

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ and JOHN P. LIGGETT,

Plaintiffs,

-against-

1:07-CV-0943 (LEK-DRH)

RETURNABLE: Sept 2, 2011

DOUGLAS KELLNER, Individually and as
Commissioner Of the New York State Board of Elections;
EVELYN AQUILA, Individually and as Commissioner
Of the New York State Board of Elections; HELENA
MOSES DONAHUE, Individually; JAMES A. WALSH,
As Commissioner of the New York State Board of
Elections; and GREGORY P. PETERSON, as
Commissioner of the New York State Board of Elections,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
RECONSIDERATION**

Pursuant to Local Rule 7.1(g), Plaintiffs (hereinafter "Voters") submit this Memorandum in support of Plaintiffs' motion for reconsideration of the Court's July 7, 2011 MEMORANDUM-DECISION AND ORDER granting Defendants' (hereinafter "State") motion to dismiss. This motion also rests on all prior paper and proceedings in this case.

A motion for reconsideration is filed to meet "the need to correct clear error of law or prevent manifest injustice." See *North River Ins. Co. v. Cigna Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

"A district court abuses its discretion if it bases its ruling on a mistaken application of the law or a clearly erroneous finding of fact." *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001)

"Under the arbitrary and capricious standard of review, we may overturn a decision ... if it was without reason, unsupported by substantial evidence or erroneous as a matter of law." *See generally Pagan v. NYNEX Pension Plan*, 52 F.3d 438, 442 (2d Cir. 1995)

PLAINTIFF-VOTERS HAVE CONSTITUTIONAL STANDING

Dismissal of this case on the basis of Voters' failure to satisfy the constitutional standing requirements was erroneous as a matter of law.

As the Court correctly noted, "In order to meet the 'irreducible constitutional minimum of standing' under Article III, a plaintiff must satisfy three elements: first, that he has suffered 'an injury in fact'; second, that there is a 'causal connection between the injury and the conduct complained of'; and third, that it is 'likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" Memorandum-Decision and Order, page 9 (internal citations and quotations omitted).

The Court correctly noted, "To establish an injury in fact, a plaintiff must show (1) an invasion of a legally protected interest that is (2) concrete and particularized and (3) actual and imminent rather than conjectural or hypothetical. 'The bare existence of an abstract injury is not enough to confer standing.' Rather, the party asserting the interest or injury must 'have a direct and personal stake in the controversy,' lest the judicial process 'be converted into a vehicle for the vindication of the value interests of concerned bystanders.'" Memorandum-Decision and Order, page 9 (internal citations and quotations omitted).

The Court correctly noted, "Plaintiffs [argue] that they have suffered an injury because '[t]hey were unable to know that their votes were accurately counted,' and that this injury will

persist in future elections absent relief from the Court. PML at 4-5.” Memorandum-Decision and Order, page 10.

The Court correctly noted, “Plaintiffs correctly point out that they have a legally protected interest in having their votes counted accurately. Am. Compl. ¶¶ 238, 241, 243-44 (citing *United States v. Saylor*, 322 U.S. 385, 388 (1944); *United States v. Classic*, 313 U.S. 299, 315 (1941); *United States v. Mosley*, 238 U.S. 383 (1915)).” Memorandum-Decision and Order, page 10.

However, the Court incorrectly said, “Plaintiffs’ Amended Complaint makes clear that they are not alleging a legally protected interest only in having their votes counted accurately. Rather, Plaintiffs are alleging a legally protected interest in having their votes counted in a very particular way – namely, in having their votes counted manually and in full public viewing at **every** polling station in the state of New York.” Memorandum-Decision and Order, page 10. (emphasis added by Plaintiffs). Plaintiffs have claimed a protected interest in having their votes counted manually and in full public view at only their polling stations.

Under the circumstances of this case and Voters’ principle argument, the Court abused its discretion or was arbitrarily and capricious in omitting three key words when it said, “The Amended Complaint explicitly states: ‘Voting procedures that are not . . . machine and computer free, with paper ballots that are hand marked and hand counted, abridge the right to cast an effective vote.’ Am. Compl. ¶ 246 (citing *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).” Memorandum-Decision and Order, page 10-11.

