UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT L. SCHULZ, et al.,	)	
	)	
Plaintiffs-Appellants	)	
	)	EMERGENCY MOTION FOR
v.	)	PRELIMINARY INJUNCTION
	)	
STATE OF NEW YORK, et al.,	)	District Case No. 1:07-CV-0943
	)	(LEK/DRH)
	)	
Defendants-Appellees	)	

APPELLANTS' MEMORANDUM OF LAW IN SUPPORT
OF EMERGENCY MOTION FOR PROVISIONAL RELIEF

January 2, 2008

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APPELLANTS' MEMORANDUM OF LAW IN SUPPORT
OF EMERGENCY MOTION FOR PROVISIONAL RELIEF

In support of this motion, based on the accompanying Declaration by Robert Schulz and the Excerpts of the Record, Plaintiffs-Appellants, who are *pro se*, state as follows:

RELIEF REQUESTED

Plaintiffs seek an order:

a) Preliminarily enjoining, prohibiting and restraining IOWA Defendants, including IOWA's counties and any person or political Party authorized to conduct a caucus election on behalf of the IOWA Defendants, from conducting any Caucus election for President of the United States of America, where:

i. The "captain" of each Republican Party and each Democratic Party caucus held in each of Iowa's 1780 election precincts do *not* immediately certify under penalty of perjury, and publicly announce to all Participants present at the caucuses, and conspicuously post outside the caucus location in plain writing the results of all votes cast during said caucus, including the one-person, one-vote preference for President, and the vote that determines the delegate count, and

ii. The "captain" of each of the precinct caucuses does *not* immediately transmit to the government of the County where the caucus is located, to a person(s) designated by the Iowa Defendants, by telephone or by electronic means, the certified count of each vote taken at his or her caucus, and

iii. The person(s) designated by the Iowa Defendants at each of the 99 Iowa counties to receive the certified vote totals from the precinct caucus captains does *not* immediately tally the precinct level vote totals, does *not* immediately certify the County tally under penalty of perjury, does *not* immediately publicly announce and conspicuously post outside the County building the County tally (precinct-by-precinct), and does *not*

immediately transmit to the government of the State of Iowa, to a person(s) designated by the Iowa Defendants, by telephone or by electronic means, the County tally (precinct-by-precinct), and

iv. The State official(s) designated by the Iowa Defendants to receive the certified vote totals from each of the 99 Iowa counties does *not* immediately tally the county tallies, does *not* immediately certify the resultant Statewide vote totals under penalty of perjury, does *not* immediately post the Statewide vote totals on the State of Iowa's publicly accessible website, (precinct-by-precinct and county-by-county), and

v. 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) Granting any further relief that to the Court may seem just and proper.

THE URGENCY

The Iowa Caucus Election for President of the United States will be held on the evening of January 3, 2008, beginning at 7 pm.

Unless the requested injunctive relief is granted, the Iowa Caucus election for President of the United States will be constitutionally deficient, *and* will result in confusion and frustration at best.

REQUIREMENTS OF RULE 8

Early Friday morning, December 28, 2007, Plaintiffs filed a motion for a preliminary injunction, seeking an Order from the District Court to prohibit Iowa Defendants from releasing county-wide and State-wide vote totals on election night that were not broken down, precinct-by-precinct. See A-252 for a copy of Plaintiffs' proposed Order, A-256 for a copy of Plaintiffs' supporting Memorandum of Law, and A-291 for a copy of Plaintiffs' supporting Declaration of facts.

On Friday morning, December 28, 2007, Plaintiffs also served Defendants with a set of the papers.

Late Friday afternoon on December 28, 2007, the District Court denied Plaintiffs' request on the ground of fairness – that is, that it would be unfair to require Iowa Defendants to inform the Court by Wednesday, January 2, 2008, of any reason why Iowa Defendants should not be

prevented from releasing county-wide and State-wide vote totals on election night that were not broken down, precinct-by-precinct. See A-1 for a copy of the Court's Order.

