

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

DEC 28 2007

**ROBERT L. SCHULZ, et al.,** )  
 )  
 **Plaintiffs,** )  
 **v.** )  
 )  
 **STATE OF NEW YORK, et al.,** )  
 )  
 **Defendants,** )

LAWRENCE K. BAERMAN, CLERK  
ALBANY

**No. 07-cv-0943  
LEK-DRH**

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**PLAINTIFFS' BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE  
FOR INJUNCTIVE RELIEF AGAINST IOWA DEFENDANTS**

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**December 27, 2007**

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<b>v.</b>	)	<b>No. 07-cv-0943</b>
	)	<b>LEK-DRH</b>
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<b>STATE OF NEW YORK, et al.,</b>	)	
	)	
<b>Defendants,</b>	)	

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**PLAINTIFFS' BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE  
FOR INJUNCTIVE RELIEF AGAINST IOWA DEFENDANTS**

In support of this motion, based on Plaintiffs' Complaint, and the prior pleadings, including Plaintiffs' Opposition to Defendants' motions to dismiss and Plaintiffs' cross motion for summary judgment, Plaintiffs' statement of material facts, the Affidavits by Lynn Landes, John Liggett, and James Condit, and two Declarations by Robert Schulz, Plaintiffs, who are *pro se*, state as follows:

**RELIEF REQUESTED**

Plaintiffs seek an order:

- a) Preliminarily and temporarily enjoining, prohibiting and restraining IOWA Defendants, including their cities, towns, counties, municipalities, agents, contractors and any person or political Party authorized to conduct a Presidential caucus or primary election on behalf of the State

from conducting any caucus or primary election for President of the United States of America, where:

- i. The votes are counted in secret, by machine or otherwise, and that do not utilize paper ballots with votes that are hand-marked and hand-counted in full public view, and
  - ii. The “captains” of the precinct caucuses do not immediately certify, under penalty of perjury, and publicly announce to all Participants at the caucuses, and conspicuously post in plain writing, the results of all votes cast during said caucus, including the one-person, one-vote of the Participants’ preference for President and the vote that determines the delegate count, and
  - iii. The “captains” of the precinct caucuses do not agree to immediately transmit to the State Defendants, and their County, by electronic means, a copy of the precinct certified results of all votes counts, and
  - iv. The precinct certified results of all vote counts are not immediately posted on each public County website as well as the principal public State of Iowa website, caucus-by-caucus, precinct-by-precinct, and
  - v. The procedural steps enumerated above are not completed before copies of the precinct certified results are transmitted to the National Election Pool, the Associated Press or any other “third party,” and
  - vi. The original voter registration, completed ballots and precinct captains’ certified results are not hand delivered or mailed by certified return receipt mail to the County Clerk before 5 pm on January 4, 2008, to be retained there in a secure location for one year, and
- b) Expediting these proceedings where this matter might be set for trial, and
- c) Granting any further relief that to the Court may seem just and proper.

### **PRELIMINARY STATEMENT**

This case arises from decisions by all State Defendants to conduct primary and general elections in 2008, for President of the United States, in ways that violate the federal Constitution and the Voting Rights Act by not eliminating the election’s vulnerabilities to confusion, frustration, error and fraud.

Between two and four citizens who are registered voters from each State in the Union are the Plaintiffs in this case. Each and every State in the Union is a Defendant; the Governor and Attorney General of each State have been served a copy of the Summons and Complaint. The chief election official(s) of each State are also Defendants having been sued in their individual and official capacities; they too have been served with copies of the Summons and Complaint.

As of today, Defendants have responded to the Complaint by filing motions to dismiss for lack of jurisdiction, wrong venue, Due process violation and lack of standing.

Concurrently, Plaintiffs have today opposed Defendants' motions to dismiss and have moved for Summary Judgment.

This Memorandum of Law is in support of Plaintiffs' proposed Show Cause Order against Iowa Defendants, whose Motion to Dismiss was received by Plaintiffs on the 22<sup>nd</sup> of December, having been mailed on December 18<sup>th</sup>.

