

Robert L. Schulz  
2458 Ridge Road  
Queensbury, NY 12804

June 15, 2009

Paul M. Collins  
Deputy Special Counsel  
State Board of Elections  
40 Steuben Street  
Albany, NY 12207

Re: Schulz et al., v. State of New York, et al.  
Case number 07-943

Dear Mr. Collins:

**Pursuant to FRAP Rule 26 (a) (1) (A) (i)** Plaintiffs provide the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that Plaintiffs may use to support their claims:

**STATE ELECTION OFFICIALS:**

The following officials would have access to:

1. The number and location of polling places in their State using Humans, Mechanical devices and Electronic devices to count votes between 1990 and 2012;
2. Historical records of INCORRECT COUNTS ( instances in which the counters reported inaccurate results).
3. Historical records of ELECTION MANAGEMENT SYSTEM MISCOUNTS AND OTHER FAILURES (instances in which the human or other system that aggregates and tallies the votes reported inaccurate results).
4. Historical records of MEMORY CARD MALFUNCTIONS (instances in which votes tabulated by scanners and stored on memory cards inside the scanners could not be retrieved, the data was incorrect, card readers malfunctioned, cards were programmed for the wrong precinct, cards were set up as test cards which didn't store vote data, the memory card became full and the scanner then rejected all ballots, etc.).
5. Historical records of MARK-DETECTION FAILURES ( instances in which there was a loss of sensor calibration, inadequate maintenance, and other factors which affected the reading of votes marked on paper ballots such as a failure to read certain types of ink or readings affected by light marks and pencil lead).
6. Historical records of INCORRECT CODES (instances of coding on the ballots that prevented the scanners from reading the ballots).
7. Historical records of MISCELLANEOUS OPERATIONAL BREAKDOWNS (instances of Human, Mechanical and Electronic failures, ballot jams, automatic-feed failures, failure to connect by modem to the central tabulator, etc.

8. Historical records of MANUFACTURERS of vote counting devices.
9. Historical records of TEST PROCEDURES AND RESULTS for vote counting methods and devices.
10. Historical records of vote RECOUNTS.
11. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those ballots).

**Helena Moses Donahue** (defendant and former member of SBOE)

**Douglas Kellner** (defendant and current member of SBOE)

**Evelyn Aquila** (defendant and current member of SBOE)

**Gregory P. Peterson** (current member of SBOE)

**James A. Walsh** (current member SBOE)

**NYS Board of Elections**

**40 Steuben Street**

**Albany, NY 12207-2108**

**(518) 474-6220**

DISTRICT OF COLUMBIA. **Mary M. Cheh** (D-Ward 3), who is heading the council investigation of SEQUOIA whose machines were responsible for thousands of “phantom votes” in last September’s primary vote.

STATE OF ALABAMA, **Beth Chapman**, Secretary of State and Chief Election Official.

STATE OF ALASKA, **Sean Parnell**, Lt. Governor and Chief Election Official.

STATE OF ARIZONA, **Jan Brewer**, Secretary of State and Chief Election Official.

STATE OF ARKANSAS, **Charlie Daniels**, Secretary of State and Chief Election Official.

STATE OF CALIFORNIA, **Debra Bowen**, Secretary of State and Chief Election Official.

STATE OF COLORADO, **Mike Coffman**, Secretary of State and Chief Election Official.

STATE OF CONNECTICUT, **Susan Bysiewicz**, Secretary of State and Chief Election Official.

STATE OF DELAWARE, **Elaine Manlove**, Commissioner of Elections.

STATE OF FLORIDA, **Kurt Browning**, Secretary of State and Chief Election Official.

STATE OF GEORGIA, **Karen Handel**, Secretary of State and Chief Election Official.

STATE OF HAWAII, **Rex M. Quidilla**, Chief Election Officer.

STATE OF IDAHO, **Ben Ysursa**, Secretary of State and Chief Election Official.

STATE OF ILLINOIS, **Albert Porter, Bryan Schneider, Jesse Smart, Wanda Rednour, Robert Walters, Patrick Brady, William McGuffageand John Keith**, State Board of Elections.

STATE OF INDIANA, **Todd Rokita**, Secretary of State and Chief Election Official.

STATE OF IOWA, **Michael Mauro**, Secretary of Stateand Chief Election Official.

STATE OF KANSAS, **Ron Thornburgh**, Secretary of State and Chief Election Official.

STATE OF KENTUCKY, **Trey Grayson**, Secretary of State and Chief Election Official.

STATE OF LOUISIANA, **Jay Dardenne**, Secretary of State and Chief Election Official.

STATE OF MAINE, **Matthew Dunlap**, Secretary of State and Chief Election Official.

STATE OF MARYLAND, **Robert Walker, Bobbie Mack, Andrew Jezic, David McManusand Charles Thomann**, State Board of Elections.

STATE OF MASSACHUSETTS, **William Francis Galvin**, Secretary of the Commonwealth and Chief Election Official.

STATE OF MICHIGAN, **Terri Lynn Land**, Secretary of State and Chief Election Official.

STATE OF MINNESOTA, **Mark Ritchie**, Secretary of State and Chief Election Official.

STATE OF MISSISSIPPI, **Eric Clark**, Secretary of State and Chief Election Official.

STATE OF MISSOURI, **Robin Carnahan**, Secretary of State and Chief Election Official.