INTRODUCTION AND PROCEDURAL HISTORY

The underlying case arises from decisions by all State Defendants to conduct caucus, primary and general elections in 2008, for President of the United States, in ways that violate the federal Constitution and the Voting Rights Act.

First, all States will use machines to count most of the votes.[1] This means the votes will be counted in secret (no person can witness the counting of the votes), making it impossible to know if all votes have been accurately counted.

In addition, whether the votes cast in any precinct are to be counted by machine or by hand, the state-wide "results" of each caucus, primary and general election will be announced to the nation by the National Election Pool (a private consortium of the five television networks and the Associated Press), within minutes after the polls close in that State. See Affidavits by

[1] The Iowa Defendants have decided not to use machines during the Iowa Caucus on January 3, 2008. The Diebold optical scan machines used to count the votes during the Iowa Straw Poll in 2007 failed, resulting in a hand count of the hand-marked paper ballots that had been fed into the machines that failed. Iowa has decided, however, to use machines to count the votes on Election Day in November of 2008.

Lynn Landes (A 173), the Affidavit by John Liggett (A 248), the Affidavit by James Condit (A 250) and the Declaration by Robert Schulz (A 125).

However, the precinct-by-precinct vote totals will not be publicly available for weeks into the future, much less on election night, thus making it impossible for any citizen who knows the result of the vote count at his or her precinct to determine if those votes were accurately included in the County-wide and Statewide "results." See Declaration by Robert Schulz, Exhibit B (A-296).

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 Amended 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 Amended Complaint. See A-3 for a copy of the Amended Complaint.[2]

All Defendants responded to the Complaint by filing motions to dismiss for lack of jurisdiction, Due process violation, sovereign immunity, wrong venue and lack of standing. See A-68 for a copy of Iowa Defendants'

[2] References to "A -__" are references to page numbers in the appendix titled, "RELEVANT PARTS OF THE RECORD."

Motion to Dismiss, which was postmarked on December 18 and received by Plaintiffs on December 22, 2007.

Plaintiffs opposed all motions to dismiss and have cross-moved for Summary Judgment. See A-74 for a copy of Plaintiffs' Opposition and Cross-Motion for Summary Judgment. See A-113 for Plaintiffs supporting Statement of Material Facts not in dispute, A-125 for a supporting Declaration by Plaintiff Schulz, A-250 for a supporting Affidavit by Plaintiff James Condit, A-248 for a supporting Affidavit by Plaintiff John Liggett, and A-173 for a supporting Affidavit by Lynn Landes.

STANDARD OF REVIEW

In this circuit the standard for issuance of preliminary injunctive relief is well-settled. The movant has the burden of showing irreparable harm *and* (1) either probable success on the merits *or* (2) sufficiently serious questions going to the merits to make them a fair ground for litigation *plus* a balance of hardships tipping decidedly in the movant's favor. *Kaplan v. Board of Education of the City School District of the City of New York, 759 F.2d 256, 259 (2d Cir. 1985); Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979).* The effect of the grant or withholding of such relief upon the public interest must also be considered. *Virginian Railway Co. v. System Federation, 300 U.S. 515, 552, 81 L.*

Ed. 789, 57 S. Ct. 592 (1937); Stamicarbon, N.V. v. American Cyanamid Co., 506 F.2d 532 (2d Cir. 1974).

ARGUMENT

I. The District Court Abused Its Discretion

Plaintiffs met their burden of showing irreparable harm *and* probable success on the merits *plus* a balance of hardships tipping decidedly in Plaintiff's favor. See A- 256-295.

In denying Plaintiffs' quite modest and quite reasonable request for relief (i.e., that Iowa Defendants merely be prohibited from authorizing the release of the results of any Countywide or Statewide vote totals that does not include the precinct-by-precinct breakdown of the vote), the district court abused its discretion, requiring a formal hearing on Plaintiffs motion for injunctive relief, with more than five days notice, thus rendering any such hearing moot. See A-1 for a copy of the District Court's Order.

