

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ROBERT L. SCHULZ; DOUG BERSAW; AMANDA)
MOORE; ARTHUR GROVEMAN; JAMES CONDIT,)
JR., FRED SMART; PAM WAGNER; TROY D. REHA;))
GREGORY GOREY; SUSAN MARIE WEBER; and)
MARY D. FARRELL,)**

Plaintiffs

-against-

**STATE OF NEW YORK, Lorraine Cortés-Vázquez,)
Secretary of State; STATE OF NEW HAMPSHIRE,)
William Gardner, Secretary of State; STATE OF)
SOUTH CAROLINA, Mark Hammon, Secretary of)
State; STATE OF FLORIDA, Kurt S. Browning,)
Secretary of State; STATE OF OHIO, Jennifer Brunner,)
Secretary of State; STATE OF ILLINOIS, Jesse White,)
Secretary of State; STATE OF IOWA, Michael Mauro,)
Secretary of State;; STATE OF TEXAS, Phil Wilson,)
Secretary of State; STATE OF CALIFORNIA, Debra)
Bowen, Secretary of State; STATE OF OREGON, Bill)
Bradbury, Secretary of State,)**

Defendants

VERIFIED COMPLAINT

No.

JURISDICTION AND VENUE

1. 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.
2. This action is timely commenced.
3. The lead Plaintiff resides in this judicial district.

PARTIES

4. ROBERT L. SCHULZ is a citizen and registered voter. He is qualified to vote in the New York State primary and general elections. He resides at 2458 Ridge Road, Queensbury, NY 12804.
5. JAMES CONDIT JR. is a citizen and registered voter. He is qualified to vote in the 2008 Ohio primary and general elections. He resides in Ohio at 4575 Farview Lane, Cincinnati, Ohio 45247.
6. PAM WAGNER is a citizen and registered voter. She is qualified to vote in the 2008 caucus and general elections. She resides in Iowa at 2556 Johnson Iowa Road, Homestead, IA 52236.
7. TROY D. REHA is a citizen and registered voter. He is qualified to vote in the 2008 Iowa caucus and general elections. He resides in Iowa at 2525 County Line Road, Des Moines, IA 50321.
8. DOUG BERSAW is a citizen and registered voter. He is qualified to vote in the 2008 New Hampshire primary and general elections. He resides in New Hampshire at 139 Tully Brook Rd., Richmond NH 03470
9. ARTHUR GROVEMAN is a citizen and registered voter. He is qualified to vote in the 2008 Florida primary and general elections. He resides in Florida at 4521 Hidden River Road Sarasota, Florida 34240.
10. SUSAN MARIE WEBER is a citizen and registered voter. She is qualified to vote in the 2008 California primary and general elections. She resides at 43-041 Buttonwood Dr., Palm Desert CA 92260.

11. GREGORY GOREY is a citizen and registered voter. He is qualified to vote in the 2008 Texas primary and general elections. He resides at 3828 Arrow Drive, Austin Texas 78749.
12. MARY D. FARRELL is a citizen and registered voter. She is qualified to vote in the 2008 Oregon primary and general elections. She resides at 1117 Northeast Hancock St., Portland, Oregon 97212.
13. FRED SMART is a citizen and registered voter. He is qualified to vote in the 2008 Illinois primary and general elections. He resides at 3242 Harrison St., Evanston, Ill 60201.
14. AMANDA MOORE is a citizen and registered voter. She is qualified to vote in the 2008 South Carolina primary and general elections. She resides at 2117 Savannah Highway Charleston, South Carolina 29414.
15. STATE OF NEW HAMPSHIRE is one of the 50 States of the United States of America; William Gardner is the duly elected Secretary of State.
16. STATE OF IOWA is one of the 50 States of the United States of America; Michael Mauro is the duly elected Secretary of State.
17. STATE OF FLORIDA is one of the 50 States of the United States of America, Kurt S. Browning is the duly elected Secretary of State.
18. STATE OF OHIO is one of the 50 States of the United States of America; Jennifer Brunner is the duly elected Secretary of State.
19. STATE OF SOUTH CAROLINA is one of the 50 States of the United States of America; Mark Hammon is the duly elected Secretary of State.

20. STATE OF CALIFORNIA is one of the 50 States of the United States of America, Debra Bowen is the duly elected Secretary of State.
21. STATE OF TEXAS is one of the 50 States of the United States of America, Phil Wilson is the duly elected Secretary of State.
22. STATE OF ILLINOIS is one of the 50 States of the United States of America; Jesse White is the duly elected Secretary of State.
23. STATE OF OREGON is one of the 50 States of the United States of America, Bill Bradbury is the duly elected Secretary of State.
24. STATE OF NEW YORK is one of the 50 States of the United States of America, Lorraine Cortés-Vázquez is the duly elected Secretary of State.

