SOW may not be assigned or delegated by either party hereto in whole or in part, without the prior written approval of the other party hereto.

6.02 Contractor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

6.03 The Contractor may subcontract the work required to be performed under this Contract with the prior written approval by the Secretary.

6.04 If any provision of this SOW is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any other provision of this

SOW

6.05 The parties agree that this SOW is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee, vendor, or customer of either party, and that there are no third party beneficiaries as to this SOW or any part or specific provision of this SOW.

6.06 This SOW shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

6.07 No waiver of any breach or of any of the terms or provisions of this SOW shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.

6.08 Any notices required or permitted by this SOW shall be sent by courier facsimile, or by registered or certified mail with return receipt requested. Notices shall be deemed given upon personal delivery to the addressee, or three days after the date of mailing if sent by registered or certified mail.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

Facsimile: (614) 644-0649

Notices to GovTech shall be sent to:

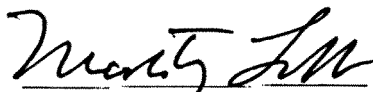
GovTech Solutions, LLC
3046 Brecksville Road, Suite D
Richfield, Ohio 44286

Facsimile: (330) 659-7388

IN WITNESS WHEREOF, the parties have executed this Statement of Work as of the dates appearing below.

Secretary:

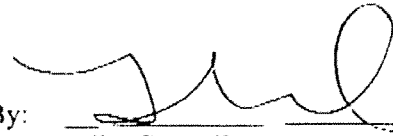
By:


Monty Lobb

Title: Assistant Secretary of State

GovTech:

By:


Mike Connell


Title: Operations Manager

OH SOS Election Night Contract FY04.FINAL.doc

Date: 7/1/03

Date: 7-1-03

Please Date
7/1/03


FEDERAL TAX I.D. NUMBER

OH SOS Election Night Contract FY04.FINAL.doc

EXHIBIT A

To Statement of Work (Secretary of State Contract Number 180)

Election Night Data Collection & Reporting Application

Background

The Secretary of State of Ohio (SOS) has identified a need for upgrading their Election Night data collection and reporting application. While the current back-end solution, created in Oracle, offers acceptable data storage and tracking, the front-end customer facing application requires a new level of sophistication. Requirements for consideration are reported below.

Requirements

Application

- Create a “dazzling” site that is user friendly, intuitive;
- The site shall be written in the .net programming language;
- Site must be fast loading by industry standards and easy to navigate;
- If the site contains items owned by third parties, such as photographs, software code, etc., then those items must be licensed for use on the site;
- Create a presentation layer that accurately reads and displays data from Oracle database
- Application should be scalable
- Provide online, real-time update of data;
- Browser based, allowing for access through the following means:
 - LAN/WAN;
 - DSL;
 - Cable modem;
 - Dial up;
 - ISP;
 - Wireless;
- Compatible with IE 5.0 and higher and Netscape 4.0 and higher;
- Provide mechanism for easy reporting of data provided by SOS’s Election Night system:
 - Issues;
 - Questions;
 - Candidates;
- Allow for easy modification of application via a content manager interface by SOS
- Provide links to SOS website, Ohio.gov and others as appropriate;

Reports/Results

- Provide ability to produce reports based on the following:

- Candidates, including the following fields:
 - Candidate name;
 - Party;
 - Number of votes;
 - Percentage of total votes counted;
 - Race;
 - Number of precincts reporting of total number of precincts*;
- Issues/Questions, including the following fields:
 - Issue/Question name;
 - For;
 - Against;
 - Number of votes;
 - Percentage of total votes counted;
 - Number of precincts reporting of total number of precincts*;
- Voter turnout:
 - By county;
 - By district;
 - By precinct*;
- By precinct*;
 - Number of precincts reported of total precincts* for district;
- Sort by party;
- By county;
- Summary;
- Present in format that is printer friendly
- Allow for automated distribution of reports by:
 - Email;
 - Server;
 - Multiple locations;

* Note: precinct data to be collected and reported after election results have been finalized.

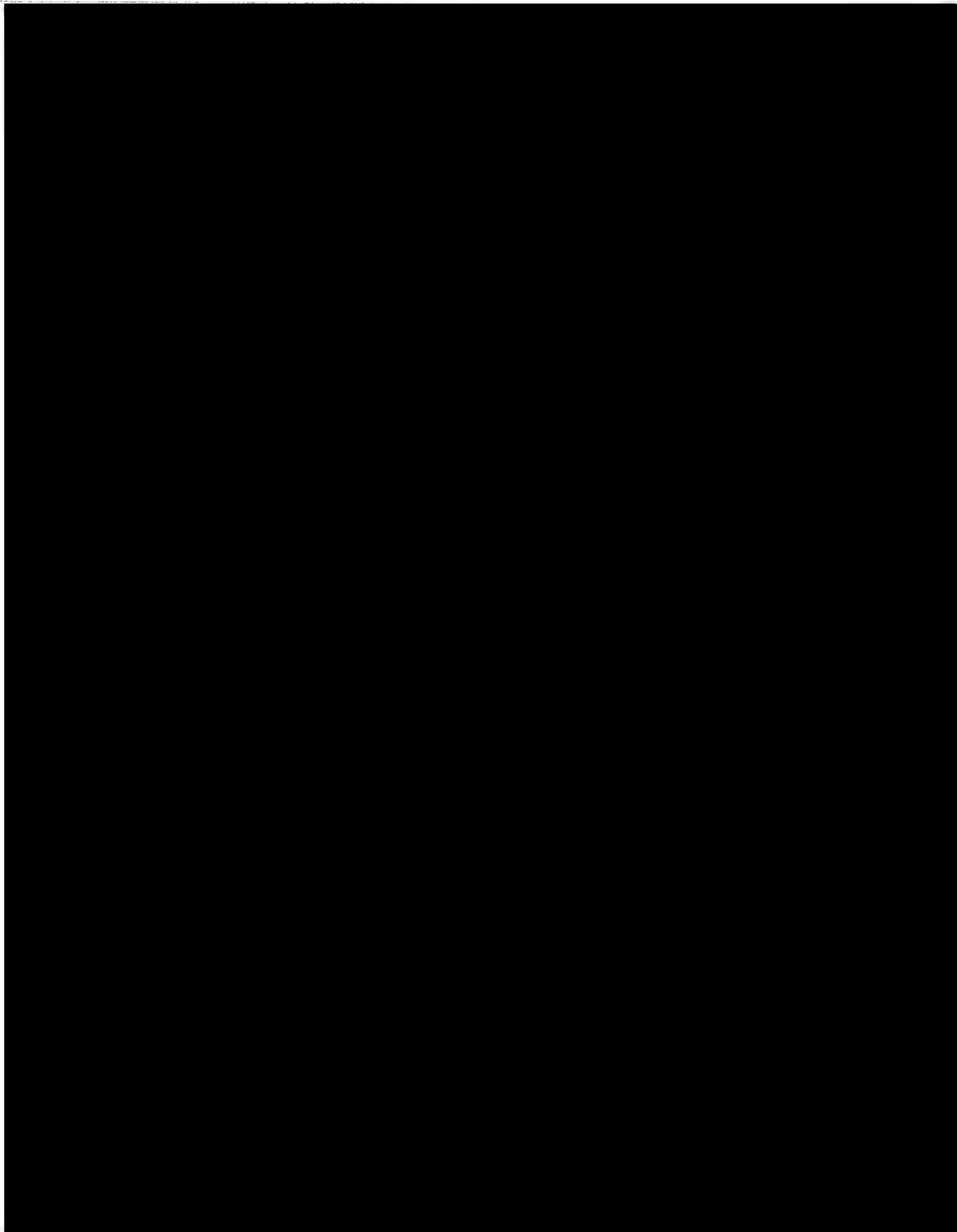
EXHIBIT B

To Statement of Work (Secretary of State Contract Number 180)

Mirror Site Hosting

SMARTech proposes to provide the State of Ohio SOS with a backup offsite hosting configuration shown as follows:

State of Ohio SOS Server Layout



SMARTech will work with your IT folks to configure a hot standby mirror site for your Election Night Backup plan. The Chattanooga based equipment will consist of a 2.4Ghz Xeon dual processor Dell 1750 Web server connected to a Dell 2650 Single 2.8Ghz Xeon processor with onboard RAID Oracle DB Server and a SMARTech Shared MS SQL server. A hardware VPN device will allow access to a private network connecting the servers for database replication services as well as remote admin. The webserver will contain a software firewall which will be configured to allow Port 80 internet traffic only. FTP access will be allowed through the SMARTech secure FTP server with a virtually mapped connection to the private network side of the servers. The above server configuration includes up to 150GB of bandwidth per month. Additional bandwidth will be charged at the rates shown in the **Bandwidth and Services Pricing** section.

The hot rollover configuration will still need some design coordination but will essentially consist of a DNS rollover feature which is accomplished by working with the TTL timing and DNS forwarding. We can completely re-point the site if the primary site should fail by using some remote monitoring capabilities.

We understand that this configuration is needed only for the election period. We suggest that the remote site be configured 1 month before the election which will allow the operation and testing to be accomplished prior.

All access to the servers will be allowed through the VPN device. Firewalls will not allow public access to the administrative functions of the server farm.

Bandwidth and Services Pricing

Encoding

Set-up Fee per Media Format: \$100.00
Encoding Rate: \$5/minute

Streaming Storage

\$ rate per Megabyte/ per month (only in conjunction with streaming services)		
<1,000 mb		\$ 0.04
1,000 -	5,000 mb	\$ 0.03
5,001 -	10,000 mb	\$ 0.025
10,001 -	20,000 mb	\$ 0.02
20,001 -	50,000 mb	\$ 0.0175
50,001 -	100,000 mb	\$ 0.015
100,001 +	mb	\$ 0.01

Streaming On Demand

Usage per month	Real Media Format	All Other Formats
0 - 50,000 mb	\$ 0.025	\$ 0.01
50,001 - 200,000 mb	\$ 0.0225	\$ 0.009
200,001 - 250,000 mb	\$ 0.02	\$ 0.008
250,001 - 1,000,000 mb	\$ 0.015	\$ 0.007
1,000,001 - 2,500,000 mb	\$ 0.01	\$ 0.005
2,500,001 - 7,500,000 mb	\$ 0.0075	\$ 0.004
7,500,001 - 15,000,000 mb	\$ 0.005	\$ 0.003
15,000,001 + (individual case basis)		

Live Streaming

Maximum encoding rate 400 KBPS (set-up fees not included)				
Max Simultaneous Streams	1 hour	2 hours	3 hours	4 hours
500	\$1,200	\$1,900	\$2,300	\$2,800
1,000	\$1,500	\$2,200	\$2,600	\$3,100
5,000	\$4,000	\$4,500	\$5,000	\$5,500
10,000	\$8,000	\$9,000	\$11,000	\$13,000
>10,000	(Individual case basis)			
Any event over 4 hours to be quoted on a case by case basis.				

Website

Bandwidth

Gigabyte (GB)	Per/Megabyte (MB)
Up to 5000	\$0.0050
Up to 2000	\$0.0750
Up to 1000	\$0.0100
Up to 500	\$0.0150
Up to 250	\$0.0200
GovTech Contract FY04 (Election Night)	Included in Monthly fee

STATEMENT OF WORK

UNDER STATE TERM SCHEDULE NUMBER 533384-1

Secretary of State Contract Number 180

This Statement of Work is between the **Office of the Ohio Secretary of State** (hereinafter the "Secretary"), located at 180 E. Broad Street, 16th Floor, Columbus, Ohio 43215, and **GovTech Solutions, LLC**, an Ohio limited liability company, with offices at 3046 Brecksville Road, Suite D, Richfield, Ohio 44286 (hereinafter "GovTech") (Secretary and GovTech each referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Secretary currently maintains an election night system; however, the current system requires an updated customer facing presentation layer (hereinafter the "Application").

WHEREAS, Secretary wishes to update it's Application with a browser based and user friendly interface that does not require the installation of software on the end-user's machine.

WHEREAS, GovTech is in the business of providing Internet World Wide Web development, programming and related services, including technical and creative services;

WHEREAS, Secretary wishes to retain the services of GovTech to perform certain Application planning and design related services, including, providing technical and creative services in connection with the development of the new interactive Election Night Web site as described more fully herein; and

WHEREAS, GovTech wishes to provide Secretary with such services;

THEREFORE, the parties, for good and valuable consideration and based on the mutual promises recited herein, do agree as follows:

Article I. STATE TERM SCHEDULE

1.01 This Statement of Work ("SOW") is entered into under the authority of State Term Schedule **533384-1** (the "STS") and incorporates by reference the Terms & Conditions of the STS.

Article II. DEFINITIONS

2.01 “Acceptance” or Accepted when used in this Agreement means signoff by the Secretary for GovTech’s completion of either the Planning Phase or Application Design Phase.

2.02 “Application” shall mean the updated customer facing presentation layer over the Secretary’s current election night system.

2.03 “Application Design” shall mean the Application Look and Feel of the User Interface including the general workflow that the end-user would experience. The Application Design does not include integration with the Secretary’s back end databases and systems. However, the Application Design does take into consideration the Secretary’s Election Night Database and systems in development of the Application Design.

2.04 “Application Design Phase” shall mean the phase in which the GovTech develops the Application’s Look and Feel and general workflow.

2.05 “Application Design Phase Deliverables” shall mean those items described below that the GovTech commits to provide to Secretary at the completion of the Application Design Phase:

- (a) Key screens of the User Interface for the GovTech’s proposed Election Night Application, to include both 2003 and 2004 screen sets;
- (b) General workflow for the GovTech’s proposed Election Night Application;
- (c) Project plan, time and cost estimate for development phase, should Secretary so desire to proceed with project.

2.06 “Look and Feel” shall mean the general appearance and operation of the Application Web site.

2.07 “Election Night System” shall mean the Secretary’s Election Night System comprised of the front-end, customer facing presentation layer, administrative content management interface and supporting databases.

2.08 “Election Night Database” shall mean the Secretary’s Election Night Database that is a component of the Secretary’s Election Night System.

2.09 “Planning Phase” shall mean the initial phase during which GovTech performs basic research in consultation with the Secretary to establish the information base for the creation of the Application Design.

2.10 “Planning Phase Deliverables” shall mean those items described below which GovTech commits to provide to Secretary at the completion of the Planning Phase:

(a) A written description of the “Scope of Work” that describes the Project idea, time frame, constraints, and available resources;

(b) A written description of the “Requirements” that describes the high-level business requirements for the application;

(c) A written description of the “Functional Specifications” that describes in detail how the Requirements will manifest in the Application; the Functional Specifications may include screen shots, process flows, and other resources to assist in communicating the expected behavior of the Application;

(d) A written description of the “Project Plan Schedule” for the design phase containing the detailed work items, resources, relationships, and timeline for building the Application. The plan should also include plans for testing and application evaluation, as well as escalation and disaster recovery plans.

2.11 “Project” shall mean the undertaking by GovTech to work with Secretary to develop an Application Design for Secretary’s Election Night Application, that is preliminarily described in the Draft Requirements, and as will be further defined in the Functional Specifications and shall progress as procedurally described in this Agreement.

2.12 “User Interface” shall mean the junction between a user of the Election Night Application and the Election Night System.

