

**ROBERT L. SCHULZ, JAMES CONDIT JR., )  
JENNIFER MAKI; PAM WAGNER; TROY )  
D. REHA; GINGER CORBETT; ROGER )  
LEAHY; and WALTER REDDY, )**

## VERIFIED COMPLAINT

No.

**STATE OF IOWA, David A. Vaudt, State Auditor; STORY COUNTY, Mary Moisman, Commissioner of Elections; and IOWA REPUBLICAN PARTY, Ray Hoffman, Chairman,**

1. All Defendants have their principal offices in this judicial district. All Plaintiffs are citizens of the United States; some reside in this judicial district.
2. The claims arise under the Constitution of the United States of America; this court has jurisdiction under 28 U.S.C. Sections 1331 and 1343(3), and 42 U.S.C. Section 1983.
3. This action is timely commenced.

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5. JAMES CONDIT JR. is a citizen and registered voter. He is not qualified to vote in the Iowa Straw Poll. He has purchased a \$35 ticket to the Iowa Straw Poll. He resides in Ohio at 4575 Farview Lane, Cincinnati, Ohio 45247.
6. JENNIFER MAKI is a citizen and registered voter. She is qualified to vote in the Iowa Straw Poll. She has purchased a \$35 ticket to the Iowa Straw Poll and intends to vote. She resides in Iowa at 1998 White Street, Dubuque, IA 52001.
7. PAM WAGNER is a citizen and registered voter. She is qualified to vote in the Iowa Straw Poll. She has purchased a \$35 ticket to the Iowa Straw Poll and intends to vote. She resides in Iowa at 2556 Johnson Iowa Road, Homestead, IA 52236.
8. TROY D. REHA is a citizen and registered voter. He is qualified to vote in the Iowa Straw Poll. He has purchased a \$35 ticket to the Iowa Straw Poll but may not be able to be in Ames to vote. He resides in Iowa at 2525 County Line Road, Des Moines, IA 50321.
9. GINGER CORBETT is a citizen and registered voter. She is qualified to vote in the Iowa Straw Poll, except for the fact that she does not have the \$35 required to vote. She resides in Iowa at 801 Myatt Drive, #19, Maquoketa, IA 52067.
10. ROGER LEAHY is a citizen and registered voter. He is qualified to vote in the Iowa Straw Poll. He has purchased a \$35 ticket to the Iowa Straw Poll and intends to vote. He resides in Iowa at 2096 Nutmeg Ave., Fairfield, IA 52556.
11. WALTER REDDY is a citizen and registered voter. He is not qualified to vote in the Iowa Straw Poll. He has purchased a \$35 ticket to the Iowa Straw Poll. He resides at 16 Briar Oak Drive, Weston, CT 06883.
12. STATE OF IOWA is one of the 50 States of the United States of America; David A. Vaudt is the duly elected State Auditor. The State of Iowa, including Iowa State

- University and one of its political subdivisions (Story County), will cooperate, share expenses and otherwise partner with the Iowa Republican Party to conduct the Iowa Straw Poll on August 11, 2007; on information and belief the State Auditor will be present during the Iowa Straw Poll and will announce the results of the Iowa Straw Poll following the close of the voting period.
13. STORY COUNTY is one of the 99 Counties in the State of Iowa; Mary Moisman is the Commissioner of Elections. On information and belief the County owns the Diebold machines that will be used to conduct the Iowa Straw Poll, the machines will be staffed by County employees during the Iowa Straw Poll, and County employees will transport the machines from the 60 voting stations to a centralized vote tabulation room after the voting period.
14. IOWA REPUBLICAN PARTY is affiliated and inextricably intertwined with and otherwise a significant part of the National Republican Party, which is one of the two major political parties of the United States of America.

#### **PRELIMINARY STATEMENT**

15. This action challenges the constitutionality of the voting process to be used during the quasi-public Iowa Straw Poll in Ames Iowa on August 11, 2007. The process unnecessarily and unreasonably heightens the possibility of confusion, deception, frustration and fraud. In addition the process involves what appears to be a constitutionally challenged “poll tax.” To vote, one must pay \$35.
16. It is common knowledge that the eyes of America are on Iowa as 2008 Republican Party hopefuls stand the first serious test of the overall election process – the Iowa Republican Straw Poll – leading up to the state’s first-in-the-nation caucus in January, 2008.