Interestingly, Iowa Defendants have decided NOT to use machines to count the votes cast during next week's Caucus.<sup>1</sup> The votes cast at the 3800 caucuses (precincts) will be hand counted.

However, as shown in the accompanying Declaration by Robert Schulz and the arguments included herein, unless the requested injunctive relief is granted, the

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<sup>1</sup> Diebold optical scan machines used during the Iowa Straw Poll last summer failed, necessitating a hand count.

Iowa Caucus election for President of the United States will be constitutionally deficient due to its vulnerabilities to confusion, frustration, error and fraud.

## THE URGENCY

The Presidential election cycle begins in Iowa on the evening of January 3, 2008. See schedule below.

### JANUARY 2008

- **January 3:** Iowa
- **January 8:** New Hampshire
- **January 5:** Wyoming (R)
- **January 15:** Michigan
- **January 19:** Nevada, South Carolina (R)
- **January 26:** South Carolina (D)
- **January 29:** Florida

### FEBRUARY 2008

- **February 1:** Maine (R)
- **February 5:** Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho (D), Illinois, Kansas (D), Massachusetts, Minnesota, Missouri, New Jersey, New Mexico (D), New York, North Dakota, Oklahoma, Tennessee, Utah
- **February 9:** Louisiana, Kansas (R)
- **February 10:** Maine (D)
- **February 12:** District of Columbia, Maryland, Virginia
- **February 19:** Hawaii (D)<sup>1</sup>, Washington, Wisconsin

### MARCH 2008

- **March 4:** Ohio, Rhode Island, Texas, Vermont
- **March 8:** Wyoming (D)
- **March 11:** Mississippi

### APRIL 2008

- **April 22:** Pennsylvania

### MAY 2008

- **May 6:** Indiana, North Carolina
- **May 13:** Nebraska, West Virginia
- **May 20:** Kentucky, Oregon
- **May 27:** Idaho (R)

### JUNE 2008

- **June 3:** Montana, New Mexico (R), South Dakota

### AUGUST 2008

- **August 25-28:** Democratic National Convention in Denver, Colorado

### SEPTEMBER 2008

- **September 1-4:** Republican National Convention in Minneapolis-St. Paul, Minnesota

Unless this Court acts swiftly to protect the integrity of the Iowa Caucus, Plaintiffs and the People of this nation will needlessly, but certainly, endure -- in violation of their Rights, an election that is by definition constitutionally deficient and which will deprive them of their Right to democratically elect the leaders of their choice.

### **STATEMENT OF FACTS**

The facts of the case are presented in the accompanying Declaration by Robert Schulz as well as in Plaintiffs' prior pleadings filed on November 1, 2007 and earlier today, December 28, 2007.

### **ARGUMENT**

#### **I. IOWA LAWS PURPORTEDLY "REGULATING" PRIMARY CAUCUSES FAIL TO PROVIDE MINIMUM CONSTITUTIONAL PROTECTIONS**

Between its state constitution and state statutes, Iowa laws governing elections cover approximately 850 single-spaced published pages. The bulk of the laws regulating presidential primary caucuses are found in the Code of Iowa at Chapter 43, "PARTISAN NOMINATIONS -- PRIMARY ELECTION". Although the upcoming Iowa Caucus is explicitly "regulated" by Iowa election law, and the Caucus enjoys a widespread, public imprimatur of protection and official legitimacy via the drape of these election laws, critical deficiencies in the law

effectively remove the Iowa caucus from the zone of interest to be protected by the federal constitution and the federal voting rights act.

In short, key provisions of Iowa law that effectively exempt the Caucus from critical statutory requirements normally applicable to other official elections, render the Caucuses devoid of Constitutional integrity. In the end, the Iowa Caucus is nothing more than a private *political* event, effectively uncontrolled by state officials; OR it is an official presidential primary election being regulated by constitutionally deficient statutes which virtually invite political abuse and election fraud under cover of Iowa election law.

