

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - -X
ROBERT SCHULZ, :
JAMES CONDIT, JR. , :
JENNIFER MAKI, :
PAM WAGNER, : Civil No. 4: 07cv- 00350
TROY D. REHA, :
GINGER CORBETT, :
ROGER LEAHY and :
WALTER REDDY, :
Plaintiffs, :
vs. :
STATE OF IOWA, DAVID A. :
VAUDT (State Auditor), :
STORY COUNTY, MARY MOISMAN : TRANSCRIPT OF HEARING
(Commissioner of Elections), :
IOWA REPUBLICAN PARTY, and :
RAY HOFFMAN, Chairman of :
the Iowa Republican Party, :
Defendants. :
- - - - -X

First Floor Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Friday, August 10, 2007
1: 30 p. m.

BEFORE: THE HONORABLE JAMES E. GRITZNER, Judge.

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 189, U. S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

APPEARANCES:

For the Plaintiffs: Pro Se

1 MR. SCHULZ: Well, I'll be speaking on behalf of
2 myself. We're all representing ourselves, but I and probably
3 James Condit would like to address the court as well.

4 THE COURT: And he's at the other end?

5 MR. CONDIT: Yes, Your Honor.

6 THE COURT: And are you a lawyer, sir?

7 MR. SCHULZ: I am not.

8 THE COURT: Our small amount of research that we've
9 been able to do in the short time since we learned that you were
10 on the premises has told us that while you are not a lawyer you
11 appear to be a frequent litigator, so you have some experience
12 in court, and so we'll cut kind of a middle ground as to how
13 forgiving we are for a pro se litigant in terms of what we
14 expect from you, Mr. Schulz.

15 MR. SCHULZ: Understood.

16 THE COURT: But we will be ready to proceed.

17 I also have just received the motion to dismiss filed
18 by Mr. McDermott on behalf of the Republican Party of Iowa. I
19 appreciate -- and I've read it. I've read your brief, and I
20 appreciate the arguments that you're making, and there may be
21 some crossover to what we're dealing with here today. I think
22 that the issue, it seems to me, today is solely whether or not a
23 temporary restraining order should enter. Anything else, it
24 seems to me, is going to end up being futile if that doesn't
25 occur. So while I can appreciate that some of the arguments

1 made in your motion to dismiss might also be made in response
2 today, I would assume that the motion to dismiss would not
3 actually be before the court today, but we would potentially
4 have the ability of the other side to respond to that. But I

5 will recognize that some of the arguments that you make in your
6 memorandum are applicable to the question of whether or not
7 there's a likelihood of success on the merits, one of the
8 obvious issues, and whether or not there's irreparable injury.
9 And, obviously, the court is always interested in whether or not
10 there's an adequate showing of standing or whether we are
11 dealing here with not a constitutional claim but rather a
12 political dispute which the court would not have jurisdiction to
13 consider.

14 So those are just some preliminary comments.

15 Let me ask, is there anyone here on behalf of the
16 State of Iowa? Has the State of Iowa been served?

17 MR. SCHULZ: Yes, Your Honor.

18 THE COURT: Did you make any contact with any attorney
19 for the State of Iowa to advise them of this hearing today?

20 MR. SCHULZ: The State Auditor was personally served
21 and notified of the hearing at 1:30.

22 THE COURT: And is there anyone here on behalf of
23 Mr. Vaudt?

24 Is there anyone here on behalf of Story County or Mary
25 Moisman?

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1 And would it be accurate then to assume,
2 Mr. McDermott, that you are here on behalf of the Iowa
3 Republican Party?

4 MR. MCDERMOTT: Yes, Your Honor.

5 THE COURT: And I happen to recognize the other
6 gentlemen at counsel table, who are lawyers, Mr. Roberts and
7 Mr. Sporer. Are you here as counsel today, gentlemen, or are
8 you here as representatives of the party --

9 MR. SPORER: Well, if I might speak, Your Honor --

10 THE COURT: -- or just interested folks?

11 MR. SPORER: Yes. Well, definitely not just
12 interested folks. Mr. Roberts is our national committeeman, and
13 I'm the organization chairman of the Republican Party of Iowa,
14 and I guess we are yet to be determined if it is necessary for
15 us to enter an appearance. So initially I think it would be
16 fair to say we're not appearing; but since the allegations were
17 somewhat uncertain, our participation may become necessary.

18 THE COURT: All right. Mr. Schulz, how is it you
19 intend to proceed today?

20 MR. SCHULZ: I would like to first address something
21 that you said, Your Honor, with respect -- you said if the court
22 were to deny the request for a temporary -- to restrain the
23 defendants from conducting the straw poll tomorrow, the rest of
24 the complaint might be futile. I would respectfully --

25 THE COURT: Well, it may or may not, but I don't have

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1 to decide all of that today.

2 MR. SCHULZ: Yes, we would hope, Your Honor, that
3 regardless of the decision about the voting procedure to be
4 followed tomorrow that the court -- that the case will obviously
5 go on and these underlying issues will be argued with respect to
6 a motion for a preliminary injunction, which we will work on
7 next, and, of course, the request for a permanent injunction,
8 the request for preliminary injunction would be most likely
9 sought, at least from what we know today, because there are
10 additional election events scheduled here in Iowa. The caucus,
11 for instance, coming up in January if they don't move it up
12 earlier.

13 So these underlying issues need to be addressed, need
14 to be determined by a court of competent jurisdiction regardless

15 of what happens Saturday.

16 Of course, we will argue here now for the court to
17 enjoin the defendants from conducting the straw poll with the
18 intended voting procedures, and we would argue that the court
19 would direct the defendants to follow the ten-point program or
20 something like it, rather than the procedure that they intend to
21 follow. So we would argue for the ten-point program.

22 And if I might, Your Honor, we have done the research,
23 and what we're saying, in effect, is all of the ballots, which
24 do not have to be changed at all, as far as we know, regardless
25 of the fact -- regardless of how the vote is conducted on

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1 Saturday, those ballots will either go into a black box, a
2 machine, which will scan them, record the vote and then
3 transport within the machine that ballot into a black box within
4 the machine, not visible to the public, out of sight and not
5 counted, those ballots -- it's our understanding those ballots
6 will not be counted, will not be taken out of that machine and
7 counted publicly and the machines will then be transported by
8 county personnel, county and state personnel, to a centralized
9 vote tabulation room. And in that room, if past experience is
10 any indicator, that room will not be open to the public, and
11 buttons will be pressed on these machines, and the machines
12 will, in response to the button pressing, eject a Kroeger
13 grocery store type of piece of paper with the results on it and
14 somebody will tabulate those, State Auditor's office possibly
15 will tabulate those receipts from each of the 60 machines and
16 announce the results.

17 The ballots will never be in public view, which is our
18 primary complaint, No. 1, and, No. 2, will not be counted at the
19 machines where the people will have voted.

20 It doesn't have to happen that way. Those ballots can
21 stay in public view without being read, without determining how
22 a person voted, and they can be counted at the machine at the
23 end of the voting period.

24 What we have here is a low tech way that those two
25 fundamental concerns of ours could be met. This is a slightly

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1 opaque but clear plastic -- almost clear plastic container. It
2 has a slot on the top. Somebody could, having filled out their
3 ballot -- my understanding is there will be 11 names on the
4 ballot with ovals next to each name, and the person voting is to
5 blacken in the oval, and instead of putting it into some black
6 box not to be seen again, that ballot could easily be placed
7 folded, put upside down, whatever -- we're also recommending
8 that each voting area be roped off. Within the voting area
9 we're saying there should be the official vote counters and
10 every candidate should be allowed to have somebody in there.

11 But we're saying that the voter could fold it, turn it
12 over, place it easily in the box. The public can see from some
13 distance, cameras running, a people's chain of custody, there
14 are the ballots. And then at the end of the voting period, this
15 top of this container can be removed. There's some 25,000 or
16 more people expected to vote, 60 machines. Average amount of
17 ballots in each container will be in the 400s. This
18 (indicating) is a 500-sheet ream of paper. It doesn't take very
19 long for the people counting, the representatives of the county
20 auditor's office, if that's the official, the state. Candidates
21 can agree on the allocation of each ballot. They can turn it
22 over and they can see that this ballot with the oval blackened
23 in is for Mr. Romney, fine, it goes on that stack. This ballot
24 with the oval blackened in for Mr. Tancrito goes on that stack,

25 and so forth.

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1 And then they're counted. They're put back into the
2 container. The container cover is put back on, duct tape around
3 both ends, and then in public view -- I mean, duct tape around
4 both ends complies with the Iowa Administrative Code. It just
5 says sealed. It doesn't have to have a lock on it. It just
6 says sealed. So the container is sealed, and then it's
7 transported in full public view, never out of the people's chain
8 of custody, and it goes to the central tabulation room where the
9 results from each of those counts are read and, of course, in
10 agreement. I mean, the results of that count at the voting
11 station was announced publicly. Everybody heard it, saw it.
12 It's on film. The public is beyond the rope. It's all recorded
13 in public view.

14 And the containers are -- or the ballots are put back
15 in and transported to the central room, and the number for each
16 of those 60 locations is read aloud. Obviously, it has to
17 agree, you know, with what was read at the voting station. Each
18 one of these boxes we're recommending have letters, black on
19 white, four inches high, easy to do, a piece of tape, and so
20 forth. And then the results are tabulated and there's a final
21 count for everybody.

22 It's reasonable. It's quite doable. It's quite
23 practical. We see no reason to take those ballots -- that those
24 ballots have to be removed from public view, and the Supreme
25 Court has spoken. People have voting rights, the right to have

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1 everyone's -- everyone has a right to cast an effective vote,
2 meaning everybody has a right to have their vote properly

3 counted. This is a way to do it. It's probably a whole lot
4 less expensive. It certainly doesn't cost as much as these
5 machines that they're struggling with, and you don't have to run
6 cables to it and electrify it and keep it electrified in order
7 to be able to work properly for eight or ten hours during the
8 day, 60 of them. So there's a net economic gain.