17. The Iowa Straw Poll is clearly the most important event on the entire 2007 calendar for the Republican candidates seeking the nomination for President of the United States of America.
18. In the words of the Iowa Republican Party, as other states continue to front-load the Presidential nomination calendar, Iowa's position at the front of the nomination process brings more significance in this cycle to both the Iowa Straw Poll and Caucus and therefore the general election, affecting every voter's choice for President. The vote totals for the candidates on the ballot at the Iowa Straw Poll affects the outcome of the Iowa caucus and the 2008 presidential race.
19. The Iowa Straw Poll has historically winnowed the field of presidential candidates. While the results of the Straw Poll are non-binding, it has become the first real test of each campaign's organizational strength.
20. An accurate vote count is therefore of critical importance. Everything reasonable must be done to eliminate the potential for confusion, deception, frustration and fraud.
21. The vote counting process being used by Defendants unnecessarily and unreasonably heightens the possibility for machine error (intentional or otherwise) and human fraud.
22. If the Iowa Straw Poll voting process is to pass constitutional muster, there can be no substitute for a People's "chain of custody" and the manual allocation and counting of all ballots in full public view, at each voting station, before those ballots are ever removed from public view.

### **FACTS**

23. On August 11, 2007, from 10 am to 6 pm, more than 25,000 residents of the State of Iowa will arrive on the campus of Iowa State University in Ames, a public facility. They

- will be 18 years of age or older. They will be there to choose one man from a list of eleven men as their choice to be the next President of the United States of America. See Exhibit A-2.
24. There will be 60 Story County-owned Diebold computerized voting machines set up in three buildings on the public campus: Scheman Building, CY Stephens Building and the Hilton Coliseum. See Exhibit A-4.
  25. Employees from the Story County Election Commissioner's office will staff all voting machines. Exhibit A-4.
  26. At each of 60 vote stations the voters will receive a paper ballot. They will pencil in an oval next to the candidate of their choice. They will enter the paper ballot into a machine that will scan the entire ballot and record the vote. After scanning each ballot the machine will deposit the ballot into a "black box" within the Diebold machine. Exhibit A-4.
  27. At 6 pm voting will end. The ballots will NOT be removed from their machines or counted. Instead, on information and belief, each machine with its black box and ballots will be transported to a centralized "tabulation" room by public employees from the Story County Election Commissioner's office and from the office of Iowa State Election Commissioner. See Exhibit A-4.
  28. On information and belief, based on past experience, the door to the tabulation room will be closed to the public.
  29. The ballots will NOT be removed from their black boxes or counted. Instead, a button on the machine will be pressed. In response, the machine will eject a slip of paper showing the number of votes recorded by that machine for each candidate. The results will be tabulated.

30. The State Election Commissioner will announce the results of the vote from the stage at the Hilton Coliseum. See Exhibit A-4.
31. Each person casting a vote will have paid \$35 to do so. The eleven candidates on the list are all Republicans. The Iowa Republican Party is sponsoring the event, which is known as the Ames Straw Poll, also the Iowa Straw Poll, also the Iowa Republican Straw Poll.
32. On August 3rd, the Secretary of State for California decertified the primary Diebold voting machines in use in 39 counties in California and in widespread use across the nation, including Story County. See Exhibit C-1 and D.1.
33. According to a document on the Iowa State Auditor's website detailing electronic voting machines certified for each Iowa county, Story County uses the same machines decertified by California. See Exhibit B-2, Page 5. The primary machine used by Story County is **Diebold Accuvote-OS, ACV-OS 1.96.6**. This was decertified by California. (See Exhibit D.1, Page 5). The accessible DRE (touchscreen) machine used by Story County is **Diebold Accuvote-TSX, ACV-TSX 4.6.3**. This machine was also decertified by California. (See Exhibit D.1, Page 5).
34. From her official pronouncement, it appears as though the California Secretary of State has completely decertified the Diebold AccuVote-OS (optical scanning) machine. Exhibit D.1, Page 5.

