I, Christopher Nance, am over the age of 18, under no legal disability, and testify from personal knowledge as follows:

1. I am the Assistant Secretary of State for the State of Ohio under Secretary of State Jennifer Brunner.

2. I have served as Assistant Secretary of State since January 8, 2007.

3. As Assistant Secretary of State I am responsible for serving as Secretary of State Brunner’s liaison to the Cuyahoga County Board of Elections.

4. Before becoming Assistant Secretary of State, I worked as a Deputy District Director in the Cleveland, Ohio office of Congresswoman Stephanie Tubbs-Jones.

5. In my role as Deputy District Director, I had worked closely with the Cuyahoga County Board of Elections.

6. I have had extensive interaction with the Cuyahoga County Board of Elections since 2004.

7. The Cuyahoga County Board of Elections has historically had some problems in the conduct of elections. During the 2004 general election, Cuyahoga County used a punch card voting system. In that election, several precincts in Cuyahoga County had very long lines of voters. Some of the precincts also had failed to include some registered voters in their poll books.

8. As a result of the problems in Cuyahoga County and other places in the State of Ohio, Representative Stephanie Tubbs-Jones sponsored a challenge to Ohio’s Electoral College votes during the opening of those votes on January 6, 2005.

9. This challenge was also sponsored by Senator Barbara Boxer in the United States Senate and led to a two hour debate in each house of Congress concerning whether to accept the electoral votes of the State of Ohio.

10. A copy of the debates are located in the Congressional Record.

11. Michael Vu served as the Director of the Cuyahoga County Board of Elections beginning in August 2003 and continuing through February 2007.

12. Before the 2004 general election, Vu made a number of organizational changes at the Cuyahoga County Board of Elections including reducing the overall number of Board employees by approximately 33%.

13. The Cuyahoga County Board of Elections had an uneventful 2005 election prior to implementing a Direct Recording Electronic (“DRE”) voting system.

14. The May 2006 primary election was the first election in Cuyahoga County that used a DRE system instead of a punch card system as the main voting system for the county.
15. During the May 2006 primary election, Cuyahoga County used a Diebold Optical Scan system to process absentee ballots. Starting with the November 2006 general election voters were able to simply cast an absentee ballot without specifying a reason.

16. Cuyahoga County had a 100% failure rate in counting the absentee ballots for the 2006 primary election. Because of poor communication between the board, Diebold, and the ballot printing company, the specifications for the absentee ballots were incorrect. This meant that the scanner could not read any of the absentee ballots.

17. The unofficial results for Cuyahoga County were delayed by five days due to hand counting the absentee ballots. This resulted in the overall statewide count being delayed by five days. In order to count absentee ballots for the May 2006 primary, one Democrat and one Republican board employee had to vote each absentee ballot on a DRE for the official canvass.

18. In addition to the problem with absentee ballots, Cuyahoga County also had various failures with their DREs in the May 2006 primary. An unusually high number of poll workers failed to show up on election day. As a result, numerous precincts did not open on time for the election. In addition, some precincts were not properly prepared to handle their new DRE machines.

19. The Diebold DRE has a three-prong electrical plug. Some of the older polling locations in Cuyahoga County have only two-prong outlets. Some poll workers at these locations did not have the appropriate adaptors that would allow the machine to be plugged into the wall.

20. Because of the various problems encountered by the Cuyahoga County Board of Elections, the Board and the County Commissioners established the Cuyahoga Election Review Panel. The panel members were Judge Ronald B. Adrine, Chair, former Director of the Ohio Lottery Commission Thomas J. Hayes, and Cleveland State Law Professor Candice Hoke.

21. The purpose of the Cuyahoga Election Review Panel was to review all aspects of the election administration system in Cuyahoga County and to make recommendations about the ways that election administration could be improved.

22. The Panel interviewed board members, staff, poll workers, and additional individuals, including me, about the issues in Cuyahoga County.

23. On July 20, 2006, the Cuyahoga Elections Review Panel issued its report. A true and accurate copy of that report is attached to this affidavit as Exhibit A.