9 We just see no reason why something like this could
10 not be used as a substitute for the voting procedures, which as
11 we see them do not comply with Supreme Court requirements, don't
12 comply with the Constitution, don't satisfy the need for
13 security, accuracy, reliability, accessibility.

14 There's a higher percentage -- I mean, there's a
15 heightened possibility of confusion, deceit, fraud, frustration
16 when you put ballots in some machine and rely on the machine to
17 do the counting job, and to put those ballots out of public
18 view, there's enough skepticism, there's enough concern, there's
19 enough corruption in America. We don't need -- we need to end
20 it to the extent that it happens in elections, and we read
21 reports all the time about problems with elections. There's
22 just no need. This is quite doable. There's no reason -- we'll
23 donate -- we have 60 of these plastic containers here with the
24 tops. We would be glad to donate those to the parties. They
25 could certainly take those back and get set up and put one of

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1 these -- so that everybody voting puts their ballot in one of
2 these tomorrow, rather than one of those Diebold machines.

3 So that's essentially our argument, Your Honor. I
4 would be glad to answer any questions.

5 THE COURT: Your argument, with all due respect, is a
6 little upside down from the way these matters are usually
7 considered. The burden on the other party and the public policy

8 argument kind of come down the road a little way in the process
9 of consideration of these issues.

10 The court first has to be assured that it has
11 jurisdiction. Therefore, I have to be assured that you folks
12 have standing, and by that I mean that you would suffer some
13 injury that this court could protect that is somehow different
14 than the injury or some injury that would be suffered by
15 thousands of others who are also interested in the matter, and
16 so --

17 MR. SCHULZ: May I continue?

18 THE COURT: Well, let me just finish so I can give you
19 an outline of what I need to hear from you.

20 MR. SCHULZ: Yes.

21 THE COURT: I need to, first of all, make that
22 determination that, in fact, you have standing.

23 MR. SCHULZ: Yes.

24 THE COURT: Then after that I have to determine
25 whether or not there's a likelihood that you would have success

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1 on the merits, and in order to make that determination, I have
2 to be able to address whether or not the straw poll is an
3 election because if it is not an election and, therefore, not
4 subject to constitutional protection, if it is -- it seems to me
5 by definition a straw poll is an unofficial act. So I have to
6 get over that hurdle whether or not it is indeed an election
7 that would be entitled to constitutional protection and,
8 therefore, there would be some suggestion that you have a
9 likelihood of success on the merits.

10 Then, of course, you also have to be able to
11 demonstrate to me that there's some reason that there's
12 something wrong with the system, and I've read your materials so

13 I have all of that information.

14 If it is not an election and not subject to
15 constitutional protection, then I would have a concern that this
16 is a political dispute for which the court also does not have
17 jurisdiction.

18 So, obviously, it's important that I determine first
19 that I have jurisdiction. Secondly, if I assume that I do, then
20 I have to be able to determine, first, that you will suffer an
21 immediate and irreparable injury and, second, that you're likely
22 to be successful on the merits.

23 So those are the kinds of things that I need to be
24 able to weigh in the process of doing this. I don't think I
25 have that yet from your materials. So if you've got more you

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1 can tell me, I'm ready to hear from you.

2 MR. SCHULZ: Thank you, Your Honor.

3 On page 19 of the complaint, beginning at paragraph
4 84, under the heading "Plaintiffs are entitled to injunctive
5 relief," putting aside the standing and jurisdiction questions
6 for the moment, the court has here in these three paragraphs our
7 response to the court's -- to the requirement of the court to
8 consider and weigh whether we have a likelihood of success on
9 the merits, whether there's immediate or irreparable harm and
10 whether balancing of the equities argues in our favor.

11 So we do provide the court with argument that we will
12 proceed -- we will succeed, that we have a strong likelihood of
13 success on the merits and that we will suffer immediate and
14 irreparable harm should the voting procedures not be altered on
15 Saturday and, three, that a balancing of the equities argues in
16 our favor.

17 With respect to -- and I'll come back to standing and

18 other jurisdictional questions; but with respect to the
19 likelihood of success on the merits, we would argue that
20 clearly Supreme Court decisions, which there are three causes
21 of action in our complaint; the first one deals with the
22 constitutionality of the proposed voting procedures, the voting
23 procedures now planned. Clearly, the Supreme Court in case
24 after case has -- the Classic case, the Mosley case, the Sims
25 case, clearly has -- the Klu Klux Klan cases, clearly has

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1 required, has said that people not only have the right to cast a
2 ballot but to have that vote counted fairly, accurately, with a
3 minimal, everything must be done. I mean, the Supreme Court has
4 said the Constitution leaves to the states, Congress has left to
5 the states the responsibility to conduct and regulate elections.

6 I understand there's a question of whether this is an
7 election, and we'll come back to that; but these matters of
8 implementing and controlling and regulating elections is left to
9 the states, and the Supreme Court has said the states are
10 required to do everything in their power, in effect, to minimize
11 any chance of confusion and deception and fraud and frustration
12 at elections. And, obviously, we're arguing that these
13 defendants, both public and private, in association have not
14 done enough -- they can do more as we've demonstrated -- to
15 satisfy the Constitution's requirement for fair vote counting,
16 the Supreme Court's requirement.

17 With respect to immediate and irreparable harm,
18 clearly a violation of a fundamental right, even for a moment,
19 is irreparable under U.S. v. Elrod. You take away someone's
20 fundamental right for a moment, they can never get that freedom
21 back. It's gone forever. And that's what is at stake here.
22 This election, this vote on Saturday cannot be redone. It

23 will -- under the same set of circumstances, the same parties
24 voting, it cannot be redone. This is it. So if there is harm
25 done -- and we would argue harm is done when you take those

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1 ballots out of public view and you do not count them at each
2 election voting station, that that's irreparable harm. And a
3 balancing of the equities clearly argues in favor of the
4 plaintiffs and generally the people, which we can't speak for
5 but will with the court's permission.

6 Balancing of the equities argues in our favor.
7 Without this restraining order, we are harmed as I've explained.
8 We are harmed irreparably and immediately. Fundamental rights
9 are affected here. Fundamental voting rights are affected.

10 THE COURT: Well --

11 MR. SCHULZ: Clearly, we do not have the opportunity,
12 the time, you know, to get to the Court of Appeals should things
13 go the other way, but -- so this is it. And, on the other hand,
14 if the restraining order issues as we've asked for, what harm,
15 other than political maybe, somewhat embarrassing, but what harm
16 comes to the defendants if they pick up, walk -- leave this
17 courtroom with these 60 boxes and put those at each voting
18 station so that somebody putting their choice down in an
19 election, in a vote that's going to have dramatic -- in their
20 own words, in the defendants' own words, which I'll read in a
21 moment, this is going to affect what happens in the caucus, it's
22 going to affect what happens in the general election, it's going
23 to affect the choices every one of these plaintiffs and others
24 are going to have from here on in, in their own words, which
25 we'll read in a moment.

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1 THE COURT: But that's exactly the issue. How are
2 these plaintiffs affected in some way that is different than
3 thousands of others would be, to the extent they're interested
4 in the electoral process? And then the other question I have
5 is, you talk about voting rights and elections. Don't we have
6 here a situation where we have an individual political party
7 involved in a small part of the process that leads to the
8 nomination of their candidate?

9 MR. SCHULZ: Yes, Your Honor. We would have no
10 problem if a private club, the Republican Party of Iowa as an
11 example, if a private club wants to hold a fundraiser and wants
12 to gauge the feelings of Republicans or the members of that
13 club, regardless of the political party, engage the preferences,
14 we would have no problem with that. We wouldn't be here today
15 if that were the case, but what you have here is a hybrid.

16 In going through the research for this case, I saw
17 what was happening in this country back in 1900. You had
18 general elections. You didn't have primaries, and the argument
19 then was, hey, this is not a general election; this is just a
20 primary. The Supreme Court spoke said, this is going to have a
21 future effect on everything that happens downstream in the
22 electoral process, so, therefore, there will be controls, there
23 will be regulations and controls of primaries. We didn't have
24 primaries initially. We just had general elections. Somebody
25 came up with the idea of a primary, said, why do we have to

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1 worry about state statutes governing what happens at a primary?
2 Because you're affecting future choice. And so now we have
3 strict controls in primaries.

4 So here we are again now, oh, this is just a straw
5 poll, means nothing. Baloney -- forgive my vernacular, but not

6 true. It affects choice. Immediately after this -- in their
7 own words, if I may read for a moment from Exhibit A -- what do
8 we find the defendants saying about this, on their encouraging
9 people to participate, and so forth? We find them saying in
10 Exhibit A, page A-8, we find them saying things like, the Iowa
11 Straw Poll is the most important event of the 2007 calendar for
12 Republican candidates seeking the Republican nomination for
13 President. As other states continue to front load the
14 presidential nomination calendar, Iowa's position at the front
15 of the nomination process brings more significance in this cycle
16 to both the Iowa Straw Poll and Caucus. The Iowa Straw Poll has
17 historically winnowed the field of presidential candidates.

18 And with the court's permission, there is another
19 particular quote that I'm looking for. All of the eyes are on
20 this straw poll. I mean, for the last week in New York, for
21 instance, national news on all the networks talks about the
22 upcoming Iowa Straw Poll, great interest in this.