STATE OF MONTANA, **Brad Johnson**, Secretary of State and Chief Election Official.

STATE OF NEBRASKA, **John Gale**, Secretary of State and Chief Election Official.

STATE OF NEVADA, **Ross Miller**, Secretary of State and Chief Election Official.

STATE OF NEW HAMPSHIRE, **William Gardner**, Secretary of State and Chief Election Official.

STATE OF NEW JERSEY, **Anne Milgram**, Attorney General and Chief Election Official.

STATE OF NEW MEXICO, **Mary Herrera**, Secretary of State and Chief Election Official.

STATE OF NORTH CAROLINA, **Larry Leake, Lorraine Shinn, Charles Winfree, Genevieve Sims and Robert Cordle**, State Board of Elections.

STATE OF NORTH DAKOTA, **Alvin Jaeger**, Secretary of State and Chief Election Official.

STATE OF OHIO, **Jennifer Brunner**, Secretary of State and Chief Election Official.

STATE OF OKLAHOMA, **Thomas Prince**, Susan Turpen and Ramon Watkins, State Election Board.

STATE OF OREGON, **Bill Bradbury**, Secretary of State and Chief Election Official.  
STATE OF PENNSYLVANIA, **Pedro Cortés**, Secretary of the Commonwealth and Chief Election Official.

STATE OF RHODE ISLAND, **A. Ralph Mollis**, Secretary of State and Chief Election Official.

STATE OF SOUTH CAROLINA, **John Hudgens III, Cynthiz Bensch, Tracey Green, Pamella Pinson and Edward Pritchard, Jr.**, State Election Commission;

STATE OF SOUTH DAKOTA, **Chris Nelson**, Secretary of State and Chief Election Official.

STATE OF TENNESSEE, **Riley Darnell**, Secretary of State and Chief Election Official.

STATE OF TEXAS, **Phil Wilson**, Secretary of State and Chief Election Official.

STATE OF UTAH, **Gary Herbert**, Lt. Governor and Chief Election Official.

STATE OF VERMONT, **Deborah Markowitz**, Secretary of State and Chief Election Official.

STATE OF VIRGINIA, **Jean Cunningham, Harold Pyon and Nancy Rodriques**, State Board of Elections.

STATE OF WASHINGTON, **Sam Reed**, Secretary of State and Chief Election Official.

STATE OF WEST VIRGINIA, **Betty Ireland**, Secretary of State and Chief Election Official.

STATE OF WISCONSIN, **John Schober, Shane Falk, David Anstaett, Kirby Brant, Donald Goldberg, Carl Holborn, Patrick Hodan, Robert Kasieta and Jon Savage**, State Elections Board.

STATE OF WYOMING, **Max Maxfield**, Secretary of State and Chief Election Official.

## **NYS COUNTY BOARD OF ELECTIONS OFFICIALS:**

The following officials would have access to:

1. The number and location of polling places in their County using Humans, Mechanical devices and Electronic devices to count votes between 1990 and 2012;
2. Historical records of INCORRECT COUNTS ( instances in which the counters reported inaccurate results).
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11. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those ballots).

**Jeffrey J. Curtis**, Comm.

**Donna English**, Comm.

Washington County Board of Elections

383 Broadway

Fort Edward, NY 12828

Phone: 518-746-2180

**Gregory C. Soumas**, Comm.

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New York County Board of Elections\*

200 Varick Street - 10th Floor

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Phone: 212-886-2100

**Chris Riley**, NYC Board of Elections spokesman

**Matthew J. Clyne, Comm.**

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32 North Russell Road

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**John F. Colligan, Comm.**

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44 Hawley St., Government Plaza

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**Katie Lacey, Comm.**

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Cayuga County Board of Elections

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**Norman P. Green, Comm.**

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Chautauqua County Board of Elections

7 North Erie Street

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**Keith H. Osborne, Comm.**  
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**Judith L. Peck, Comm.**

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**Jerry Eaton, Comm.**

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**Ann M. Nortz, Comm.**

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**Susan N. Guenther, Comm.**

**Nancy L. Leven, Comm.**

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**Laura P. Costello, Comm.**  
**Lynne M. Jones, Comm.**  
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**Peter M. Quinn, Comm.**  
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Rochester, NY 14614  
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**Jamie M. Duchessi, Comm.**  
**Lyn A. May, Comm.**  
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**William T. Biamonte, Comm.**  
**John A. DeGrace, Comm.**  
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**Nancy L. Smith, Comm.**  
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**Kathleen M. Perez, Comm.**  
**Pamela N. Mandryck, Comm.**  
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321 Main Street - 3rd Floor  
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**Edward F. Ryan, Comm.**  
**Helen M. Kiggins, Comm.**  
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Civic Center - 15th Floor  
421 Montgomery Street  
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Phone: 315-435-3312

**Mary Q. Salotti, Comm.**  
**Michael J. Northrup, Comm.**  
Ontario County Board of Elections  
20 Ontario Street  
Canandaigua, NY 14424  
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**Susan Bahren, Comm.**  
**David C. Green, Comm.**  
Orange County Board of Elections  
25 Court Lane, P.O. Box 30  
Goshen, NY 10924  
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**Helen L. Zelazny, Comm.**  
**Dennis J. Piedimonte, Comm.**  
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County Administration Building  
14016 State Route 31  
Albion, NY 14411  
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**William W. Scriber, Comm.**  
**Donald M. Wart, Comm.**  
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185 E. Seneca Street, Box 9  
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Phone: 315-349-8350