In fact, the Amended Complaint explicitly states: “Voting procedures that are not **open, verifiable, transparent** and machine and computer free, with paper ballots that are hand marked

and hand counted, abridge the right to cast an effective vote. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).” (emphasis added by Voters).

This is a significant omission by the Court in light of Voters’ oft- repeated reference to and reliance on the principle of the public nature of elections emerging from our basic law (the Constitution for the United States of America) and the mandate in *Williams* that all 50 states shall recognize “the right of qualified voters, regardless of their political persuasion, to cast their votes **effectively**.” (internal citations and quotations omitted) (emphasis added by Voters).

Voters have a right to **know** that their votes, when cast, will produce a definite and desired result; they will be accurately and honestly counted. *Williams* goes on to recognize that this right “of course, rank[s] among our most precious freedoms. We have repeatedly held that freedom of association is protected by the [First Amendment](#). And of course this freedom protected against federal encroachment by the [First Amendment](#) is entitled under the [Fourteenth Amendment](#) to the same protection from infringement by the States (internal citations and quotations omitted). Similarly we have said with reference to the right to vote: ‘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. Other rights, even the most basic, are illusory if the right to vote is undermined.’” (internal citations and quotations omitted).

Having separated and placed out of its view Voters’ principle constitutional argument (the constitutional principle of the public nature of elections, which requires each essential step in the voting process, particularly the vote counting step, be **open, verifiable and transparent**), the Court mistakenly and erroneously went on to say, “In order to find that Plaintiffs have established a legally protected interest here, then, the Court would be required to conclude that they have a legally protected interest in having their votes counted manually and in full public

viewing. The Court is unable to reach such a conclusion here.” Memorandum-Decision and Order, page 11.

The Court’s abusive decision continued, saying, “First, the Court notes that Plaintiffs’ reliance on *Williams* in support of the above assertion is misplaced. The Supreme Court held in *Williams* only that voters have the right ‘to cast their votes effectively’; it did not hold that manual counting of votes is required to protect that right.”

It is impossible for elections that rely on machines and computers to count votes to be open, verifiable and transparent.

In point of fact, as discovery in this case has been demonstrating, before being interrupted by the instant motion to dismiss, only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and the Voters’ right to cast their votes effectively – i.e., where vote counting is open, verifiable and transparent.

Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters’ right to a state that protects the **integrity** of the political process, as mandated by the Supreme Court in *Storer v. Brown*, 415 U.S. 724, 732 (1974) (Am. Complaint, par. 231).

Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters’ 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. (Am. Complaint, par. 236).

Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters' right to a state that structures elections in a way that **avoids confusion, deception and even frustration** of the democratic process, as mandated by the Supreme Court in *Larouche v. Kezer*, 990 F.2d at 442 (2d Cir. 1993) (Am. Complaint, par. 232).

Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters' right to have their votes [accurately and honestly] **counted**, as mandated by the Supreme Court in *United States v. Mosley*, [238 U.S. 383](#). (Am. Complaint, par. 238).

“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](#).

Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters' right to have their votes “**honestly counted**” as mandated by the Supreme Court in *United States v. Saylor*, 322 U.S. 385. (Am. Complaint, par. 243).

The Court's abusive decision continued by relying on *Green Party of State of N.Y. v. Weiner*, 216 F. Supp. 2d 176 (2002). Only a voting process that includes the manual counting of votes in full public view can protect the **constitutional principle of the public nature of elections** and Voters' right to have their votes accurately and honestly counted, notwithstanding the facts, circumstances and decision in the federal district court for the Southern district of New York in *Green Party*.

Contrary to the Court's finding on page 11 of its Memorandum-Decision and Order, Voters have demonstrated they have suffered a sufficiently concrete, cognizable injury, traceable to the State's action, and will continue to suffer the injury absent relief from the Court.