If there was any doubt as to the reasonableness of Plaintiffs' request and the absolute lack of any hardship on Iowa Defendants if it was ordered to add the procedural step requested by Plaintiffs, the District Court had the discretion to schedule a conference call with Iowa Defendants on Monday, December 31, Wednesday, January 2, or Thursday, January 3, to examine the issue.

II. A Balancing of the Equities Tips Decidedly In Plaintiffs' Favor

As the Record and the accompanying Declaration by Plaintiff Schulz shows, Plaintiffs are asking the Court to require Iowa Defendants (and the two political parties running the caucuses on behalf of and under the legal supervision of Iowa Defendants) to release the precinct-by-precinct information readily available in digital format, and already in the hands of Iowa Defendants and the two political parties running the caucuses on behalf of and under the legal supervision of Iowa Defendants, and to do so at the same time the results of any countywide or statewide vote totals are released to the public via the Associated Press, any County or State of Iowa website, the Republican or Democratic Political Parties, or by any other medium of public communication.

The two political parties running the caucuses on behalf of the Iowa Defendants already maintain digital spreadsheets (Microsoft ExCel), listing the location of every Precinct caucus. See Schulz Declaration, Exhibit A (Republican caucus locations), and Exhibit B (Democratic caucus locations).

On information and belief, said Republican spreadsheet includes a column for every Republican candidate for President, and said Democratic spreadsheet includes a column for every Democratic candidate for President.

On Caucus election night, each caucus captain will report the total votes received for each candidate to his or her County. Those precinct level totals will be entered onto the digital spreadsheet. While the precinct-by-precinct totals will be received and maintained by the Republican and Democratic Party Headquarters, only the County totals will be posted to the Party websites. See A-296.

The County totals will also be released to the Associated Press on caucus election night, but without the readily available precinct-by-precinct breakdown.

See Figure X herein for an overview of how the results of the votes cast during the Iowa Caucus will be reported, absent the requested injunctive relief.

Plaintiffs are merely requesting that on election night, that all precinct level results: 1) be immediately certified and conspicuously posted outside each caucus location (allowing any person to record the totals); 2) be immediately communicated to Iowa Defendants' 99 Counties *and* to the State of Iowa; and 3) that the State of Iowa immediately post the precinct-by-precinct and county-by-county results on the State's publicly accessible website (allowing any person to see that the precinct level result obtained at

a particular caucus was, in fact, accurately counted in the county and/or state tally.

See Figure Y herein for an overview of how the results of the votes cast during the Iowa Caucus would be reported, with the requested injunctive relief.

The added procedural steps would cause no harm or hardship to Iowa Defendants.

On the other hand, without the procedural adjustment, Plaintiffs will suffer immediate and irreparable harm. Iowa Plaintiffs will not be able to tell on election night as the vote totals are released, and for days and weeks to come until the precinct-by-precinct results are released, if ever, if their precinct level totals were accurately included in the County and State tallies. In addition, the Plaintiffs would lack the justification for a "recount." In the meantime, the winners and also rans would have been announced, boosting the ability of the winners to raise money to get their message out to the voters in other states, while severely hampering the ability of the also rans to do the same.

This would result in immediate confusion and frustration, something the Supreme Court of the United States has said the States must do all they can to eliminate.

III. The Public Interest Will Be Harmed Without the Injunction

When it comes to deciding motions for preliminary injunctions, “Likelihood of success” is but one "strong factor" to be weighed alongside both the likely harm to the Defendants and the public interest. *Dino De Laurentiis Cinematografica, SpA. v. D-150, Inc., 366 F.2d 373, 375 (2d Cir. 1966)* (*quoting* 3 Barron & Holtzoff, Federal Practice & Procedure § 1433 at 493 (1958)).

It is not in the public interest to have the Iowa Defendants, and the two political parties running its Caucus Election for President of the United States, not to include the precinct-by-precinct breakdown when they release the results of countywide and state wide results on election night.