For the reasons set forth above, the Diebold Elections Systems, Inc., voting system, comprised of GEMS software, version 1.18.24, AccuVote-TSX with AccuView Printer Module and Ballot Station firmware version 4.6.4, AccuVote-OS (Model D) with firmware version 1.96.6, AccuVote-OS Central Count with firmware version 2.0.12, AccuFeed, Vote Card Encoder, version 1.3.2, Key Card Tool software, version 4.6.1, and VC Programmer software, version 4.6.1, which was previously approved, is found and determined to be defective or unacceptable and its certification and approval for use in subsequent elections in California is immediately withdrawn, except as specifically provided below.

35. After completely withdrawing California's certification of the family of Diebold voting products, *which includes those used by Story County*, and providing for conditional use of the Diebold TSX touchscreen machine pursuant to new provisions and procedures, the California Secretary fails to make any further mention regarding the Diebold AccuVote-OS optical scanning machine, rendering it completely decertified. Exhibit D.1, Page 5-12.

36. For instance, California limits its precincts to just (1) TSX machine per polling place. Exhibit D.1 Page 5.

1. In order to provide accessible balloting to voters with disabilities in compliance with HAVA, jurisdictions may use no more than one AccuVote-TSx per polling place on Election Day. To protect voter privacy, jurisdictions are required to ensure that at least five persons voluntarily cast their ballot on each such device over the course of Election Day.

37. California now imposes a 100% manual count of all votes cast on each TSX used: Exhibit D.1, Page 5.

2. The AccuVote-TSx may be used in early voting prior to Election Day, subject to the following restrictions:
  - After the close of the polls each day of early voting, all voting equipment must be secured against tampering and returned by jurisdiction elections employees for storage in a jurisdiction facility that meets the security standards that apply to the jurisdiction's election headquarters;
  - Early voting centers may only be staffed by jurisdiction elections employees;
  - The jurisdiction must staff the early voting so that one employee is responsible solely for monitoring the voting equipment to ensure no unauthorized access to the equipment occurs;
  - The jurisdiction must maintain a chain of custody log for each piece of equipment, in which two or more jurisdiction employees record, verify and sign off on the public counter numbers on the device, the integrity of the tamper-evident-seals and the serial number of those seals at the opening and closing of the polls each day of early voting; and
  - The jurisdiction must conduct a 100% manual count of all votes cast on an AccuVote-TSx.

38. CA now imposes an additional 100% manual count AUDIT of the results tabulated on each DRE (Direct Recording Electronic) machine (i.e., the Diebold TSX touchscreen). Exhibit D.1, Page 9.

21. User jurisdictions are required to conduct a 100% manual count audit of the electronic results tabulated on each DRE machine in use on Election Day.

**PLAINTIFFS' FIRST CAUSE OF ACTION:**

**FAILURE TO PROVIDE THE VOTERS WITH A VERIFIABLE "CHAIN OF CUSTODY" AND THE MANUAL ALLOCATION AND COUNTING OF ALL BALLOTS IN FULL PUBLIC VIEW, AT EACH VOTING STATION, BEFORE THOSE BALLOTS ARE EVER REMOVED FROM PUBLIC VIEW VIOLATES THE VOTING RIGHTS OF PLAINTIFFS**

39. Failure to provide the People with a public viewing – a People's "Chain of Custody"— of all ballots, and a manual allocation and count of all ballots in full public view, at each voting station, before those ballots are ever removed from public view violates the voting rights of Plaintiffs.
40. The federal Constitution assigns to the states the initial responsibility for setting the rules and governing elections. The power given to the states in the federal Constitution to regulate elections is necessary as a way to insure orderly operation of the voting (democratic) process. State regulations of elections has been derived (*Burdick v Takushi*, 112 S. Ct. at 2603) from Article I, Section 4, cl. 1 of the federal Constitution which reads:
- "The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof."  
Article I, Section 4, cl. 1  
Federal Constitution
41. State regulation of elections has also been derived (*Storer v Brown*, 415 U.S. at 729-30, 1974), from Article I, Section 2, cl. 1 of the Federal Constitution, which reads:

"The House of Representatives shall be composed of members chosen every second year by the People of the several states, and the Electors in each state shall have qualifications requisite for Electors of the most numerous branch of the State Legislature."  
Article I, Section 2, cl. 1, Federal Constitution