Article III. SCOPE OF WORK

3.01 “Engagement” Secretary hereby retains GovTech to develop an Application Design (as further described in this Article) for the Secretary’s Election Night System, effective as of the Effective Date defined in Article IV, and GovTech hereby accepts such retention by Secretary.

3.02 “Acceptance of Engagement” GovTech will complete the Project and deliver the Components as described in the Specifications.

3.03 Planning Phase The first portion of the Project shall be the Planning Phase. The GovTech shall also deliver to the Secretary the Planning Phase Deliverables.

3.04 Application Design Phase Concurrent with the development of Project Plan shall be the Application Design Phase. GovTech shall undertake the activities as outlined in the Project Plan Schedule, as developed in the Planning Phase. GovTech shall also deliver to the Secretary the Planning Phase Deliverables.

3.05 Application Design Parameters GovTech shall develop the Application Design with the following parameters such that the Election Night Application will:

- (a) Meet the expectations of typical Internet users and will not require any additional software installation;
- (b) Comply with all requirements stated in section 3517.106 and divisions (C)(6)(b) and (D)(6) of section 3517.10 of the Revised Code;
- (c) Be based on the known data structures and relationships in the Secretary's existing Election Night Database;
- (d) Provide for appropriate authentication procedures; and
- (e) Be in accordance with the other requirements listed in Exhibit A.

3.06 Installation Phase Upon completion and Acceptance of the Application, GovTech shall install the Application on a Server owned and designated by the Secretary.

- (a) GovTech shall provide an onsite resource for the Installation of the Application.
- (b) GovTech shall provide stress testing of the Installed Application by simulating the number of hits expected during election night. Should the initial tests have negative results, GovTech will work with the Secretary's IT Department to arrive at an acceptable solution to allow for this traffic level.
- (c) GovTech shall also provide an onsite resource on the day and night of the election, November 4, 2003, to assist the Secretary to troubleshoot the Application, if necessary.

3.07 Mirror Application GovTech shall install and host (as set forth in Exhibit B) a Mirror site of the Application to provide a failover solution in the event of failure of the primary installation on Election Day.

- (a) GovTech shall perform stress testing of the Mirror site.
- (b) The Parties agree that GovTech shall subcontract its hosting responsibilities under this SOW to SMARTech Corporation, with offices located at 801 Broad Street, Suite 220, Chattanooga, TN 37402. GovTech may subcontract to another entity, but must first receive Secretary approval.

3.08 In addition to the Planning Phase Deliverables, the Application Design Deliverables, and the Installation and Mirroring Deliverables, GovTech shall provide timely status reports to Secretary.

Article IV. TERM

4.01 This SOW is effective as of the 1st day of July 2003. This SOW will automatically expire on January 15, 2004. Unless this SOW is terminated or expires without renewal, it will remain in effect until the Services are completed to the satisfaction of the Secretary and GovTech is paid. Satisfaction of the Secretary shall be judged on a reasonable standard. The current General Assembly cannot commit a future General Assembly to expenditures. The Secretary, however, may renew this SOW in the next biennium by issuing written or electronic notice to GovTech of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Services continues.

4.02 Timeliness of Performance. GovTech understands that prompt performance of all services hereunder is required by Secretary in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting Secretary's deadlines or scheduled completion dates are caused by the unacceptable performance of any GovTech employee or any other cause within the reasonable control of GovTech, GovTech shall provide additional temporary personnel, as requested by Secretary and at no charge to Secretary, in order to complete the assignment involved in a timely manner. Neither party, however, shall be responsible for any delays that are not due to such party's fault or negligence or that could not have reasonably been foreseen or provided against.

Article V. COMPENSATION

5.01 In consideration for the promises and performance of GovTech as set forth herein, the Secretary agrees to:

(a) Pay GovTech, upon submission of appropriately detailed and accurate invoices for services performed by GovTech in accordance with Article III, Sections 3.01 to 3.06, and Exhibit A of this SOW at the hourly rates as follows:

- i.) RE-SRV-DEV2 Application Developer II \$135/hour
- ii.) RE-SRV-DEV3 Application Developer III \$175/hour
- iii.) RE-SRV-MRG1 Project Manager I \$160/hour
- iv.) RE-SRV-MRG2 Project Manager II \$185/hour
- v.) RE-SRV-INSTALL2 System Integrator II \$175/hour

(b) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article III, Sections 3.01 to 3.06, and Exhibit A exceed **SIXTY THOUSAND FOUR HUNDRED AND FIFTY DOLLARS AND 00/100 CENTS (\$60,450.00).**

(c) Pay GovTech, upon submission of appropriately detailed and accurate invoices for services performed by GovTech in accordance with Article III, Section

3.07, and Exhibit B of this SOW at the rates as follows:

Description	Qty	Setup 1 Time	Monthly	Qty Mo	MR Total	Total
Dell 2650 or Equiv (Oracle Svr)	1	\$750.00	\$850.00	2	\$1,700.00	\$2,450.00
Dell 1750 or Equiv (Web Server)	2	\$1,500.00	\$1,500.00	2	\$3,000.00	\$4,500.00
VPN Device	1	\$500.00	\$150.00	2	\$300.00	\$800.00
Shared MS SQL DB	1	\$500.00	\$150.00	2	\$300.00	\$800.00
Oracle SQL DB (Customer Provided SW)	1	\$950.00	\$ -			\$950.00
Load Balanced Web Node	1	\$125.00	\$125.00	2	\$250.00	\$375.00
Nightly Backups (up to 50GB)			\$150.00	2	\$300.00	\$300.00
Short Term Contract Teardown	1	\$500.00				\$500.00
		\$4,825.00			\$5,850.00	\$10,675.00

(d) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article I and Exhibit A exceed **TEN THOUSAND SIX HUNDRED SEVENTY FIVE DOLLARS AND 00/100 CENTS (\$10,675.00)**.

(e) Pay GovTech, upon submission of appropriately detailed and accurate itemization of expenses. GovTech must submit original receipts for all expenses. GovTech's expenses shall comply with the requirements outlined in the attached Schedule A.

(f) In no event shall the cost to the Secretary under this contract for expenses exceed **TWO THOUSAND DOLLARS AND 00/100 CENTS (\$2,000.00)**.

(g) In no event shall the cost to the Secretary under this contract for services performed as detailed in Article I plus any applicable expenses exceed **SEVENTY-THREE THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS AND 00/100 CENTS (\$73,125.00)**.

5.02 Any Deliverables shall be accompanied by an appropriately detailed and accurate invoice for services performed and expenses incurred.

5.03 An invoice is not proper if it contains a defect or impropriety. A proper invoice shall include, but is not limited to, the identification of a purchase number, the date of service and the service provided. The Secretary shall notify GovTech within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to

correct the defect or impropriety.

5.04 GovTech shall first forward all Invoices and Deliverables to Dilip C. Mehta, Chief Financial Officer, for review and approval at the following location:

Secretary of State of Ohio
Attn: Dilip C. Mehta, Chief Financial Officer
180 East Broad Street, 17th Floor
Columbus, Ohio 43215

5.05 Section 126.30 of the Ohio Revised Code is applicable to this SOW and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month that equals one twelfth of the rate per annum prescribed in Section 5703.47 of the Ohio Revised Code.

5.06 Unless expressly provided for elsewhere in this SOW, GovTech shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this SOW.

5.07 The Secretary is exempt from any sales, use, excise and property tax. To the extent sales, use, excise or any similar tax is imposed on GovTech in connection with the Services, such will be the sole and exclusive responsibility of GovTech, and GovTech will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the services are rendered or a later time.

Article VI. MISCELLANEOUS

6.01 The rights and responsibility arising under this SOW may not be assigned or delegated by either party hereto in whole or in part, without the prior written approval of the other party hereto.

6.02 Contractor affirmatively represents and warrants to the Secretary that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation and warranty is deemed to be false, the Contract shall be void *ab initio* as between the parties to this Contract, and any funds paid by Secretary hereunder shall be immediately repaid to Secretary, or an action for recovery may be immediately commenced by Secretary for recovery of said funds.

6.03 The Contractor may subcontract the work required to be performed under this Contract with the prior written approval by the Secretary.

6.04 If any provision of this SOW is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any other provision of this

SOW

6.05 The parties agree that this SOW is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee, vendor, or customer of either party, and that there are no third party beneficiaries as to this SOW or any part or specific provision of this SOW.

6.06 This SOW shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

6.07 No waiver of any breach or of any of the terms or provisions of this SOW shall be, or be construed to be, a waiver of any preceding or succeeding breach of the same or any other provision hereof.

6.08 Any notices required or permitted by this SOW shall be sent by courier facsimile, or by registered or certified mail with return receipt requested. Notices shall be deemed given upon personal delivery to the addressee, or three days after the date of mailing if sent by registered or certified mail.

Notices to Secretary shall be sent to:

The Office of the Ohio Secretary of State
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

Facsimile: (614) 644-0649

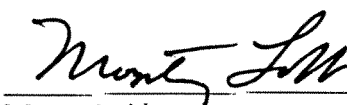
Notices to GovTech shall be sent to:

GovTech Solutions, LLC
3046 Brecksville Road, Suite D
Richfield, Ohio 44286

Facsimile: (330) 659-7388


IN WITNESS WHEREOF, the parties have executed this Statement of Work as of the dates appearing below.

Secretary:

By: 
Monty Lobb

Title: Assistant Secretary of State

GovTech:

By: 
Mike Connell

Title: Operations Manager

OH SOS Election Night Contract FY04.FINAL.doc

Date: 7/1/03

Date: 7-1-03



FEDERAL TAX I.D. NUMBER

OH SOS Election Night Contract FY04.FINAL.doc

EXHIBIT A

To Statement of Work (Secretary of State Contract Number 180)

Election Night Data Collection & Reporting Application

Background

The Secretary of State of Ohio (SOS) has identified a need for upgrading their Election Night data collection and reporting application. While the current back-end solution, created in Oracle, offers acceptable data storage and tracking, the front-end customer facing application requires a new level of sophistication. Requirements for consideration are reported below.

Requirements

Application

- Create a “dazzling” site that is user friendly, intuitive;
- The site shall be written in the .net programming language;
- Site must be fast loading by industry standards and easy to navigate;
- If the site contains items owned by third parties, such as photographs, software code, etc., then those items must be licensed for use on the site;
- Create a presentation layer that accurately reads and displays data from Oracle database
- Application should be scalable
- Provide online, real-time update of data;
- Browser based, allowing for access through the following means:
 - LAN/WAN;
 - DSL;
 - Cable modem;
 - Dial up;
 - ISP;
 - Wireless;
- Compatible with IE 5.0 and higher and Netscape 4.0 and higher;
- Provide mechanism for easy reporting of data provided by SOS’s Election Night system:
 - Issues;
 - Questions;
 - Candidates;
- Allow for easy modification of application via a content manager interface by SOS
- Provide links to SOS website, Ohio.gov and others as appropriate;

Reports/Results

- Provide ability to produce reports based on the following:

- Candidates, including the following fields:
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 - Number of votes;
 - Percentage of total votes counted;
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 - Number of precincts reporting of total number of precincts*;
- Issues/Questions, including the following fields:
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 - Number of precincts reporting of total number of precincts*;
- Voter turnout:
 - By county;
 - By district;
 - By precinct*;
- By precinct*;
 - Number of precincts reported of total precincts* for district;
- Sort by party;
- By county;
- Summary;
- Present in format that is printer friendly
- Allow for automated distribution of reports by:
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* Note: precinct data to be collected and reported after election results have been finalized.

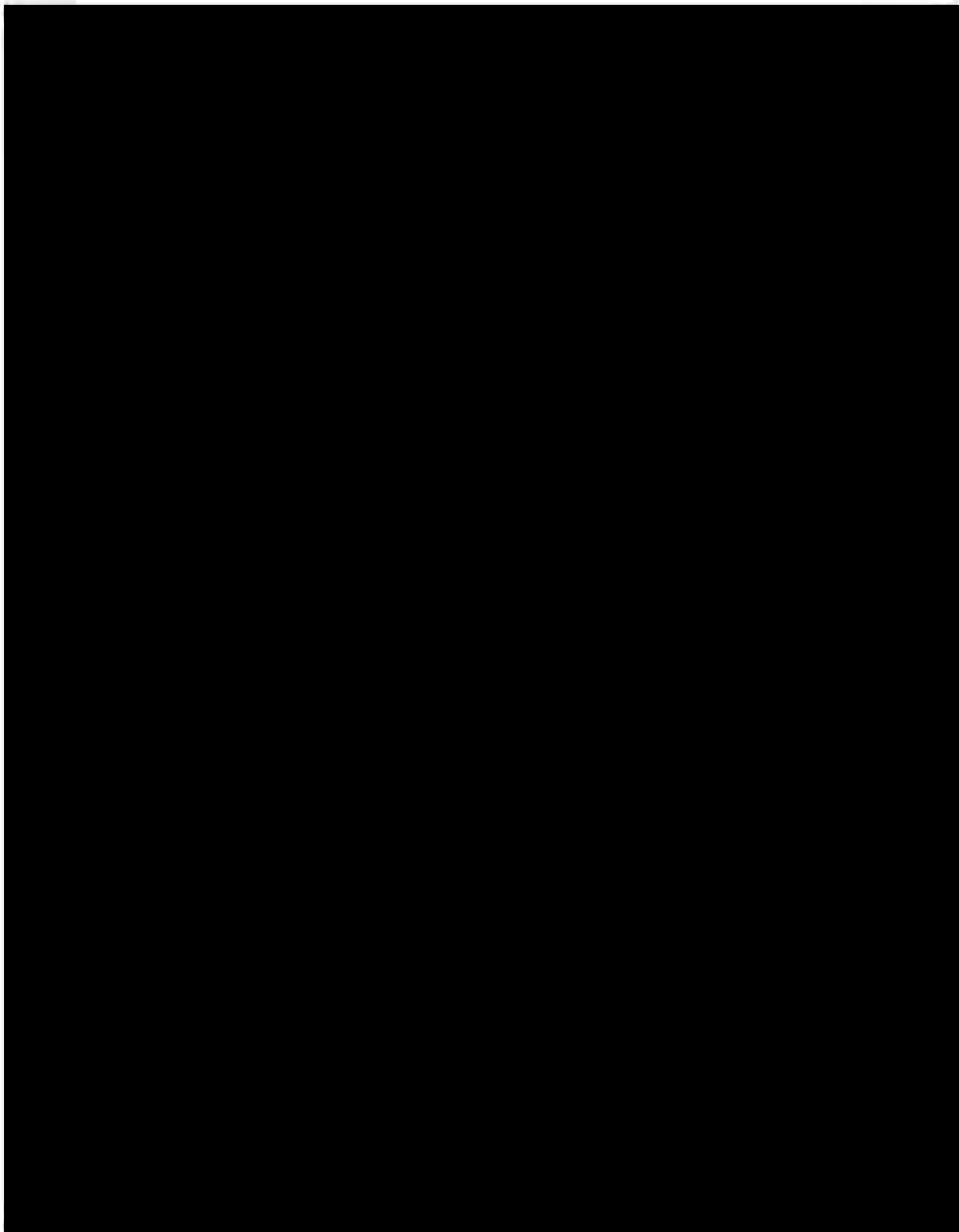
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Bandwidth and Services Pricing**Encoding**

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20,001 - 50,000 mb	\$ 0.0175
50,001 - 100,000 mb	\$ 0.015
100,001 + mb	\$ 0.01

Streaming On Demand

Usage per month	Real Media Format	All Other Formats
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10,000	\$8,000	\$9,000	\$11,000	\$13,000
>10,000	(Individual case basis)			
Any event over 4 hours to be quoted on a case by case basis.				