**Henry J. Nicols, Comm.**  
**Sheila M. Ross, Comm.**  
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Suite 2  
140 County Highway 33W  
Cooperstown, NY 13326  
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**Robert J. Bennett, Comm.**  
**Anthony G. Scannapieco, Jr., Comm**  
Putnam County Board of Elections  
1 Geneva Road  
Brewster, NY 10509  
Phone: 845-278-6970

**Edward G. McDonough, Comm.**  
**Larry A. Bugbee, Comm.**  
Rensselaer County Board of Elections  
Ned Pattison Government Center  
1600 Seventh Ave.  
Troy, NY 12180  
Phone: 518-270-2990

**Ann Marie Kelly, Comm**  
**Joan M. Silvestri, Comm.**  
Rockland County Board of Elections  
11 New Hempstead Road  
New City, NY 10956  
Phone: 845-638-5172

**William Fruci, Comm.**  
**Diane Wade, Comm.**  
Saratoga County Board of Elections  
50 W. High St.  
Ballston Spa, NY 12020  
Phone: 518-885-2249

**Brian Quail, Comm.**  
**Art Brassard, Comm.**  
Schenectady County Board of Elections  
388 Broadway - Suite E  
Schenectady, NY 12305-2520  
Phone: 518-377-2469

**Clifford C. Hay, Comm.**  
**Lewis L. Wilson, Comm.**  
Schoharie County Board of Elections  
County Office Bldg. - 284 Main Street  
P. O. Box 99  
Schoharie, NY 12157  
Phone: 518-295-8388

**John L. Vona, Comm.**

**Joseph Fazzary, Comm.**

Schuyler County Board of Elections  
County Office Building  
105 9th Street, Unit 13  
Watkins Glen, NY 14891-9972  
Phone: 607-535-8195

**Ruth V. Same, Comm.**

**Joan P. Mooney, Comm.**

Seneca County Board of Elections  
One DiPronio Drive  
Waterloo, NY 13165  
Phone: 315-539-1760

**Jennie H. Morrill, Comm.**

**Deborah J. Pahler, Comm.**

St. Lawrence County Board of Elections  
48 Court Street  
Canton, NY 13617  
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**Gilbert A. Sweet, Comm.**

**Vicky Olin, Comm.**

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3 E. Pulteney Square  
Bath, NY 14810  
Phone: 607-664-2260

**Anita S. Katz, Comm.**

**Cathy L. Richter Geier, Comm.**

Suffolk County Board of Elections  
Yaphank Avenue  
P. O. Box 700  
Yaphank, NY 11980  
Phone: 631-852-4500

**Faith Kaplan, Comm.**

**Rodney Gaebel, Comm.**

Sullivan County Board of Elections  
Government Center, 100 North Street  
P. O. Box 5012  
Monticello, NY 12701-5192  
Phone: 845-807-0400

**Cinda Lou Goodrich, Comm.**  
**Bernadette M. Toombs, Comm.**  
Tioga County Board of Elections  
County Office Building  
56 Main Street  
Owego, NY 13827  
Phone: 607-687-8261

**Stephen M. DeWitt, Comm.\***  
**Elizabeth W. Cree, Comm.**  
Tompkins County Board of Elections  
Court House Annex  
128 E. Buffalo Street  
Ithaca, NY 14850  
Phone: 607-274-5522

**Kathleen Carey-Mihm, Comm.**  
**Thomas F. Turco, Comm.**  
Ulster County Board of Elections  
284 Wall Street  
Kingston, NY 12401  
Phone: 845-334-5470

**William A. Montfort, Comm.**  
**Mary Beth Casey, Comm.**  
Warren County Board of Elections  
County Municipal Center  
1340 State Route 9  
Lake George, NY 12845  
Phone: 518-761-6456

**Jack W. Bailey, Comm.**  
**Richard E. Clark, Comm.**  
Wayne County Board of Elections  
157 Montezuma St. Ext.  
P. O. Box 636  
Lyons, NY 14489  
Phone: 315-946-7400

**Reginald A. LaFayette, Comm.**  
**Carolee C. Sunderland, Comm.**  
Westchester County Board of Elections  
25 Quarropas Street  
White Plains, NY 10601  
Phone: 914-995-5700

**Anna Mae Balmas, Comm**  
**James E. Schlick, Comm.**  
Wyoming County Board of Elections  
4 Perry Avenue  
Warsaw, NY 14569  
Phone: 585-786-8931

**Robert Brechko, Comm.**  
**Pamela A. Welker, Comm.**  
Yates County Board of Elections  
Suite 1124  
417 Liberty Street  
Penn Yan, NY 14527  
Phone: 315-536-5135

**Naomi C. Silie, Comm.**  
**Juan Carlos Polanco, Comm.**  
Bronx County Board of Elections  
1780 Grand Concourse-5th Floor  
Bronx, NY 10457  
Phone: 718-299-9017

**Julie Dent, Comm.**  
**Nancy Mottola Schacher, Comm**  
Kings County Board of Elections  
345 Adams Street - 4th Floor  
Brooklyn, NY 11201  
Phone: 718-797-8800

**Jose M. Araujo, Comm.**  
**Judith D. Stupp, Comm.**  
Queens County Board of Elections  
126-06 Queens Boulevard  
Kew Gardens, NY 11415  
Phone: 718-730-6730

**James Joseph Sampel, Comm.**  
**John P. Sipp, Comm.**  
Richmond County Board of Elections  
1 Edgewater Plaza  
Staten Island, NY 10305  
Phone: 718-876-0079

## **TOWN ELECTION OFFICIALS:**

The following individuals would have access to:

1. The number and location of polling places in their County using Humans, Mechanical devices and Electronic devices to count votes between 1990 and 2012;
2. Historical records of INCORRECT COUNTS ( instances in which the counters reported inaccurate results).
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11. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those ballots).