42. The State has a compelling interest in protecting the integrity of the political process.  
*Storer v. Brown*, 415 U.S. 724, 732 (1974).
43. States have a compelling interest, not just a legitimate interest, in structuring elections in a way that avoids confusion, deception and even frustration of the democratic process.  
*Larouche v. Kezer*, 990 F.2d at 442 (2d Cir. 1993).
44. To prevail on the constitutional transgressions alleged in this complaint, plaintiffs know that they need show beyond a reasonable doubt that the administration, by the State and County Boards of Elections of the Iowa Straw Poll will severely burden the exercise of a substantial constitutional voting right.
45. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Burdick v. Takushi*, 112 S. Ct. 2059, 2067 (1992).
46. The Supreme Court has derived a number of constitutional voting rights from the First and Fourteenth Amendments, including: the right to associate for the advancement of political purposes, *NAACP v Alabama*, 357 U.S. 449, 460 (1958); the right to cast an effective vote, *Williams v Rhodes*, 393 U.S. 23, 30 (1968); and the right to create and develop new political parties, *Norman v. Reed*, 112 S. Ct. 698, 705 (1992).
47. The Supreme Court has clarified “the right to vote” to mean “the right to participate in an electoral process that is necessarily structured [by state regulations] to maintain the integrity of the democratic system.” *Burdick v. Takusi*, 112 S. Ct. at 2063.
48. Notwithstanding this recognition by the Supreme Court of the need for state regulations to protect the democratic (voting) process, the Supreme Court has held that a state cannot

violate a right encompassed within the Equal Protection Clause of the Fourteenth Amendment. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

49. "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, [110 U.S. 651](#), and to have their votes counted, *United States v. Mosley*, [238 U.S. 383](#). In *Mosley* the Court stated that it is '**as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box.**' 238 U.S. at 386. The right to vote can neither be denied outright, *Guinn v. United States*, [238 U.S. 347](#), *Lane v. Wilson*, [307 U.S. 268](#), nor destroyed by alteration of ballots, see *United States v. Classic*, [313 U.S. 299, 315](#), nor diluted by ballot-box stuffing, *Ex parte Siebold*, [100 U.S. 371](#), *United States v. Saylor*, [322 U.S. 385](#). As the Court stated in *Classic*, 'Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots **and have them counted . . .**' (313 U.S., at 315)." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).
50. "And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." [377 U.S. 533, 556](#).

51. “Almost a century ago, in *Yick Wo v. Hopkins*, [118 U.S. 356](#), the Court referred to “the political franchise of voting” as ‘a fundamental political right, because it is preservative of all rights.’ [118 U.S., at 370](#).” [377 U.S. 533, 562](#).
52. “We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.” *U. S. v. Mosley*, 238 U.S. 383, 386 (1915).
53. In the *KU KLUX CASES*, 110 U.S. 651 (1884), the Supreme Court said: “It is as essential to the successful working of this government that the great organisms of its executive and legislative branches should be the free choice of the people, as that the original form of it should be so. In absolute governments, where the monarch is the source of all power, it is still held to be important that the exercise of that power shall be free from the influence of extraneous violence and internal corruption. **In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger. Such has been the history of all republics, and, though ours [110 U.S. 651, 667] has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources.**” (Plaintiffs’ emphasis).
54. In *United States v. Saylor*, 322 U.S. 385 (1944), the Supreme Court said, “In *United States v. Mosley*, [238 U.S. 383](#), 35 S.Ct. 904, 905, this court reversed a judgment sustaining a demurrer to an indictment which charged a conspiracy of election officers to render false returns by disregarding certain precinct returns and thus falsifying the count of the vote cast. After stating that 19 is constitutional and validly extends ‘some

protection, at least, to the right to vote for Members of Congress,' the court added: 'We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.' The court then traced the history of 19 from its origin as one section of the Enforcement Act of May 31, 1870,<sup>3</sup> which contained other sections more specifically aimed at election frauds, and the survival of 19 as a statute of the United States notwithstanding the repeal of those other sections. The conclusion was that 19 protected personal rights of a citizen including the right to cast his ballot, and held that to re- [322 U.S. 385, 388] fuse to count and return the vote as cast was as much an infringement of that personal right as to exclude the voter from the polling place. The case affirms that the elector's right intended to be protected is not only that to cast his ballot but that **to have it honestly counted.**" (Plaintiffs' emphasis).