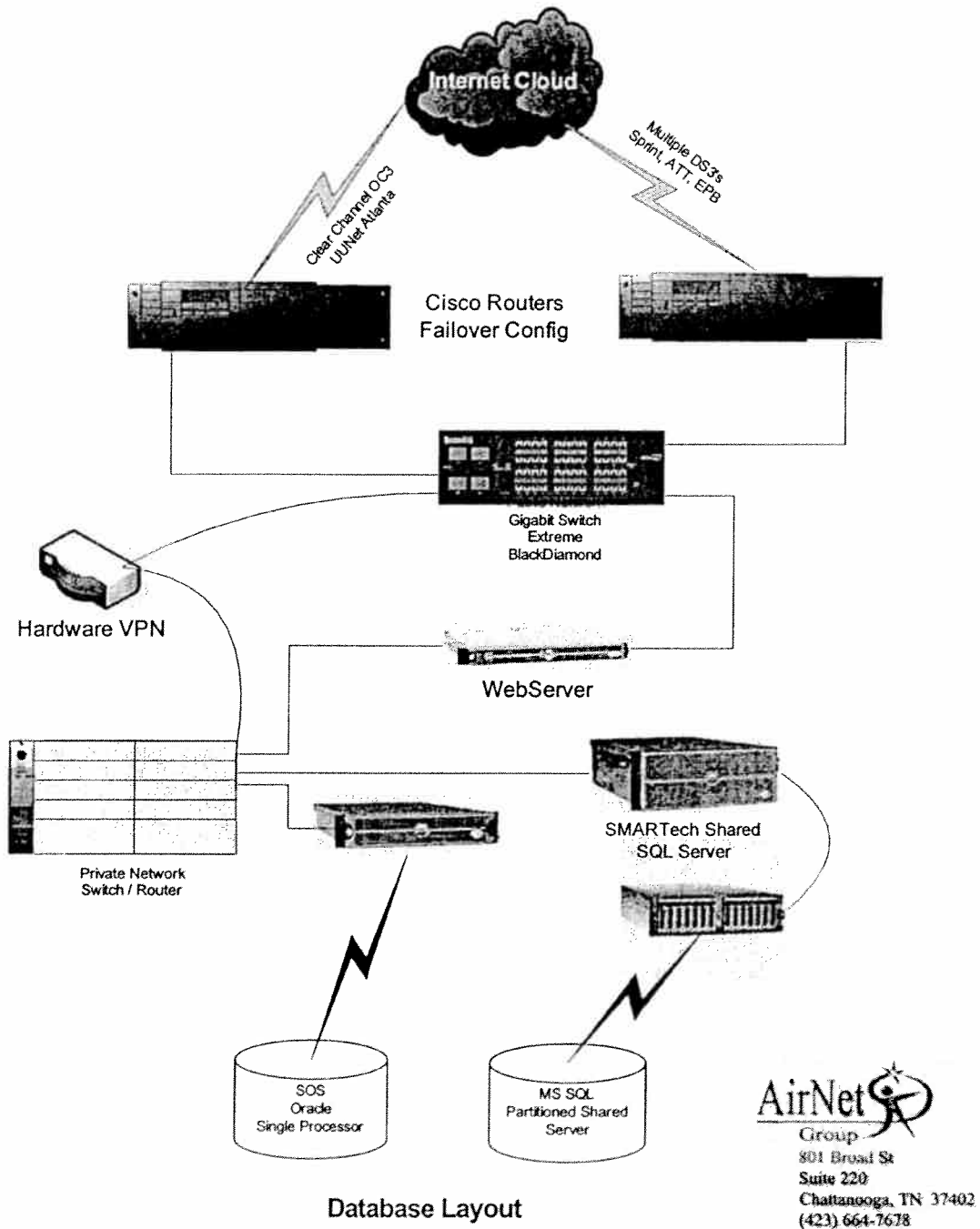
Website**Bandwidth**

Gigabyte (GB)	Per/Megabyte (MB)
Up to 5000	\$0.0050
Up to 2000	\$0.0750
Up to 1000	\$0.0100
Up to 500	\$0.0150
Up to 250	\$0.0200
Up to 100	\$0.0250

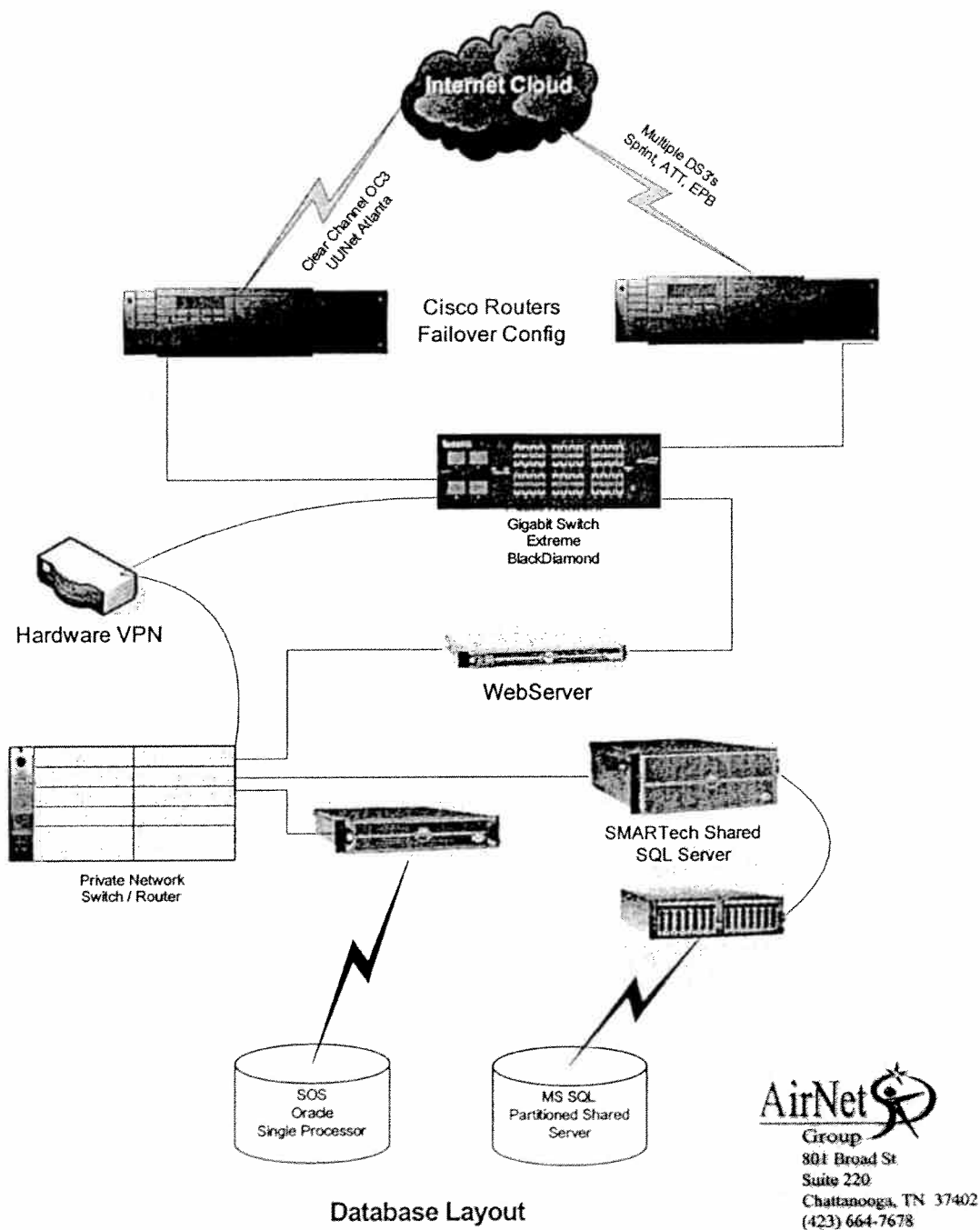
GovTech Contract FY04 (Election Night) fee included in Monthly fee

effective: 09-01-03

State of Ohio SOS Server Layout



State of Ohio SOS Server Layout



Published on Thursday, June 1, 2006 by Rolling Stone magazine

Was the 2004 Election Stolen?

Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted -- enough to have put John Kerry in the White House.

by Robert F. Kennedy Jr.

Like many Americans, I spent the evening of the 2004 election watching the returns on television and wondering how the exit polls, which predicted an overwhelming victory for John Kerry, had gotten it so wrong. By midnight, the official tallies showed a decisive lead for George Bush -- and the next day, lacking enough legal evidence to contest the results, Kerry conceded.

Republicans derided anyone who expressed doubts about Bush's victory as nut cases in "tin foil hats," while the national media, with few exceptions, did little to question the validity of the election. The Washington Post immediately dismissed allegations of fraud as "conspiracy theories,"(1) and The New York Times declared that "there is no evidence of vote theft or errors on a large scale."(2)

But despite the media blackout, indications continued to emerge that something deeply troubling had taken place in 2004. Nearly half of the 6 million American voters living abroad(3) never received their ballots -- or received them too late to vote(4) -- after the Pentagon unaccountably shut down a state-of-the-art Web site used to file overseas registrations.(5) A consulting firm called Sproul & Associates, which was hired by the Republican National Committee to register voters in six battleground states,(6) was discovered shredding Democratic registrations.(7) In New Mexico, which was decided by 5,988 votes,(8) malfunctioning machines mysteriously failed to properly register a presidential vote on more than 20,000 ballots.(9) Nationwide, according to the federal commission charged with implementing election reforms, as many as 1 million ballots were spoiled by faulty voting equipment -- roughly one for every 100 cast.(10)

The reports were especially disturbing in Ohio, the critical battleground state that clinched Bush's victory in the electoral college. Officials there purged tens of thousands of eligible voters from the rolls, neglected to process registration cards generated by Democratic voter drives, shortchanged Democratic precincts when they allocated voting machines and illegally derailed a recount that could have given Kerry the presidency. A precinct in an evangelical church in Miami County recorded an impossibly high turnout of ninety-eight percent, while a polling place in inner-city Cleveland recorded an equally impossible turnout of only seven percent. In Warren County, GOP election officials even invented a nonexistent terrorist threat to bar the media from monitoring the official vote count.(11)

Any election, of course, will have anomalies. America's voting system is a messy patchwork of polling rules run mostly by county and city officials. "We didn't have one election for president in 2004," says Robert Pastor, who directs the Center for Democracy and Election Management at American University. "We didn't have fifty elections. We actually had 13,000 elections run by 13,000 independent, quasi-sovereign counties and municipalities."

But what is most anomalous about the irregularities in 2004 was their decidedly partisan bent: Almost without exception they hurt John Kerry and benefited George Bush. After carefully

examining the evidence, I've become convinced that the president's party mounted a massive, coordinated campaign to subvert the will of the people in 2004. Across the country, Republican election officials and party stalwarts employed a wide range of illegal and unethical tactics to fix the election. A review of the available data reveals that in Ohio alone, at least 357,000 voters, the overwhelming majority of them Democratic, were prevented from casting ballots or did not have their votes counted in 2004(12) -- more than enough to shift the results of an election decided by 118,601 votes.(13) (See Ohio's Missing Votes) In what may be the single most astounding fact from the election, one in every four Ohio citizens who registered to vote in 2004 showed up at the polls only to discover that they were not listed on the rolls, thanks to GOP efforts to stem the unprecedented flood of Democrats eager to cast ballots.(14) And that doesn't even take into account the troubling evidence of outright fraud, which indicates that upwards of 80,000 votes for Kerry were counted instead for Bush. That alone is a swing of more than 160,000 votes -- enough to have put John Kerry in the White House.(15)

"It was terrible," says Sen. Christopher Dodd, who helped craft reforms in 2002 that were supposed to prevent such electoral abuses. "People waiting in line for twelve hours to cast their ballots, people not being allowed to vote because they were in the wrong precinct -- it was an outrage. In Ohio, you had a secretary of state who was determined to guarantee a Republican outcome. I'm terribly disheartened."

Indeed, the extent of the GOP's effort to rig the vote shocked even the most experienced observers of American elections. "Ohio was as dirty an election as America has ever seen," Lou Harris, the father of modern political polling, told me. "You look at the turnout and votes in individual precincts, compared to the historic patterns in those counties, and you can tell where the discrepancies are. They stand out like a sore thumb."

I. The Exit Polls

The first indication that something was gravely amiss on November 2nd, 2004, was the inexplicable discrepancies between exit polls and actual vote counts. Polls in thirty states weren't just off the mark -- they deviated to an extent that cannot be accounted for by their margin of error. In all but four states, the discrepancy favored President Bush.(16)

Over the past decades, exit polling has evolved into an exact science. Indeed, among pollsters and statisticians, such surveys are thought to be the most reliable. Unlike pre-election polls, in which voters are asked to predict their own behavior at some point in the future, exit polls ask voters leaving the voting booth to report an action they just executed. The results are exquisitely accurate: Exit polls in Germany, for example, have never missed the mark by more than three-tenths of one percent.(17) "Exit polls are almost never wrong," Dick Morris, a political consultant who has worked for both Republicans and Democrats, noted after the 2004 vote. Such surveys are "so reliable," he added, "that they are used as guides to the relative honesty of elections in Third World countries."(18) In 2003, vote tampering revealed by exit polling in the Republic of Georgia forced Eduard Shevardnadze to step down.(19) And in November 2004, exit polling in the Ukraine -- paid for by the Bush administration -- exposed election fraud that denied Viktor Yushchenko the presidency.(20)

But that same month, when exit polls revealed disturbing disparities in the U.S. election, the six media organizations that had commissioned the survey treated its very existence as an embarrassment. Instead of treating the discrepancies as a story meriting investigation, the networks scrubbed the offending results from their Web sites and substituted them with "corrected" numbers that had been weighted, retroactively, to match the official vote count. Rather than finding fault with the election results, the mainstream media preferred to dismiss the polls as flawed.(21)

"The people who ran the exit polling, and all those of us who were their clients, recognized that it was deeply flawed," says Tom Brokaw, who served as anchor for NBC News during the 2004 election. "They were really screwed up -- the old models just don't work anymore. I would not go on the air with them again."