Douglas A. Bersaw  
139 Tully Brook Road  
Richmond, NH 03470  
Phone: 603-239-8827

(More to come)

## **LEVER MACHINE MANUFACTURERS**

The following individuals would themselves or would know of others who would have access to specialized information regarding their mechanical vote counting device, including:

1. How the device **REGISTERS, COUNTS AND TRANSMITS** vote totals.
2. The **NUMBER AND LOCATION** of polling places in the United States using its Mechanical device to count votes between 1990 and 2012;
3. Historical records of **INCORRECT COUNTS** ( instances in which the counters reported inaccurate results).
4. Historical records of **ELECTION MANAGEMENT SYSTEM MISCOUNTS AND OTHER FAILURES** (instances in which the human or other system that aggregates and tallies the votes reported inaccurate results).
5. Historical records of **MISCELLANEOUS OPERATIONAL BREAKDOWNS** (instances of failure of Mechanical parts, including but not limited to cables, levers, gears, links, wheels, counters, paper jams, automatic-feed failures, etc.).
6. Historical **MAINTENANCE RECORDS**.
7. Historical records of **PARTS ORDERS**.
8. Historical records of **EMERGENCY CALLS** for assistance.
9. Historical records of **TEST PROCEDURES AND RESULTS**.
10. Historical records of vote **RECOUNTS**.

**Heidi L. Marshall**

Voting Machine Service Center,  
PO Box 261, Gerry, NY 14740  
vote@netsync.net  
716-287-2090.

CEO, Automatic Lever Voting Machine Corporation, Jamestown, NY

**Ransom F. Shoup III**

President  
Shoup Voting Machine Corporation (Advanced Voting Solutions)  
Bryn Mawr, Pa.

James C. Wilkins, Jr.  
General Manager  
International Election Solutions  
856-461-4415

Elections USA Inc. by Shoup.  
1927 East Sawmill Road, Quakertown, PA 18951.  
215-538-0779.

[Rf.shoup@electionsusainc.com](mailto:Rf.shoup@electionsusainc.com)

## **ELECTRONIC MACHINE MANUFACTURERS :**

The following individuals would themselves or would know of others who would have access to specialized information regarding their Electronic vote counting device, including:

1. How the device REGISTERS, COUNTS AND TRANSMITS vote totals.
2. The NUMBER AND LOCATION of polling places in the United States using their device to count votes between 1990 and 2012.
3. Historical records of INCORRECT COUNTS ( instances in which the counters reported inaccurate results).
4. Historical records of ELECTION MANAGEMENT SYSTEM MISCOUNTS AND OTHER FAILURES (instances in which the human or other system that aggregates and tallies the votes reported inaccurate results).
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9. Historical MAINTENANCE RECORDS.
10. Historical records of PARTS ORDERS.
11. Historical records of EMERGENCY CALLS for assistance.
12. Historical records of TEST PROCEDURES AND RESULTS.
13. Historical records of vote RECOUNTS.
14. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those ballots.

**Jack Blaine**, CEO and President  
**Michelle Shafer**, Vice President  
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## **Aldo Tesi**

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## **EXPERTS**

The following individuals would have access to:

1. The number and location of polling places in the United States using Humans, Mechanical devices and Electronic devices to count votes between 1990 and 2012;
2. Historical records of INCORRECT COUNTS ( instances in which the counters reported inaccurate results).
3. Historical records of ELECTION MANAGEMENT SYSTEM MISCOUNTS AND OTHER FAILURES (instances in which the human or other system that aggregates and tallies the votes reported inaccurate results).
4. Historical records of MEMORY CARD MALFUNCTIONS (instances in which votes tabulated by scanners and stored on memory cards inside the scanners could not be retrieved, the data was incorrect, card readers malfunctioned, cards were programmed for the wrong precinct, cards were set up as test cards which didn't store vote data, the memory card became full and the scanner then rejected all ballots, etc.).
5. Historical records of MARK-DETECTION FAILURES ( instances in which there was a loss of sensor calibration, inadequate maintenance, and other factors which affected the reading of votes marked on paper ballots such as a failure to read certain types of ink or readings affected by light marks and pencil lead).
6. Historical records of INCORRECT CODES (instances of coding on the ballots that prevented the scanners from reading the ballots).
7. Historical records of MISCELLANEOUS OPERATIONAL BREAKDOWNS (instances of Human, Mechanical and Electronic failures, ballot jams, automatic-feed failures, failure to connect by modem to the central tabulator, etc.
8. Historical records of MANUFACTURERS of vote counting devices.
9. Historical records of TEST PROCEDURES AND RESULTS for vote counting methods and devices.
10. Historical records of vote RECOUNTS.
11. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those ballots).