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

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

"The primary is conducted by the state at public expense. Act No. 46, supra, 35. The primary, as is the general election, is subject to numerous statutory regulations as to the time, place and manner of conducting the election, **including provisions to insure that the ballots cast at the primary are correctly counted,** and the results of the count correctly recorded and certified to the Secretary of State, whose duty it is to place the names of the successful candidates of each party on the official [313 U.S. 299, 312] ballot. The Secretary of State is prohibited from placing on the official

ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of the Act. Act 46, 1...

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

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

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

“...Moreover, we cannot close our eyes to the fact already mentioned that **the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election even though there is no effective legal prohibition upon the rejection at the election of the choice made at the primary and may thus operate to deprive the voter of his constitutional right of choice.** This was noted and extensively commented upon by the concurring

Justices in *Newberry v. United States*, supra, [256 U.S. 263](#) -269, 285, 287, 41 S.Ct. 476-478, 484.

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

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

"The right of the voters at the primary to have their votes counted is, as we have stated, a right or privilege secured by the Constitution..." (Plaintiffs' emphasis).

56. The federal Constitution condemns state restrictions such as those to be implemented by Iowa and its partners in the Iowa Straw Poll “that, without justification [no compelling state interest], significantly encroach upon the rights to vote [and have the vote counted] and to associate for political purposes.” *Unity Party v. Wallace*, 707 F. 2d 59, 62 (2d Cir. 1983), or that enhance rather than prevent voter confusion, deception, frustration and fraud. *Storer v. Brown*, 415 U.S. 724, 732 (1974).
57. The planned Straw Poll procedures are substantively deficient, e.g., they remove from public inspection key elements required for a fair vote count and the Defendants intend to

- use electronic vote tabulation equipment that has been officially decertified by the state of California because of significant and well documented security and accuracy problems. The Straw Poll voting procedures abridge the right to cast an effective vote. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).
58. The Straw Poll voting procedures impose an impermissible burden upon fundamental rights under the First and Fourteenth Amendments. *Burdick v. Takusi*, 112 S. Ct. at 2063.
  59. The Straw Poll with its poll tax violates a right encompassed within the Equal Protection Clause of the Fourteenth Amendment. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).
  60. The Straw Poll voting procedures heavily burden the right to vote. Due to the possibility of machine error (intentional and unintentional) and human fraud, they may result in votes being cast only for party favorites at a time when other party insurgents are clamoring for a place on the ballot. *Williams v. Rhodes*, 393 U.S. 23, 41 (1968).
  61. Due to the enhanced probability of machine error and human fraud, the Straw Poll voting procedures may deprive a party insurgent of the right to have his voice heard and his views considered. *Williams v. Rhodes*, 393 U.S. 23, 41 (1968).
  62. Due to the enhanced probability of machine error and human fraud, the Straw Poll voting procedures may restrict real as opposed to theoretical votes, ballot access and voter choice downstream in the election process. *American Party v. White*, 415 U.S. 767, 783 (1974).

## PLAINTIFFS' SECOND CAUSE OF ACTION:

### **FAILURE TO PROVIDE THE VOTERS WITH A VERIFIABLE "CHAIN OF CUSTODY" AND THE MANUAL ALLOCATION AND COUNTING OF ALL BALLOTS IN FULL PUBLIC VIEW, AT EACH VOTING STATION, BEFORE THOSE BALLOTS ARE EVER REMOVED FROM PUBLIC VIEW VIOLATES THE CONTRACT RIGHTS OF PLAINTIFFS**

63. The purchase of a \$35 Ticket helps pay for the Iowa Straw Poll, enables any purchaser of the ticket, including out of state Plaintiffs, to contribute money to cover the expenses of the Straw Poll and participate in the events except voting. In addition it enables Iowa residents to cast their vote in the poll. The tickets have been offered to the general public, including on the Iowa GOP's website. Ticket purchasers need only certify to certain facts.
64. The Republican Party of Iowa website (<https://www.fundraisingbynet.net/fbn/eticket.asp>) contains the following language:

#### **Confirm Your Eligibility**

☐ By checking this box, I confirm that the following statements are true and accurate:

I am a citizen or permanent resident in the United States.