The Court's erroneous decision continued, basing its ruling on a mistaken application of the law, saying, "Furthermore, the Court finds that Plaintiffs have not alleged a sufficiently concrete and particularized harm to establish standing. The Second Circuit has joined other circuits in holding that 'a voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared.' (internal citations and quotations omitted). Not only is the alleged injury of which Plaintiffs complain widely shared by all voters in the state of New York, it is an abstract one and as such cannot constitute an injury in fact. Plaintiffs' argument that '[t]hey were unable to know that their votes were accurately counted' is not the kind of 'informational injury' that has previously been found to establish standing, for instance, when voters are unable to obtain information that would help them evaluate candidates for office. *Cf. Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998). Memorandum-Decision and Order, page 12.

The Court erred by failing to consider the principle of law laid down in *Akins*, considering merely the parties and the facts of *Akins*.

In point of fact, the *Akins* Court held, “Often the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found ‘injury in fact.’ See [Public Citizen, 491 U.S. at 449-450](#) ... Thus the fact that a political forum may be more readily available where an injury is widely shared ... does not, by itself, automatically disqualify an interest for Article III purposes. Such an interest, where sufficiently concrete, may count as an ‘injury in fact.’ This conclusion seems particularly obvious where (to use a hypothetical example) ... large numbers of voters suffer interference with voting rights conferred by law [including the constitutional principle of the public nature of elections] (internal citations and quotations omitted). We conclude that similarly, the informational injury at issue here, directly related to voting, the most basic of political rights, is sufficiently concrete and specific such that the fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts.” *Cf. Fed. Election Comm’n v. Akins*, 524 U.S. 11, 24-25 (1998).

“To the extent that *Akins* requires some additional ‘plus’ -- some reason that plaintiffs need the information ... that requirement is liberally construed ... it is difficult to imagine what information would not make a citizen a better-informed voter, or would not affect her ability to participate in some workings of government. See [Akins, 524 U.S. at 21](#); [Pub. Citizen, 491 U.S. at 449](#) ... In determining whether an informational injury is sufficiently concrete, the universe of interests that will create a ‘plus’ is larger than those that would support standing on their own (as evidenced by *Akins*'s reliance on voting, which is an interest shared by every citizen in America).” *American Canoe Assoc. v City of Louisa*, 389 F.3d 536, 546.

Plaintiffs are unable to find anything in any Act of Congress intending to exclude Voters from the benefits of the constitutional principle of the public nature of elections, with its demand

that every essential step in the election process be open, verifiable and transparent, even if that were possible.

Plaintiffs have suffered a genuine injury in fact, and will continue to do so absent relief from the Court.

The injury in fact is their inability to know their votes have been accurately counted, i.e., their inability to obtain information critical to their peace of mind, confidence and trust that they are casting an effective vote, that the election process and democracy they are participating in is not operating in contrast to the way it is designed to work by the Basic Law – the Constitution for the United States of America and that the State has done everything in its power to eliminate frustration, confusion, error and fraud.¹

Plaintiffs are claiming injury to a particular Right of their own, as distinguished from the public’s interest in the administration of the law.

The harm asserted has been traced to the State and the Courts can redress Plaintiffs’ “injury in fact,” notwithstanding the State’s assertions to the contrary. See Plaintiffs’ Memorandum in Opposition to the instant Motion to Dismiss, pages 5-8.

The Court’s reliance on *Weber v. Shelly*, 347 F.3d 1101, 1106-07 (9th Cir. 2003) is misplaced. The record in this case demonstrates that most, if not all states have, on constitutional grounds, abandoned consideration and deployment of the any type of touch screen voting system, including the type which was the subject of *Weber*. In addition, unlike the voters in *Weber*, both Plaintiffs in the instant case (and all other voters in New York State, except the disabled) are required to cast their votes by marking paper ballots by hand. The problem is their

¹ Plaintiffs have never relied primarily on any claim of injury from machine error and fraud, which injury would only be added to Plaintiffs’ primary injury caused by the counting of their votes in secret and could be considered conjectural and hypothetical, although almost always undiscoverable.

paper ballots must then be inserted into a machine where their vote is allegedly recorded accurately and allegedly counted accurately, in secret, out of public view.