The public interest is never served by election confusion, frustration, error or fraud, especially during elections for President of the United States of America.

Plaintiffs have shown a need for protection that outweighs any probable injury to the Iowa Defendants and that a balancing of the public interest weighs in Plaintiffs' favor.

While "irreparability" may suggest some minimum of probable injury, which is required to get the court's attention, the more important question is the *relative* quantum and quality of Plaintiffs' likely harm absent the injunction.

The loss of U.S. constitutionally guaranteed Rights, including the Right to cast an effective vote and to have every vote accurately counted , even for minimal periods of time, constitutes irreparable injury. S*ee Elrod v. Burns, 427 U.S. 347, 373 (1976)* (plurality opinion). See also *Time Warner v. Bloomberg, 118 F.3d 917, 924 (2d Cir. 1997).*

IV. A Balancing of the Public Interests Tips Decidedly in Plaintiffs' Favor.

The public interests being defended by Plaintiffs include the preservation, protection and enhancement of self-government, due process, popular sovereignty, accountability in government, the Right to Petition Government for a Redress of constitutional torts, the Rights of Speech and Assembly, and the Right to Constitutional governance carried out in decency and good order.

The public interest being defended by the Defendants in refusing to include the precinct-by-precinct results in its countywide and statewide tallies on election night is unimaginable.

V. 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. Trebucq*, 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).

CONCLUSION

Plaintiffs have made a sufficiently strong showing that they are likely to prevail on the merits in light of the disparity of probable harm as between the

Plaintiffs and the Iowa Defendants and the location of the public interest. Since the issues are grave, and the balance of hardship substantially favors Plaintiffs, the denial of the provisional relief in the district court should be reversed.

Dated: January 2, 2008

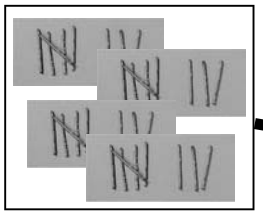
ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY 12804
Phone: (518) 656-3578

Current Iowa Caucus Reporting

FIGURE X

1780 Precincts

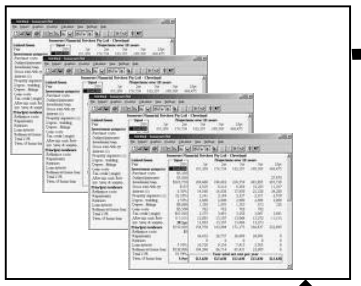
1780 Republican Caucuses



Precinct Totals

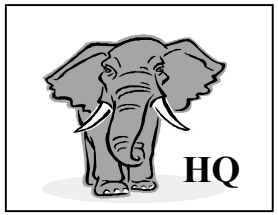
99 Counties

99 Republican Party officials tabulate precinct vote totals



Precinct Totals

(Precinct by Precinct)



Republican Party state HQ

County **Totals ONLY**

County totals -*ONLY*- posted on Republican Party website

County **Totals ONLY**

NOTE:
Neither political party releases precinct-level totals to the public, the Assoc. Press or the State of Iowa

NEP - National Election Pool

AP Associated Press

CNN

CBS

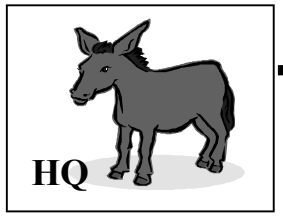
ABC

NBC

FOX

County **Totals ONLY**

Democrat Party state HQ

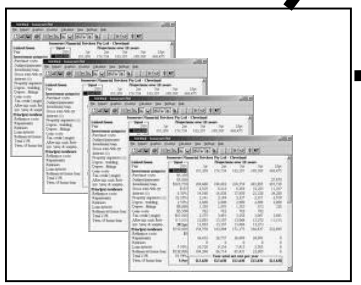


County **Totals ONLY**

County totals -*ONLY*- posted on Democrat Party website

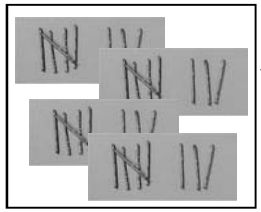
Precinct Level Totals

(Precinct by Precinct)