Given the much (self) touted national influence of the Iowa Caucus, it is unconscionable that the state would ignore its fiduciary and Constitutional duties to its citizens, and the Republic, by providing official sanction to a deeply flawed presidential primary event, ostensibly conducted under the patronage and cover of demonstrably defective "primary election" laws. As Plaintiffs establish below, it is clear that much of the hundreds of pages of Iowa election law are rendered impotent as they apply to Iowa Caucuses.

To begin, it is clear Iowa law recognizes its Caucuses as "Primary Elections". Section 43.1 of the Iowa Code clearly acknowledges that elections for the purpose of nominating candidates for public office are, by definition, "Primary Elections":

**43.1 Primary election construed.**

The primary election required by this chapter shall be construed to be an election by the members of various political parties for the purpose of placing in nomination candidates for public office.

Amazingly, while recognizing Caucuses as official elections subject to regulation as "primaries", Iowa law expressly provides that for caucus-primary events the political parties themselves, may establish, (or not) via the party's own bylaws or party rules, any "requirement" or procedures to tabulate or report (or not report) results of the precinct level caucuses. Essentially, Section 43.4 of Iowa's election law provides that party officials themselves are free -- *by law* -- to establish election procedures and report, **or not report**, precinct-level caucus election results.

In short, Iowa law explicitly provides that presidential primary caucus votes can be counted in private and/or reported as the political parties themselves may decide. Clearly, the delegation of state authority to private political parties to count, tabulate, report, and/or effectively "self-certify" primary/caucus election results for federal elections cannot pass federal constitutional muster:

**43.4 Political party precinct caucuses.**

[...]

When the rules of a political party require the selection and reporting of delegates selected as part of the presidential nominating process, or the rules of a political party require the tabulation and reporting of the number of persons attending the caucus favoring each presidential candidate, it is the duty of a person designated as provided by the rules of that political party to report the results of the precinct caucus as directed by the state central committee of that political party.

Section 39A.4(2) of Iowa's election law would appear to bare some "legal teeth" toward protecting the (perceived) legitimacy of the caucuses, but it is clear the law does little more than provide for criminal sanctions for failing to perform the vote counting or reporting duties *as established by the political parties themselves*. Critically, without official possession, certification and rigorous chain-of-custody accountability for precinct-level caucus election evidence, it would appear highly unlikely that any violation of these criminal statutes could ever be successfully prosecuted:

**39A.4 Election misconduct in the third degree.**

(2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.

Interestingly, at Section 43.48 Iowa primary law appears to require reporting of precinct-level vote counts, but only for counts *produced by voting equipment*. Conveniently for the state and the political parties, the law allows everyone to skirt the thorny constitutional issues raised by this provision that would normally apply to all *other*, i.e., "*non-caucus*", primary elections solely because only Caucus votes are (ironically) counted by hand:

**43.48 Precinct counts publicly available.**

The commissioner shall make available to the public the precinct counts produced by the voting equipment.

Section 43.91 of the Iowa Code facially attempts to circumvent normal election safeguards by opening the caucus primary to individuals who would not otherwise be eligible to vote in either a "normal" primary election or an Iowa general election. Specifically, Sec. 43.91 delegates voter registration and verification responsibilities to the political parties who apparently control who is physically allowed to vote. According to the statute, caucus voters need not be registered, nor even of legal age, but merely reside within the precinct and be *eligible* to become an elector by the date of the general election.