**Mary M. Cheh**, (Ward 3) City Council, Washington DC.

**Debra Bowen**: California Secretary of State.

**Andrew W. Appel**. Princeton University computer scientist.

**Sheila Parks**, Ed.D.  
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**William Edelstein**. [w.edelstein@gmail.com](mailto:w.edelstein@gmail.com) Information on Lever machine failures in NY.

**Teresa Hommel**, Chair, Task Force on Election Integrity, Community Church of New York..  
212 228-3803 [tahommel@earthlink.net](mailto:tahommel@earthlink.net) Information on Lever machine failures in NY.

**Ellen Theisen** – 360-437-9922 Director [www.VotersUnite.org](http://www.VotersUnite.org) [ellen@votersunite.org](mailto:ellen@votersunite.org)

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**John Washburn** – 262-238-8940 [john@washburnresearch.org](mailto:john@washburnresearch.org)

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**Clint Curtis**. 321-795-7922 - [clintcurtis@clintcurtis.com](mailto:clintcurtis@clintcurtis.com)

**Lynn Landes**: 215-629-3553 <http://www.thelandesreport.com>

**John Bonifaz:** Legal director for Voter Action, a national voting rights organization

**Bev Harris:** Black BoxVoting.

**Ion Sancho:** Leon Cty FL election official.

**Dr. Herbert Thompson:** Security Innovations of FL.

**Leonard Gates:** Assisted the FBI as it hacked into mainframe election computers.

**Pursuant to FRAP Rule 26 (a) (1) (A) (ii)** Plaintiffs provide a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that Plaintiffs have in their possession, custody, or control and may use to support their claims:

**STATEMENTS: FEDERAL CONSTITUTIONAL COURT OF GERMANY  
STORED AT <http://www.bundesverfassungsgericht.de/en/press/bvg09-019en.html>** (copy of statement dated March 3, 2009 printed below):

**Federal Constitutional Court - Press office**

**Press release no. 19/2009 of 3 March 2009**

Judgment of 3 March 2009 - [2 BvC 3/07 and 2 BvC 4/07](#)

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**Use of voting computers  
in 2005 *Bundestag* election unconstitutional**

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The Federal Constitutional Court rendered judgment on two complaints concerning the scrutiny of an election, which were directed against the use of computer-controlled voting machines (so-called voting computers) in the 2005 *Bundestag* election of the 16th German *Bundestag* (see German press release no. 85/2008 of 25 September 2008). The Second Senate decided that the use of electronic voting machines requires that the essential steps of the voting and of the determination of the result can be examined by the citizen reliably and without

any specialist knowledge of the subject. This requirement results from the principle of the public nature of elections (Article 38 in conjunction with Article 20.1 and 20.2 of the Basic Law (*Grundgesetz - GG*)), which prescribes that all essential steps of an election are subject to the possibility of public scrutiny unless other constitutional interests justify an exception. Accordingly it is, admittedly, constitutionally unobjectionable that § 35 of the Federal Electoral Act (*Bundeswahlgesetz - BWG*) permits the use of voting machines. However, the Federal Voting Machines Ordinance (*Bundeswahlgeräteverordnung*) is unconstitutional because it does not ensure that only such voting machines are permitted and used which meet the constitutional requirements of the principle of the public nature of elections. According to the decision of the Federal Constitutional Court, the computer-controlled voting machines used in the election of the 16th German *Bundestag* did not meet the requirements which the constitution places on the use of electronic voting machines. This, however, does not result in the dissolution of the *Bundestag* because for lack of any indications that voting machines malfunctioned or could have been manipulated, the protection of the continued existence of the elected parliament prevails over the electoral errors which have been ascertained. To the extent that the manner in which the German *Bundestag's* Committee for the Scrutiny of Elections conducted the proceedings was objected to, the complaint for the scrutiny of an election was unsuccessful.

**In essence, the decision is based on the following considerations:**

I. The objections to the errors of the proceedings for the scrutiny of elections which had been conducted before the German *Bundestag* were unsuccessful. Even though the duration of the proceedings between the lodging of the objection to the election and the German *Bundestag's* decision was more than a year, this is not yet a serious procedural error. The duration of the proceedings alone does not deprive the German *Bundestag's* decision of its foundation. Nor is the fact that the Committee for the Scrutiny of Elections refrained from conducting an oral hearing of the complainant's objection to the election, and also apart from this did not deliberate in public, a serious error which deprives the German *Bundestag's* decision of its foundation.

II. The principle of the public nature of elections, which results from the fundamental decisions of constitutional law in favour of democracy, the republic and the rule of law prescribes that all essential steps of an election are subject to the possibility of public scrutiny unless other constitutional interests justify an exception. Here, the examination of the voting and of the ascertainment of the election result attains special significance.

The use of voting machines which electronically record the voters' votes and electronically ascertain the election result

only meets the constitutional requirements if the essential steps of the voting and of the ascertainment of the result can be examined reliably and without any specialist knowledge of the subject. While in a conventional election with ballot papers, manipulations or acts of electoral fraud are, under the framework conditions of the applicable provisions, at any rate only possible with considerable effort and with a very high risk of detection, which has a preventive effect, programming errors in the software or deliberate electoral fraud committed by manipulating the software of electronic voting machines can be recognised only with difficulty. The very wide-reaching effect of possible errors of the voting machines or of deliberate electoral fraud make special precautions necessary in order to safeguard the principle of the public nature of elections.