In their Brief in Opposition to the State's motion to dismiss, Appendix A, Voters summarized their arguments in support of their constitutional standing, all clearly based on the principle of the public nature of elections emerging from the Constitution for the United States of America. Those arguments are repeated here.

Voters' principal argument right along in this case, which is now approaching four years in the making, has been that the mechanical lever and electronic voting systems violate the public nature of elections in our democratic, constitutional Republic by counting votes in secret, and requiring Plaintiffs to have a special expert knowledge to even KNOW how their votes are counted, to say nothing of the valid security questions surrounding such voting systems. Voters have argued that to be consistent with the constitutional principle of the public nature of elections, ALL essential steps in the voting process must be subject to public examination; it must be possible for the Voters to check the essential steps in the election act and in the ascertainment of the results, reliably and without special expert knowledge (unless other constitutional interests justify an exception, and there are none). While it can be argued that HAVA facilitated the deployment of unconstitutional computer-controlled voting machines in New York State, HAVA, itself, is not unconstitutional as written. The Voting System consisting of paper ballots, hand marked and hand counted (with a ballot marking system available and accessible for individuals with disabilities), as called for by Plaintiffs in their complaint, is fully compliant with HAVA.

The use of the Dominion and ES&S machines to count the votes cast by Voters is to be reviewed by this Article III Court against the standard of the public nature of elections (Article I,

Section 2 and 3 and the Seventeenth Amendment of the Constitution for the United States of America).

Plaintiffs have argued that the public nature of elections is a fundamental precondition for democratic political will-formation. It ensures the correctness and verifiability of the election events, and hence creates a major precondition for the well-founded **trust of the Plaintiffs in the correct operation of the elections**. The state form of congressional democracy, in which the rule of the people is mediated by elections, demands that the act of transferring state responsibility to congressmen and Presidents is subject to special public monitoring. The fundamentally required public nature of the election procedure covers the electoral proposal (primaries and ballot preparation) procedure, the election act (**broken regarding the ballot by the secret nature of elections**) and the ascertainment of the election result.

The basis for public elections is formed by the fundamental constitutional options for democracy, the republic and the rule of law (Article I, Sections 2 and 4 and the Seventeenth Amendment to the Constitution for the United States of America).

In a representative democracy, the elections of the people's representation constitute the fundamental act of legitimization. The ballot in the elections to the United States Congress and the President forms the major element of the process of will-forming from the people to the State bodies, and hence at the same time constitutes the basis for political integration. Compliance with the election principles applicable to this, and **Plaintiffs confidence in compliance with them, therefore, constitute preconditions for a viable democracy**. Only by the possibility of monitoring whether the elections comply with the constitutional election principles, including the principle of the public nature of elections that emerges from our Constitution, is it possible for Plaintiffs to ensure that the delegation of State power to the people's representatives (which

forms the first and most important part of the uninterrupted legitimization chain of the people to the bodies and office-holders entrusted with State tasks), does not suffer from a shortcoming. The democratic legitimacy of the elections demands that the election events be controllable so that manipulation can be ruled out or corrected and unjustified suspicion can be refuted. This is the only way to facilitate the well-founded **trust of the sovereign Plaintiffs** in the correct formation of the representative body. The obligation incumbent on the legislature and on the executive to ensure that the election procedure is designed constitutionally and is implemented properly is not sufficient by itself to impart the necessary legitimacy, trust and confidence to Plaintiff voters. Only if Voters can reliably convince themselves of the lawfulness of the transfer act, if the elections are therefore implemented **“before their eyes” is it possible to guarantee the trust of the sovereign Voters in Congress and the Presidency being composed in a manner corresponding to the will of the voters, necessary for the functioning of democracy and the democratic legitimacy of state decisions.**

In our Republic, elections are a matter for the entire people and a joint concern of all citizens. Consequently, the monitoring of the election procedure must also be a matter for and a task of the citizen, including Plaintiffs. **To avoid constitutional injury, Voters must be able to comprehend and verify the central steps in the elections reliably and without any special prior technical knowledge.**

The public nature of the elections is also anchored in the principle of the rule of law. The public nature of the State’s exercise of power, which is based on the rule of law, serves its transparency and controllability. It is contingent on the citizen being able to perceive acts of the State bodies. This also applies as to the activities of the election bodies.