Importantly, although a list of actual voters is required to be prepared and submitted to state officials by the political party, no requirement is made that requires surrender or retention of the original voter declarations which establish legal eligibility. With regard to voter declarations of eligibility, it is further questionable if voters of only **minor age** can even legally create such a declaration under penalty of perjury. As such, Iowa provisions regulating who can vote at a primary caucus appear to be not only constitutionally deficient, but on their face are ripe in enabling endemic election fraud by virtually inviting the political parties to fabricate voter credentials. Here is the text of Sec. 43.91:

**43.91 Voter at caucus must be precinct resident.**

Any person voting at a precinct caucus must be a person who is or will by the date of the next general election become an eligible elector and who is a resident of the precinct. A list of the names and addresses of each person to whom a ballot was delivered or who was allowed to vote in each precinct caucus shall be prepared by the caucus chairperson and secretary who shall certify such list to the

commissioner at the same time as the names of those elected as delegates and party committee members are so certified.

As additional evidence of Iowa's attempts, via its laws, to establish and perpetuate the imprimatur of the caucus as an official state primary election, consider Sections 43.4 and 43.93 of the Code.

In Section 43.4, Iowa law clearly recognizes the purpose of the caucuses is selection of presidential delegates. It goes even further, setting in law the requirement that the Caucus must be held before any equivalent "meeting, caucus or primary" in any other state for the purpose of nominating candidates for president. Together, these references work to conclude that caucuses are in fact, true Presidential primary elections, accomplish the political effects and ends of primaries, and are subject not only to the full protections provided by state law for primaries, but to the necessary federal Constitutional requirements as well:

**43.4 Political party precinct caucuses.**

Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses held not later than the fourth Monday in February of each even-numbered year. The date shall be at least eight days earlier than the scheduled date for any meeting, caucus or primary which constitutes the first determining stage of the presidential nominating process in any other state, territory or any other group which has the authority to select delegates in the presidential nomination.

In Section 43.93, the Iowa primary-caucus statute provides that caucuses "shall be held in a building which is publicly owned..." Again, such practice, embedded within state law, embellishes the public's perception that the Iowa

Caucus is the officially sanctioned, state controlled, legitimate primary event its private political party organizers fraudulently want the American public to believe it is.

**43.93 Place of holding caucus.**

Each precinct caucus shall be held in a building which is publicly owned or is suitable for and from time to time made available for holding public meetings wherever it is possible to do so. Upon the application of the county chairperson, the person having control of a building supported by taxation under the laws of this state shall make available the space necessary to conduct the caucus without charge during presidential election years and at a charge not greater than that made for its use by other groups during other years. When using public buildings, the county chairpersons shall cooperate to attempt the collocation of the caucuses.

Although this is but a brief foray into Iowa election law, it is clear that under Iowa law, presidential primary caucuses are considered primaries, and regulated as such, but there are critical flaws and deficiencies in the details of those laws which essentially deprive the citizenry of their Rights to a fair primary caucus-election.

The Court is moved by Plaintiffs to require Iowa to provide, at a minimum, the same level of protections provided in law for its other primary and its general elections and to implement the election vote-counting and certification practices and protocols required to bring the Iowa caucus into line with the letter and the spirit of the rulings by the United States Supreme Court regarding federal primary elections.

## II. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

The Constitution is to be construed in its entirety. “The provisions of the Federal Constitution granting [Iowa] specific power to legislate in certain areas are subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution.” *Williams v Rhodes*, 393 U.S. 23 (1968)

The First Amendment to the Constitution of the United States of America reads in part:

*“Congress shall make no law...abridging ... the Right of the People peaceably to Assemble and to Petition the Government for Redress of Grievances.”*

Plaintiffs’ motion is a Petition for Redress (remedy) of a Constitutional tort being committed in Iowa, but with harm felt by *all* Plaintiffs in *all* States.

The Fifth Amendment to the Constitution of the United States of America reads in part: *“No person shall be deprived of ...liberty, or property, without due process of law....”*

An individual American’s Right to have all votes that are cast in Iowa for President of the United States accurately counted is essential for the preservation of each Plaintiff’s individual Liberty, and essential for the protection of the first of the Grand Rights -- Government based upon the consent of the People.