24. As a result of the various elections issues Cuyahoga County had in May of 2006, the county spent approximately $21 million on Diebold Election Systems, Inc. ("Diebold"). Between $10 - $12 million was spent between May 2006 and November 2006.
25. The November 2006 election in Cuyahoga County ran without any major problems.

26. Three Cuyahoga County Board of Elections employees were indicted and two of those employees were convicted on felony counts concerning the recount of the 2004 Presidential Election in Cuyahoga County. The convictions were eventually overturned on appeal and the employees pled guilty to reduced charges. Nevertheless, the management and administrative issues identified in the Cuyahoga Elections Review Panel report detailed a comprehensive set of recommendations needed to improve the administration of elections in Cuyahoga County.

27. The Cuyahoga County Board of Elections saw substantial changes. The Board accepted the resignations of both its Director and Deputy Director in February 2007. Subsequently all four board members of the Cuyahoga County Board of Elections resigned and were replaced by Secretary of State Brunner.

28. Secretary of State Brunner also placed the Cuyahoga County Board of Elections under administrative review and asked me to serve as her liaison to the Board. In my role as board liaison, I spent extensive periods of time in Cleveland working directly with the new Board members as well as the new Director and Deputy Director and staff.

29. The new personnel have updated many of their procedures and the level of communication between the board members themselves, as well as with the Secretary of State’s Office, has greatly increased.

30. Secretary of State Brunner and I also have a weekly conference call meeting with bipartisan representatives of the Board of Elections.

31. At the same time that Secretary of State Brunner and I were working to correct deficiencies at the Cuyahoga County Board of Elections, the Secretary of State authorized Project EVEREST.

32. Project EVEREST was designed as a complete study of all voting systems used in the State of Ohio. The study was to examine the reliability of all five voting systems, identify risks and vulnerabilities they present, and to determine the reliability and safety of each system. Secretary of State Brunner issued a request for proposals to conduct this study on June 18, 2007.

33. On September 10, 2007, Secretary of State Brunner presented her request to the State Controlling Board in order to fund Project EVEREST. The Secretary had asked the State to spend $1.9 million in order to conduct the most systematic study of these voting machines than had been done by any state testing organization.
34. The Controlling Board initially continued consideration of the funding request for this study and asked the Secretary to organize a panel of bipartisan elections officials to review the study.

35. The Secretary returned to the Controlling Board with her request for funding and included in her proposal a plan to involve 12 bipartisan county elections officials in reviewing the findings of the Project EVEREST testers.

36. On September 24, 2007, the Controlling Board voted unanimously to approve the expenditure of $1.9 million by the Secretary to conduct the EVEREST study.

37. Secretary of State Brunner retained three separate teams of researchers to examine the vulnerabilities and functioning of the various certified Ohio voting systems. SysTest Labs was hired to review the manner in which the various voting machines themselves functioned and to review the various administrative practices of Ohio Boards of Elections in connection with the administration of elections using current Ohio voting systems. Microsolved, Inc., a for-profit testing firm, was also hired to assess the degree to which current Ohio voting systems could be penetrated, compromised or “hacked.” Secretary Brunner hired a team of academic personnel associated with The Pennsylvania State University, The University of Pennsylvania, and The University of California—Santa Barbara (Webwise, Inc.) to also review voting equipment, including the machines’ source codes, to evaluate the degree to which current Ohio voting systems could be penetrated, compromised or “hacked.” Finally, Secretary Brunner contracted with Battelle Memorial Institute to procure a project manager of this study.

38. Secretary of State Brunner also negotiated with Diebold Elections Systems, Hart InterCivic, and ES&S, the three vendors of Ohio’s certified elections systems, resulting in the vendors providing copies of their source code as well as multiple sets of end-to-end voting equipment for all test teams.

39. By December 7, 2007, Secretary of State Brunner had received the final reports from all testing entities who had been retained to review Ohio’s voting equipment.