The voters themselves must be able to understand without detailed knowledge of computer technology whether their votes cast are recorded in an unadulterated manner as the basis of vote counting, or at any rate as the basis of a later recount. If the election result is determined through computer-controlled processing of the votes stored in an electronic memory, it is not sufficient if merely the result of the calculation process carried out in the voting machine can be taken note of by means of a summarising printout or an electronic display.

The legislature is not prevented from using electronic voting machines in elections if the possibility of a reliable examination of correctness, which is constitutionally prescribed, is safeguarded. A complementary examination by the voter, by the electoral bodies or the general public is possible for example with electronic voting machines in which the votes are recorded in another way beside electronic storage. In the case at hand, it need not be decided whether there are other technical possibilities which make it possible for the electorate to trust in the correctness of the procedure of the ascertainment of the election result in a way that is based on its retraceability, thus complying with the principle of the public nature of elections.

Limitations of the possibility for the citizens to examine the voting cannot be compensated by an official institution testing sample machines in the context of their engineering type licensing procedure, or the very voting machines which will be used in the elections before their being used, for their compliance with specific security requirements and for their technical integrity. Also an extensive entirety of other technical and organisational security measures alone is not suited to compensate a lack of the possibility of the essential steps of the electoral procedure being examined by the citizens. For the possibility of examining the essential steps of the election promotes justified trust in the regularity of the election only by the citizens themselves being able to reliably retrace the voting.

If computer-controlled voting machines are used, no contrary

constitutional principles can be identified which could justify a far-reaching restriction on the public nature of the election, and thus on the possibility of examining the voting and the ascertainment of the result. The exclusion of ballots unwittingly being marked in an erroneous manner, of inadvertent counting errors and of erroneous interpretations of the voters' will in vote counting does not as such justify forgoing any kind of retraceability of the voting. The principle of the secrecy of the vote and the interest in a rapid clarification of the composition of the German *Bundestag* are also no contrary constitutional interests which could be invoked as the basis of a far-reaching restriction on the possibility of examining the voting and the ascertainment of the result. It is not constitutionally required that the election result be available shortly after the closing of the polls. Apart from this, the past *Bundestag* elections have shown that also without the use of voting machines, the official provisional result can, as a general rule, be ascertained within a few hours.

III. While the authorisation to issue an ordinance, which is granted by § 35 BWG, does not meet with any overriding constitutional reservations, the Federal Voting Machines Ordinance is unconstitutional because it infringes the principle of the public nature of elections. The Federal Voting Machines Ordinance does not contain any regulations which ensure that only such voting machines are permitted and used which comply with the constitutional requirements placed on an effective examination of the voting and a reliable verifiability of the election result. The Federal Voting Machines Ordinance does not ensure that only such voting machines are used which make it possible to reliably examine, when the vote is cast, whether the vote has been recorded in an unadulterated manner. The ordinance also does not place any concrete requirements as regards its content and procedure on a reliable later examination of the ascertainment of the result. This deficiency cannot be remedied by means of an interpretation in conformity with the constitution.

IV. Also the use of the above-mentioned electronic voting machines in the election to the 16th German *Bundestag* infringes the public nature of the election. The voting machines did not make an effective examination of the voting possible because due to the fact that the votes were exclusively recorded electronically on a vote recording module, neither voters nor electoral boards nor citizens who were present at the polling station were able to verify the unadulterated recording of the votes cast. Also the essential steps of the ascertainment of the result could not be retraced by the public. It was not sufficient that the result of the calculation process carried out in the voting machine could be taken note of by means of a summarising printout or an electronic display.

V. The electoral errors which have been identified do not lead to a repetition of the election in the constituencies affected.

The electoral error which results from the use of computer-

controlled voting machines whose design was incompatible with the requirements placed on an effective possibility of examining the voting does not result in a declaration of partial invalidity of the election to the 16th German *Bundestag* even if it is assumed to be relevant to the allocation of seats. The interest in the protection of the continued existence of parliament, the composition of which was determined trusting in the constitutionality of the Federal Voting Machines Ordinance, prevails over the electoral error because its possible implications on the composition of the 16th German *Bundestag* can be rated as marginal at most, for lack of any indications that voting machines malfunctioned or could have been manipulated, and because, also in view of the fact that the established infringement of the constitution took place when the legal situation had not been clarified yet, they do not make the continued existence of the elected parliament appear intolerable.

This press release is also available in the original [german version](#).

Zum [ANFANG](#) des Dokuments

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### **INFORMATION STORED AT [www.VOTERSUNITE.ORG](http://www.VOTERSUNITE.ORG)**

Election Problem Log, showing the machine malfunctions:

<http://www.votersunite.org/electionproblems.asp?sort=date&selectstate=ALL&selectvendor=&selectproblemtyp=Machine+malfuction>

Links to pdf files giving brief descriptions of many system malfunctions, sorted by vendor

<http://www.votersunite.org/info/failuresbyvendor.asp>

DRE failures in the news: 28 pages briefly describing 179 DRE failures

<http://www.votersunite.org/info/DREFailedExperiment.pdf>

Ballot-scanner Voting System Failures in the News. Brief descriptions, sorted by type of failure.