The Right to have all votes cast in Iowa for President of the United States accurately counted is as much an unalienable Property Right of each Plaintiff as is his Right to worship freely and his Right to real and personal property.

Voting procedures in Iowa that result in error and fraud, even confusion and frustration, infringe upon every Plaintiff's individual, unalienable Right to Liberty and Property.

Under the Supremacy Clause of the Constitution (Article VI, clause 2), Iowa is prohibited from engaging in any act that would diminish the value of those Rights.

The Liberty and Property of each individual Plaintiff depends upon his or her vigilance and ability to defend against any act or threat by Iowa Defendants to diminish the value of his or her Right to have all votes that are cast for President of the United States accurately counted, no matter the geographical distance between Iowa where the constitutional tort occurs and the Plaintiff's voting booth.

The Ninth Amendment reads:

*"The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People."*

Each individual Plaintiff claims and is exercising the natural Right to join with all other Plaintiffs in a constitutional challenge to the decision by Iowa to count the votes for President of the United States of America IN SECRET (causing confusion, frustration, error and/or fraud).

The Tenth Amendment to the Constitution of the United States of America reads:

*“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.”*

The power to control the requirements of a constitutionally run electoral system (the Right to freely cast a ballot, the Right to observe that it was received, and the Right to see that it was accurately counted) is clearly reserved to the People, who have not and would never transfer that power to Iowa. Each constitutional tort by the State of Iowa or one of its political subdivisions or persons acting on its behalf is a usurpation of the power of the People.

The Fourteenth Amendment to the Constitution of the United States of America reads:

*“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”*

The Iowa State Defendants cannot commit a constitutional tort relating to the election process for President of the United States without effecting the Rights of all the Plaintiffs.

Iowa Defendants cannot act to abridge the Right of any Plaintiff to cast an effective vote, that is, to have all votes cast in the Iowa caucus accurately counted.

Each Plaintiff, as a citizen of the United States, is to enjoy the privilege and Right of knowing that Iowa's election process is open, verifiable and transparent and has done everything in its power to eliminate confusion, frustration, error and fraud.

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them”. *Miranda v. Arizona*, 384 U.S. 436 (1966)

Inaccurate vote counting in the Iowa caucus will have a profound effect on Plaintiff-voters in all other States.

The individual's Right, through the Petition Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the “capstone” Right, the period at the end of the sentence on Liberty's evolution, for “law without it, is law without justice.”

The federal Constitution assigns to the States the initial responsibility for setting the rules and governing elections. The power given to the states in the federal Constitution to regulate elections is necessary as a way to insure orderly operation of the voting (democratic) process. State regulations of elections have been derived (*Burdick v Takushi*, 112 S. Ct. at 2603) from Article I, Section 4, cl. 1 of the federal Constitution which reads:

*“The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”*

State regulation of elections has also been derived (*Storer v Brown*, 415 U.S. at 729-30, 1974), from Article I, Section 2, cl. 1 of the Federal Constitution, which reads:

*“The House of Representatives shall be composed of members chosen every second year by the People of the several states, and the Electors in each state shall have qualifications requisite for Electors of the most numerous branch of the State Legislature.”*

Iowa has a compelling interest in protecting the integrity of the political process. *Storer v. Brown*, 415 U.S. 724, 732 (1974).

Iowa has a compelling interest, not just a legitimate interest, in structuring elections in a way that avoids confusion, deception and even frustration of the democratic process. *Larouche v. Kezer*, 990 F.2d at 442 (2d Cir. 1993).

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Burdick v. Takushi*, 112 S. Ct. 2059, 2067 (1992).

The Supreme Court has derived a number of constitutional voting rights from the First and Fourteenth Amendments, including: the right to associate for the advancement of political purposes, *NAACP v Alabama*, 357 U.S. 449, 460 (1958); the right to cast an effective vote, *Williams v Rhodes*, 393 U.S. 23, 30 (1968); and the right to create and develop new political parties, *Norman v. Reed*, 112 S. Ct. 698, 705 (1992).