- The funds I am contributing are my own personal funds and not those of another person.
- My contribution is not from the general treasury funds of a corporation, organization or national bank.
- I am not a federal contractor.
- I am not a foreign national who lacks permanent resident status in the United States.

I affirm that I am making this contribution via my personal credit or debit card for which I have a legal obligation to pay, and not through a corporate or business entity card or the card of another person.

☐ **I confirm that I am 18 years or older.**

65. According to information and belief, each ticket is uniquely identified and will be used as the means of controlling access to the limited voting areas and the means of securing an actual ballot.

66. **Offer and Acceptance.** A contract is based upon an agreement. An agreement arises when one person, the offeror, makes an offer and the person to whom the offer is made, the offeree, accepts. An offer may be made to a particular person or it may be made to the public at large.
67. **Agreement.** In law, a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances.
68. Article 1, Section 10 of the Constitution reads as follows:

**Section 10 - Powers prohibited of States**

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, **or Law impairing the Obligation of Contracts**, or grant any Title of Nobility.

69. All contracts must contain mutual assent. Anderson, 540 N.W.2d at 285. This assent is usually given through an offer and acceptance. An offer is a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Id. (quoting Restatement (Second) of Contracts § 24). An offer also must be certain as to its terms and requirements. See Audus v. Sabre Communications Corp., 554 N.W.2d 868, 871 (Iowa 1996); 17A Am. Jur.2d Contracts § 192, at 202.
70. The purchase of a Straw Poll ticket is the execution of the contract between Defendants – the organizers of the Straw Poll-- and those participating as ticket holders.
71. The ticket contract contains not only the Right to help pay for the event and, in some cases, to cast a vote, but the corollary Right to have the votes counted accurately.

72. Plaintiff Ticket holders in no way, would willfully consent to this contract if they even suspected the votes could be compromised or the vote counting process was ripe for fraud or machine failure -- or even sabotage.
73. Indeed, lacking the integrity of even the minimal (although constitutionally deficient) controls and procedures of a Primary Election, the Iowa Straw Poll has the appearance of a rigged gambling table or game show where those in the "back room" determine who wins. Unfortunately for the Plaintiffs, and the balance of America, the outcome of this particular electoral event poses a very real threat affecting the choices of the American voters in 2008 and potentially altering the future of the nation itself.
74. That the State of Iowa and Story County defendants have lent their imprimatur and assistance to this contract fraud is indefensible and unconstitutional. There can be no substitute for the public hand-counting and totaling of votes.

**PLAINTIFFS' THIRD CAUSE OF ACTION:**

**DEFENDANTS HAVE ESTABLISHED A "POLL TAX" IN VIOLATION  
OF THE EQUAL PROTECTION CLAUSE OF THE  
FOURTEENTH AMENDMENT TO THE CONSTITUTION**

75. Only those citizens of Iowa who have paid Defendants \$35 are eligible to vote, if they are over 18 and produce a driver's license proving they live in Iowa.
76. But for the requirement to pay \$35, some citizens of Iowa, including some Plaintiffs, would otherwise be eligible to vote in the Straw Poll.
77. The \$35 represents an unconstitutional "poll tax." The Supreme Court has declared all poll taxes to be unconstitutional.
78. In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), Virginia residents brought the action to have Virginia's poll tax declared unconstitutional. The Supreme Court held,

- “A State’s conditioning of the right to vote on the payment of a fee or tax violates the Equal Protection Clause of the Fourteenth Amendment.”
79. “Once the franchise is granted to the electorate, lines which determine who may vote may not be drawn so as to cause invidious discrimination.” 383 U.S. 663, 665-667.
80. “Fee payments or wealth, like race, creed, or color, are unrelated to the citizen's ability to participate intelligently in the electoral process.” 383 U.S. 663, 666-668.
81. “The interest of the State, when it comes to voting registration, is limited to the fixing of standards related to the applicant's qualifications as a voter.” 383 U.S. 663, 668.
82. “Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored.” 383 U.S. 663, 668.
83. “Classifications which might impinge on fundamental rights and liberties - such as the franchise - must be closely scrutinized.” 383 U.S. 663, 670.