23 I'll come back to that. So we have a situation today,
24 unlike what was happening in the early 1900s before we had these
25 primaries. In their own words, in our exhibits, we quote them,

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1 pulled pages off the Republican Party's web site, and they
2 clearly say -- I'm trying to remember the exact words and I
3 can't; but, in effect, they say, this is going to affect the
4 future choice, it's going to affect the outcome -- these are the
5 words. It's going to affect the outcome of the -- thank you.
6 It's A-9 in Exhibit A. A-9, Iowans see their role in the
7 process of politics and will understand how their participation
8 will shape the outcome of not only the Iowa Caucus but the 2008
9 presidential race, the nation's future and ultimately America's
10 place on the world's stage.

11 So the defendants are admitting that the results of
12 Saturday's vote will affect the outcome of the Iowa Caucus. So
13 if the votes are not counted accurately, if they're not counted
14 fairly and accurately, it could very well -- it's just common
15 knowledge, it may well affect the future of one or more of those
16 candidates. For instance, hypothetical case, the votes are not
17 counted properly and, for sake of argument, the results are
18 overwhelmingly Ron Paul wins this election by a landslide
19 because the votes were counted wrong and, in fact, it says Mitt
20 Romney or Rudy Giuliani got one percent or two percent. That's
21 not fair and may well affect the ability of the one or two
22 percenters to continue, to convince the nation that they should
23 look in their direction.

24 It may affect their ability to raise money. It's
25 common knowledge, it's almost impossible to succeed today with

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1 the cost of reaching out with your message to Americans in Iowa
2 or then eventually across the country given the cost of
3 television and newspaper advertising, and so on.

4 So it may very well affect the outcome. Those votes
5 have to be counted accurately, and then the results can be
6 accepted. Of course, the ballots never left our view, the
7 public's view, and they were counted at the voting station.
8 They were never taken out of public view and commingled with
9 whatever, you know, and then some button on a machine that has
10 all of these deficiencies -- I was motivated to get involved in
11 this action not only in response to requests of others sitting
12 in New York but also because of what I had heard and read on
13 August 3rd -- first on July 28th and then on August 3rd what
14 happened in California. They spent a lot of money and had a --
15 I'm an engineer by training, and I was associated with General

16 Electric's research center for a long time. I understand good
17 research, I think, and so I read what they did out there, a very
18 powerful study funded by the Governor and Secretary of State of
19 California looking into all of these machines for the purpose of
20 just trying to do the best we can if we're going to use
21 machines. They didn't look at whether to use machines or some
22 low tech approach but if we're going to use machines. What can
23 we do to improve the security, reliability, accessibility of
24 these machines if we're going to use machines? And they
25 decertified these Diebold machines, the very machines that are

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1 owned by Story County and are going to be used in this election.
2 We've had studies before. We've had studies by Cal
3 Tech, we've had studies by Princeton, MIT, and they all come up
4 with the same results: You don't want to use these machines in
5 elections. You don't want to rely on them for a fair vote
6 count, which is going to happen Saturday, a vote count. And
7 this was another study on top of -- why aren't people moving
8 away? Why aren't they considering something else? I don't
9 know, but we'll do the best we can, you know, to defend the
10 Constitution, the people's voting rights, and so we got
11 involved.

12 THE COURT: The original ballots stay in tact, don't
13 they? The machines count them, but the ballots are still there,
14 unless somebody throws them away?

15 MR. SCHULZ: Well, we don't know what's in the machine
16 before -- these aren't my words, but this is talked about in
17 these studies and people who are quite familiar. There's the
18 old phrase of stuffing the ballot box. I was watching,
19 interestingly enough, on BBC World News the other day, they were
20 talking about an election that just happened in Bangladesh, and

21 so they showed this video clip of a voting station in Bangladesh
22 where they had a box with the traditional slit in the top and
23 somebody voting and putting their piece of paper in this box,
24 which is not transparent, but it's in the box. And, of course,
25 then they showed that -- they bring that box over to a table,

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1 and they empty out all of the paper ballots and they're counted.
2 All right, it wasn't a clear paper box, but at least it appeared
3 to me that it never left the view of the person maybe filming
4 this.

5 If these ballots are put in those Diebold -- I don't
6 see the reason for using them, but I just cannot for the life of
7 me understand what the upside is for using these machines.

8 THE COURT: You understand the question is just do the
9 ballots still exist after they go in the machine?

10 MR. SCHULZ: Yes, thank you. They can be putting
11 this -- and they can be opened at the voting station. I think
12 that's maybe the area of a compromise, Your Honor.

13 THE COURT: And the ballots are available at some
14 later time if somebody wants to test the machine tally against
15 the ballots?

16 MR. SCHULZ: Yes. Your Honor, you raise an
17 interesting question. Yes, those ballots are put in those
18 machines. Of course, there ought to be an inspection to make
19 sure that the machines weren't stuffed, to use the vernacular,
20 and that they're empty to begin with; but those ballots are put
21 in those black boxes, and if those -- and this is an area of
22 compromise. I would think that I for one -- I can't speak for
23 these plaintiffs, but I for one would accept an inspection of
24 those machines, if we have to use these machines, and I don't
25 understand the need for those; but if we have to use these

1 machines, then, fine, let's inspect them ahead of time. We're
 2 not asking at this late date for a test of the logic and
 3 accuracy, you know, of any of the components, but at least be
 4 able to look to make sure that the ballot box is not stuffed and
 5 it's empty at the beginning and then viewed in public view for
 6 the duration of the voting period. Then at the end of the
 7 voting period, at the 60 voting stations, under clear public
 8 view those ballots, if they were taken out of those machines and
 9 put on a table and allocated and counted, then put back in the
 10 machine and the machines continue over to the tabulation room
 11 where the results of each count are announced and people can
 12 hear, yep, that matched with that machine. And if those
 13 machines were marked and numbered, and so forth, then fine,
 14 that's an area of compromise. If you want to use the expensive
 15 black box rather than the cheap one and want to electrify it and
 16 whatnot, fine. I mean, I don't see -- I just don't see the need
 17 for it, but if you want to use this box (indicating) instead of
 18 this box (indicating), fine, as long as those ballots are taken
 19 out of that box and counted right there and the results
 20 announced at each voting station, like each precinct, but in
 21 this case 60 stations around the campus, then that's an area of
 22 compromise if the machines have to be used.

23 On standing, Your Honor, there are three plaintiffs
 24 who are not residents of Iowa, myself included. There are five
 25 plaintiffs who are residents registered to vote in Iowa. Why am

1 I -- what standing do I have? What standing does Mr. Reddy from
 2 Connecticut have? What standing does Mr. Condit from Ohio have?

3 Each of us has purchased a ticket as the complaint

4 reports, and I can produce evidence to that effect here today if
5 the court needs to see it. We purchased a ticket. As far as
6 I'm concerned, I entered into a contract with the person I
7 bought that ticket from --

8 THE COURT: Don't you have a problem with your
9 contract since you don't have an Iowa driver's license?

10 MR. SCHULZ: No, no, Your Honor, I'm not trying to
11 vote, I am not trying to vote. But what I did when I purchased
12 that ticket was I agreed to assist these defendants in the
13 conduct, the festivities, hoping, of course, that we'll see a
14 different voting procedure; but, nonetheless, there's an implied
15 contract here. There's a contract. I would never purchase that
16 ticket if I thought for a moment that, you know, there was going
17 to be a -- that not every step was going to be taken to assure
18 an accurate and fair vote count. I'm entitled to a fair -- and
19 I expect my contract with the people that I bought that ticket
20 from is that these votes will be -- every vote will be counted
21 and properly allocated.

22 And so I'm arguing standing on the basis of the
23 contract clause of the Constitution, and I believe that's my
24 standing.

25 My choice in November of next year, in the defendants'

25

1 own words, is going to be affected by what happens here
2 Saturday, and I believe that. If that vote is not counted,
3 either because of machine error, intentional or otherwise, or
4 human fraud as happens, then my fundamental right, voting rights
5 are being affected, even though I'm in New York. In their own
6 words, my choice in November of next year is affected by what
7 happens here Saturday. And, of course, I also have a contract
8 with the people I bought the ticket from that votes will be

9 proper and everything will be done, and I'm here to assist in
10 that process.

11 I don't know of another -- and it's, obviously, a
12 constitutional question, but there's a third constitutional
13 question we've raised. We've noticed the poll tax issue, which
14 there seems to be a poll tax involved here, Your Honor. Because
15 of the involvement of the county and the state -- this is not
16 the Republican Party acting on its own as a private club, the
17 political party. I have no axe to grind. I'm not here
18 because -- I avoid political questions. My career, I avoid
19 political questions like the plague. My only concern for 28
20 years is to scrutinize governmental behavior, compare that
21 behavior with the requirements of the state and federal
22 constitutions, and whenever I see an impropriety or a conflict
23 that the government is doing something they're not authorized to
24 do, then I feel it's my responsibility to defend the
25 Constitution, state or federal, that that's my responsibility as

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1 a citizen of the country, no other reason. But I avoid
2 political -- yes, I vote; yes, I have my personal choices; yes,
3 I do the best I can to find out who the most appropriate person
4 for the particular office is, but that is not involved in this
5 case. Involved in this case is the defense of freedom, liberty
6 and the constitutional voting rights of people.

7 It's, obviously, a poll tax when you set up -- there's
8 invidious discrimination here. If you pay \$35, you can vote.
9 As late as 19 -- well, 1966, in the Virginia case we've cited,
10 the Supreme Court spoke and struck down the Virginia poll tax
11 and said, it's just not to be tolerated. When people vote, you
12 don't set up any requirements for voting that are based on
13 wealth and that sort of thing.