40. Beginning on December 7, Secretary of State Brunner and other members of her office began reviewing the unredacted reports she received from her vendors. She also began formulating recommendations as a result of this study.

41. Secretary of State Brunner also began working with the bipartisan group of 12 elections officials who reviewed the Project EVEREST Report.

42. On December 14, 2007, Secretary of State Brunner released the Project EVEREST Report and her recommendations. A true and accurate copy is attached to this Affidavit as Exhibit B.

43. During the November 2007 general election, the Cuyahoga County Board of Elections experienced problems with their Diebold (now known as Premier Election Solutions) DREs.
44. When a DRE is used as a voting machine, the DRE records each vote on a memory card. It also prints a copy of each vote on a roll of paper, referred to as a Voter Verified Paper Audit Trail” (“VVPAT”).

45. After the polls close, the poll workers are responsible for shutting down the voting machines at their precincts. They are also responsible for removing the memory cards and VVPATs from the various DREs. Both the memory cards and VVPATs are placed in a precinct bag along with the poll book and various other materials. The bag is sealed and locked.

46. The precinct bag is returned to the board of elections where the lock and seal are broken. The memory cards are inserted into a card reader that is connected to a server. The server reads the votes cast on each machine in each precinct.

47. In order to make sure that the November 2007 election ran smoothly, I spent election night in the Cuyahoga County Board of Elections along with all four county board members, their director and deputy director, and senior officials from Premier Elections Solutions including senior administrative and technical representatives.

48. The Cuyahoga County Board of Elections counts the votes in a room which is enclosed with windows. The public and the press may stand outside the windows and observe the counting of ballots.

49. During vote counting on November 4, 2007, the Premier GEMS server, which is responsible for counting ballots, crashed while the memory cards were being fed into the server.

50. The GEMS server had around 300 memory cards uploaded at the time it crashed.

51. Prior to the crash, the computer screen had shown results for the precincts that had their memory cards uploaded.

52. When the system crashed, the screen simply read “GEMS ERROR.” The screen then went completely blank.

53. After bringing the server back online, several of the precincts that had results already uploaded were simply missing from the displayed results on the GEMS server.

54. After getting the server to start working again, it crashed a second time.

55. The press and members of the public were able to witness the entire crash.

56. In order to process the votes in Cuyahoga County for the 2007 general election, the Cuyahoga County Board of Elections had to daisy chain 44 DREs together to process votes. According to Premiere’s guidelines, up to 55 DREs can be daisy chained for the purposes of tabulating votes.
57. These crashes caused a substantial delay in processing the unofficial canvass.

58. After these series of crashes, the Cuyahoga County Board of Elections hired SysTest Labs to observe and analyze the results of Premier’s analysis and explanation of the GEMS server crashes.

59. Cuyahoga County is the largest election jurisdiction in Ohio. In fact, it is among the top 20 voting jurisdictions in the United States in terms of size and one of the most complicated. Cuyahoga County has 1,436 precincts.

60. Because the March 2008 primary election is an even year primary election, each precinct will have an election for a Democratic and Republic precinct representative to the County Central Committee. Since there must be a Democratic, Republican, and Issues only ballot for each precinct in Cuyahoga County and also since Ohio uses statutorily mandated ballot rotation, there will be approximately 4,300 permutations of the ballot in Cuyahoga County for the March 2008 primary election.

61. Based upon the complexity of the Cuyahoga County ballot and the county’s prior experience with the Diebold DREs, and the EVEREST Report, the Secretary of State encouraged the Cuyahoga County Board of Elections to strongly consider if the Diebold DRE system could perform adequately in 2008 Presidential election cycle.

62. The Secretary of State understands that there is no risk-free voting system and that every single voting system has advantages and disadvantages. The EVEREST Report, however, exposed real problems with both the DRE and precinct count optical scan systems currently in use in Ohio. These systems present a number of points of security vulnerability that far exceeds the number of points of vulnerability presented by central count optical scan systems.

63. While it is not possible to have a risk free voting system, the Secretary believes that it is important to minimize the number of risk points and vulnerability points in any voting system. By reducing the number of points of risk or vulnerability, the fairness and accuracy of elections is strengthened.