In fact, the exit poll created for the 2004 election was designed to be the most reliable voter survey in history. The six news organizations -- running the ideological gamut from CBS to Fox News -- retained Edison Media Research and Mitofsky International,(22) whose principal, Warren Mitofsky, pioneered the exit poll for CBS in 1967(23) and is widely credited with assuring the credibility of Mexico's elections in 1994.(24) For its nationwide poll, Edison/Mitofsky selected a random subsample of 12,219 voters(25) -- approximately six times larger than those normally used in national polls(26) -- driving the margin of error down to approximately plus or minus one percent.(27)

On the evening of the vote, reporters at each of the major networks were briefed by pollsters at 7:54 p.m. Kerry, they were informed, had an insurmountable lead and would win by a rout: at least 309 electoral votes to Bush's 174, with fifty-five too close to call.(28) In London, Prime Minister Tony Blair went to bed contemplating his relationship with President-elect Kerry.(29)

As the last polling stations closed on the West Coast, exit polls showed Kerry ahead in ten of eleven battleground states -- including commanding leads in Ohio and Florida -- and winning by a million and a half votes nationally. The exit polls even showed Kerry breathing down Bush's neck in supposed GOP strongholds Virginia and North Carolina.(30) Against these numbers, the statistical likelihood of Bush winning was less than one in 450,000.(31) "Either the exit polls, by and large, are completely wrong," a Fox News analyst declared, "or George Bush loses."(32)

But as the evening progressed, official tallies began to show implausible disparities -- as much as 9.5 percent -- with the exit polls. In ten of the eleven battleground states, the tallied margins departed from what the polls had predicted. In every case, the shift favored Bush. Based on exit polls, CNN had predicted Kerry defeating Bush in Ohio by a margin of 4.2 percentage points. Instead, election results showed Bush winning the state by 2.5 percent. Bush also tallied 6.5 percent more than the polls had predicted in Pennsylvania, and 4.9 percent more in Florida.(33)

According to Steven F. Freeman, a visiting scholar at the University of Pennsylvania who specializes in research methodology, the odds against all three of those shifts occurring in concert are one in 660,000. "As much as we can say in sound science that something is impossible," he says, "it is impossible that the discrepancies between predicted and actual vote count in the three

critical battleground states of the 2004 election could have been due to chance or random error." (See The Tale of the Exit Polls)

Puzzled by the discrepancies, Freeman laboriously examined the raw polling data released by Edison/Mitofsky in January 2005. "I'm not even political -- I despise the Democrats," he says. "I'm a survey expert. I got into this because I was mystified about how the exit polls could have been so wrong." In his forthcoming book, *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*, Freeman lays out a statistical analysis of the polls that is deeply troubling.

In its official postmortem report issued two months after the election, Edison/Mitofsky was unable to identify any flaw in its methodology -- so the pollsters, in essence, invented one for the electorate. According to Mitofsky, Bush partisans were simply disinclined to talk to exit pollsters on November 2nd⁽³⁴⁾ -- displaying a heretofore unknown and undocumented aversion that skewed the polls in Kerry's favor by a margin of 6.5 percent nationwide.⁽³⁵⁾

Industry peers didn't buy it. John Zogby, one of the nation's leading pollsters, told me that Mitofsky's "reluctant responder" hypothesis is "preposterous."⁽³⁶⁾ Even Mitofsky, in his official report, underscored the hollowness of his theory: "It is difficult to pinpoint precisely the reasons that, in general, Kerry voters were more likely to participate in the exit polls than Bush voters."⁽³⁷⁾

Now, thanks to careful examination of Mitofsky's own data by Freeman and a team of eight researchers, we can say conclusively that the theory is dead wrong. In fact it was Democrats, not Republicans, who were more disinclined to answer pollsters' questions on Election Day. In Bush strongholds, Freeman and the other researchers found that fifty-six percent of voters completed the exit survey -- compared to only fifty-three percent in Kerry strongholds.⁽³⁸⁾ "The data presented to support the claim not only fails to substantiate it," observes Freeman, "but actually contradicts it."

What's more, Freeman found, the greatest disparities between exit polls and the official vote count came in Republican strongholds. In precincts where Bush received at least eighty percent of the vote, the exit polls were off by an average of ten percent. By contrast, in precincts where Kerry dominated by eighty percent or more, the exit polls were accurate to within three tenths of one percent -- a pattern that suggests Republican election officials stuffed the ballot box in Bush country.⁽³⁹⁾

"When you look at the numbers, there is a tremendous amount of data that supports the supposition of election fraud," concludes Freeman. "The discrepancies are higher in battleground states, higher where there were Republican governors, higher in states with greater proportions of African-American communities and higher in states where there were the most Election Day complaints. All these are strong indicators of fraud -- and yet this supposition has been utterly ignored by the press and, oddly, by the Democratic Party."

The evidence is especially strong in Ohio. In January, a team of mathematicians from the

National Election Data Archive, a nonpartisan watchdog group, compared the state's exit polls against the certified vote count in each of the forty-nine precincts polled by Edison/Mitofsky. In twenty-two of those precincts -- nearly half of those polled -- they discovered results that differed widely from the official tally. Once again -- against all odds -- the widespread discrepancies were stacked massively in Bush's favor: In only two of the suspect twenty-two precincts did the disparity benefit Kerry. The wildest discrepancy came from the precinct Mitofsky numbered "27," in order to protect the anonymity of those surveyed. According to the exit poll, Kerry should have received sixty-seven percent of the vote in this precinct. Yet the certified tally gave him only thirty-eight percent. The statistical odds against such a variance are just shy of one in 3 billion.(40)

Such results, according to the archive, provide "virtually irrefutable evidence of vote miscount." The discrepancies, the experts add, "are consistent with the hypothesis that Kerry would have won Ohio's electoral votes if Ohio's official vote counts had accurately reflected voter intent."(41) According to Ron Baiman, vice president of the archive and a public policy analyst at Loyola University in Chicago, "No rigorous statistical explanation" can explain the "completely nonrandom" disparities that almost uniformly benefited Bush. The final results, he adds, are "completely consistent with election fraud -- specifically vote shifting."

II. The Partisan Official

No state was more important in the 2004 election than Ohio. The state has been key to every Republican presidential victory since Abraham Lincoln's, and both parties overwhelmed the state with television ads, field organizers and volunteers in an effort to register new voters and energize old ones. Bush and Kerry traveled to Ohio a total of forty-nine times during the campaign -- more than to any other state.(42)

But in the battle for Ohio, Republicans had a distinct advantage: The man in charge of the counting was Kenneth Blackwell, the co-chair of President Bush's re-election committee.(43) As Ohio's secretary of state, Blackwell had broad powers to interpret and implement state and federal election laws -- setting standards for everything from the processing of voter registration to the conduct of official recounts.(44) And as Bush's re-election chair in Ohio, he had a powerful motivation to rig the rules for his candidate. Blackwell, in fact, served as the "principal electoral system adviser" for Bush during the 2000 recount in Florida,(45) where he witnessed firsthand the success of his counterpart Katherine Harris, the Florida secretary of state who co-chaired Bush's campaign there.(46)

Blackwell -- now the Republican candidate for governor of Ohio(47) -- is well-known in the state as a fierce partisan eager to rise in the GOP. An outspoken leader of Ohio's right-wing fundamentalists, he opposes abortion even in cases of rape(48) and was the chief cheerleader for the anti-gay-marriage amendment that Republicans employed to spark turnout in rural counties(49). He has openly denounced Kerry as "an unapologetic liberal Democrat,"(50) and during the 2004 election he used his official powers to disenfranchise hundreds of thousands of Ohio citizens in Democratic strongholds. In a ruling issued two weeks before the election, a federal judge rebuked Blackwell for seeking to "accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(51)

"The secretary of state is supposed to administer elections -- not throw them," says Rep. Dennis Kucinich, a Democrat from Cleveland who has dealt with Blackwell for years. "The election in Ohio in 2004 stands out as an example of how, under color of law, a state election official can frustrate the exercise of the right to vote."

The most extensive investigation of what happened in Ohio was conducted by Rep. John Conyers, the ranking Democrat on the House Judiciary Committee.⁽⁵²⁾ Frustrated by his party's failure to follow up on the widespread evidence of voter intimidation and fraud, Conyers and the committee's minority staff held public hearings in Ohio, where they looked into more than 50,000 complaints from voters.⁽⁵³⁾ In January 2005, Conyers issued a detailed report that outlined "massive and unprecedented voter irregularities and anomalies in Ohio." The problems, the report concludes, were "caused by intentional misconduct and illegal behavior, much of it involving Secretary of State J. Kenneth Blackwell."⁽⁵⁴⁾

"Blackwell made Katherine Harris look like a cupcake," Conyers told me. "He saw his role as limiting the participation of Democratic voters. We had hearings in Columbus for two days. We could have stayed two weeks, the level of fury was so high. Thousands of people wanted to testify. Nothing like this had ever happened to them before."

When ROLLING STONE confronted Blackwell about his overtly partisan attempts to subvert the election, he dismissed any such claim as "silly on its face." Ohio, he insisted in a telephone interview, set a "gold standard" for electoral fairness. In fact, his campaign to subvert the will of the voters had begun long before Election Day. Instead of welcoming the avalanche of citizen involvement sparked by the campaign, Blackwell permitted election officials in Cleveland, Cincinnati and Toledo to conduct a massive purge of their voter rolls, summarily expunging the names of more than 300,000 voters who had failed to cast ballots in the previous two national elections.⁽⁵⁵⁾ In Cleveland, which went five-to-one for Kerry, nearly one in four voters were wiped from the rolls between 2000 and 2004.⁽⁵⁶⁾

There were legitimate reasons to clean up voting lists: Many of the names undoubtedly belonged to people who had moved or died. But thousands more were duly registered voters who were deprived of their constitutional right to vote -- often without any notification -- simply because they had decided not to go to the polls in prior elections.⁽⁵⁷⁾ In Cleveland's precinct 6C, where more than half the voters on the rolls were deleted,⁽⁵⁸⁾ turnout was only 7.1 percent⁽⁵⁹⁾ -- the lowest in the state.

According to the Conyers report, improper purging "likely disenfranchised tens of thousands of voters statewide."⁽⁶⁰⁾ If only one in ten of the 300,000 purged voters showed up on Election Day -- a conservative estimate, according to election scholars -- that is 30,000 citizens who were unfairly denied the opportunity to cast ballots.

III. The Strike Force

In the months leading up to the election, Ohio was in the midst of the biggest registration drive in its history. Tens of thousands of volunteers and paid political operatives from both parties canvassed the state, racing to register new voters in advance of the October 4th deadline. To

those on the ground, it was clear that Democrats were outpacing their Republican counterparts: A New York Times analysis before the election found that new registrations in traditional Democratic strongholds were up 250 percent, compared to only twenty-five percent in Republican-leaning counties.(61) "The Democrats have been beating the pants off us in the air and on the ground," a GOP county official in Columbus confessed to The Washington Times.(62)

To stem the tide of new registrations, the Republican National Committee and the Ohio Republican Party attempted to knock tens of thousands of predominantly minority and urban voters off the rolls through illegal mailings known in electioneering jargon as "caging." During the Eighties, after the GOP used such mailings to disenfranchise nearly 76,000 black voters in New Jersey and Louisiana, it was forced to sign two separate court orders agreeing to abstain from caging.(63) But during the summer of 2004, the GOP targeted minority voters in Ohio by zip code, sending registered letters to more than 200,000 newly registered voters(64) in sixty-five counties.(65) On October 22nd, a mere eleven days before the election, Ohio Republican Party Chairman Bob Bennett -- who also chairs the board of elections in Cuyahoga County -- sought to invalidate the registrations of 35,427 voters who had refused to sign for the letters or whose mail came back as undeliverable.(66) Almost half of the challenged voters were from Democratic strongholds in and around Cleveland.(67)

There were plenty of valid reasons that voters had failed to respond to the mailings: The list included people who couldn't sign for the letters because they were serving in the U.S. military, college students whose school and home addresses differed,(68) and more than 1,000 homeless people who had no permanent mailing address.(69) But the undeliverable mail, Bennett claimed, proved the new registrations were fraudulent.

By law, each voter was supposed to receive a hearing before being stricken from the rolls.(70) Instead, in the week before the election, kangaroo courts were rapidly set up across the state at Blackwell's direction that would inevitably disenfranchise thousands of voters at a time(71) -- a process that one Democratic election official in Toledo likened to an "inquisition."(72) Not that anyone was given a chance to actually show up and defend their right to vote: Notices to challenged voters were not only sent out impossibly late in the process, they were mailed to the very addresses that the Republicans contended were faulty.(73) Adding to the atmosphere of intimidation, sheriff's detectives in Sandusky County were dispatched to the homes of challenged voters to investigate the GOP's claims of fraud.(74)

"I'm afraid this is going to scare these people half to death, and they are never going to show up on Election Day," Barb Tuckerman, director of the Sandusky Board of Elections, told local reporters. "Many of them are young people who have registered for the first time. I've called some of these people, and they are perfectly legitimate."(75)

On October 27th, ruling that the effort likely violated both the "constitutional right to due process and constitutional right to vote," U.S. District Judge Susan Dlott put a halt to the GOP challenge(76) -- but not before tens of thousands of new voters received notices claiming they were improperly registered. Some election officials in the state illegally ignored Dlott's ruling, stripping hundreds of voters from the rolls.(77) In Columbus and elsewhere, challenged

registrants were never notified that the court had cleared them to vote.

On October 29th, a federal judge found that the Republican Party had violated the court orders from the Eighties that barred it from caging. "The return of mail does not implicate fraud," the court affirmed,(78) and the disenfranchisement effort illegally targeted "precincts where minority voters predominate, interfering with and discouraging voters from voting in those districts."(79) Nor were such caging efforts limited to Ohio: The GOP also targeted hundreds of thousands of urban voters in the battleground states of Florida,(80) Pennsylvania(81) and Wisconsin.(82)

Republicans in Ohio also worked to deny the vote to citizens who had served jail time for felonies. Although rehabilitated prisoners are entitled to vote in Ohio, election officials in Cincinnati demanded that former convicts get a judge to sign off before they could register to vote.(83) In case they didn't get the message, Republican operatives turned to intimidation. According to the Conyers report, a team of twenty-five GOP volunteers calling themselves the Mighty Texas Strike Force holed up at the Holiday Inn in Columbus a day before the election, around the corner from the headquarters of the Ohio Republican Party -- which paid for their hotel rooms. The men were overheard by a hotel worker "using pay phones to make intimidating calls to likely voters" and threatening former convicts with jail time if they tried to cast ballots.(84)

This was no freelance operation. The Strike Force -- an offshoot of the Republican National Committee(85) -- was part of a team of more than 1,500 volunteers from Texas who were deployed to battleground states, usually in teams of ten. Their leader was Pat Oxford, (86) a Houston lawyer who managed Bush's legal defense team in 2000 in Florida,(87) where he warmly praised the efforts of a mob that stormed the Miami-Dade County election offices and halted the recount. It was later revealed that those involved in the "Brooks Brothers Riot" were not angry Floridians but paid GOP staffers, many of them flown in from out of state.(88) Photos of the protest show that one of the "rioters" was Joel Kaplan, who has just taken the place of Karl Rove at the White House, where he now directs the president's policy operations.(89)

IV. Barriers to Registration

To further monkey-wrench the process he was bound by law to safeguard, Blackwell cited an arcane elections regulation to make it harder to register new voters. In a now-infamous decree, Blackwell announced on September 7th -- less than a month before the filing deadline -- that election officials would process registration forms only if they were printed on eighty-pound unwaxed white paper stock, similar to a typical postcard. Justifying his decision to ROLLING STONE, Blackwell portrayed it as an attempt to protect voters: "The postal service had recommended to us that we establish a heavy enough paper-weight standard that we not disenfranchise voters by having their registration form damaged by postal equipment." Yet Blackwell's order also applied to registrations delivered in person to election offices. He further specified that any valid registration cards printed on lesser paper stock that miraculously survived the shredding gauntlet at the post office were not to be processed; instead, they were to be treated as applications for a registration form, requiring election boards to send out a brand-new card.(90)