The Supreme Court has clarified “the right to vote” to mean “the right to participate in an electoral process that is necessarily structured [by state regulations] to maintain the integrity of the democratic system.” *Burdick v. Takusi*, 112 S. Ct. at 2063.

Notwithstanding this recognition by the Supreme Court of the need for Iowa state regulations to protect the democratic (voting) process, the Supreme Court has held that Iowa cannot violate a right encompassed within the Equal Protection Clause of the Fourteenth Amendment. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

"Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 U.S. 651, and to have their votes counted, *United States v. Mosley*, 238 U.S. 383. In *Mosley* the Court stated that it is ‘**as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box.**’ 238 U.S. at 386. The right to vote can neither be denied outright, *Guinn v. United States*, 238 U.S. 347, *Lane v. Wilson*, 307 U.S. 268, nor destroyed by alteration of ballots, see *United States v. Classic*, 313 U.S. 299, 315, nor diluted by ballot-box stuffing, *Ex parte Siebold*, 100 U.S. 371, *United States v.*

*Saylor*, 322 U.S. 385 . As the Court stated in *Classic*, ‘Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots **and have them counted . . .**’ (313 U.S. at 315).” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

“And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” 377 U.S. 533, 556.

“Almost a century ago, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court referred to “the political franchise of voting’ as ‘a fundamental political right, because it is preservative of all rights.’ 118 U.S., at 370.” 377 U.S. 533, 562.

In the *KU KLUX CASES*, 110 U.S. 651, 667 (1884), the Supreme Court said:

"It is as essential to the successful working of this government that the great organisms of its executive and legislative branches should be the free choice of the people, as that the original form of it should be so. In absolute governments, where the monarch is the source of all power, it is still held to be important that the exercise of that power shall be free from the influence of extraneous violence and internal corruption. In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger. Such has been the history of all republics, and, though ours has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources."

In *U. S. v. Classic*, 313 U.S. 299 (1941), the Supreme Court said,

“Pursuant to the authority given by 2 of Article I of the Constitution, and subject to the legislative power of Congress under 4 of Article I, and other pertinent provisions of the Constitution, the states are given, and in fact exercise a wide discretion in the formulation of a system for the choice by the people of representatives in Congress. In common with many other states Louisiana has exercised that discretion by setting up machinery for the effective choice of party candidates for representative in Congress by primary elections and by its laws it eliminates or seriously restricts the candidacy at the general election of all those who are defeated at the primary. All political parties, which are defined as those that have cast at least 5 per cent of the total vote at specified preceding elections, are required to nominate their candidates for representative by direct primary elections. Louisiana Act No. 46, Regular Session, 1940, 1 and 3.

**“The primary is conducted by the state at public expense. Act No. 46, supra, 35. The primary, as is the general election, is subject to numerous statutory regulations as to the time, place and manner of conducting the election, including provisions to insure that the ballots cast at the primary are correctly counted, and the results of the count correctly recorded and certified to the Secretary of State, whose duty it is to place the names of the successful candidates of each party on the official [313 U.S. 299, 312] ballot. The Secretary of State is prohibited from placing on the official ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of the Act. Act 46, 1... (Plaintiffs’ emphasis).**

“The right to vote for a representative in Congress at the general election is, as a matter of law, thus restricted to the successful party candidate at the primary, to those not candidates at the primary who file nomination papers, and those whose names may be lawfully written into the ballot by the electors. Even if, as appellees argue, contrary to the decision in *Serpas v. Trebuca*, supra, voters may lawfully write into their ballots, cast at the general election, the name of a candidate rejected at the primary and have their ballots counted, the practical operation of the primary law in otherwise excluding from the ballot on the general election the names of candidates rejected at the primary is such as to impose serious restrictions upon the choice of candidates by the voters save by voting at the primary election. In fact, as alleged in the indictment, **the practical operation of the primary in Louisiana, is and has been since the primary election was established in 1900 to secure the election of the Democratic primary [313 U.S. 299, 314] nominee for the Second Congressional District of Louisiana.** (Plaintiffs’ emphasis).