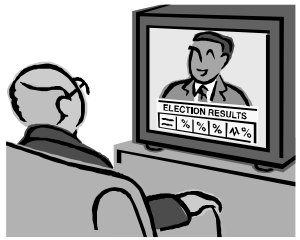
99 Democrat Party officials tabulate precinct vote totals

Precinct Level Totals



1780 Democrat Precinct Caucuses

The nation learns the election results almost immediately after the Parties report their (unofficial) results to AP



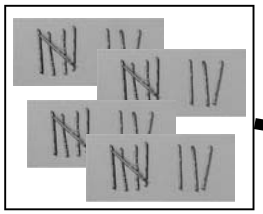
Proposed Iowa Caucus Reporting

FIGURE Y

1780 Precincts

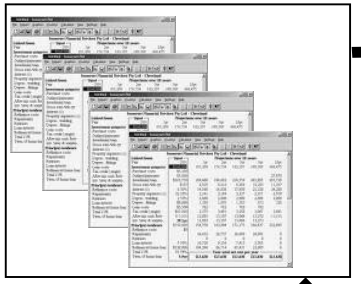
99 Counties

1780 Republican Caucuses



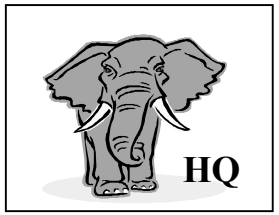
Precinct Totals

99 Republican Party officials tabulate precinct vote totals



Precinct Totals

(Precinct by Precinct)



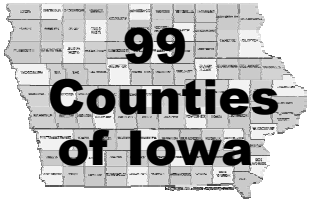
Republican Party state HQ

County Totals ONLY

County totals -*ONLY*- posted on Republican Party website

Precinct Totals

Caucus certifications & records



Precinct Totals

State of Iowa

99 IA state officials tabulate official Caucus results

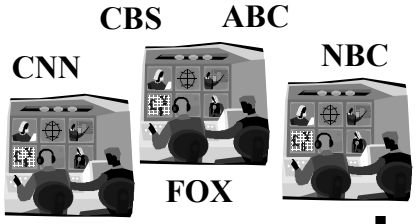
Precinct + County official results posted on State of Iowa website

County Totals ONLY

NEP - National Election Pool

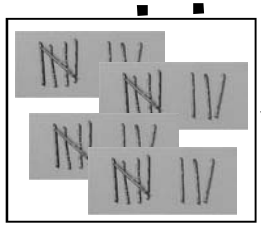
AP Associated Press

CBS ABC CNN NBC FOX



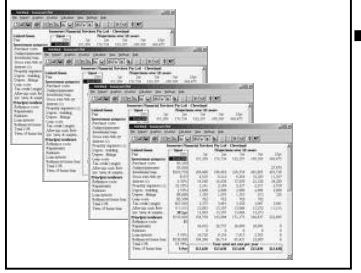
Precinct Totals

Caucus certifications & records



1780 Democrat Precinct Caucuses

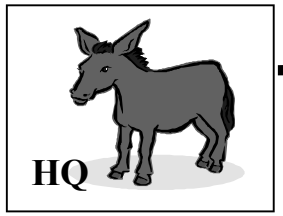
Precinct Level Totals



99 Democrat Party officials tabulate precinct vote totals

Precinct Level Totals

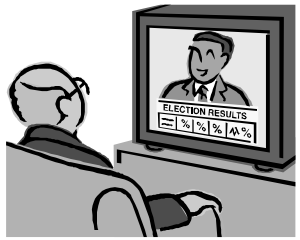
(Precinct by Precinct)



Democrat Party state HQ

County Totals ONLY

County totals -*ONLY*- posted on Democrat Party website



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