PRELIMINARY STATEMENT

25. This action challenges the constitutionality of Defendants' voting processes to be used during the primary and general elections in 2008. The processes unnecessarily and unreasonably heighten the possibility of confusion, deception, frustration and fraud.
26. An accurate vote count is of critical importance. Everything reasonable must be done to eliminate the potential for confusion, deception, frustration and fraud.
27. The voting processes to be used by Defendants will not be open, verifiable or transparent, and will rely on machines and computers for vote counting, all of which means the possibility for error and human fraud will be unnecessarily and unreasonably heightened.
28. If the primary and general election voting processes are 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, followed by a public announcement of the results, before those ballots are ever removed from public view.

FACTS

29. Beginning in January of 2008, Defendant States will conduct primary elections for each major party. On “Primary Day,” each registered voter will have the opportunity to cast a vote for a person, from a list of candidates, as that voter’s choice to represent the voter’s party during the general election in November for the position of President of the United States of America and other offices.
30. In November of 2008, Defendant States will participate in the nation-wide general election during which registered voters will have the opportunity to cast their vote from among the party favorites for President of the United States of America and other offices.
31. On information and belief, during the primary and general elections, the voting process in Defendant States will not be as open, verifiable or transparent as possible.
32. On information and belief, during the primary and general elections, Defendant States will use machines and/or computers for vote casting and counting in some or all of their counties.
33. On information and belief, during the primary and general elections, the ballots will not remain in public view at each voting station before the votes are counted.
34. On information and belief, during the primary and general elections, the votes will not be hand counted at each voting station.
35. On information and belief, during the primary and general elections, the number of votes cast for each candidate at each voting station in each State will not be publicly announced at each voting station before the total number of votes cast in that State for each candidate has been tabulated, totaled and publicly announced from some centralized counting room.

36. On information and belief, during the primary and general elections, the number of votes counted for each candidate will not be publicly announced at each voting station before the ballots are removed from the voting station.
37. For instance, at some of Defendants' 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" out of public view. At the end of the voting period, the ballots will NOT be removed from their machines 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 numbers will be communicated to government officials in a centralized "tabulation" room. On information and belief, the door to the tabulation room will be closed to the public. The results will then be publicly announced.
39. There have been a number of comprehensive, university level studies in the last several years regarding the accuracy, reliability, security and accessibility of the "high-tech" machines and computers that Defendant States now have been positioned, or are on their way to positioning in their municipalities for use in the 2008 primary and general elections.
40. On information and belief, each study has concluded that the machines, computers, and software studied should not be used for elections.
41. Some of these studies are as follows:
- 2007 The study by the University of California, done for the State of California, under a contract authorized by the Secretary of State of California, Debra Bowen. The results of the study caused Secretary of State Bowen to decertify the four major companies providing computers, machine, and software to the state of California.

See http://www.sos.ca.gov/elections/elections_vsr.htm

- 2006 The study by Princeton University’s Center for Information Technology Policy and Department of Computer Science, entitled, “Security Analysis of the Diebold Accuvote-TS Voting Machine.” This full paper can be seen here: <http://itpolicy.princeton.edu/voting/ts-paper.pdf>
- 2001 Caltech-MIT Voting Technology Project (2001) [Voting - What Is, What Could Be?](#) - July 2001 Report of the Caltech-MIT Voting Technology Project.

In addition, such university studies were preceded by this important government sponsored study:

- 1988 Roy G . Saltman, Accuracy, Integrity, and Security in Computerized Vote-Tallying, preprint, (Washington, D.C.: U.S. Department of Commerce, National Institute of Standards and Technology [formerly National Bureau of Standards], NBS Special Publication 500-158, 1988)

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

42. 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.
43. 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

44. 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

45. The State has a compelling interest in protecting the integrity of the political process. *Storer v. Brown*, 415 U.S. 724, 732 (1974).
46. 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).
47. 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 will severely burden or prevent the exercise of a substantial constitutional voting right.
48. “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).
49. 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).
50. 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.
51. 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).
52. "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).
53. “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.
54. “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.
55. “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).
56. 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).

57. 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, 1870,³ 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).

58. 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).

59. The federal Constitution condemns state restrictions such as those to be implemented by Defendant States "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).
60. Voting procedures that are not open, verifiable, transparent and machine and computer free abridge the right to cast an effective vote. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).
61. Defendants' voting procedures impose an impermissible burden upon fundamental rights under the First and Fourteenth Amendments. *Burdick v. Takusi*, 112 S. Ct. at 2063.
62. Defendants' voting procedures violate a right encompassed within the Equal Protection Clause of the Fourteenth Amendment. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).
63. Defendants' 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 party insurgents are clamoring for a place on the ballot. *Williams v. Rhodes*, 393 U.S. 23, 41 (1968).
64. Due to the enhanced probability of machine error and human fraud, Defendants' 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).
65. Due to the enhanced probability of machine error and human fraud, Defendants' 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

66. Formally registering with the State to vote and as a member of a political party is a contract. On the one hand the registrant agrees to be listed as a voter and a member of that party with eligibility to vote in that political party's primary election. On the other hand the State and the political party agree that the votes will be counted accurately.
67. **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.
68. **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.
69. 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.