Blackwell's directive clearly violated the Voting Rights Act, which stipulates that no one may be denied the right to vote because of a registration error that "is not material in determining whether such individual is qualified under state law to vote." (91) The decision immediately threw registration efforts into chaos. Local newspapers that had printed registration forms in their pages saw their efforts invalidated. (92) Delaware County posted a notice online saying it could no longer accept its own registration forms. (93) Even Blackwell couldn't follow the protocol: The Columbus Dispatch reported that his own staff distributed registration forms on lighter-weight paper that was illegal under his rule. Under the threat of court action, Blackwell ultimately revoked his order on September 28th -- six days before the registration deadline. (94)

But by then, the damage was done. Election boards across the state, already understaffed and backlogged with registration forms, were unable to process them all in time. According to a statistical analysis conducted in May by the nonpartisan Greater Cleveland Voter Coalition, 16,000 voters in and around the city were disenfranchised because of data-entry errors by election officials, (95) and another 15,000 lost the right to vote due to largely inconsequential omissions on their registration cards. (96) Statewide, the study concludes, a total of 72,000 voters were disenfranchised through avoidable registration errors -- one percent of all voters in an election decided by barely two percent. (97)

Despite the widespread problems, Blackwell authorized only one investigation of registration errors after the election -- in Toledo -- but the report by his own inspectors offers a disturbing snapshot of the malfeasance and incompetence that plagued the entire state. (98) The top elections official in Toledo was a partisan in the Blackwell mold: Bernadette Noe, who chaired both the county board of elections and the county Republican Party. (99) The GOP post was previously held by her husband, Tom Noe, (100) who currently faces felony charges for embezzling state funds and illegally laundering \$45,400 of his own money through intermediaries to the Bush campaign. (101)

State inspectors who investigated the elections operation in Toledo discovered "areas of grave concern." (102) With less than a month to go before the election, Bernadette Noe and her board had yet to process 20,000 voter registration cards. (103) Board officials arbitrarily decided that mail-in cards (mostly from the Republican suburbs) would be processed first, while registrations dropped off at the board's office (the fruit of intensive Democratic registration drives in the city) would be processed last. (104) When a grass-roots group called Project Vote delivered a batch of nearly 10,000 cards just before the October 4th deadline, an elections official casually remarked, "We may not get to them." (105) The same official then instructed employees to date-stamp an entire box containing thousands of forms, rather than marking each individual card, as required by law. (106) When the box was opened, officials had no way of confirming that the forms were filed prior to the deadline -- an error, state inspectors concluded, that could have disenfranchised "several thousand" voters from Democratic strongholds. (107)

The most troubling incident uncovered by the investigation was Noe's decision to allow Republican partisans behind the counter in the board of elections office to make photocopies of postcards sent to confirm voter registrations (108) -- records that could have been used in the GOP's caging efforts. On their second day in the office, the operatives were caught by an

elections official tampering with the documents.(109) Investigators slammed the elections board for "a series of egregious blunders" that caused "the destruction, mutilation and damage of public records."(110)

On Election Day, Noe sent a team of Republican volunteers to the county warehouse where blank ballots were kept out in the open, "with no security measures in place."(111) The state's assistant director of elections, who just happened to be observing the ballot distribution, demanded they leave. The GOP operatives refused and ultimately had to be turned away by police.(112)

In April 2005, Noe and the entire Board of Elections were forced to resign. But once again, the damage was done. At a "Victory 2004" rally held in Toledo four days before the election, President Bush himself singled out a pair of "grass-roots" activists for special praise: "I want to thank my friends Bernadette Noe and Tom Noe for their leadership in Lucas County."(113)

V. "The Wrong Pew"

In one of his most effective maneuvers, Blackwell prevented thousands of voters from receiving provisional ballots on Election Day. The fail-safe ballots were mandated in 2002, when Congress passed a package of reforms called the Help America Vote Act. This would prevent a repeat of the most egregious injustice in the 2000 election, when officials in Florida barred thousands of lawfully registered minority voters from the polls because their names didn't appear on flawed precinct rolls. Under the law, would-be voters whose registration is questioned at the polls must be allowed to cast provisional ballots that can be counted after the election if the voter's registration proves valid.(114)

"Provisional ballots were supposed to be this great movement forward," says Tova Andrea Wang, an elections expert who served with ex-presidents Jimmy Carter and Gerald Ford on the commission that laid the groundwork for the Help America Vote Act. "But then different states erected barriers, and this new right became totally eviscerated."

In Ohio, Blackwell worked from the beginning to curtail the availability of provisional ballots. (The ballots are most often used to protect voters in heavily Democratic urban areas who move often, creating more opportunities for data-entry errors by election boards.) Six weeks before the vote, Blackwell illegally decreed that poll workers should make on-the-spot judgments as to whether or not a voter lived in the precinct, and provide provisional ballots only to those deemed eligible.(115) When the ruling was challenged in federal court, Judge James Carr could barely contain his anger. The very purpose of the Help America Vote Act, he ruled, was to make provisional ballots available to voters told by precinct workers that they were ineligible: "By not even mentioning this group -- the primary beneficiaries of HAVA's provisional-voting provisions -- Blackwell apparently seeks to accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(116)

But instead of complying with the judge's order to expand provisional balloting, Blackwell insisted that Carr was usurping his power as secretary of state and made a speech in which he compared himself to Mohandas Gandhi, Martin Luther King Jr. and the apostle Paul -- saying that he'd rather go to jail than follow federal law.(117) The Sixth Circuit Court of Appeals upheld

Carr's ruling on October 23rd -- but the confusion over the issue still caused untold numbers of voters across the state to be illegally turned away at the polls on Election Day without being offered provisional ballots.(118) A federal judge also invalidated a decree by Blackwell that denied provisional ballots to absentee voters who were never sent their ballots in the mail. But that ruling did not come down until after 3 p.m. on the day of the election, and likely failed to filter down to the precinct level at all -- denying the franchise to even more eligible voters.(119)

We will never know for certain how many voters in Ohio were denied ballots by Blackwell's two illegal orders. But it is possible to put a fairly precise number on those turned away by his most disastrous directive. Traditionally, anyone in Ohio who reported to a polling station in their county could obtain a provisional ballot. But Blackwell decided to toss out the ballots of anyone who showed up at the wrong precinct -- a move guaranteed to disenfranchise Democrats who live in urban areas crowded with multiple polling places. On October 14th, Judge Carr overruled the order, but Blackwell appealed.(120) In court, he was supported by his friend and campaign contributor Tom Noe, who joined the case as an intervenor on behalf of the secretary of state.(121) He also enjoyed the backing of Attorney General John Ashcroft, who filed an amicus brief in support of Blackwell's position -- marking the first time in American history that the Justice Department had gone to court to block the right of voters to vote.(122) The Sixth Circuit, stacked with four judges appointed by George W. Bush, sided with Blackwell.(123)

Blackwell insists that his decision kept the election clean. "If we had allowed this notion of 'voters without borders' to exist," he says, "it would have opened the door to massive fraud." But even Republicans were shocked by the move. DeForest Soaries, the GOP chairman of the Election Assistance Commission -- the federal agency set up to implement the Help America Vote Act -- upbraided Blackwell, saying that the commission disagreed with his decision to deny ballots to voters who showed up at the wrong precinct. "The purpose of provisional ballots is to not turn anyone away from the polls," Soaries explained. "We want as many votes to count as possible."(124)

The decision left hundreds of thousands of voters in predominantly Democratic counties to navigate the state's bewildering array of 11,366 precincts, whose boundaries had been redrawn just prior to the election.(125) To further compound their confusion, the new precinct lines were misidentified on the secretary of state's own Web site, which was months out of date on Election Day. Many voters, out of habit, reported to polling locations that were no longer theirs. Some were mistakenly assured by poll workers on the grounds that they were entitled to cast a provisional ballot at that precinct. Instead, thanks to Blackwell's ruling, at least 10,000 provisional votes were tossed out after Election Day simply because citizens wound up in the wrong line.(126)

In Toledo, Brandi and Brittany Stenson each got in a different line to vote in the gym at St. Elizabeth Seton School. Both of the sisters were registered to vote at the polling place on the city's north side, in the shadow of the giant DaimlerChrysler plant. Both cast ballots. But when the tallies were added up later, the family resemblance came to an abrupt end. Brittany's vote was counted -- but Brandi's wasn't. It wasn't enough that she had voted in the right building. If she wanted her vote to count, according to Blackwell's ruling, she had to choose the line that led to

her assigned table. Her ballot -- along with those of her mother, her brother and thirty-seven other voters in the same precinct -- were thrown out(127) simply because they were, in the words of Rep. Stephanie Tubbs Jones (D-Ohio), "in the right church but the wrong pew."(128)

All told, the deliberate chaos that resulted from Blackwell's registration barriers did the trick. Black voters in the state -- who went overwhelmingly for Kerry -- were twenty percent more likely than whites to be forced to cast a provisional ballot.(129) In the end, nearly three percent of all voters in Ohio were forced to vote provisionally(130) -- and more than 35,000 of their ballots were ultimately rejected.(131)

VI. Long Lines

When Election Day dawned on November 2nd, tens of thousands of Ohio voters who had managed to overcome all the obstacles to registration erected by Blackwell discovered that it didn't matter whether they were properly listed on the voting rolls -- because long lines at their precincts prevented them from ever making it to the ballot box. Would-be voters in Dayton and Cincinnati routinely faced waits as long as three hours. Those in inner-city precincts in Columbus, Cleveland and Toledo -- which were voting for Kerry by margins of ninety percent or more -- often waited up to seven hours. At Kenyon College, students were forced to stand in line for eleven hours before being allowed to vote, with the last voters casting their ballots after three in the morning.(132)

A five-month analysis of the Ohio vote conducted by the Democratic National Committee concluded in June 2005 that three percent of all Ohio voters who showed up to vote on Election Day were forced to leave without casting a ballot.(133) That's more than 174,000 voters. "The vast majority of this lost vote," concluded the Conyers report, "was concentrated in urban, minority and Democratic-leaning areas."(134) Statewide, African-Americans waited an average of fifty-two minutes to vote, compared to only eighteen minutes for whites.(135)

The long lines were not only foreseeable -- they were actually created by GOP efforts. Republicans in the state legislature, citing new electronic voting machines that were supposed to speed voting, authorized local election boards to reduce the number of precincts across Ohio. In most cases, the new machines never materialized -- but that didn't stop officials in twenty of the state's eighty-eight counties, all of them favorable to Democrats, from slashing the number of precincts by at least twenty percent.(136)

Republican officials also created long lines by failing to distribute enough voting machines to inner-city precincts. After the Florida disaster in 2000, such problems with machines were supposed to be a thing of the past. Under the Help America Vote Act, Ohio received more than \$30 million in federal funds to replace its faulty punch-card machines with more reliable systems.(137) But on Election Day, that money was sitting in the bank. Why? Because Ken Blackwell had applied for an extension until 2006, insisting that there was no point in buying electronic machines that would later have to be retrofitted under Ohio law to generate paper ballots.(138)

"No one has ever accused our secretary of state of lacking in ability," says Rep. Kucinich. "He's a rather bright fellow, and he's involved in the most minute details of his office. There's no doubt

that he knew the effect of not having enough voting machines in some areas."

At liberal Kenyon College, where students had registered in record numbers, local election officials provided only two voting machines to handle the anticipated surge of up to 1,300 voters. Meanwhile, fundamentalist students at nearby Mount Vernon Nazarene University had one machine for 100 voters and faced no lines at all.(139) Citing the lines at Kenyon, the Conyers report concluded that the "misallocation of machines went beyond urban/suburban discrepancies to specifically target Democratic areas."(140)

In Columbus, which had registered 125,000 new voters(141) -- more than half of them black(142) -- the board of elections estimated that it would need 5,000 machines to handle the huge surge.(143) "On Election Day, the county experienced an unprecedented turnout that could only be compared to a 500-year flood," says Matt Damschroder,(144) chairman of the Franklin County Board of Elections and the former head of the Republican Party in Columbus.(145) But instead of buying more equipment, the Conyers investigation found, Damschroder decided to "make do" with 2,741 machines.(146) And to make matters worse, he favored his own party in distributing the equipment. According to The Columbus Dispatch, precincts that had gone seventy percent or more for Al Gore in 2000 were allocated seventeen fewer machines in 2004, while strong GOP precincts received eight additional machines.(147) An analysis by voter advocates found that all but three of the thirty wards with the best voter-to-machine ratios were in Bush strongholds; all but one of the seven with the worst ratios were in Kerry country.(148)

The result was utterly predictable. According to an investigation by the Columbus Free Press, white Republican suburbanites, blessed with a surplus of machines, averaged waits of only twenty-two minutes; black urban Democrats averaged three hours and fifteen minutes.(149) "The allocation of voting machines in Franklin County was clearly biased against voters in precincts with high proportions of African-Americans," concluded Walter Mebane Jr., a government professor at Cornell University who conducted a statistical analysis of the vote in and around Columbus.(150)

By midmorning, when it became clear that voters were dropping out of line rather than braving the wait, precincts appealed for the right to distribute paper ballots to speed the process. Blackwell denied the request, saying it was an invitation to fraud.(151) A lawsuit ensued, and the handwritten affidavits submitted by voters and election officials offer a heart-rending snapshot of an electoral catastrophe in the offing:(152)

From Columbus Precinct 44D:

"There are three voting machines at this precinct. I have been informed that in prior elections there were normally four voting machines. At 1:45 p.m. there are approximately eighty-five voters in line. At this time, the line to vote is approximately three hours long. This precinct is largely African-American. I have personally witnessed voters leaving the polling place without voting due to the length of the line."

From Precinct 40:

"I am serving as a presiding judge, a position I have held for some 15+ years in precinct 40. In all

my years of service, the lines are by far the longest I have seen, with some waiting as long as four to five hours. I expect the situation to only worsen as the early evening heavy turnout approaches. I have requested additional machines since 6:40 a.m. and no assistance has been offered."

Precinct 65H:

"I observed a broken voting machine that was not in use for approximately two hours. The precinct judge was very diligent but could not get through to the BOE."

Precinct 18A:

"At 4 p.m. the average wait time is about 4.5 hours and continuing to increase?. Voters are continuing to leave without voting."