The principle of the public nature of elections requires that all essential steps in the elections are subject to public examination unless other constitutional interests justify an exception. Particular significance attaches here to the monitoring of the counts, the voting act at the polling place and the tabulation or ascertainment of the election result.

An election procedure in which Plaintiffs cannot reliably comprehend whether their vote is accurately recorded and included in the ascertainment of the election result, and how the total votes cast are assigned and counted, excludes central elements of the election procedure from public monitoring, and hence does not comply with the constitutional principle of the public nature of elections in America, the constitutional requirements of Article I, Sections 2 and 4 and the Seventeenth Amendment.

The requirements as to the fully transparent examination of each of the principal election steps by Voters, apply to the implementation of elections regardless of the responsibility of the state , notwithstanding the state's constitutional structure.

Voters have argued, in effect, that while the State Legislature is entitled to broad latitude when lending concrete shape to the principles of election law within which they must decide whether and to what degree deviations from individual principles of election law are justified in the interest of the uniformity of the entire election system and to ensure the state policy goals which they pursue, it is the role of the Court to check whether the State has remained within the boundaries of the latitude granted to them by the Constitution, or whether they have violated a valid constitutional election principle by overstepping these boundaries.

Voters's principle argument has been that when voting, it must be possible to check the integrity of the essential steps in the election act and in the ascertainment of the results **reliably and without special expert knowledge.**

The necessity of such monitoring emerges **principally** from the public nature of elections, but also in part from the susceptibility to manipulation of electronic voting machines and their amenability to error. In these, the acceptance of the voters' votes and the calculation of the election result is based on a calculation act which cannot be examined from outside or by persons **without special computer knowledge.** For instance, errors in the voting machine software are hence difficult to recognize. Over and above this, such errors can affect not only one individual election computer, but all the devices used. While manipulations or election falsifications are virtually impossible in classical elections with voting slips under the conditions of the valid provisions, including the provisions on the **public nature** of elections – or at least are only possible with considerable effort and with a very high risk of discovery which has a preventive impact – a major impact may in principle be achieved with relatively little effort by encroachments on electronically controlled voting machines. Manipulations of individual voting machines can already influence not only individual voters' votes, but all votes cast with the aid of this device. The scope of the election errors which are caused by accidental alteration, criminal tampering and malfunctions of a single software program affecting multiple devices is even wider. The major scope of the effect of possible errors in the voting machines or targeted election falsifications requires special precautions to be taken in order to comply with the principle of the public nature of elections.

Voters must be able to verify – also without a more detailed knowledge of computers – whether their vote as cast is recorded truthfully as a basis for counting or – if the votes are initially counted with technical support – at least as a basis for an automatic, full, mandatory, publicly funded, manual re-count, before any ballots are removed from public view. **It is not sufficient if they must rely on the hidden functionality of the system without the possibility of personal inspection. It is hence inadequate if they are initially informed by an electronic display or computer generated “receipt” that their ballot has been accurately registered. This does not facilitate sufficient monitoring by Voters.**

Whether there are technical possibilities which create trust on the part of the Voters in the correctness of the proceedings in ascertaining the election result based on verifiability, and which, therefore, comply with the principle of the public nature of elections, **need not be decided here.**

Restrictions on possibilities for Schulz and Liggett to monitor the election events cannot be compensated for by sample machines and devices prior to their deployment being subjected to certification and verification testing by an official institution as to their compliance with certain security requirements and their proper technical performance.

For this reason, a comprehensive set of other technical and organizational security measures (e.g. monitoring and safekeeping of the voting machines, comparability of the devices used with an officially checked sample at any time, criminal liability in respect of election falsifications and locally organized elections) **is also not suited by itself to compensate for a**

lack of monitoring and controllability of the essential steps in the election procedure by the citizen.