14 So we have a plaintiff in this case, she's here in
15 this case, if I can speak for her -- she's not here, she lives
16 too far away to have made this; but she's a plaintiff. She's
17 qualified to vote. She can produce a Virginia ID, driver's ID
18 and --

19 MR. REHA: Iowa.

20 MR. SCHULZ: I'm sorry, an Iowa ID, driver's license,
21 and she's a citizen who lives in Virginia -- I'm sorry, Iowa,
22 and she would be here Saturday voting but for the requirement of
23 the \$35. She doesn't have the \$35. So it's just a poll tax.
24 Again, it wouldn't be a poll tax except that the state and the
25 county are so involved in this effort Saturday. The vote is

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1 taking place on state property. The machines are owned by the
2 county. County employees are going to be staffing the machines
3 during voting. The State Auditor is going to be present, and he
4 and his people are going to be very much involved and will take
5 the stage as we've provided the court with the evidence in their
6 own words off their own web site. He will take the stage and
7 announce the results. The State of Iowa is going to announce
8 the results, the State Auditor.

9 So it's clearly some sort of hybrid. It's a quasi
10 public voting issue that is going to carry a tremendous amount
11 of weight nationwide and will affect my choice and the choice of
12 the Iowa residents beginning clearly with the Iowa Caucus, in
13 their own words, in the defendants' own words.

14 So I think I've addressed the issues that you've asked
15 me to address, and with that, I would end.

16 THE COURT: I'm going to hear from Mr. Condit also,
17 but let me just ask a couple of quick, I think, questions.

18 First of all, do you have any legal authority for the

19 principle -- I know you say that this is a de facto election,
20 but do you have any legal authority for the concept that a straw
21 poll conducted by an individual political party is, in fact, an
22 election or is, in fact, a poll in terms of public electoral
23 process? Is there any legal authority for your opinion in that
24 regard?

25 MR. SCHULZ: First, Your Honor, this is not a straw

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1 poll to be conducted -- in our opinion, to be conducted by a
2 political party. This is a straw --

3 THE COURT: I've heard that part of your argument.

4 MR. SCHULZ: I'm sorry.

5 THE COURT: I'm asking a very specific question now.

6 MR. SCHULZ: Yes.

7 THE COURT: Are you aware of any legal authority that
8 a straw poll of this sort is sufficiently akin to a public
9 election that it is entitled to constitutional protection? Are
10 you aware of any judge that has made that determination?

11 MR. SCHULZ: It is a first impression case. It is a
12 first impression case of utmost importance. As I say, we're
13 back in history at the point where they're talking primaries,
14 oh, we don't need to regulate these. Of course, you have to.
15 Understood, this is, of course, quote, nonbinding; but is that
16 really true? It's pretty binding. I mean, it clearly, in their
17 own words, affects future choice.

18 THE COURT: All right.

19 MR. SCHULZ: So, no, Your Honor, there is no -- it's a
20 first time -- it's a first impression case on straw polls.

21 THE COURT: Got you on that.

22 MR. SCHULZ: Clearly, under the facts and
23 circumstances of this case, it's first impression.

24 THE COURT: Now, let me ask you this. You brought
25 this action late yesterday. The straw poll is scheduled for

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1 tomorrow.

2 MR. SCHULZ: Yes, Your Honor.

3 THE COURT: That's pretty short notice to everybody.
4 Why did not you bring something earlier?

5 MR. SCHULZ: Personally speaking, and that's all I can
6 do, as I say, I -- the California event triggered -- I mean, it
7 was the straw that broke the camel's back for me. This was a
8 constitutional issue that I felt strongly -- I mean, it's been a
9 growing interest on my part for some time, this machine voting
10 and computer voting. The dilution of the voting rights through
11 machine voting has been a growing issue for me for some time,
12 but on August 3rd, August 3rd, the California Secretary of State
13 decertified these machines and --

14 THE COURT: All right. And I've seen that and I've
15 read that material and --

16 MR. SCHULZ: -- I immediately went to work --

17 THE COURT: I don't want to hear the argument again.
18 I'm trying to get through some very specific things that I as a
19 judge have to do.

20 MR. SCHULZ: Understood.

21 THE COURT: The other question that I have then is,
22 were you aware of the information contained in the declaration
23 by Mr. Condit prior to the action taken in California?

24 MR. SCHULZ: Was I aware of the information in the --
25 no. I saw his declaration for the first time maybe an hour

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1 before we appeared here to file the case.

2 THE COURT: All right. Good enough.
3 What efforts have you made to insure the appearance of
4 the defendants who are not present here today?
5 MR. SCHULZ: The appearance today?
6 THE COURT: Yes.
7 MR. SCHULZ: A nonparty served the State Auditor
8 personally at his office at 9:05.
9 THE COURT: Was any notice provided to the State
10 Auditor prior to that service other than he might have read it
11 in a paper or heard it on the news or something?
12 MR. SCHULZ: We had not called them. I did not -- I
13 was not able to go to bed the night before last all the way
14 through the night. All of this effort, working with all of the
15 plaintiffs was all coming together, and then I had to find my
16 way here, and I had nothing -- there really wasn't anything
17 solid yet, except pieces, being contributed to this effort that
18 we could provide. There was no prior contact, no prior notice
19 with the State Auditor. There was no prior contact before this
20 morning with the County Auditor, the Commissioner of Elections.
21 They were both provided with the set of papers. It was too late
22 yesterday to make an attempt. Their offices were just assumed
23 to be closed. It was after 5:00. And the media was notified,
24 and there was at least one report that I've heard about -- I
25 haven't seen -- about this.

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1 I might say this, Your Honor -- I leave it to
2 Mr. Condit to discuss the details, but earlier this week, I
3 received a telephone call asking if I would participate in a
4 radio broadcast, a 50,000 watt Clear Channel, at 9 o'clock your
5 time, local time, the Jan Mickelson Show.

6 Mr. Laudner who's here in the courtroom, Mr. Sporer

7 sitting at the table participated from the other side in that
8 event. Mr. Condit was in the studio with his three teenage
9 children, who are here, and then I was on the phone from New
10 York. And it was -- I was directly asked by the host of that
11 show, popular show here, if a lawsuit was going to be filed, and
12 I said yes. I know that's not direct notice to the party, but
13 it's -- and then immediately that day we began to receive
14 telephone calls from all three of your network TV stations and
15 they wanted interviews, and I respectfully apologized and said,
16 I'm sorry, I don't like to do this, but I cannot talk to you
17 now. I'm not getting any sleep the way -- I mean, I'm really --
18 I mean, we're doing everything possible to get this case filed
19 tomorrow, which was yesterday. We had hoped, were planning on
20 being able to file it earlier in the day, but I had difficulty
21 getting all the plane connections. I'm from Upstate New York
22 and -- anyway, it's difficult to get from there to here, to
23 Des Moines directly, especially on short notice. So I was able
24 to get here as quickly as I could. I arrived in town at 2:30,
25 and we went to Kinko's and assembled things and then came

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1 directly here, and I think we were here by about 4 o'clock, and
2 that was -- we did our darndest to get here.

3 And then when we talked about serving the other side,
4 we realized that that would have to occur first thing this
5 morning, and that's what we did with all three defendants. They
6 were served earlier this morning.

7 THE COURT: All right. Thank you, sir.

8 Mr. Condit.

9 MR. CONDIT: Yes, Your Honor. I'll try to address the
10 points you're concerned about, and if I'm veering off, just tell
11 me to stop and I'll move on to the next point, okay.

12 With regard to notice of the last minute of this
13 thing, of filing this action, we have -- I've been in this,
14 trying to get honest elections versus very questionable and
15 easily rigged computer elections since 1981. So this isn't
16 something we popped up.

17 The new element here, though, is about a week ago, a
18 week-and-a-half ago, Mr. Walter Reddy, one of the plaintiffs
19 here, put me in touch with Mr. Schulz, and we talked for two
20 hours, I think, the first time and we talked two or three or
21 four hours before he arrived yesterday. Mr. Schulz offering to
22 put together this complaint has a level of expertise that I
23 absolutely do not have and very few people in the country have.
24 And we have often -- we have not had the sustained funding to
25 hire a law firm to do this over a period of years. So that's

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1 why the lateness of this. Had Mr. Schulz and I been put
2 together earlier, we wouldn't have done it such last minute.

3 With regard to the time that the Republican Party of
4 Iowa, as well as all the other Secretary of States, I don't want
5 to pick on Iowa because Iowa -- except that we have to deal with
6 it here. Iowa is actually a little more open than most of the
7 states, Iowa and New Hampshire, and that's why we paid to bring
8 this action here, to try to get some redress for all of the
9 voters of the whole United States.

10 The Republican Party of Iowa was notified in 1995 and
11 1996 by our organization that they had conducted the vote in the
12 straw poll in that year in a most unsavory way. And I can go
13 into the details if you want. I don't believe they had the
14 county auditor or any of the state people involved then, and I
15 believe that these county people were brought in to try to give
16 cover of legitimacy to this completely unreliable system that

17 they used, and now I'm hoping it will backfire on them because
18 they bring in these government agencies and it now becomes a
19 hybrid as Mr. Schulz says.

20 In 1996 they were notified, the assistant, the
21 chairman -- State Chairman of the Republican Party, Brian
22 Kennedy, that there was absolute proof of eyewitnesses in every
23 classroom that the Republican Party of Iowa, in conjunction with
24 Voter News Service out of New York City, who counted the votes
25 of the delegation of the Republican Party of Iowa, for some

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1 strange reason, there was absolute proof that Pat Buchanan was
2 defrauded 13 percent of his vote in that year in the Iowa
3 caucuses, so they've --

4 THE COURT: I have read your declaration, sir, so no
5 need to repeat that.

6 MR. CONDIT: I'm sorry. My point is simply, all we've
7 agreed with, including on the Jan Mickelson Radio Show the other
8 day on WHO, is absolute contempt. What Brian Kennedy's
9 assistant asked me with a witness on the phone when we were
10 asking if they would help redress the wrong then, are you on
11 drugs? You know, Mr. Walter Reddy was asked by one of the
12 people at the GOP headquarters, do you believe in black
13 helicopters? They're calling this a frivolous complaint when
14 we're worried about the vote of every American.