<http://www.votersunite.org/info/opscansinthenews.pdf>

A list of recent miscounts, showing that the error rate far exceeds the rate allowed by federal law.

<http://www.votersunite.org/info/AccuracyIgnored.asp>

E-Voting Failures in the 2006 Mid-Term Elections: A sampling of problems across the nation

<http://www.votersunite.org/info/E-VotingIn2006Mid-Term.pdf>

A discussion of the uninspected 'ballot programming' that occurs in every jurisdiction in every election, listing specific ballot programming errors that have caused votes to be miscounted.

<http://www.votersunite.org/info/ballotprogrammingintro.asp>

and the more complete:

<http://www.votersunite.org/info/BallotProgramming.pdf>

## **INFORMATION STORED AT [WWW.THELANDESREPORT.COM](http://WWW.THELANDESREPORT.COM)**

System-wide computer fraud, outsourcing U.S. voting systems, cover-up and Networks' exit poll, federal complicity in vote fraud. <http://www.thelandesreport.com/ToCongress1.htm>

Leonard Gates Deposition. FBI assisted telephone companies with hacking into mainframe election computers in cities across the country.

<http://www.thelandesreport.com/GatesDeposition.PDF>

## **INFORMATION STORED AT [WWW.BRADBLOG.COM](http://WWW.BRADBLOG.COM)**

Affidavit by Clint Curtis dated December 6, 2004 regarding his creation of a vote fraud software prototype.

Sequoia Op-Scan Ballot Counters Fail to Count Same Way Twice

Re-Scan Tests of 260 Initially Rejected Ballots in Disputed Palm Beach Election UN-Rejects Different Numbers of Ballots Each Time They Are Scanned

Same Failed Company Fighting Against Public Disclosure of Similar Problems Today in both Washington D.C. and New Jersey...

Posted By [Brad Friedman](#) On 3rd October 2008 @ 12:21 In [Election Irregularities](#), [Florida](#), [Sequoia Voting Systems](#), [New Jersey](#), [Election 2008](#), [Washington D.C.](#)

## **INSTITUTIONAL REPORTS**

**Princeton:** 10/24/08 - publishes guide for hacking e-voting machines

<http://www.engadget.com/2008/10/24/princeton-publishes-how-to-guide-for-hacking-sequoia-e-voting-ma/>

**Caltech/MIT**, *"The Voting Technology Report, Version 2"*, March 30, 2001, principal author, Stephen Ansolabehere, *"The most stunning thing in our work was that hand-counted paper ballots were better than anything else"*.

[http://www.hss.caltech.edu/%7Evoting/CalTech\\_MIT\\_Report\\_Version2.pdf](http://www.hss.caltech.edu/%7Evoting/CalTech_MIT_Report_Version2.pdf)

**Brennan Justice Center**, *"The Machinery of Democracy: Protecting Elections in an Electronic World"*, 2006 <http://www.brennancenter.org/programs/downloads/Full%20Report.pdf>

**Information Technology & Innovation Foundation**, *"Paper Trails Don't Ensure Accurate E-Voting Totals"* (pending official release September 2007),

<http://www.informationweek.com/story/showArticle.jhtml?articleID=201806115>

## **GOVERNMENTAL REPORTS**

**California Secretary of State, Deborah Bowen**, *Top to Bottom Review of the voting machines certified for use in CA: Decertification/ Recertification Decisions, (TTBR)* Issued August 3, 2007; [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm)

**Ohio Secretary of State, Jennifer Brunner**, *Evaluation and Validation of Election-Related Equipment, Standard and Testing (EVEREST) Study*, Issued Dec. 7, 2007; <http://www.sos.state.oh.us/sos/info/everest.aspx?Section=3180>

**U.S. House Judiciary Committee**, *What Went Wrong in Ohio: the Conyers Report on the 2004 Presidential Election*, 2005, Representative John Conyers and his Democratic colleagues on the Judiciary Committee, Executive summary: [http://www.truthout.org/docs\\_05/010605Y.shtml](http://www.truthout.org/docs_05/010605Y.shtml); full report: <http://www.truthout.org/Conyersreport.pdf>

**Government Accountability Office**, 2005, *Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to Be Completed* <http://www.gao.gov/new.items/d05956.pdf>

**OSCE – Office of Democratic Institutions and Human Rights**, 2005, *Election Observation Manual, 17 Criteria for a Fair Vote Count* (p. 62) [http://www.osce.org/publications/odihr/2005/04/14004\\_240\\_en.pdf](http://www.osce.org/publications/odihr/2005/04/14004_240_en.pdf)

**Cuyahoga Election Review Panel**, *Final Report*, July 20, 2006 [www.cuyahogavoting.org/CERP\\_Final\\_Report\\_20060720.pdf](http://www.cuyahogavoting.org/CERP_Final_Report_20060720.pdf)

**International Parliamentary Union**, *Free & Fair Elections*, 2006 <http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>

**U.S. Commission on Federal Election Reform**, News article: *"Reversing Course on Electronic Voting: Some Former Backers of Technology Seek Return to Paper Ballots, Citing Glitches, Fraud Fears,"* Wall Street Journal, May 12, 2006. [http://online.wsj.com/public/article\\_print/SB114739688261250925-q5rh2ocioxu6mgjmS6bZPCZL0HY\\_20060610.html](http://online.wsj.com/public/article_print/SB114739688261250925-q5rh2ocioxu6mgjmS6bZPCZL0HY_20060610.html)

## **EXPERTS' REPORTS**

**Aviel Rubin**, News article: *"On My Mind: Pull The Plug,"* Forbes Magazine, 8/06 <http://www.forbes.com/forbes/2006/0904/040.html?partner=alerts&requestid=2972>

**Rebecca Mercuri, PhD.**, focused on electronic vote tabulating since 1989, Affidavit filed in *Squire v. Geer*, Franklin County (Ohio) Court of Appeals, 06APD-12-1285.