70. 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.
71. The execution of a Voter Registration Card is the execution of the contract between Defendants and those participating as voters.
72. The Voter Registration contract contains not only the Right to cast a vote, but the corollary Right to have the votes counted accurately.
73. Plaintiff registered voters 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.
74. Indeed, lacking the integrity of an open, verifiable, transparent, machine and computer free election with hand counting of all votes and a "People's chain of custody," Defendants' voting procedures have the appearance of a rigged gambling table or game show where the "house" determines 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.
75. That Defendant States have lent their imprimatur and assistance to this contract fraud is indefensible and unconstitutional.

THIRD CAUSE OF ACTION

**IF THE CONSTITUTION REQUIRES EVERYTHING POSSIBLE
BE DONE TO ASSURE ALL VOTES ARE EFFECTIVE,
THE CONSTITUTION REQUIRES UTILIZATION OF ANY
AVAILABLE VOTING PROCEDURE
THAT IS OPEN, VERIFIABLE AND TRANSPARENT, I.E.,
NO MACHINE OR COMPUTERIZED VOTE COUNTING**

76. The following eleven step voting procedure is practical and available for adoption by all Defendant States. If the Constitution requires everything possible to be done to assure all votes are counted and effective, and there is no compelling state interest that would argue against the adoption of the following voting procedure, the procedure must be adopted and followed by each Defendant during the 2008 primary and general elections.
1. All votes are to be cast on paper ballots.
 2. From the time the voter votes to the time the results of the vote are publicly announced, all paper ballots shall never be out of the view of the public.
 3. Each completed paper ballot is to be deposited into a numbered, transparent container that is in clear public view throughout the voting period. The numbers are to be at least 4 inches high, black on white.
 4. Each candidate on the ballot shall have the Right to have a representative present for an inspection of each container ten minutes before the voting period begins.
 5. A rope shall surround each vote station at a distance of 6-10 feet from the numbered transparent container, beyond which any person can quietly stand to quietly observe and record by video recording device the transparent containers and the number of voters.
 6. As the voting period ends, each ballot box is to be set on one of several 6-8 foot long cafeteria-style tables that have been set up at each of the voting stations. There, the ballots are to be separated and hand-counted.
 7. Aside from two representatives of the State Defendants, each candidate on the ballot may have a representative participate in the vote counting process. All State and candidate Vote Counters must agree on the candidate allocation of each vote and the count. Once the Vote Counters are in agreement on the allocation and the count of the votes, the result of the count is to be read aloud for public consumption. After tallying the ballots for each candidate, the appropriate State

Vote Counters will then each certify, under penalty of perjury, the vote totals for each candidate cast at their vote station.

8. The paper ballots at each vote station are to be returned to the numbered, transparent containers immediately after the vote are counted. The containers are to be sealed pursuant to State law and transported to a central warehouse according to State law, along with the certifications of the vote station's totals. A copy of the certified tally sheets shall be kept at the local precinct, ward, or polling station.
9. The certified vote totals are to be immediately communicated from each vote station to a central tabulation location where the totals from each vote station are to be publicly announced and tabulated as they are received. The central location shall be open to the public during the entire process.
10. As each certified vote total arrives at the central warehouse, the identification number of the voting station, the ballot container number and the results of the hand-counted vote will be read aloud by the State and entered into a computer spreadsheet for live video projection onto public viewing screens within the room. 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 a State Auditor with the time/date noted, and preserved as part of the official election record.
11. After the results of the vote from each of the vote stations are received, entered and read aloud, and the cumulative (grand) totals from the hand-counts are agreed to by the state and candidate representatives, the final totals will then be immediately certified by the State, 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 room. Following the election, the ballots, certifications, totals and computer spreadsheet will be turned over to the custody of the State for secure storage, pursuant to State law for General Elections. The state will make copies of the vote certifications and spreadsheet(s) available to the public for a nominal copying cost. The state will post the vote spreadsheet and appropriate certifications of the totals on its websites as soon as is practicable.

CONCLUSION

77. 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.
78. Only a manual count of the votes can provide the 100% assurance that the votes will be accurately counted.
79. Defendants' intended voting procedures will place a severe burden upon or deny the Fundamental Rights of the Plaintiffs by conducting what is in scale, form, substance and practical effect, a *sham* Election without any of the procedural controls or legal safeguards that are otherwise mandated by the Constitution and state law.
80. Beyond the discredited voting equipment that Defendants intend to use for the primary and general elections, the Defendants' voting procedures are so deficient and inviting of fraud and corruption as to be unconscionable.
81. A constitutionally compliant voting procedure is available.

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

- a) Permanently enjoining Defendants from conducting any caucus, primary, special, general or other election in 2008 unless such election is open, verifiable, transparent, machine-free, and computer-free, and
- b) For such other and further relief as to the Court may seem just and proper.

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