15 So the idea that they now are surprised by this,
16 they're surprised by the actual lawsuit, thanks to the expertise
17 of Mr. Schulz getting together with us in the last week, but yet
18 they're surprised that these are problems, the study at MIT and
19 Cal Tech in 2001, the Princeton University study by Abby Reuben,
20 Dr. --

21 (The reporter stopped Mr. Condit.)

22 THE COURT: A little slower.

23 MR. CONDIT: Oh, I'm sorry, I didn't want to waste the
24 court's time. The MIT, Cal Tech --

25 THE COURT: Yes, but don't kill my court reporter.

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1 MR. CONDIT: No, we like all the court reporters.

2 They record what happens.

3 The Cal Tech, MIT study of 2001 which was published
4 and put all over the net, the Princeton University study by Abby
5 Reuben which was done in 2003, I believe, the Johns Hopkins did
6 an extensive study. For heavens sakes, Roy Saltman in 1988 for
7 the Department of Commerce, Your Honor, did an extensive
8 250-page study showing the unreliability of all of these
9 electronic systems. Now, this was for the Department of
10 Commerce and published in 1988 and covered extensively in the
11 New Yorker Magazine of November of 1988.

12 So the idea -- what we have, Your Honor, and this is
13 where I think we're asking the court to give some relief on this
14 to the voters of the United States. Again, I'm not picking on
15 Iowa. This is the case in all 50 states that not only the heads
16 of the Democrat and Republican Parties at the county, state and
17 national level but all the secretaries of states, all of the
18 boards of elections of the counties, with the exception of ten
19 counties in New Hampshire, treat with utter contempt our concern
20 of how horrifyingly bad these computers systems are. And if you
21 wish, I can do two or three minutes on how bad they are.

22 These systems, Your Honor, were made to rig elections.
23 Now, I'm not saying they can't do a fair count. Surely they can
24 do a fair count; but they were made to rig elections, and many
25 of these studies have said it in just about that language.

1 Now, that's your one point, is this a surprise on any
2 of these state parties or state auditors. And, in fact, I will
3 tell you that the GOP here, it's on the Internet and it's being
4 said by word of mouth, and I believe it's true, I don't think
5 they'll deny it, they got so many calls after the Jan Mickelson
6 Show about why in the world are you using these discredited
7 Diebold machines because the California study by the Secretary
8 of State is in the New York Times, in the Los Angeles Times and
9 every other paper in the country. So they got so many calls
10 that they had one of the campaigns to ask their supporters to
11 quit calling the Republican headquarters.

12 So the idea, you know, that this is something like
13 we're pulling some trick off to bring them into court, Your
14 Honor, I don't think is fair. I don't think it's fair. I wish
15 I had known Mr. Schulz ten years ago because if he would have
16 been willing then, we would have done it then, and then we might
17 not have seen the 2000 travesty where, according to the MIT
18 study, Your Honor, according to the MIT study in 2001, and Cal
19 Tech was in on that, too, they said 4,000,000, not 4,000,
20 4,000,000 of the 6,000,000 votes of citizens had been lost
21 because of the electronic machines. Four million to six
22 million? This is not a frivolous issue as has been said over
23 the media by the defendants. This is the most serious issue on
24 the future of our country, the United States of America.

25 Now, Your Honor, I wanted to address your concern

1 about are the ballots intact, and that's a good question, and
2 the one answer -- with the Diebold system, the one-word answer
3 is yes. You know, assuming that there's no false compartments
4 in the machines, which theoretically could be determined by an

5 inspection, the ballots are intact, and that's a great
6 improvement that has happened in at least the system because in
7 the entire State of Georgia, in Columbus, Ohio, the capital of
8 my state, in the 2000 election, there was no paper at all. They
9 just pushed the button like at McDonald's, except at least at
10 McDonald's a receipt comes out you got a big Mac and a Coke or
11 something. And there was an entire book, "Black Box Voting,"
12 Chapter 2, Appendix II, that goes into all these examples of
13 when there was no paper; but we do have paper here, and that is
14 good.

15 So all we need to do is keep that paper. What we do
16 not want and what the vast majority of the public and polls
17 of people -- a few polls have been taken on this. So 90 percent
18 say, no, we want the ballots to stay in the public view. So
19 that's the issue here. We have the ballots. If they just use
20 the low tech clear boxes, they stay in public view.

21 And, Your Honor, this isn't something that any of us
22 made up in the last ten years. This is the way our founding
23 fathers did it and all of America did it basically for the first
24 180 years of this country, except that they had cardboard,
25 whatever. They didn't have plastic see-through boxes; they just

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1 had boxes. So, except for that one thing, the founding fathers
2 did it and all of this country up to about 1970. 1960 there
3 were some machines. They had paper ballots in view all day,
4 counted by the people before they left the view.

5 But what I wanted to address on your question, what I
6 think I know where you were going was I -- I mean, I suspect
7 that you were getting at, aren't these ballots available later
8 to do, if someone questions the results. And that is a standard
9 party line that is taught at biannual meetings or annual

10 meetings in every state. These computer companies like Diebold,
11 ES&S, Sequoia and Hart, they bring these board of elections
12 people together or they're involved in the count -- and this is
13 the party line -- oh, Mr. Citizen, do you not -- okay, this is
14 the way it is said, kind of implied. Oh, Mr. Citizen, we have
15 these ballots in case we need a recount, to which, Your Honor, I
16 have to ask to all of the officials in this country, how about
17 the count?

18 (Applause.)

19 MR. CONDIT: No, no.

20 How about the count, Your Honor? What is happening
21 with these machines, and this has been -- they've been dancing
22 all around, the defendants have and the Republican Party of
23 Iowa, what they're going to do with the ballots. First we were
24 going to have a little audit, and so we had somebody here ask,
25 what do you mean by audit? Not specified. And then up until

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1 the radio show, Mary in the office there -- and I'm not picking
2 on her; she was probably told to say this -- told Ernest
3 Hancock, a talk show host in Arizona, there will be no audit.
4 No one will see the ballots.

5 Well, then I say I don't trust who programmed those
6 machines. And if this question is gotten into at some point
7 here, Your Honor, I would ask respectfully that you put the
8 defendants under oath. They don't even know who programmed
9 these machines. I'm not talking about who set the machines,
10 something they called in on Jan Mickelson later. Who programmed
11 the software? They and no other Secretary of State in this
12 country has ever been able to answer who programmed these
13 machines.

14 So if you decide that this is a quasi government

15 situation in this election and you decide to put this under the
16 categories that the Supreme Court eventually put primaries under
17 a hundred years ago, then that is incredible that they're
18 foisting -- not only Iowa, but all 49 of the 50 states and half
19 of New Hampshire is foisting upon the public, instead of an open
20 system, a black box system where we don't even know who
21 programmed the computers and told them what to do on election
22 day, and that black box nature of this, Your Honor, is a
23 problem, but I wanted to get at that. Once they announce the
24 results at 7 o'clock on Saturday, then it's over. The media,
25 CNN takes it out. And so if those ballots are not counted

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1 before that, then there is going to be irreparable harm to some
2 of these candidates if any accidental or on purpose mistakes
3 were made.

4 For instance, there is talk -- and I don't believe
5 this is going to happen, but there's talk that five presidential
6 candidates, Your Honor, are going to drop out if they do bad in
7 this Iowa Straw Poll, five of them. I do think one or two might
8 drop out. So this does have a public character and it also now
9 has the government oversight, the government machines, and
10 that's why I think Mr. Schulz's point should be seriously
11 considered that this be put under that category and that we also
12 begin to give the voters some relief in an open process instead
13 of a black box process.

14 The last point I wanted to make, Your Honor, again,
15 you have to determine the other issues first, but I just want to
16 say one thing about how bad these computers are. Professor Doug
17 Jones --

18 THE COURT: You haven't been doing that?

19 MR. CONDIT: Please? I guess I have, but I wanted to

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20 make one other point that Professor Doug Jones made on the radio
21 show, the Jan Mickelson Show, the other day. There are actually
22 modems in these machines, Your Honor, that can be manipulated
23 from a distance, from a satellite, from cell phone technology.
24 Believe it or not, without anyone in Iowa or anyone in
25 Cincinnati, Ohio, knowing it, the people in control of Diebold

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1 codes can come into these machines, query the results during the
2 middle of the day and change the results on the computer. That
3 was said by Professor Doug Jones the other day. It's been said
4 in many of the studies over the last number of years and
5 every -- I don't know how these cell phones work. Twenty years
6 ago if you would have said somebody could call me now from
7 Connecticut or California and out of all the cell phones in the
8 city, this comes to my phone, I'd say it's impossible, but I see
9 it happening.

10 So the idea someone in Moscow, Russia, can call me and
11 get me on the cell phone, someone in New York City or Brazil can
12 come into Iowa if they're using many of these types of computers
13 and change the vote without the little old ladies and good
14 citizens sitting there knowing it's happening. So if we don't
15 have at least a count of the ballots to check the results of the
16 machines, there is just a tremendous injustice being done to the
17 people of the United States. And I believe the Republican Party
18 is correct when it says this election will not only affect the
19 presidential election, they're saying it will affect the future
20 of the world, and I believe they are correct, though, Your
21 Honor.

22 So I really appreciate you giving me the chance to
23 mention these points, and if you can get through the first two
24 issues you had raised, I thank you for letting me present this

25 to the court why the vote itself is of such a concern on

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1 Saturday.

2 THE COURT: Thank you, Mr. Condit.

3 MR. CONDIT: Thank you.

4 MR. SCHULZ: May I have one minute, Your Honor?

5 THE COURT: You'll have the opportunity to offer
6 rebuttal after Mr. McDermott speaks, so I'll ask you to wait for
7 that.