As day stretched into evening, U.S. District Judge Algernon Marbley issued a temporary restraining order requiring that voters be offered paper ballots.(153) But it was too late: According to bipartisan estimates published in The Washington Post, as many as 15,000 voters in Columbus had already given up and gone home.(154) When closing time came at the polls, according to the Conyers report, some precinct workers illegally dismissed citizens who had waited for hours in the rain -- in direct violation of Ohio law, which stipulates that those in line at closing time are allowed to remain and vote.(155)

The voters disenfranchised by long lines were overwhelmingly Democrats. Because of the unequal distribution of voting equipment, the median turnout in Franklin County precincts won by Kerry was fifty-one percent, compared to sixty-one percent in those won by Bush. Assuming sixty percent turnout under more equitable conditions, Kerry would have gained an additional 17,000 votes in the county.(156)

In another move certain to add to the traffic jam at the polls, the GOP deployed 3,600 operatives on Election Day to challenge voters in thirty-one counties -- most of them in predominantly black and urban areas.(157) Although it was billed as a means to "ensure that voters are not disenfranchised by fraud,"(158) Republicans knew that the challengers would inevitably create delays for eligible voters. Even Mark Weaver, the GOP's attorney in Ohio, predicted in late October that the move would "create chaos, longer lines and frustration."(159)

The day before the election, Judge Dlott attempted to halt the challengers, ruling that "there exists an enormous risk of chaos, delay, intimidation and pandemonium inside the polls and in the lines out the doors." Dlott was also troubled by the placement of Republican challengers: In Hamilton County, fourteen percent of new voters in white areas would be confronted at the polls, compared to ninety-seven percent of new voters in black areas.(160) But when the case was appealed to the Supreme Court on Election Day, Justice John Paul Stevens allowed the challenges to go forward. "I have faith," he ruled, "that the elected officials and numerous election volunteers on the ground will carry out their responsibilities in a way that will enable qualified voters to cast their ballots."(161)

In fact, Blackwell gave Republican challengers unprecedented access to polling stations, where they intimidated voters, worsening delays in Democratic precincts. By the end of the day, thanks

to a whirlwind of legal wrangling, the GOP had even gotten permission to use the discredited list of 35,000 names from its illegal caging effort to challenge would-be voters.(162) According to the survey by the DNC, nearly 5,000 voters across the state were turned away at the polls because of registration challenges -- even though federal law required that they be provided with provisional ballots.(163)

VII. Faulty Machines

Voters who managed to make it past the array of hurdles erected by Republican officials found themselves confronted by voting machines that didn't work. Only 800,000 out of the 5.6 million votes in Ohio were cast on electronic voting machines, but they were plagued with errors.(164) In heavily Democratic areas around Youngstown, where nearly 100 voters reported entering "Kerry" on the touch screen and watching "Bush" light up, at least twenty machines had to be recalibrated in the middle of the voting process for chronically flipping Kerry votes to Bush.(165) (Similar "vote hopping" from Kerry to Bush was reported by voters and election officials in other states.)(166) Elsewhere, voters complained in sworn affidavits that they touched Kerry's name on the screen and it lit up, but that the light had gone out by the time they finished their ballot; the Kerry vote faded away.(167) In the state's most notorious incident, an electronic machine at a fundamentalist church in the town of Gahanna recorded a total of 4,258 votes for Bush and 260 votes for Kerry.(168) In that precinct, however, there were only 800 registered voters, of whom 638 showed up.(169) (The error, which was later blamed on a glitchy memory card, was corrected before the certified vote count.)

In addition to problems with electronic machines, Ohio's vote was skewed by old-fashioned punch-card equipment that posed what even Blackwell acknowledged was the risk of a "Florida-like calamity."(170) All but twenty of the state's counties relied on antiquated machines that were virtually guaranteed to destroy votes(171) -- many of which were counted by automatic tabulators manufactured by Triad Governmental Systems,(172) the same company that supplied Florida's notorious butterfly ballot in 2000. In fact, some 95,000 ballots in Ohio recorded no vote for president at all -- most of them on punch-card machines. Even accounting for the tiny fraction of voters in each election who decide not to cast votes for president -- generally in the range of half a percent, according to Ohio State law professor and respected elections scholar Dan Tokaji -- that would mean that at least 66,000 votes were invalidated by faulty voting equipment.(173) If counted by hand instead of by automated tabulator, the vast majority of these votes would have been discernable. But thanks to a corrupt recount process, only one county hand-counted its ballots.(174)

Most of the uncounted ballots occurred in Ohio's big cities. In Cleveland, where nearly 13,000 votes were ruined, a New York Times analysis found that black precincts suffered more than twice the rate of spoiled ballots than white districts.(175) In Dayton, Kerry-leaning precincts had nearly twice the number of spoiled ballots as Bush-leaning precincts.(176) Last April, a federal court ruled that Ohio's use of punch-card balloting violated the equal-protection rights of the citizens who voted on them.(177)

In addition to spoiling ballots, the punch-card machines also created bizarre miscounts known as "ballot crawl." In Cleveland Precinct 4F, a heavily African-American precinct, Constitution Party

candidate Michael Peroutka was credited with an impressive forty-one percent of the vote. In Precinct 4N, where Al Gore won ninety-eight percent of the vote in 2000, Libertarian Party candidate Michael Badnarik was credited with thirty-three percent of the vote. Badnarik and Peroutka also picked up a sizable portion of the vote in precincts across Cleveland -- 11M, 3B, 8G, 8I, 3I.(178) "It appears that hundreds, if not thousands, of votes intended to be cast for Senator Kerry were recorded as being for a third-party candidate," the Conyers report concludes.(179)

But it's not just third-party candidates: Ballot crawl in Cleveland also shifted votes from Kerry to Bush. In Precinct 13B, where Bush received only six votes in 2000, he was credited with twenty percent of the total in 2004. Same story in 9P, where Bush recorded eighty-seven votes in 2004, compared to his grand total of one in 2000.(180)

VIII. Rural Counties

Despite the well-documented effort that prevented hundreds of thousands of voters in urban and minority precincts from casting ballots, the worst theft in Ohio may have quietly taken place in rural counties. An examination of election data suggests widespread fraud -- and even good old-fashioned stuffing of ballot boxes -- in twelve sparsely populated counties scattered across southern and western Ohio: Auglaize, Brown, Butler, Clermont, Darke, Highland, Mercer, Miami, Putnam, Shelby, Van Wert and Warren. (See The Twelve Suspect Counties) One key indicator of fraud is to look at counties where the presidential vote departs radically from other races on the ballot. By this measure, John Kerry's numbers were suspiciously low in each of the twelve counties -- and George Bush's were unusually high.

Take the case of Ellen Connally, a Democrat who lost her race for chief justice of the state Supreme Court. When the ballots were counted, Kerry should have drawn far more votes than Connally -- a liberal black judge who supports gay rights and campaigned on a shoestring budget. And that's exactly what happened statewide: Kerry tallied 667,000 more votes for president than Connally did for chief justice, outpolling her by a margin of thirty-two percent. Yet in these twelve off-the-radar counties, Connally somehow managed to outperform the best-funded Democrat in history, thumping Kerry by a grand total of 19,621 votes -- a margin of ten percent.(181) The Conyers report -- recognizing that thousands of rural Bush voters were unlikely to have backed a gay-friendly black judge roundly rejected in Democratic precincts -- suggests that "thousands of votes for Senator Kerry were lost."(182)

Kucinich, a veteran of elections in the state, puts it even more bluntly. "Down-ticket candidates shouldn't outperform presidential candidates like that," he says. "That just doesn't happen. The question is: Where did the votes for Kerry go?"

They certainly weren't invalidated by faulty voting equipment: a trifling one percent of presidential ballots in the twelve suspect counties were spoiled. The more likely explanation is that they were fraudulently shifted to Bush. Statewide, the president outpolled Thomas Moyer, the Republican judge who defeated Connally, by twenty-one percent. Yet in the twelve questionable counties, Bush's margin over Moyer was fifty percent -- a strong indication that the president's certified vote total was inflated. If Kerry had maintained his statewide margin over

Connally in the twelve suspect counties, as he almost assuredly would have done in a clean election, he would have bested her by 81,260 ballots. That's a swing of 162,520 votes from Kerry to Bush -- more than enough to alter the outcome. (183)

"This is very strong evidence that the count is off in those counties," says Freeman, the poll analyst. "By itself, without anything else, what happened in these twelve counties turns Ohio into a Kerry state. To me, this provides every indication of fraud."

How might this fraud have been carried out? One way to steal votes is to tamper with individual ballots -- and there is evidence that Republicans did just that. In Clermont County, where optical scanners were used to tabulate votes, sworn affidavits by election observers given to the House Judiciary Committee describe ballots on which marks for Kerry were covered up with white stickers, while marks for Bush were filled in to replace them. Rep. Conyers, in a letter to the FBI, described the testimony as "strong evidence of vote tampering if not outright fraud." (184) In Miami County, where Connally outpaced Kerry, one precinct registered a turnout of 98.55 percent (185) -- meaning that all but ten eligible voters went to the polls on Election Day. An investigation by the Columbus Free Press, however, collected affidavits from twenty-five people who swear they didn't vote. (186)

In addition to altering individual ballots, evidence suggests that Republicans tampered with the software used to tabulate votes. In Auglaize County, where Kerry lost not only to Connally but to two other defeated Democratic judicial candidates, voters cast their ballots on touch-screen machines. (187) Two weeks before the election, an employee of ES&S, the company that manufactures the machines, was observed by a local election official making an unauthorized log-in to the central computer used to compile election results. (188) In Miami County, after 100 percent of precincts had already reported their official results, an additional 18,615 votes were inexplicably added to the final tally. The last-minute alteration awarded 12,000 of the votes to Bush, boosting his margin of victory in the county by nearly 6,000. (189)

The most transparently crooked incident took place in Warren County. In the leadup to the election, Blackwell had illegally sought to keep reporters and election observers at least 100 feet away from the polls. (190) The Sixth Circuit, ruling that the decree represented an unconstitutional violation of the First Amendment, noted ominously that "democracies die behind closed doors." But the decision didn't stop officials in Warren County from devising a way to count the vote in secret. Immediately after the polls closed on Election Day, GOP officials -- citing the FBI -- declared that the county was facing a terrorist threat that ranked ten on a scale of one to ten. The county administration building was hastily locked down, allowing election officials to tabulate the results without any reporters present.

In fact, there was no terrorist threat. The FBI declared that it had issued no such warning, and an investigation by The Cincinnati Enquirer unearthed e-mails showing that the Republican plan to declare a terrorist alert had been in the works for eight days prior to the election. Officials had even refined the plot down to the language they used on signs notifying the public of a lockdown. (When ROLLING STONE requested copies of the same e-mails from the county, officials responded that the documents have been destroyed.) (191)

The late-night secrecy in Warren County recalls a classic trick: Results are held back until it's determined how many votes the favored candidate needs to win, and the totals are then adjusted accordingly. When Warren County finally announced its official results -- one of the last counties in the state to do so (192) -- the results departed wildly from statewide patterns. John Kerry received 2,426 fewer votes for president than Ellen Connally, the poorly funded black judge, did for chief justice. (193) As the Conyers report concluded, "It is impossible to rule out the possibility that some sort of manipulation of the tallies occurred on election night in the locked-down facility." (194)

Nor does the electoral tampering appear to have been isolated to these dozen counties. Ohio, like several other states, had an initiative on the ballot in 2004 to outlaw gay marriage. Statewide, the measure proved far more popular than Bush, besting the president by 470,000 votes. But in six of the twelve suspect counties -- as well as in six other small counties in central Ohio -- Bush outpolled the ban on same-sex unions by 16,132 votes. To trust the official tally, in other words, you must believe that thousands of rural Ohioans voted for both President Bush and gay marriage. (195)

IX. Rigging the Recount

After Kerry conceded the election, his campaign helped the Libertarian and Green parties pay for a recount of all eighty-eight counties in Ohio. Under state law, county boards of election were required to randomly select three percent of their precincts and recount the ballots both by hand and by machine. If the two totals reconciled exactly, a costly hand recount of the remaining votes could be avoided; machines could be used to tally the rest.

But election officials in Ohio worked outside the law to avoid hand recounts. According to charges brought by a special prosecutor in April, election officials in Cleveland fraudulently and secretly pre-counted precincts by hand to identify ones that would match the machine count. They then used these pre-screened precincts to select the "random" sample of three percent used for the recount.

"If it didn't balance, they excluded those precincts," said the prosecutor, Kevin Baxter, who has filed felony indictments against three election workers in Cleveland. "They screwed with the process and increased the probability, if not the certainty, that there would not be a full, countywide hand count." (196)

Voting machines were also tinkered with prior to the recount. In Hocking County, deputy elections director Sherole Eaton caught an employee of Triad -- which provided the software used to count punch-card ballots in nearly half of Ohio's counties (197) -- making unauthorized modifications to the tabulating computer before the recount. Eaton told the Conyers committee that the same employee also provided county officials with a "cheat sheet" so that "the count would come out perfect and we wouldn't have to do a full hand-recount of the county." (198) After Eaton blew the whistle on the illegal tampering, she was fired.

(199) The same Triad employee was dispatched to do the same work in at least five other counties. (200) Company president Tod Rapp -- who contributed to Bush's campaign (201) -- has

confirmed that Triad routinely makes such tabulator adjustments to help election officials avoid hand recounts. In the end, every county serviced by Triad failed to conduct full recounts by hand. (202)

Even more troubling, in at least two counties, Fulton and Henry, Triad was able to connect to tabulating computers remotely via a dial-up connection, and reprogram them to recount only the presidential ballots. (203) If that kind of remote tabulator modification is possible for the purposes of the recount, it's no great leap to wonder if such modifications might have helped skew the original vote count. But the window for settling such questions is closing rapidly: On November 2nd of this year, on the second anniversary of the election, state officials will be permitted under Ohio law to shred all ballots from the 2004 election. (204)

X. What's At Stake

The mounting evidence that Republicans employed broad, methodical and illegal tactics in the 2004 election should raise serious alarms among news organizations. But instead of investigating allegations of wrongdoing, the press has simply accepted the result as valid. "We're in a terrible fix," Rep. Conyers told me. "We've got a media that uses its bullhorn in reverse -- to turn down the volume on this outrage rather than turning it up. That's why our citizens are not up in arms."

The lone news anchor who seriously questioned the integrity of the 2004 election was Keith Olbermann of MSNBC. I asked him why he stood against the tide. "I was a sports reporter, so I was used to dealing with numbers," he said. "And the numbers made no sense. Kerry had an insurmountable lead in the exit polls on Election Night -- and then everything flipped." Olbermann believes that his journalistic colleagues fell down on the job. "I was stunned by the lack of interest by investigative reporters," he said. "The Republicans shut down Warren County, allegedly for national security purposes -- and no one covered it. Shouldn't someone have sent a camera and a few reporters out there?"

Olbermann attributes the lack of coverage to self-censorship by journalists. "You can rock the boat, but you can never say that the entire ocean is in trouble," he said. "You cannot say: By the way, there's something wrong with our electoral system."

Federal officials charged with safeguarding the vote have also failed to contest the election. "Congress hasn't investigated this at all," says Kucinich. "There has been no oversight over our nation's most basic right: the right to vote. How can we call ourselves a beacon of democracy abroad when the right to vote hasn't been secured in free and fair elections at home?"

Sen. John Kerry -- in a wide-ranging discussion of ROLLING STONE's investigation -- expressed concern about Republican tactics in 2004, but stopped short of saying the election was stolen. "Can I draw a conclusion that they played tough games and clearly had an intent to reduce the level of our vote? Yes, absolutely. Can I tell you to a certainty that it made the difference in the election? I can't. There's no way for me to do that. If I could have done that, then obviously I would have found some legal recourse."

Kerry conceded, however, that the widespread irregularities make it impossible to know for

certain that the outcome reflected the will of the voters. "I think there are clearly states where it is questionable whether everybody's vote is being counted, whether everybody is being given the opportunity to register and to vote," he said. "There are clearly barriers in too many places to the ability of people to exercise their full franchise. For that to be happening in the United States of America today is disgraceful."

Kerry's comments were echoed by Howard Dean, the chairman of the Democratic National Committee. "I'm not confident that the election in Ohio was fairly decided," Dean says. "We know that there was substantial voter suppression, and the machines were not reliable. It should not be a surprise that the Republicans are willing to do things that are unethical to manipulate elections. That's what we suspect has happened, and we'd like to safeguard our elections so that democracy can still be counted on to work."