#### **PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF**

84. Plaintiff’s have a strong likelihood of success on the merits of their constitutional claims. Only a manual count of the ballots that have not been out of public view will provide 100% assurance that all voters have cast an effective vote – that is, that all votes have been properly and legally counted. The vote is the cornerstone of our democratic, constitutional republic. If every person should vote and one vote can make a difference, then any system that heightens the possibility of error and fraud must be avoided. The Constitution demands it.
85. Without the requested temporary injunctive relief Plaintiffs’ harm will be immediate and

irreparable: the voting is scheduled to take place on Saturday, August 11, 2007 without the 100% assurance that the votes will be accurately counted that only a manual count can provide, and it will not be possible to redo the vote.

86. On the other hand the harm to Defendants if the temporary injunction is granted is virtually non-existent. Under Plaintiffs' ten-point program there is no need to redo any ballots and the Plaintiffs have already purchased enough transparent containers for the receipt of all ballots at all 60 voting stations. On information and belief, the tables needed to count the ballots at each voting station are already available from Defendants. However, if Plaintiffs are mistaken about this, they will be happy to rent the necessary 6-8 foot cafeteria style tables. Plaintiffs can foresee no net increase in cost to Defendants if they are ordered to abandon the Diebold machines. In fact, without the requirement for all the electric cabling and the demand for electric energy associated with the running of the machines for more than eight hours there would most likely be a net decrease in cost if the TRO was granted.

### **CONCLUSION**

87. Defendants are placing a severe burden upon the Fundamental Rights of the Plaintiffs by conducting what is in scale, form, substance and practical effect, a *de facto* Primary Election without the needed procedural controls or legal safeguards that are otherwise mandated by the Constitution, and at least partially provided by existing state law.
88. The event is being staged by clearly self-interested parties whose publicly stated goals include culling the Presidential choices the American People will enjoy in 2008. Its primary sponsors are highly biased, and arguably very powerful political interests that

have openly characterized the event's national significance and publicized the Straw Poll as a integral element of the national Primary process.

89. Beyond the officially discredited and decertified voting equipment that Defendants intend to use at the event, the Defendant's stated procedures outlined for the management of the voting and vote counting processes are so Constitutionally deficient and inviting of fraud and corruption as to be unconscionable.
90. The State of Iowa has sanctioned this event. The County of Story has sanctioned this event. The state university at Ames has sanctioned this event. Employees of the Story County Commissioner of Elections (and perhaps other officials) will be overseeing the casting of ballots. The voting machines owned by Story County will be used at the event. The votes will be counted and totaled by State and/or County employees.
91. The Right to Vote is the cornerstone of our system of representative governance. We the People should not further endure elections where obvious procedural deficiencies and inherently unsecure mechanical and electronic devices knowingly put the integrity of this Fundamental Right at risk. **It's time to hand count the ballots in public.** **It's also time to begin to ask WHY so many oppose something so simple and so fair.**

WHEREFORE, based on the above, plaintiffs respectfully request interim orders and a final order:

- a) permanently enjoining defendants from conducting "Straw Polls", or any caucus, primary, special, general or other election unless such election is open, verifiable, machine-free, and computer-free, and
- b) preliminarily enjoining and prohibiting Defendants from conducting any "straw poll," caucus, primary, special, general or other election unless such election is open,

verifiable, machine-free, and computer-free, until the issues presented and raised in this case are finally determined, and

- c) temporarily enjoining and prohibiting Defendants from conducting the Iowa Straw Poll currently scheduled for August 11, 2007 unless Defendants agree to implement the following ten-point procedure during the Iowa Straw Poll election:
1. From the time the voter votes to the time the results of the vote are publicly announced, all paper ballots are never out of the view of the public.
  2. Each completed paper ballot is deposited into a numbered, clear-plastic, container that is in clear public view to the public throughout the day. The numbers are 4 inches high, black on white.
  3. Each candidate on the ballot has the Right to have an observer present for an inspection by the County Defendant of each container. The inspection of each container is to take place no earlier than 9:50 am on the day of voting.
  4. Surrounding each vote station at a distance of approximately 25-30 feet from the numbered clear plastic container is a rope beyond which any person can quietly stand to quietly observe and record by video recording device the clear-plastic containers and the number of voters.
  5. As the voting period ends, each ballot box is set on one of two 6-8 foot long cafeteria-style tables that have been set up at each of the 60 voting stations. There, the ballots are separated and hand-counted.
  6. Aside from two members of the staff of the County or State Defendants, each candidate on the ballot may have a representative participate in the ballot counting process. All County, State and candidate Vote Counters must agree on the candidate allocation of each vote and the count. Once all Counters are in agreement on the allocation and the count of the votes, the result of the count is read aloud for public consumption. After tallying the ballots for each candidate, the appropriate County or State staff Vote Counters will then each certify, under penalty of perjury, the vote totals for each candidate cast at the vote station they are responsible for counting.
  7. The paper ballots are then returned to the numbered, clear-plastic containers, sealed pursuant to Iowa law, and then transported to a central counting location, along with the certifications of the vote station's totals -- **never out of view of the County, State and candidate Vote Counters or the general public.**
  8. At the central location, the containers are placed inside an area that has been roped off. Within the roped off area, chairs have been set up for the County, State and