8 Do any of the other plaintiffs, named plaintiffs here
9 today wish to make a statement?

10 MR. REHA: I would like to, Your Honor.

11 THE COURT: Would you identify yourself, sir.

12 MR. REHA: My name is Troy Reha, and I live in
13 Des Moines. I will be voting on Saturday, and I guess since
14 I've come to the knowledge of this issue, the one thing that
15 takes the cake, so to speak, is this issue of not knowing if my
16 vote, my vote, will be counted for the person that I vote for.
17 How can I as an American and as an Iowan be guaranteed that my
18 vote will count at the Iowa Straw Poll? When I go to the Iowa
19 Straw Poll and I vote for the person that I want to vote for, is
20 my vote going to make a difference in the person that I vote for
21 or will a machine or a computer write it off?

22 From the things that I've read and the things that
23 I've heard and been shown, in specific that I've seen that I
24 think is mentioned here, there are more than just me, Troy Reha,
25 that are concerned about this issue. My personal feeling is

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1 somebody has got to fix this issue. Who is going to do that?

2 Who is going to make sure that my 12-year-old son and my twin

3 seven-year-old daughters live in a country where their vote
4 matters? Because the way it looks today, I don't think it will
5 in the future if somebody doesn't fix this problem.

6 This is extremely important, not just to me but to
7 Iowans and to Americans, and I certainly hope it's important to
8 you, who I also hope is going to vote, because if my vote
9 doesn't count and can be evaporated, how do you know your vote
10 is going to count and not be evaporated? It's a very serious
11 issue to all of us.

12 I think I can pretty much say for all of us that when
13 this issue came forward, the chance to be heard, the chance to
14 step forward and do my civic duty, risky maybe, but people in my
15 family have died for this country. This is the least I can do.
16 It's extremely important, and I hope that my words have weight
17 in how you rule.

18 Thank you.

19 THE COURT: Thank you, sir.

20 Any of the other plaintiffs?

21 MR. LEAHY: Yes.

22 THE COURT: Folks, I want to give you a chance to be
23 heard, but please understand this is not a polit -- I can't even
24 say it; not a political inquiry here today. So while I
25 appreciate your passion, the issue before this court is whether

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1 there is a legal basis on the record made here to grant a
2 temporary restraining order. That's it.

3 So even if I were convinced the computers were
4 terrible things, that's not what is before me today. So I
5 just -- we have to get through this because the court has other
6 things it has to do yet this afternoon, but -- I wanted you to
7 have a chance to speak, but I just wanted to indicate to you

8 that that's what I need to know for purposes of what my job is
9 here today, whatever I may think of your passion and your
10 political arguments, and so on.

11 Now, having said that, does anyone else wish to speak?

12 You, sir, are?

13 MR. LEAHY: Yes, my name is Roger Leahy. I'm a
14 business owner in Fairfield, Iowa, and I participated in the
15 Republican caucuses at the precinct and county level in prior
16 years, and I've participated in the Republican Straw Poll in
17 Ames eight years ago, and I purchased straw poll tickets for
18 myself and my family to attend, and I'll be going tomorrow to
19 the straw poll. And I just wanted to say -- and, again, I'm not
20 sure I can speak to the jurisdiction, but I just wanted to say
21 that I've got no anticipation that there's any intent on the
22 part of the Republican Party to perpetrate fraud or anything
23 like that. I am -- being an Iowan, I feel like Iowans are
24 honest and we're fair, and I'm proud of the position that Iowa
25 has in the nation of being, you know, an honest and, you know, a

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1 forthright state, and so forth; but I just feel like we need to
2 get this above the area of doubt. It's not like we should
3 resist -- if there's a problem there, if there's any perception
4 of a problem, I have my friends and my family concerned about
5 this, these voting machines, and I feel like if I can't say
6 we've done our darndest to make sure that we're presenting, to
7 the best of our ability, something that's going to present
8 without a reasonable doubt a fair election, that if there's any
9 reason to -- I just feel like if there's any way that we can
10 accommodate that, it should be accommodated, and it's too bad
11 that we have to resort to a lawsuit. It would be a lot better
12 if it was just a voluntary thing, saying, hey, let's help out

13 here, let's try to make this more transparent, and there was
14 goodwill on the part of all of the parties to try to, you know,
15 oh, you're right, those machines do have some potential. Of
16 course, we're not going to do anything wrong; but you're right,
17 they could be perceived as being fraudulent so -- and there's a
18 lot of research that they've been fraudulent or could have been
19 or are prone to be.

20 I just feel like as Iowans -- as an Iowan and as a
21 person attending the Republican Straw Poll, I would like to see
22 that be elevated to a level that we can really trust beyond a
23 shadow of a doubt that we've done what we can to make it a fair,
24 transparent and undisputably honest election.

25 And that's my statement. I feel like as an Iowan that

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1 this is part of the political process, that this is what's going
2 to give me my choices in the caucus, and I'm planning to go to
3 the caucus to support my party -- my candidate, and if my
4 candidate -- you know, if something happens in the straw poll
5 that wasn't totally above board, then I feel like that will have
6 influenced my choices and perhaps negatively.

7 So that's my statement.

8 Thank you, Your Honor.

9 THE COURT: Yes, folks. Please remember you've put me
10 in a spot where I've got a job to do this afternoon and very
11 little time to do it in, so let's not make any more political
12 speeches. If you've got something to tell me about the legal
13 basis for your temporary restraining order application, I want
14 to hear it from you, but don't tell me how much you care about
15 that issue. I understand that point.

16 MR. REDDY: Your Honor, my name is Walter Reddy. I'm
17 from Connecticut. I'm in the process of moving to New

18 Hampshire. In New Hampshire I was up there during a straw poll.
19 They didn't have -- it wasn't of national significance like
20 this. Because of the straw poll here with the national
21 significance, I really wanted to be part of this. I drove out
22 here. I drove over 1,200 miles to be here because this could be
23 the next President of the United States that's decided tomorrow,
24 or the ones that are voting, I feel will be eliminated. So it
25 will affect me back there. And I also drove to Wisconsin to

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1 pick up these on the way (indicating), so I've driven over like
2 1,800 miles to be here because I believe that that's the only
3 fair way to count the vote.

4 And with that, I'll end it.

5 THE COURT: All right, sir.

6 MS. WAGNER: Briefly. My name is Pam Wagner, and I
7 believe this that this is a legal right because I believe that I
8 have a legal right to guarantee that my vote tomorrow will be
9 counted fairly and represented to the country accurately.

10 THE COURT: All right. Thank you.

11 Mr. McDermott.

12 MR. MCDERMOTT: Thank you, Your Honor.

13 For at least three reasons the plaintiffs' claim must
14 be dismissed. First of all and most importantly, they lack
15 standing to bring this claim. Secondly, they have failed to
16 show any imminent harm by moving forward with the straw poll
17 tomorrow. And, finally, even if we got past the standing issue,
18 this claim would still fail on the merits.

19 Plaintiffs have talked a lot today about how this is a
20 fundamental right. Casting a ballot in tomorrow's straw poll is
21 neither fundamental nor a right. This is a private, nonbinding
22 fundraiser and rally. There is no fundamental right, no

23 constitutional right, no right granted by any statute, state or
24 federal, whatsoever that grants anyone the right to vote in the
25 straw poll tomorrow. It is purely private. It has no bearing

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1 on which candidates or which people are allowed to participate
2 in the caucuses or any general election.

3 The plaintiffs have this burden to clearly allege
4 facts that demonstrate that they have standing to bring this
5 case. There are two components to standing. First, the
6 constitutional; the second prudential. Under the
7 constitutional, they must show that they have suffered or will
8 suffer an actual or imminent injury in fact. They have failed
9 to do so. No plaintiff here can prove that they will suffer an
10 actual injury in fact. A plaintiff cannot rely on a generalized
11 grievance that is shared by substantially -- in equal measure by
12 a large class of citizens. The injury that the plaintiffs claim
13 that they will suffer is exactly that. It is a generalized
14 grievance.

15 On the prudential side, the plaintiffs' interests must
16 be within the zone of interests that are to be protected by a
17 statute or a constitutional provision based upon that claim.
18 There is no statute or constitutional provision that allows
19 anyone to vote in tomorrow's nonbinding straw poll. It is the
20 responsibility of the plaintiffs to allege facts demonstrating
21 that they are a proper party to invoke this court that they have
22 standing to bring about the court's powers. They haven't done
23 that. Purchasing a ticket does not give someone constitutional
24 standing under -- or prudential standing in order to invoke this
25 court to take action.

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1 The voting machines that will be used tomorrow will
2 affect the entire mass of people that are casting ballots.
3 These people have a general grievance that is the same as
4 everyone else there and, thus, don't have an injury in fact that
5 would provide them standing.

6 The Constitution's contract clause does not apply
7 here. It is wholly separate from the alleged private contract
8 by purchasing a ticket and then being allowed to cast a ballot.
9 There are no constitutional provisions whatsoever that apply in
10 this case. The plaintiffs may have, and they've articulated
11 over and over that they have a generalized belief that the
12 system that they've set up for counting these ballots is the
13 appropriate way to do it, but there is nothing in the law, no
14 case law certainly, that would mandate a private entity to use
15 any specific method to count ballots or to count its own votes.
16 To do otherwise would be to say that this court could jump in at
17 an Elks Lodge vote or a Moose Lodge vote or any other fundraiser
18 and dictate the terms of that fundraiser. Harm to the parties
19 ideological preferences or personalized beliefs, no matter how
20 grievous, cannot meet the injury in fact requirement here. So
21 they absolutely lack standing.

22 Concern about an injury is not an injury. Concern
23 about an injury to someone's children is not an injury that
24 passes muster and would allow them to bring a claim before this
25 court.