To help prevent a repeat of 2004, Kerry has co-sponsored a package of election reforms called the Count Every Vote Act. The measure would increase turnout by allowing voters to register at the polls on Election Day, provide provisional ballots to voters who inadvertently show up at the wrong precinct, require electronic voting machines to produce paper receipts verified by voters, and force election officials like Blackwell to step down if they want to join a campaign. (205) But Kerry says his fellow Democrats have been reluctant to push the reforms, fearing that Republicans would use their majority in Congress to create even more obstacles to voting. "The real reason there is no appetite up here is that people are afraid the Republicans will amend HAVA and shove something far worse down our throats," he told me.

On May 24th, Sen. Mitch McConnell (R-Ky.) tried unsuccessfully to amend the immigration bill to bar anyone who lacks a government-issued photo ID from voting (206) -- a rule that would disenfranchise at least six percent of Americans, the majority of them urban and poor, who lack such identification. (207) The GOP-controlled state legislature in Indiana passed a similar measure, and an ID rule in Georgia was recently struck down as unconstitutional. (208)

"Why erect those kinds of hurdles unless you're afraid of voters?" asks Ralph Neas, director of People for the American Way. "The country will be better off if everyone votes -- Democrats and Republicans. But that is not the Blackwell philosophy, that is not the George W. Bush or Jeb Bush philosophy. They want to limit the franchise and go to extraordinary lengths to make it more difficult to vote."

The issue of what happened in 2004 is not an academic one. For the second election in a row, the president of the United States was selected not by the uncontested will of the people but under a cloud of dirty tricks. Given the scope of the GOP machinations, we simply cannot be certain that the right man now occupies the Oval Office -- which means, in effect, that we have been deprived of our faith in democracy itself.

American history is littered with vote fraud -- but rather than learning from our shameful past and cleaning up the system, we have allowed the problem to grow even worse. If the last two elections have taught us anything, it is this: The single greatest threat to our democracy is the insecurity of our voting system. If people lose faith that their votes are accurately and faithfully

recorded, they will abandon the ballot box. Nothing less is at stake here than the entire idea of a government by the people.

Voting, as Thomas Paine said, "is the right upon which all other rights depend." Unless we ensure that right, everything else we hold dear is in jeopardy.

For more, see exclusive documents, sources, charts and commentary.

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1) Manual Roig-Franzia and Dan Keating, "Latest Conspiracy Theory -- Kerry Won -- Hits the Ether," The Washington Post, November 11, 2004.

<http://www.washingtonpost.com/wp-dyn/articles/A41106-2004Nov10.html>

2) The New York Times Editorial Desk, "About Those Election Results," The New York Times, November 14, 2004.

<http://select.nytimes.com/gst/abstract.html?res=F70615FA3C5B0C778DDDA80994DC404482&n=Top%2fReference%2fTimes%20Topics%2fSubjects%2fE%2fElection%20Results>

3) United States Department of Defense, "Defense Department Special Briefing on Federal Voting Assistance Program," August 6, 2004.

<http://www.defenselink.mil/transcripts/2004/tr20040806-1502.html>

4) Overseas Vote Foundation, "2004 Post Election Survey Results," June 2005, page 11.

http://www.overseasvotefoundation.org/downloads/surveys/ovf_survey_01jun2005_v1.0_usletter.pdf

5) Jennifer Joan Lee, "Pentagon Blocks Site for Voters Outside U.S.," International Herald Tribune, September 20, 2004.

6) Meg Landers, "Librarian Bares Possible Voter Registration Dodge," Mail Tribune (Jackson County, OR), September 21, 2004.

<http://www.mailtribune.com/archive/2004/0921/local/stories/02local.htm>

7) Mark Brunswick and Pat Doyle, "Voter Registration; 3 former workers: Firm paid pro-Bush bonuses; One said he was told his job was to bring back cards for GOP voters," Star Tribune (Minneapolis, MN), October 27, 2004.

8) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President.

<http://www.fec.gov/pubrec/fe2004/2004pres.pdf>

9) Ellen Theisen and Warren Stewart, Summary Report on New Mexico State Election Data, January 4, 2005, pg. 2.

http://www.democracyfornewmexico.com/democracy_for_new_mexico/files/NewMexico2004ElectionDataReport-v2.pdf

James W. Bronsan, "In 2004, New Mexico Worst at Counting Votes," Scripps Howard News Service, December 22, 2004. 10) "A Summary of the 2004 Election Day Survey; How We Voted: People, Ballots & Polling Places; A Report to the American People by the United States Election Assistance Commission," September 2005, pg. 10.

http://www.eac.gov/election_survey_2004/pdf/EDS%20exec.%20summary.pdf

11) Facts mentioned in this paragraph are subsequently cited throughout the story.

12) See "Ohio's Missing Votes."

13) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President. <http://www.fec.gov/pubrec/fe2004/2004pres.pdf>

14) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio," June 22, 2005. Page 5

<http://a9.g.akamai.net/7/9/8082/v001/www.democrats.org/pdfs/ohvrireport/fullreport.pdf>

15) See "VIII. Rural Counties."

16) Evaluation of Edison/Mitofsky Election System 2004 prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 3

<http://www.exit-poll.net/election-night/EvaluationJan192005.pdf>

17) This refers to data for German national elections in 1994, 1998 and 2002, previously cited by Steven F. Freeman.

18) Dick Morris, "Those Faulty Exit Polls Were Sabotage," The Hill, November 4, 2004.

<http://www.hillnews.com/morris/110404.aspx>

19) Martin Plissner, "Exit Polls to Protect the Vote," The New York Times, October 17, 2004.

20) Matt Kelley, "U.S. Money has Helped Opposition in Ukraine," Associated Press, December 11, 2004. http://www.signonsandiego.com/uniontrib/20041211/news_1n11usaid.html

Daniel Williams, "Court Rejects Ukraine Vote; Justices Cite Massive Fraud in Runoff, Set New Election," The Washington Post, December 4, 2004.

21) Steve Freeman and Joel Bleifuss, "Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count," Seven Stories Press, July 2006, Page 102.

22) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 3.

<http://www.exit-poll.net/election-night/EvaluationJan192005.pdf>

23) Mitofsky International Web site. <http://www.mitofskyinternational.com/company.htm>

24) Tim Golden, "Election Near, Mexicans Question the Questioners," The New York Times, August 10, 1994.

25) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 59.

26) Jonathan D. Simon, J.D., and Ron P. Baiman, Ph.D., "The 2004 Presidential Election: Who Won the Popular Vote? An Examination of the Comparative Validity of Exit Poll and Vote Count Data." FreePress.org, December 29, 2004, P. 9
http://freepress.org/images/departments/PopularVotePaper181_1.pdf

27) Analysis by Steven F. Freeman.

28) Freeman and Bleifuss, pg. 134

29) Jim Rutenberg, "Report Says Problems Led to Skewing Survey Data," The New York Times, November 5, 2004.

30) Freeman and Bleifuss, pg. 134

31) Analysis of the 2004 Presidential Election Exit Poll Discrepancies. U.S. Count Votes. Baiman R, et al. March 31, 2005. Page 3.
http://www.electionarchive.org/ucvAnalysis/US/Exit_Polls_2004_Edison-Mitofsky.pdf

32) Notes From Campaign Trail, Fox News Network, Live Event, 8:00 p.m. EST, November 2, 2004.

33) Freeman and Bleifuss, pg. 101-102

34) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

35) Freeman and Bleifuss, pg. 120.

36) Interview with John Zogby

37) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

38) Freeman and Bleifuss, pg. 128.

39) Freeman and Bleifuss, pg. 130.

40) "The Gun is Smoking: 2004 Ohio Precinct-level Exit Poll Data Show Virtually Irrefutable Evidence of Vote Miscount," U.S. Count Votes, National Election Data Archive, January 23,

2006. <http://uscountvotes.org/ucvAnalysis/OH/Ohio-Exit-Polls-2004.pdf>

41) "The Gun is Smoking," pg. 16.

42) The Washington Post, "Charting the Campaign: Top Five Most Visited States," November 2, 2004. <http://www.washingtonpost.com/wp-srv/politics/elections/2004/charting.html>

43) John McCarthy, "Nearly a Month Later, Ohio Fight Goes On," Associated Press Online, November 30, 2004.

44) Ohio Revised Code, 3501.04, Chief Election Officer
<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>

45) Joe Hallett, "Blackwell Joins GOP's Spin Team," The Columbus Dispatch, November 30, 2004.

46) Gary Fineout, "Records Indicate Harris on Defense," Ledger (Lakeland, Florida), November 18, 2000.

47) <http://www.kenblackwell.com/>

48) Joe Hallett, "Governor; Aggressive First Round Culminates Tuesday," Columbus Dispatch, April 30, 2006.
<http://www.dispatch.com/extra/extra.php?story=dispatch/2006/04/30/20060430-B1-02.html>

49) Sandy Theis, "Blackwell Accused of Breaking Law by Pushing Same-Sex Marriage Ban," Plain Dealer (Cleveland, OH), October 29, 2004.

50) Raw Story, "Republican Ohio Secretary of State Boasts About Delivering Ohio to Bush."
http://rawstory.rawprint.com/105/blackwell_campaign_letter2_105.php

51) In the United States District Court For the Northern District of Ohio Northern Division, The Sandusky County Democratic Party et al. v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8. <http://electionlawblog.org/archives/10-20%20Order.pdf>

52) Preserving Democracy: What Went Wrong in Ohio, Status Report of the House Judiciary Committee Democratic Staff (Rep. John Conyers, Jr.), January 5, 2005.
http://www.house.gov/judiciary_democrats/ohiostatusrept1505.pdf

53) Preserving Democracy, pg. 8.

54) Preserving Democracy, pg. 4.

55) The board of elections in Cuyahoga, Franklin and Hamilton counties.

56) Analysis by Richard Hayes Phillips, a voting rights advocate.

57) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of Nov. 2 Provisional Ballots Axed in Lucas County," Toledo Blade, January 9, 2005.

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050109/NEWS09/501090334&SearchID=73195662517954>

58) Analysis by Hayes Phillips.

59) Cuyahoga County Board of Elections

60) Preserving Democracy, pg. 6.

61) Ford Fessenden, "A Big Increase of New Voters in Swing States," The New York Times, September 26, 2004.

<http://www.nytimes.com/2004/09/26/politics/campaign/26vote.html?ex=1254024000&en=cd9ae70cb6e69619&ei=5088&partner=rssnyt>

62) Ralph Z. Hallow, "Republicans Go ?Under the Radar? in Rural Ohio," The Washington Times, October 28, 2004. <http://washtimes.com/national/20041027-115211-1609r.htm>

63) Jo Becker, "GOP Challenging Voter Registrations," The Washington Post, October 29, 2004. <http://www.washingtonpost.com/wp-dyn/articles/A7422-2004Oct28.html>

64) Janet Babin, "Voter Registrations Challenged in Ohio," NPR, All Things Considered, October 28, 2004.

65) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 2.

<http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/election2004/mlrblackwell102704ord.pdf>

66) Sandy Theis, "Fraud-Busters Busted; GOP?s Blanket Challenge Backfires in a Big Way," Plain Dealer, October 31, 2004.

67) Daniel Tokaji, "Early Returns on Election Reform," George Washington Law Review, Vol. 74, 2005, page 1235

68) Sandy Theis, "Fraud-Busters Busted; GOP?s Blanket Challenge Backfires in a Big Way," Plain Dealer, October 31, 2004.

69) Andrew Welsh-Huggins, "Out of Country, Off Beaten Path; Reason for Voting Challenges Vary," Plain Dealer (Cleveland, OH), October 27, 2004.

70) Ohio Revised Code; 3505.19

71) Directive No. 2004-44 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections Members, Directors, and Deputy Directors 1 (Oct. 26, 2004).

72) Fritz Wenzel, "Challenges Filed Against 931 Lucas County Voters," Toledo Blade, October 27, 2004. <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20041027/NEWS09/410270361/-1/NEWS>

73) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 4. <http://news.corporatecounselcentre.ca/hdocs/docs/election2004/mlrblackwell102704ord.pdf>

74) LaRaye Brown, "Elections Board Plans Hearing For Challenges," The News Messenger, October 26, 2004.

75) LaRaye Brown, "Elections Board Plans Hearing For Challenges," The News Messenger, October 26, 2004.

76) Miller v. Blackwell, (S.D. Ohio), (6th Cir. 2004) <http://news.corporatecounselcentre.ca/hdocs/docs/election2004/mlrblackwell102704ord.pdf>

77) James Drew and Steve Eder, "Court Rejects GOP Voter Challenge; Some Counties Hold Hearings Anyhow; 200 Voters Turned Away," Toledo Blade, October 30, 2004. <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20041030/NEWS09/410300450/-1/NEWS>

78) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186 <http://moritzlaw.osu.edu/electionlaw/litigation/documents/petitionforrehearingenbanc.pdf>

79) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186 <http://moritzlaw.osu.edu/electionlaw/litigation/documents/petitionforrehearingenbanc.pdf>

80) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," The New York Times, November 1, 2004.

Greg Palast, "New Florida Vote Scandal Feared," BBC News, October 26, 2004.

81) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," The New York Times, November 1, 2004.

82) Greg J. Borowski, "GOP Demands IDs of 37,000 in City," Milwaukee Journal Sentinel, October 30, 2004. <http://www2.jsonline.com:80/news/metro/oct04/271173.asp>

83) "The Disenfranchisement of the Re-Enfranchised; How Confusion Over Felon Voter

Eligibility in Ohio Keeps Qualified Ex-Offender Voters From the Polls," Prison Reform Advocacy Center, Cincinnati, Ohio, August 2004.

<http://www.prisonsucks.com/scans/Ohio%20Felon%20Voting%20Rights%20Paper.pdf>

84) Preserving Democracy, 64.

Note: Additional reporting contributed to this paragraph.

85) Gardner Selby, "Hundreds of Texans Ride Bandwagons Around U.S.; Volunteers Say Election is Too Important Not to Hit the Campaign Trail," San Antonio Express-News (Texas), October 15, 2004.

86) "Down to the Wire," Newsweek, November 15, 2004.

87) Lynda Gorov and Anne E. Kornblut, "Gore to Challenge Results; No Plans to Concede; top Fla. Court refuses to order resumption of Miami-Dade County," The Boston Globe, November 24, 2000.

http://graphics.boston.com/news/politics/campaign2000/news/Gore_to_challenge_results+.shtml

88) Al Kamen, "Miami 'Riot' Squad: Where are they Now?" Washington Post, January 24, 2005. <http://www.washingtonpost.com/wp-dyn/articles/A31074-2005Jan23.html>

89) Al Kamen, "Walking the Talk," Washington Post, April 21, 2006.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/20/AR2006042002067.html>

90) Secretary of State Directive, No. 2004-31, Section II, September 7, 2004.

91) Tokaji, pg. 1227 and Voting Rights Act, 42 U.S.C. 1971(a)(2)(B) (2000).

92) Jim Bebbington and Laura Bischoff, "Blackwell Rulings Rile Voting Advocates," Dayton Daily News. 93) Congress of the United States House of Representatives, Committee on the Judiciary, letter from Conyers to Blackwell.

http://www.house.gov/judiciary_democrats/ohblackwellfollowupltr12304.pdf

94) Catherine Candisky, "Secretary of State Lifts Order on Voting Forms; Lighter Paper Now Deemed Acceptable for Registration," Columbus Dispatch, September 30, 2004.