Accordingly, neither participation by Voters in procedures of the examination or approval of the voting machines, nor a publication of examination reports or construction characteristics (including the source code of the software with computer-controlled voting machines) makes a major contribution towards ensuring the constitutionally required level of controllability and verifiability of the election events. Technical examinations and official approval procedures, which in any case can only be expertly evaluated by interested specialists or technicians, relate to a stage in the proceedings which is far in advance of the ballot. **The participation of the public in order to achieve the required reliable monitoring of the election events is, therefore, likely to require other additional precautions.**

When deploying computer-controlled voting machines, no contrary constitutional principles are recognizable which are able to justify a broad restriction of the public nature of elections and hence the controllability of the election act and the ascertainment of the results.

The deployment of computer-controlled voting machines for the purpose of ruling out inadvertent incorrect markings on voting slips, unwanted invalid ballots, unintentional counting errors or incorrect interpretations of the voters' intention when votes are counted, **does not justify abandoning the principle of the public nature of elections and the requirement that Voters be able to know, reliably, that their votes are being accurately counted.**

There is no “conflict of interest” between the principle of secret vote casting and the principle of the public nature of elections which might justify a broad restriction of the principle of counting Plaintiffs’ votes in public and tabulating all votes in public..

The impact of the principle of the private vote is not to restrict the principle of public counts. It does not justify a restriction of public monitoring in the casting of the – previously secretly marked – vote carrier or in the ascertainment of the results. This follows from the fact that the principle of the private vote does not oppose additional precautions enabling Voters to monitor whether their vote is recorded in an unfalsified manner as a basis for any subsequent re-count.

Voters here have argued that there is no constitutional requirement for the election result to be available shortly after closing the polling stations, and as federal elections in New Hampshire and across Canada have proven, the preliminary official final result of the elections can as a rule be submitted in a matter of hours, without the deployment of voting machines. **The interest in rapidly clarifying the composition of the Congress or the Presidency is not a constitutional interest that justifies the imposition of restrictions on the constitutional principle of the public nature of the election event.**

PLAINTIFFS’ CLAIMS ARE NOT MOOT

The Court is moved to reconsider to prevent a manifest injustice.

The Court said, “Upon reviewing the Amended Complaint, the Court agrees with Defendants that Plaintiffs failed to allege that they intended to vote in future elections; indeed, there is no mention of future elections beyond 2008 until the final paragraph requesting injunctive relief relating to the 2008 elections ‘and beyond.’ See Am. Compl. ¶ 268. The Court

does not consider this final paragraph sufficient to establish a direct relationship between Plaintiffs and all future elections that occurred and will occur after 2008, and which are not referenced anywhere but the final paragraph of the Amended Complaint.”

In fact, Schulz and Liggett’s claims were obviously directed at the 2008 election cycle and beyond, not only as evidenced by the relief requested in their Amended Complaint, where each request was for “the 2008 election cycle and beyond,” but voter registrations in New York State is not an annual affair and has no fixed registration period. Schulz and Liggett were registered to vote in the 2008 elections **and beyond**. Schulz and Liggett have decades of life to live. Requesting relief for 2008 **and beyond** is another way of saying they intended to vote in 2008 and beyond and wanted to know their votes would be accurately counted without requiring special expert knowledge. In any event, the violations and harm Plaintiffs experienced in 2008 was repeated in 2010 and there is every reasonable indication that those violations and harm will recur in every future election unless the requested relief is granted.

This case has been nearly four years in the making, due to extensive discovery and motion practice, etc.

The record shows Plaintiffs’ extensive voting record. To dismiss this case, with prejudice, because Plaintiffs did not identify every primary and every general election allegedly scheduled to occur in the future, including the upcoming primary in 2012, would be manifestly unjust.

CONCLUSION

Based on the above, and all prior proceedings, Plaintiffs move the Court to Reconsider its Decision filed July 7, 2011, and on reconsideration, deny Defendants’ Motion to Dismiss.

Dated: July 21, 2011



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