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1 The poll tax claim also fails. There is a right to
2 vote in federal elections that is stated in Article I of the
3 Constitution. There is no right anywhere that someone has a
4 right to vote in a nonbinding straw poll. As such there isn't
5 any statute, certainly under Section 1983, under the Fourteenth

6 Amendment, anywhere that would allow them relief under the poll
7 tax claim if we're under a poll tax claim because this is not a
8 poll for purposes of the constitutional requirements. This is
9 not a federal election, a state election, a local election.
10 This is, again, a nonbinding poll that is going to be held at a
11 fundraiser.

12 Putting aside these dispositive points, putting aside
13 the fact that they lack standing, even if you were to say that
14 they had standing, this claim would still fail on its merits.
15 These voting machines, as they acknowledge, are used across the
16 country here. We were unable to find any court, and they were
17 unable to tell us here today any court, any judicial decision
18 anywhere that overturned the use of these machines. They have
19 come in and simply relied on a decision, and a very recent
20 decision, made by a Secretary of State in the State of
21 California. They have no legal basis, other than saying that
22 the Republican Party of Iowa should do what the California
23 Secretary of State did. They have no constitutional claim.
24 They have no legal basis to impose that upon us in this court.
25 The plaintiffs' own complaint admits that while the

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1 results of the straw poll are nonbinding, it has become a first
2 real test of each campaign's organizational strength. Simply
3 trying to change something that will affect the result of a
4 campaign's organizational strength does not rise to the level
5 that the plaintiffs need to show to show immediate harm,
6 something that this court would have to jump into based upon the
7 request for a restraining order to stop this thing tomorrow.

8 The court makes I think -- raised I think a very fair
9 point in its question about the fact that the straw poll has
10 been on the calendar for many, many months. We are here

11 literally hours before the start of the straw poll, and it is
12 now that they want us to have to change the method that the
13 straw poll would be conducted.

14 Because of those reasons, Your Honor, because they
15 lack standing, because they would fail on the merits, because
16 they have failed to show any immediate harm here, the
17 plaintiffs' claim that the court needs to use its powers to
18 grant them injunctive relief must be denied.

19 Thank you.

20 THE COURT: Thank you, Counsel.

21 Rebuttal from the plaintiffs?

22 MR. SCHULZ: Yes, Your Honor.

23 THE COURT: Usually regarded as more brief.

24 MR. SCHULZ: Understood. With respect to the no harm
25 yet argument that we just heard, it's like, if I can use this

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1 analogy, there's an expert on bridge design and he knows the
2 truth about that bridge, the truss design in Minneapolis, and he
3 goes to court and says, that bridge should be closed. I use it
4 every day. My wife uses it every day. Other people use it
5 every day. Gee, you know, there's something really wrong here.

6 It's like we would say to him, the court is supposed
7 to say to him, sorry, we have to wait. You know, there's no
8 harm yet. We have to wait for the bridge to collapse? We have
9 to wait for the harm before we address these issues that are
10 legitimate issues? We would argue no.

11 With respect to the argument that this is a general
12 grievance, the standing, the traditional standing doctrine, the
13 judicial standing doctrine, no harm different in kind and degree
14 than the rest of the people in the nation. Sorry, Your Honor,
15 sorry, Mr. McDermott. Our rights are individual rights. That

16 is what separates us from every country on the globe. Popular
17 sovereignty, only in America, legally, constitutionally. Does
18 sovereignty rest with the people? You go anywhere else in the
19 world, sovereignty rests with some person or some entity other
20 than the people. It is what makes -- this is an essential
21 principle -- our rights, our individual rights. We have an
22 individual right to have our votes counted properly. So any
23 argument that this is harm, general harm no different in kind
24 and degree than people are going to suffer elsewhere, sorry, we
25 have to live under this Constitution in the future. You know,

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1 this is an individual right, not a -- so that standing argument
2 is limp and unavailing, I'm sorry.

3 No specific method is required. It's true, the
4 Supreme Court in its decisions as we have laid them out in the
5 brief did not say one system has to be -- is preferable over
6 another. They probably never foresaw what is happening today in
7 the world of computers, and so forth. But what they did say was
8 we give responsibility for voting and elections to the states
9 and to their political subdivisions, counties included. They
10 must take every step possible to make sure that they minimize
11 the opportunity for fraud, the opportunity for errors and
12 mistake and confusion and frustration and deception. That's
13 Supreme Court edict.

14 And so -- and what we argue is that I have not heard
15 these defendants say that they cannot use this system tomorrow.
16 They said, oh, it's last minute. We're not asking them to do
17 anything that's impossible. They can simply take these boxes
18 and put one in every voting station tomorrow; problem solved.
19 It's doable. It's not something that is impossible, and it's
20 cheap and it's quite reliable. And, you know, quite frankly, if

21 I can, I'm surprised, I really anticipated a nolo contendere
22 argument here today from these defendants. I really assumed
23 that they would be able to say following a decision that, look,
24 we'll do it. I thought they would do it; they would just do it
25 because it's better. Unless they've got some connections, if

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1 this party receives any money at all, big money, small money,
2 any money at all from any machine manufacturers, unless they've
3 got some loyalty there that we don't know about, then I don't
4 know why they just didn't come here today and say, you know,
5 we'll do it and then just say later, hey, it's a straw poll, we
6 don't have to do it in the primary, and so forth, we'll deal
7 with that later. I don't know why they didn't do that, but
8 nonetheless they didn't.

9 You know, they say this is nothing but a private
10 effort. This is nothing but a -- there's no right here. You
11 don't have a right. True, as I said earlier, if this was a
12 private club holding a party, holding a barbecue and its club
13 members were coming and they were supposed to express -- pay 35
14 bucks to attend and express their view on, you know, whatever,
15 fine, no problem. But, Your Honor, you cannot -- the court
16 cannot deny the facts as we've laid them out.

17 There is heavy public involvement in this case. You
18 know, they can't talk out of both sides of their mouths as we've
19 heard. They can't approach this straw poll saying, oh, we've
20 got the government overseeing this election. We've got county
21 and state officials that are going to be counting and, you know,
22 on the stage announcing the results to give it credibility and
23 integrity. Nah, you know. And then say -- you know, this
24 morning when we served the State Auditor, we immediately drove
25 from the Capitol over to the Iowa Republican Party headquarters

1 in the old funeral building, and we served the papers on Daryl
2 Kearney, the finance director. He said, oh, Mr. Vaudt, the
3 auditor, just called here. Boy, if there isn't any more
4 evidence that they're working together on this. He just called
5 here.

6 And then there's Mr. Reddy who served Mary Moisman,
7 the county auditor, up in Ames, and then ran into her a little
8 later --

9 THE COURT: Who served the county auditor?

10 MR. REDDY: No, I didn't.

11 MR. SCHULZ: No, I'm sorry. He was with the person.
12 He didn't serve it. You're right, Your Honor. He was with
13 someone who's not a party who did the serving, but he was there,
14 and what he witnessed -- he can testify for himself, but what he
15 told me was that I suggested that they may also want to serve
16 the chairman, it wouldn't hurt. And when we went to the
17 Republican Party headquarters, as I had indicated earlier,
18 Mr. Hoffman, the chairman, and Mr. Laudner had apparently
19 already gone to Ames, and Mr. Kearney was there, so we served
20 him -- or he was served.

21 But service, personal service was effected on the
22 county auditor, and then later, an hour or two later, I
23 suggested, well, it wouldn't hurt to serve a copy of the papers
24 on the chairman, make sure that he has copies, and so forth.

25 So the service person went to the university and there

1 was a meeting there, and in the meeting were the state and
2 county and Republican Party people, including Mary Moisman, the
3 county auditor. So it would appear -- here's what appears to

4 have happened here today. The county and the state are not
5 here. Now, why is that? I would suggest to the court they're
6 not here because of strategy. We don't want to give any
7 appearance that this is anything other than a private party, and
8 if the county and the state were here, it might take away from
9 that. Is it speculation? Maybe, Your Honor, but that's what I
10 would argue, that if there would be discovery, I think that we
11 would find something like that has occurred here today.

12 So, on the one hand, you know, they clearly, as the
13 record shows, in particular, Your Honor, in particular on A-4,
14 the voting process, this is clearly a public/private effort.
15 This is not just a private undertaking. And because of the
16 involvement, we would argue, as I think I have -- and I don't
17 mean to repeat. We would argue that because of the heavy
18 involvement in this straw poll of the State of Iowa and the
19 County of Story that, in fact, people have these rights that
20 Mr. McDermott says they don't have. They have the right to have
21 their -- to make sure that they're casting a vote effectively
22 and to have that vote counted properly. And every -- the court,
23 the job of the court with respect -- the job of the court is to
24 make sure that because of the significance of this
25 public/private effort, and some day I would predict we're going

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1 to have the same kind of controls added to the Iowa
2 Administrative Code and election laws elsewhere governing the
3 procedures of these straw polls because of the power and because
4 of the effect they have on choice after they're over.

5 Are these ballots going to be intact? I would argue,
6 if I might -- no disrespect to parties. I mean, God love them,
7 we need them; but Jefferson said, political parties -- Thomas
8 Jefferson, political parties are, by their nature, corruptive.

9 And what did he mean? What he meant was people's loyalties go
10 to the party. Winning is everything. Their loyalties go to the
11 party rather than to the law, as history shows, clearly, rather
12 than as to the Constitution. Their loyalties go to the party.
13 That's what he meant by political parties are, by their nature,
14 corruptive. That's what happens, and we're seeing that happen
15 here, and the court has the opportunity to nip that in the bud,
16 prevent that from happening.

17 This is clearly not a private undertaking. This is a
18 quasi public/private undertaking, heavy, heavy involvement, in
19 their own words, of the state and the county in the planning and
20 in the execution of the straw poll, and their presence will be
21 felt and observed everywhere tomorrow during that process. So
22 they can't say it's strictly a private undertaking. If they
23 wanted security and if they wanted a clear vote, they should
24 have stayed away from the county and state and hired some
25 private security firm or something of that sort.