“Interference with the right to vote in the Congressional primary in the Second Congressional District for the choice of Democratic candidate for Congress is thus as a matter of law and in fact an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance, since it is at the only stage when such interference could have any practical effect on the ultimate result, the choice of the Congressman to represent the district. The primary in Louisiana is an integral part of the procedure for the popular choice of Congressman. The right of qualified voters to vote at the Congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice. ...

“Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections. This Court has consistently held that this is a right secured by the Constitution. *Ex parte Yarbrough*, supra; *Wiley v. Sinkler*, supra; *Swafford v. Templeton*, supra; *United States v. Mosley*, supra; see *Ex parte Siebold*, supra; *In re Coy*, 127 U.S. 731, 8 S.Ct. 1263; *Logan v. United States*, 144 U.S. 263, 12 S.Ct. 617. And since the constitutional command is without restriction or limitation, the right unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is

secured against the action of individuals as well as of states. *Ex parte Yarbrough*, supra; *Logan v. United States*, supra. ...

“...Moreover, we cannot close our eyes to the fact already mentioned that **the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election even though there is no effective legal prohibition upon the rejection at the election of the choice made at the primary and may thus operate to deprive the voter of his constitutional right of choice.** This was noted and extensively commented upon by the concurring Justices in *Newberry v. United States*, supra, 256 U.S. 263 -269, 285, 287, 41 S.Ct. 476-478, 484.

“**Unless the constitutional protection of the integrity of 'elections' extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of representatives is stripped of its constitutional protection** save only as Congress, by taking over the control of state elections, may exclude from them the influence of the state primaries. 3 Such an expedient would end that state autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom [313 U.S. 299, 320] and integrity of the choice. Words, especially those of a constitution, are not to be read with such stultifying narrowness. The words of 2 and 4 of Article I, read in the sense which is plainly permissible and in the light of the constitutional purpose, require us to hold that a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which in the circumstances of this case controls that choice, is an election within the meaning of the constitutional provision and is subject to congressional regulation as to the manner of holding it. ...

“Conspiracy to prevent the official count of a citizen's ballot, held in *United States v. Mosley*, supra, to be a violation of 19 in the case of a congressional election, **is equally a conspiracy to injure and oppress the citizen when the ballots are cast in a primary election prerequisite to the choice of party candidates for a congressional election. In both cases the right infringed is one secured by the Constitution.** The injury suffered by the citizen in the exercise of the right is an injury which the statute describes and to which it applies in the one case as in the other...”The right of the voters **at the primary** to have their votes counted is, as we have stated, a right or privilege secured by the Constitution...” (Plaintiffs’ emphasis).

### III. IMMEDIATE AND IRREPARABLE HARM

An important part of the immediate and irreparable injury finds its roots in the on-going abridgment by Iowa of Plaintiffs’ constitutional Rights as articulated above.

Plaintiffs' Rights must be upheld prior to enforcement if they are to be enjoyed at all. "The loss of ... freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Ellrod v. Burns* (1976) 427 U.S. 347, 373, 96 S.Ct. 2673, 2690.

#### **IV. BALANCING OF THE EQUITIES TILTS IN FAVOR OF PLAINTIFFS**

A balancing of the equities favors Plaintiffs who will suffer immediate and irreparable harm unless the injunctive relief requested is granted. On the other hand, Iowa Defendants will suffer no harm if the relief is granted.

#### **CONCLUSION**

Plaintiffs ask this Honorable Court to temporarily and preliminarily confine the power of Iowa to allow political parties to conduct the Iowa caucus on January 3, 2008 absent the minimal constitutional safeguards enumerated above under Relief Requested.

Respectfully submitted.