95) Analyses of Voter Disqualification, Cuyahoga County, Ohio, November 2004, Greater Cleveland Voter Registration Coalition, updated May 9, 2006, page 14.

http://www.clevelandvotes.org/news/reports/Analyses_Full_Report.pdf

96) Analyses of Voter Disqualification, page 5.

97) Analyses of Voter Disqualification, page. 1.

98) Lucas County Board of Elections -- Results of Investigation Following November 2004

General Election, April 5, 2005, Richard Weghorst and Faith Lyon.

<http://www.sos.state.oh.us/sos/electionsvoter/lucas/LucasCountyInvestigationReport.pdf>

99) "Feds Confirm Investigation of GOP Campaign Contributor," The Associated Press State & Local Wire, April 28, 2005.

100) Mark Naymik, "Coin Dealer Raised Chunk of Change for Bush," Plain Dealer, August 7, 2005.

101) Christopher D. Kirkpatrick, "Noe Indicted for Laundering Money to Bush Campaign," Toledo Blade, October 27, 2005.

<http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20051027/DEVELOPINGNEWS/51027023>

Mike Wilkinson and James Drew, "Grand Jury Charges Noe with 53 Felony Counts," Toledo Blade, February 13, 2006.

<http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20060213/BREAKINGNEWS/60213015>

102) Lucas County Report, pg. 2.

103) Lucas County Report, pg. 9.

104) Lucas County Report, pg. 10.

105) Lucas County Report, pages 9-10.

106) Lucas County Report, pg. 9.

107) Lucas County Report, pg. 9.

108) Lucas County Report, pg. 18.

109) Lucas County Report, pages 18-19.

110) Lucas County Report, pg. 19.

111) Lucas County Report, pages 4, 6.

112) Lucas County Report, pg. 6.

113) "Remarks by the President at Victory 2004 Rally," Seagate Convention Centre, Toledo, Ohio, October 29, 2004, The White House.

<http://www.whitehouse.gov/news/releases/2004/10/20041029-16.html>

note: Bernadette and Tom Noe's last name is incorrectly spelled "Noy" in the official White House transcript.

114) Help America Vote Act, Title III, Uniform and Nondiscriminatory Election Technology and Administration Requirements, Subtitle A Requirements, Section 302.

http://www.fec.gov/hava/law_ext.txt

115) Directive No. 2004-33 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections 1 (Sept. 16, 2004.).

116) In the United States District Court for the Northern District of Ohio, Western Division, The Sandusky County Democratic Party v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8.

<http://electionlawblog.org/archives/10-20%20Order.pdf>

117) Gregory Korte and Jim Siegel, "Defiant Blackwell Rips Judge; Secretary Says He'd go to Jail Before Rewriting Ballot Memo," Cincinnati Enquirer, October 22, 2004.

http://www.enquirer.com/editions/2004/10/22/loc_blackwell22.html

118) Sandusky County Democratic Party v. Blackwell, (N.D. Ohio), (6th Cir. 2004).
And Tokaji, pg. 1229

119) Tokaji, pg. 1231

120) "Judge, Blackwell, Spar Over Provisional Ballots," The Associated Press, October 20, 2004.

121) In the United States District Court for the Northern District of Ohio Western Division, The League of Women Voters of Ohio, et al. v. J. Kenneth Blackwell, Case No. 3:04 CV 7622

<http://www.moritzlaw.osu.edu/electionlaw/docs/lowv/doc15a.pdf>

122) David G. Savage, Richard B. Schmitt, "Bush Seeks Limit to Suits Over Voting Rights," Los Angeles Times, October 29, 2004. <http://www.commondreams.org/headlines04/1029-10.htm>

123) Judge Julia Smith Gibbons August 2, 2002

Judge John M. Rogers November 27, 2002

Judge Jeffrey S. Sutton May 5, 2003

Judge Deborah L. Cook May 7, 2003

http://www.ca6.uscourts.gov/internet/court_of_appeals/courtappeals_judges.htm

124) Darrell Rowland and Lee Leonard, "Federal Agency Distances Itself from Ohio Official; Blackwell Says Their Provisional-Balloting Positions are the Same," Columbus Dispatch (Ohio), October 20, 2004.

125) David S. Bernstein, "Questioning Ohio," Providence Phoenix, November 12 -18, 2004.

http://www.providencephoenix.com/features/other_stories/multi_1/documents/04259695.asp

126) Norma Robbins, "Facts to Ponder About the 2004 General Election," May 10, 2006.

http://www.clevelandvotes.org/news/reports/Facts_to_Ponder.pdf

127) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of November 2nd Provisional Ballots Axed in Lucas County," Toledo Blade, January 9, 2005.
<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050109/NEWS09/501090334/-1/NEWS>

128) Interview with Stephanie Tubbs Jones

129) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio," June 22, 2005. Page 6.

130) Democracy at Risk, pg. 5.

131) Ohio Secretary of State Web site, Provisional Ballots; Official Tabulation, November 2, 2004. <http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=148>

132) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

Christopher Hitchens, "Ohio's Odd Numbers," Vanity Fair.
<http://www.vanityfair.com/commentary/content/printables/050214roco05?print=true>

Additional analysis by Bob Fittrakis, editor of the Columbus Free Press, and Richard Hayes Phillips.

133) Democracy at Risk, pg. 3.

134) Preserving Democracy, pg. 29.

135) Democracy at Risk, pg. 5.

136) Bernstein, Providence Phoenix 137) U.S. Election Assistance Comm'n, Funding for States, http://www.eac.gov/early_money.asp and Tokaji, pg. 1222.

138) "The Battle Over Voting Technology," PBS, Online NewsHour, December 16, 2003.
http://www.pbs.org/newshour/vote2004/primaries/sr_technology_debate.html
Paul Festa, "States Scrutinize e-Voting as Primaries Near," CNET News.com, December 8, 2003.
http://news.com.com/States+scrutinize+e-voting+as+primaries+near/2100-1028_3-5114062.html

139) Preserving Democracy, pg. 27.

140) Preserving Democracy, pg. 30.

141) Matt Damschroder, chairman of Franklin County Board of Elections.

142) Preserving Democracy, pg. 26.

143) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

<http://www.washingtonpost.com/ac2/wp-dyn/A64737-2004Dec14?language=printer>

144) Correspondence with Matt Damschroder.

145) Suzanne Hoholik and Mark Ferencik, "GOP Council Hopes Rising; Party expects ruling on petitions will put its candidate on ballot," Columbus Dispatch, March 26, 2003.

146) Preserving Democracy, pg. 25.

147) Mark Niquette, "GOP Strongholds Saw Increase in Voting Machines," Columbus Dispatch, December 12, 2004.

<http://www.dispatch.com/news-story.php?story=dispatch/2004/12/12/20041212-A1-03.html&rfr=nwsl>

148) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

<http://www.washingtonpost.com/wp-dyn/articles/A64737-2004Dec14.html>

149) Columbus Free Press editor, Bob Fitrakis.

150) "Voting Machine Allocation in Franklin County, Ohio, 2004: Response to the U.S. Department of Justice Letter of June 29, 2005," Walter R. Mebane, Jr., February 11, 2006, Page 13. <http://macht.arts.cornell.edu/wrm1/franklin2.pdf>

151) Tokaji, pg. 1238.

Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

<http://moritzlaw.osu.edu/electionlaw/docs/ohio/041102LongLinecomplaint.pdf>

152) Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

<http://moritzlaw.osu.edu/electionlaw/docs/ohio/041102LongLinecomplaint.pdf>

153) Ohio Democratic Party v. Blackwell, No. C2 04 1055, slip op. At 1 (S.D. Ohio Nov. 2, 2004). <http://moritzlaw.osu.edu/electionlaw/docs/ohio/041102LongLineOrder.pdf>

154) Washington Post, "Several Factors Contributed to 'Lost' Voters in Ohio," Michael Powell and Peter Slevin, December 15, 2004.

155) Preserving Democracy, pg. 25.

156) Affidavit of Richard Hayes Phillips, December 10, 2004.

<http://www.yuricareport.com/2004%20Election%20Fraud/AffidavitPhillipsShowsKerryCouldWinOhio.html>

157) Mark Niquette, "Finally, It's Time to Vote; U.S. Appeals Court Overturns Ban, Allows Challengers Back in Polling Sites," Columbus Dispatch (Ohio), November 2, 2004.

158) In the United States District Court for the Southern District of Ohio, Western Division, Marian A. Spencer, et. al., v. J. Kenneth Blackwell, Case no. C-1-04-738, page 3.

<http://www.ohsd.uscourts.gov/pdf/Spencer.65.ord.pdf>

159) James Dao, "The 2004 Campaign: Ohio, G.O.P. Bid to Contest Registrations is Blocked," The New York Times, October 28, 2004.

<http://select.nytimes.com/gst/abstract.html?res=F20C11FA39590C7B8EDDA90994DC404482>

160) Marian A. Spencer, et. al., v. J. Kenneth Blackwell; In the United States District Court for the Southern District of Ohio, Western Division; Case no. C-1-04-738.

<http://www.ohsd.uscourts.gov/pdf/Spencer.65.ord.pdf>

161) Dan Horn, Howard Wilkinson, and Cindi Andrews, "Supreme Court Justice Allows Challengers," Cincinnati Enquirer.

http://www.enquirer.com/midday/11/11032004_News_mday_challengers03.html

162) Tokaji, pages 1237-1238.

163) Democracy at Risk, pg. 20.

164) The Columbus Free Press.

165) "Errors Plague Voting Process in Ohio, Pa." The Vindicator, November 3, 2004, Vindicator Staff Report <http://www.vindy.com/basic/news/281829446390855.php>

166) Voters Unite catalogues news reports from around the country that give examples of dysfunctional voting machines, among other election stories.

<http://www.votersunite.org/electionproblems.asp?sort=date&selectstate=ALL&selectproblemtype=Machine+malfuction>

167) The Columbus Free Press.

168) Jim Woods, "In One Precinct, Bush's Tally was Supersized by a Computer Glitch," Columbus Dispatch (Ohio), November 5, 2004.

169) Hitchens, Vanity Fair.

170) Letter from J. Kenneth Blackwell, Ohio Secretary of State, to Doug White, President, Ohio

Senate 3 (Feb. 26, 2004).

171) Sixty-eight counties used punch card ballots. Thirteen used optical scan machines. Seven used touch-screen technology.

172) Malia Rulon, "Congressman Calls For FBI Investigation Into Ohio Election," The Associated Press State & Local Wire, December 15, 2004.

173) Tokaji, Page 1221.

174) Jim Konkoly, "Volunteers Complete Local Recount," Coshocton Tribune, December 18, 2004.

175) New York Times, "Voting Problems in Ohio Spur Call for Overhaul," James Dao, Ford Fessenden, December 24, 2004.

<http://www.nytimes.com/2004/12/24/national/24vote.html?ex=1261544400&en=0e0adbe08ff79c22&ei=5088&partner=rssnyt>

176) Ken McCall and Jim Bebbington, "Two Precincts had High Undercounts, Analysis Shows," Dayton Daily News, November 18, 2004.

177) Lisa A. Abraham, "Punch-Card Voting is Illegal," Akron Beacon Journal, April 22, 2006.
<http://www.ohio.com/mld/ohio/news/14404305.htm?template=contentModules/printstory.jsp>

178) Analysis by Hayes Phillips.

179) Preserving Democracy, pg. 57.

180) Analysis by Hayes Phillips.

181) Analysis completed by using official tallies on the Ohio Secretary of State Web site.
Official tallies for Kerry:

<http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=135>

Official tallies for Connally:

<http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=138>

182) Preserving Democracy, pg. 55.

183. Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site.

<http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=135>

<http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=138>

184. Letter from Rep. John Conyers to Chris Swecker, assistant director of the Criminal Investigative Division at the Federal Bureau of Investigation. See attached affidavits.

http://www.house.gov/judiciary_democrats/ohelecfbifollowupltr12805.pdf

185. Miami County Board of Elections.

186. Confirmed by Bob Fittrakis of the Free Press

187. Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site.

188. Erin Miller, "Board Awaits State Follow Up," The Evening Leader.

<http://www.theeveningleader.com/articles/2004/11/06/news/news.01.txt>

189. "Preserving Democracy," pages 58-59.

190. The Associated Press, "News Groups Sue Ohio Elections Chief Over Poll Access," Associated Press, November 2, 2004.

and

Mark Crispin Miller, "None Dare Call It Stolen," Harper's, August 2005.

<http://www.harpers.org/ExcerptNoneDare.html>

191. Incidents in Warren County were catalogued in a series of articles by the Cincinnati Enquirer:

Erica Solving, "No Changes in Final Warren Co. Vote Count; E-mails Released Monday Show Lockdown Pre-planned," Cincinnati Enquirer, November 16, 2004.

<http://news.enquirer.com/apps/pbcs.dll/article?AID=/20041116/NEWS01/411160355/1056>

Erica Solving, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," Cincinnati Enquirer, November 5, 2004.

http://www.enquirer.com/editions/2004/11/05/loc_warrenvote05.html

Erica Solvig and Dan Horn, "Warren Co. Defends Lockdown Decision; FBI denies warning officials of any special threat," Cincinnati Enquirer, November 10, 2004.

Erica Solvig, "Warren Co. Recount Goes Public; After Election Night lockdown, security eases up," Cincinnati Enquirer, December 15, 2004.

192. Erica Solvig, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," Cincinnati Enquirer, November 5, 2004.

http://www.enquirer.com/editions/2004/11/05/loc_warrenvote05.html

193. Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

194. "Preserving Democracy," pg. 52.

195. Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

196. Joan Mazzolini, "Workers Accused of Fudging '04 Recount; Prosecutor Says Cuyahoga Skirted Rules," The Plain Dealer, April 6, 2006.

<http://www.cleveland.com/election/plaindealer/index.ssf?/base/cuyahoga/1144312870224340.xml&coll=2>

197. Malia Rulon, "Congressman Calls for FBI Investigation Into Ohio election," The Associated Press, December 15, 2004.

198. Affidavit, December 13, 2004, Sherole Eaton, Re: General Election 2004, Hocking County.

http://www.truthout.org/mm_01/5.121004.Robersondep.pdf

199. Jon Craig, "'04 Election in Hocking County; Worker Who Questioned Recount is Asked to Quit," Columbus Dispatch (Ohio), June 1st, 2005.

<http://www.dispatch.com/news-story.php?story=dispatch/2005/06/01/20050601-B3-03.html&chk=t>

200. "Preserving Democracy," pg. 81.

201. www.opensecrets.org

202. "Preserving Democracy," pg. 82.

203. "Preserving Democracy," pg. 83.

204. Ohio Secretary of State's press office.

205. Count Every Vote Act of 2005

http://www.pfaw.org/pfaw/dfiles/file_493.pdf

206. Dena Bunis, "Senate Limits Immigration Debate," The Orange County Register, May 24, 2006.

http://www.ocregister.com/ocregister/homepage/abox/article_1153484.php

207. Tokaji's blog, Election Law at Moritz, "McConnell's Voter ID Amendment," May 22, 2006.

<http://moritzlaw.osu.edu/blogs/tokaji/2006/05/mcconnells-voter-id-amendment.html>

208. United States District Court Northern District of Georgia, Rome Division.

<http://moritzlaw.osu.edu/blogs/tokaji/Order%20Granting%20Preliminary%20Injunction%20email.pdf>

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