**David Wagner, Ph.D.**, Computer Science Division, University of California, Berkeley. Written Testimony before the Committee on Science and Committee on House Administration U.S. House of Representatives, July 19, 2006,  
<http://www.house.gov/science/hearings/full06/july%2019/index.htm>

## **FILM DOCUMENTARIES**

*Hacking Democracy*, the HBO documentary nominated for an Emmy in 2007 for Outstanding Investigative Journalism, shows the detective story that uncovered the inappropriate practice of counting votes in secret, inside electronic voting machines computers - which count approximately 90% of America's votes in county, state and federal elections -; chronicles the work of [Black Box Voting](#), catching election workers in the act of destroying audit trails and rigging a 2004 presidential recount; and shows the famous "Thompson hack" and "Hursti Hack". First aired on HBO on Nov. 2, 2006.

<http://www.hbo.com/docs/programs/hackingdemocracy/index.html>

## **BOOKS**

**HACKED! *High Tech Election Theft in America*** presents to the American people the work of 11 experts on the issue of electronic vote fraud, stolen elections, and best solutions to the crisis. It explains how electronic voting has stolen our democracy; how elections in American have been privatized by large corporations; and how imperative it is that Americans start TODAY to reclaim their elections through returning to security enhanced hand-counted paper ballot elections. Co-edited by Abbe Waldman DeLozier and Vickie Karp; published by Truth Publishing, Sept. 2006. [www.hackedelections.com](http://www.hackedelections.com)

## **NEWS REPORTS**

### **EARLY PROBLEMS AT SOME NYC POLLING PLACES**

NEW YORK (AP). 02 November 2004. Voters formed long lines at polling places around the city on a mild and sunny Tuesday, only to be frustrated by late openings, broken down machines and insufficient or inadequately trained staff at some locations.

As voters in the Brooklyn wait, one of two voting machines was stuck on the Republican side.

By Richard Drew, AP

At one Brooklyn location, a machine was locked on the Republican side, according to an online and phone hotline maintained by nonpartisan and liberal voting-rights activists. (Related story: As polls begin opening, experts brace for problems)

Problems were also reported at various polling places in Manhattan and Queens.

"We would hope this type of thing wouldn't happen," said Board of Elections spokesman Chris Riley. "But if it does, all we can do is send out our team to assess the situation."

"You have to remember, we are dealing with machines that are more than 42 years old," he added.

New York is among 24 states that successfully applied for waivers delaying a requirement to replace mechanical lever voting machines.

Riley said there was no way to gauge early voter turnout in the city.

At a polling place at East 23rd Street in Manhattan, where more than 100 people lined up in the street, the hotline recorded voter complaints of insufficient staff and poorly trained polling workers who were processing people too slowly. One machine there wasn't being used because there were not enough people to staff it, according to the hotline.

At the Maria Curie Junior High School in Queens, voters were given the option of voting by paper ballot or coming back later after the polling machine there went down.

At another location in Queens, the Queensborough Hill Library opened 20 minutes late and two voting machines there did not work. Voters complained that sample ballots were not displayed.

At a Brooklyn junior high school in the Stuyvesant Heights section, where about 25 people waited to vote as it opened, one of two voting machines was stuck on the Republican side.

"We have a couple of machine breakdowns, and we're dispatching teams to fix them, literally calling a technician as soon as we get a call," said Riley, adding that the city had a total of 75 technicians citywide to work on any voting machine problems. "We have technicians in all five boroughs. Until they are fixed, we're telling people they have a choice: to vote on an emergency paper ballot or to come back later."

He said he could not estimate how long it would take to fix a given machine.

**Pursuant to FRAP Rule 26 (a) (1) (A) (iii) and (iv),** Plaintiffs provide a statement in lieu of a computation of each category of damages. Plaintiffs know of no insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**COMPENSATORY DAMAGES:** Plaintiffs seek a financial payment from each defendant as compensation for the increase in their local, state and federal taxes related to the expenditure of

public funds for the purchase, testing, maintenance and training related to defendants' authorization of the use of mechanical and electronic devices to be used to secretly count votes cast in public elections in 2008 and beyond. Plaintiffs seek a payment of \$100 from each Defendant, rather than a payment in full, such payment to be made payable to the State of New York.

**PUNATIVE DAMEAGES:** Plaintiffs seek a financial payment from each defendant as punishment against them for depriving Plaintiffs of their right to know that their votes cast in 2008 and beyond were/are to be accurately counted, and for the failure of the defendants to do everything possible to eliminate confusion, frustration, error and fraud during the voting processes. Plaintiffs seek a payment of \$100 from each Defendant, such payment to be made payable to the State of New York.

Yours truly,

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Robert L. Schulz

Cc: J.P. Liggett  
1040 1st Ave #351  
New York, NY 10022