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1 No lawsuit such as this, you know, it's never been
2 challenged before. Straw polls, yeah, they're something
3 relatively new, on the scene; but under the facts and
4 circumstances of this case, there's a lawsuit. It's a first
5 impression lawsuit. It's needed. It's not frivolous. It's
6 needed. There's merit in fact and law, and this lawsuit, it was
7 not brought with malice. It was not brought to harass or delay
8 or anything of the sort. We really don't want to stop the straw
9 poll. We have not heard the defendants argue why they can't do
10 this. Yeah, it might embarrass them, but, you know, hey, they
11 could live with that. That will pass. And they could take
12 advantage of this. My God, we are going to keep the ballots in
13 public view and they're going to be counted -- Mr. Condit raised

14 a good point. I, for one, if those votes are not counted at
15 each one of those 60 voting stations and if later on the buttons
16 are pushed and the receipts come out and they say this or that
17 and if there's, you know, an audit, even if there's an audit, I
18 mean, I, for one, would -- unless those ballots are kept in
19 public view and unless those ballots are counted at those voting
20 stations, I don't know who would believe in this day and age,
21 with the heavy corruption that we have in government -- we see
22 political parties and government officials getting indicted all
23 the time, we always have; but who would believe, I mean, who is
24 really going to believe those results except the party
25 loyalists? And that's a shame, and we cannot allow that to

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1 happen.

2 MR. CONDIT: Your Honor, could I have one paragraph
3 and I promise it will be a short one?

4 MR. SCHULZ: It's a rebuttal.

5 THE COURT: A Melville paragraph or something shorter.
6 Go ahead, Mr. Condit.

7 MR. CONDIT: Your Honor, if you do this and I'll sit
8 down. I just have two points.

9 THE COURT: Go ahead, sir.

10 MR. CONDIT: Thank you, Your Honor.

11 There was a number of cases that were at the
12 grassroots level, county levels, one against these machines in
13 1980. Our group in Cincinnati did a public interest lawsuit
14 from 1981 to 1985, the Richard Niehaus ruling that there are no
15 safeguards that the computers are not being programmed to
16 distort the results, there are no safeguards that the computers
17 aren't being programmed to distort the results. The appeals
18 court did overturn that two years later so we did not get rid of

19 the system, but I would say there have been some cases at the
20 grassroots level and the appeals court said this county judge
21 does not have any jurisdiction over the county computer system,
22 which leaves me scratching my head.

23 The other point Mr. McDermott raised, which I think is
24 good point and a point Your Honor has to consider here. He
25 said, and what are you going to do next; go into the Elks club

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1 and go into the ice cream flavor club to make them, you know,
2 follow something that the court says? I think I hope what Your
3 Honor would consider ruling, if it's proper to say that to the
4 court, is if the Elks bring in the Secretary of State and the
5 auditors that use the machines of the government, yes, yes,
6 Mr. Labor Union, yes, Mr. Elks, if you're going to have all of
7 these government officials and the government machines doing the
8 election, you now, under the statutes, act like a primary. And
9 they did that in the early part of the 20th Century Mr. Schulz
10 said, and there are new things here. There are four powerful
11 computer companies trying to get all of these counties to do
12 this. There is something new under the sun kind of here, Your
13 Honor, and I think that justifies you putting this type of
14 hybrid event under the law when they use such heavy government
15 involvement.

16 That was a Melville paragraph; I'm sorry, Your Honor.
17 Thank you for the opportunity.

18 THE COURT: Thank you, Mr. Condit.

19 Any other plaintiffs with something that has not
20 already been raised?

21 MR. SCHULZ: I'm so sorry, Your Honor.

22 THE COURT: Did you hear the word "other"?

23 MR. SCHULZ: I'm sorry. May I?

24 THE COURT: Go ahead.

25 MR. SCHULZ: Well, if the court would take judicial

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1 notice of the New York Times article, July 28th, a copy is here,
2 announcing what has happened in California and, obviously, it
3 has triggered -- it has renewed our interest --

4 MR. REDDY: It can be hacked into easily, the vote
5 total.

6 MR. SCHULZ: But if you can take judicial notice.

7 THE COURT: Is there something about that article
8 that's different from what you've already attached to your
9 complaint, other than the fact that it's the New York Times
10 rather than the Secretary of State that the New York Times is
11 writing about?

12 MR. SCHULZ: Yes. To answer your question, yes, the
13 ease in defeating software and picking locks surprises
14 investigators, the people who did this, so yes --

15 THE COURT: Is it an editorial from the New York Times
16 or article?

17 MR. SCHULZ: No. It's a news story reporting on --

18 THE COURT: You can make it a part of the record. I
19 don't have any problem with that.

20 MR. MCDERMOTT: No objection, Your Honor.

21 MR. SCHULZ: Should I hand it in?

22 THE COURT: Yes. You can just hand it to the clerk,
23 please.

24 MR. SCHULZ: Thank you.

25 THE COURT: It is unusual for me to rule from the

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1 bench after a hearing. I like to have a little more time for

2 reflection, but it's also 3:15 on Friday afternoon, and I think
3 it's necessary for all parties involved. While I will file a
4 written order hopefully later today, that written order will
5 essentially follow basically what I'm going to say now.

6 It is not the task of this court to consider whether
7 or not a particular procedure being used by the Republican Party
8 is a good one or a bad one unless it violates some law or it
9 violates the Constitution. In the absence of some legal
10 violation, the Republican Party can run their operation however
11 they wish. So this court looks at this issue to determine
12 whether or not there is a legal basis upon which to decide that
13 a temporary restraining order would lie.

14 In the process of examining that, I have some basic
15 steps that I must necessarily take. First I must decide whether
16 the plaintiffs have proceeded adequately and consistently with
17 the dictates of Rule of Civil Procedure 65 and whether they have
18 met the requirements of demonstrating the various elements
19 necessary for supporting the imposition of a temporary
20 restraining order.

21 First of all, the court can, certainly under Rule 65,
22 enter a restraining order on an ex parte basis, meaning the
23 defendant is not here, and some of them are not. The reasons
24 they are not here could be a myriad of things, not the least of
25 which being that they may take the position that they were given

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1 inadequate notice and their presence here would forgive that
2 notice, and they may be electing to do that. But the court in
3 order to do that must first decide whether there's been an
4 adequate effort to provide them with notice and give them the
5 opportunity to be heard or, if there has not been such an
6 adequate effort, whether it's appropriate under the

7 circumstances to proceed ex parte anyway.

8 Based upon the record that I have before me that's
9 been made here today and the material that was filed yesterday,
10 I think I have to say that I don't believe that there is
11 adequate notice under the scheme of Rule 65, and I don't
12 believe, given the fact that we are dealing with a subject
13 matter of something that's been pending for a very long period
14 of time, is such that it is excused, that there's a requirement
15 that notice be properly given.

16 The fact that the Republican Party elected to be
17 present here today, probably because of their concern for their
18 event which is happening tomorrow, I don't think excuses that
19 fact. I think there still is an issue under Rule 65 as to
20 whether or not the terms of the rule have been adequately met.

21 With regard to standing, which the court must
22 necessarily address, I think that's a bit murky because the
23 pleadings and the comments today are a little bit inconsistent
24 with regard to the contract claim. It becomes more murky with
25 regard to whether or not there would be standing to at least

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1 argue some issue with regard to a contract claim; but I think
2 that standing is extremely weak under the circumstances and that
3 ultimately if given an opportunity to look at it more deeply, I
4 believe that there is not adequate standing on the part of these
5 individual plaintiffs to trigger the jurisdiction of this court.
6 Because it's murky, I am going to proceed to address the merits
7 issues to some extent.

8 The court would have to conclude, in order to
9 determine that there's an adequate or a reasonable likelihood of
10 success on the merits, the court would have to conclude that
11 there is some legal protection for these plaintiffs with regard

12 to the procedures being employed by the Republican Party for
13 their straw poll. As the parties have indicated and as the
14 court has found, there is no legal basis previously establishing
15 that a straw poll, which by definition is an unofficial act and
16 not a public act, that a straw poll is not an election or a
17 public polling that would bring into question the constitutional
18 protections.

19 If it were a case of first impression and this court
20 were to try to decide that issue, the court does not have an
21 adequate factual record upon which to determine that this is
22 anything more than an internal party process and a small part of
23 that process in selecting its nominees.

24 Accordingly, as the Supreme Court has previously said,
25 that process is not subject to these same constitutional

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1 protections because it is not, in fact, an election. I believe
2 there's nothing in the record that would support this court
3 taking the legal posture that the Iowa Straw Poll is
4 sufficiently akin to an election to entitle it to the
5 constitutional protections that the plaintiffs assert here.

6 I also believe that this record is very thin on the
7 question of whether or not there is immediate and irreparable
8 injury. Therefore, because the application fails on those very
9 important grounds, the court need not consider the issues of
10 relative burden on the parties or the issue of public policy.

11 With regard to the relative burden on the parties, I
12 would only point out that to the extent there is no legal basis
13 upon which this court could interfere with the way the
14 Republican Party is running its straw poll, then obviously
15 interference by this court would be an extreme burden on the
16 party in the absence of the court's authority.

17 Therefore, despite the court's appreciation for the
18 passion that these folks feel on this issue, the court must
19 determine under the circumstances of the case that it does not
20 at this point in time provide the basis for injunctive relief.
21 Accordingly, the only issue before the court today is whether or
22 not a temporary restraining order will issue. That application
23 is denied.

24 Anything else that we can take up today, folks?

25 MR. MCDERMOTT: No, Your Honor.

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1 MR. SCHULZ: No, Your Honor.

2 THE COURT: All right. Thank you.

3 We're in recess.

4 (Proceedings concluded at 3:20 p.m.)

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I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated.

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to computer transcription under my direction and supervision, and that the foregoing computer transcription pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 10th day of August, 2007.

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