candidate Vote Counters. **The central location shall be open to the public during the entire process** including the receipt of ballots, the aggregation of vote station sub-totals and final custodial disposition of the ballots and vote count certifications.

9. As each numbered ballot container arrives at the central location, the identification number of the voting station, the ballot container number and the results of the hand-counted vote will be read aloud by one of the County vote counters and entered into a computer spreadsheet for live video projection onto public viewing screens within the counting room and also throughout the event venue as is possible. The spreadsheet will consist of (1) column for each candidate, (1) row for each voting station, and will contain automated total fields for each row and column that will update automatically as vote data is entered. Immediately after the entry of data from each voting station, a separate, individually and sequentially named copy of the master spreadsheet file will be saved to the computer's hard drive and to a separate CD-ROM disc. Additionally, a hard-copy of the spreadsheet will be printed out following the entry of each vote station's data, signed by the Auditor with the time/date noted, and preserved as part of the official election record.

10. After the results of the vote from each of the 60 vote stations are collected, entered and read aloud, and the cumulative (grand) totals from the hand-counts are agreed to by the county and candidate Counters, the final totals will then be immediately certified by the State Auditor/Commissioner of Elections, publicly read aloud and pronounced as the final election result. Copies of the final vote spreadsheet in both electronic format and hard copy will then be made immediately available to Candidate representatives and those interested members of the public and/or media within the central counting room. Following the Straw Poll event, the ballots, certifications, totals and computer spreadsheet will be turned over to the custody of the Story County Commissioner of Elections for secure storage, pursuant to the legal requirements for an Iowa General Election. The Commissioner/Auditor will make xerox copies of the vote certifications and spreadsheet(s) available to the public for only a nominal copying cost. The State and County Auditors will post the vote spreadsheet and appropriate certifications of the totals on their respective websites as soon as is practicable, and

d) Such other and further relief as to the Court may seem just and proper.

DATED: August 8, 2007

ROBERT L. SCHULZ  
2458 Ridge Road  
Queensbury, NY 12804  
518-656-3578

JAMES CONDIT JR  
4575 Farview Lane  
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513-602-0627

JENNIFER MAKI  
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563-564-6733

PAM WAGNER  
2556 Johnson Iowa Road  
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319-530-7171

TROY D. REHA  
2525 County Line Road  
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515-554-3418

GINGER CORBETT  
801 Myatt Drive, #19  
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702-450-0355

ROGER LEAHY  
2096 Nutmeg Ave.  
Fairfield, IA 52556  
641-919-8414

WALTER REDDY  
16 Briar Oak Drive  
Weston, CT 06883  
203-858-2677

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

ROBERT L. SCHULZ., being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

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ROBERT L. SCHULZ

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

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Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

JAMES CONDIT JR., being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

---

JAMES CONDIT JR.

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

---

Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

JENNIFER MAKI, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

---

JENNIFER MAKI

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

---

Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

PAM WAGNER, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

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PAM WAGNER

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

---

Notary Public

## INDIVIDUAL VERIFICATION

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

TROY D. REHA, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

TROY D. REHA

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

GINGER CORBETT, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

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GINGER CORBETT

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

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Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

ROGER LEAHY, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

---

ROGER LEAHY

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

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Notary Public

**INDIVIDUAL VERIFICATION**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

WALTER REDDY, being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated August 8, 2007, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

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WALTER REDDY

Sworn to before me this  
8<sup>th</sup> day of August, 2007.

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Notary Public