64. As the State’s Chief Election Official who is statutorily charged pursuant to Ohio Revised Code 3501.04 and 3501.05 with the duty of administering Ohio’s elections, the Secretary believes that, for the March 2008 primary election in Cuyahoga County, a central count optical scan voting system provides the most beneficial balance of fairness, safety, security, and is a solution that can be implemented by the Cuyahoga County Board of Elections.

65. There are several different areas of focus that people have in evaluating a voting system. These areas of focus include the fairness of the system, its accuracy, the ability of the local board of elections to implement the system, the amount of time the system takes to produce a result, and finally its cost.
In evaluating which system to implement for Cuyahoga County, the Secretary of State viewed the timeliness of results and cost as secondary concerns. She was focused upon fairness, safety, security, and implementability in a manner that was consistent with the findings of the Project EVEREST study.

I am aware that the system in place in Cuyahoga County for the March 2008 primary may or may not be in place for future elections. It was not practical for Cuyahoga County to use a precinct count optical scan voting system for the March 2008 primary. At the same time, the DRE system and the GEMS tabulation process used in the past by Cuyahoga County had proven to be unreliable and not appropriate for use in the March 2008 primary election.

I am also aware that it takes longer to vote on a DRE than to vote an optical scan ballot. In previous elections, long lines were a problem in Cuyahoga County. In order to alleviate this concern and the possibility of voter disenfranchisement by making people wait in long lines, the Secretary believes that optical scan ballots may be voted more quickly and more efficiently. This solution will help to reduce the possibility of long lines and the unintentional disenfranchisement of voters who are unwilling or unable to wait their turn to vote on a DRE.

I am also aware of the voter education that the Cuyahoga County Board of Elections will undertake in order to comply with the Help America Vote Act and its specific requirement that voting jurisdictions that employ a central count optical scan ballot provide voter education on the effects of casting overvotes and the method of properly marking an optical scan ballot.

Director Jane Platten managed the Cuyahoga County voter education for the 2006 election. I have reviewed the Board’s voter education plan for using central scan ballots and find it to be a comprehensive plan.

The Board of Elections has prepared a pamphlet that will be mailed to each registered voter in Cuyahoga County including those voters who are listed as inactive.

The Board has also planned numerous public outreach programs to present information to community and civic organizations about the proper manner of filling out an optical scan ballot and the potential of overvotes and their effect.

The Board has scheduled between 80 and 100 outreach events throughout the community.

The Board will pass out brochures and postcards at these events as well.

Although Cuyahoga County does not have any precinct in which a foreign language ballot must statutorily be provided, the county has poll workers who are fluent in Spanish, Russian, and Arabic, the three foreign languages most predominantly spoken in Cuyahoga County.
76. The County will translate the instruction brochure into Spanish so that it is available at community outreach programs attended by Spanish-speaking citizens.

77. The Cuyahoga County Board of Elections will also have instructions in each polling booth that will instruct the individual voter about the proper method of filing out an optical scan ballot, the problems of overvoting, and the method of correcting a ballot.

78. Finally, the Cuyahoga County Board of Elections plans to place instructions on the top of the ballot box where voters return their ballot reminding the voter to check their ballot for errors.

79. In my position as the Secretary of State’s liaison to the Cuyahoga County Board of Elections, I am aware of the preparation required of a board of elections to hold an election. An election using DREs requires programming DREs, performing necessary pre-election maintenance work on the DREs discharging and charging of each DREs battery, delivery of the DREs to the various polling locations, and the training that all poll workers must undergo.

80. I believe to a reasonable degree of certainty that if this court were to now order the Cuyahoga County Board of Elections to use DREs for March 4, 2008 as the primary voting system, Cuyahoga County would not be able to hold an election that day.

Further Affiant Sayeth Naught.

Christopher Nance

Sworn to and subscribed in my presence on this 4th day of February, 2008.

Brian E. Shinn
Notary Public