Dated: December 27, 2007

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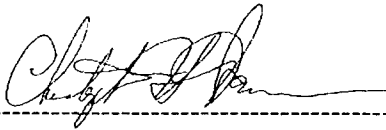
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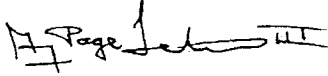
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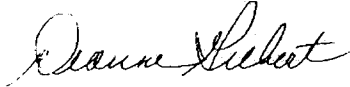
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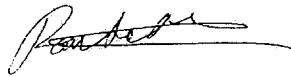
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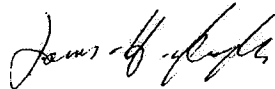
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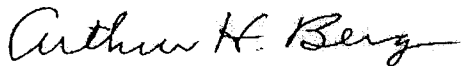
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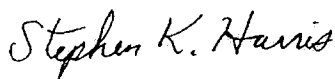
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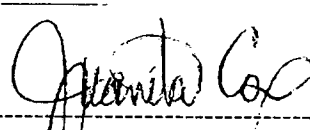
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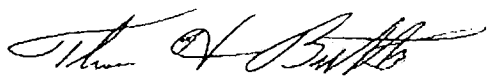
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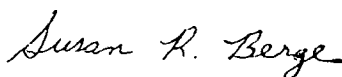
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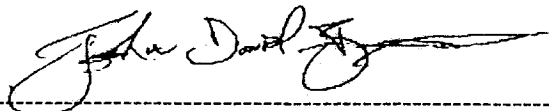
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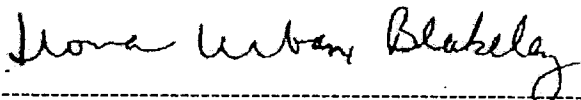
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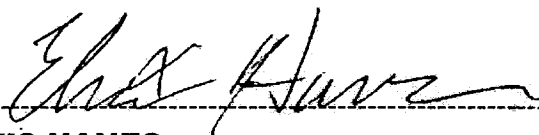
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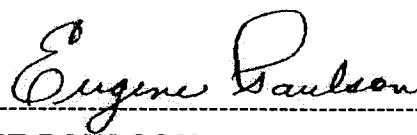
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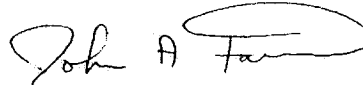
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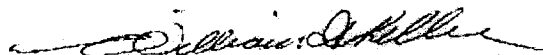
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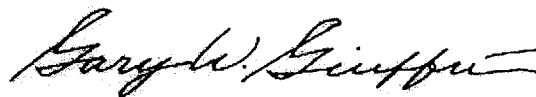
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**WILLIAM KELLER**

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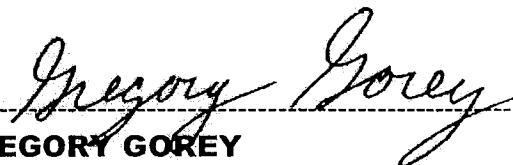


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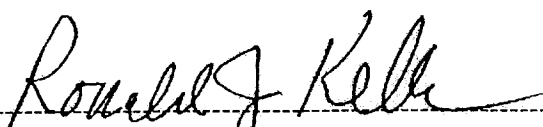
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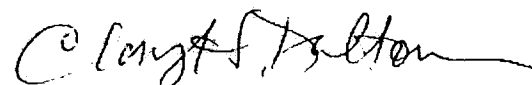
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*Anita Zibton*

**ANITA ZIBTON**

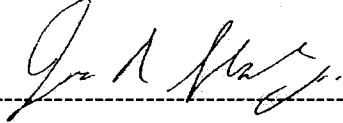
e9566 smart hollow  
La Farge, WI 54639 - Phone: 608-634-3863



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**LANCE CRAIN**

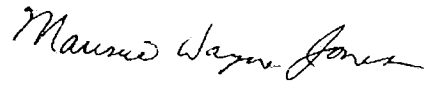
2033 Grass Creek Road  
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