

NOTES

RETRO POLITICS BACK IN VOGUE: A LOOK AT HOW THE INTERNET CAN MODERNIZE THE REEMERGING CAUCUS

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I. INTRODUCTION

The old cliché that sooner or later everything comes back into fashion is not just about clothes. In the 2004 presidential election, the caucus system, which had been decreasing in popularity since the 1960s,¹ suddenly showed signs of making a comeback.² Citing weak economies and budgetary constraints, several governors and state legislatures moved to drop their 2004 presidential primaries, doubtful that the costly political exercise would serve any purpose.³ State officials said they could not afford the millions of dollars needed to put on an election in light of the front-loaded nature of modern primaries: after the first few state primaries, the front-runner gets anointed by the media and campaign donors,⁴ thus making the remaining primaries an irrelevant exercise of formality.⁵

Others, however, have suggested that in the 2004 election, Republican-held bodies had a partisan incentive to cancel primaries, especially because the Republican Party was sure to nominate President George W. Bush as their candidate. By canceling the primaries, Republicans forced Democrats to use party funds to hold caucuses. Further, Democratic candidates

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¹ See *The Green Papers Election 2000–2004 Glossary*, at <http://www.thegreenpapers.com/Definitions.html#Cauc> (last updated Feb. 19, 2004) [hereinafter *Green Papers*].

² See, e.g., Meredith Sadin, *Budgets: Primary Concern*, NEWSWEEK, Dec. 8, 2003, at 10.

³ See *id.* See also COLO. REV. STAT. § 5.24-21-104.5 (2003), for a sample state resolution to cancel the presidential primary.

⁴ In the 2000 presidential nomination process, the paring-down effect of primary “front loading” was clearly illustrated when, by March 7, 2000, all but the presumptive nominees of each party dropped out of the race. See Ceci Connolly, *Bush, Gore Clinch Nominations*, WASH. POST, Mar. 15, 2000, at A6; Terry M. Neal, *Bush as the Artful Dodger*, WASH. POST, Oct. 17, 1999, at A4 (expressing concern about the front-loading of the calendar, because “about three-fourths of the delegates—and probably the nominations on both sides—will be decided by March 7 [2000]”). In 2004, “President Bush called Kerry at 8 p.m. [on March 3] to offer his congratulations and welcome a ‘spirited campaign,’” after Edwards, the last Democratic candidate still in the race, withdrew. Anne E. Kornblut, *Super Tuesday/Closing in on the Nomination*, BOSTON GLOBE, Mar. 3, 2004, at A1.

⁵ See Eli Sanders, *Wash. Cancels Presidential Primary*, BOSTON GLOBE, Dec. 6, 2003, at A3.

received less free publicity because caucuses garner only a fraction of the media attention that primaries do.⁶ Although not every state's attempt to cancel primaries succeeded, the various proposals added fuel to the debate on the adequacy of the primary system.⁷

In most states forgoing a primary, party-run caucuses were used to choose delegates for the national conventions.⁸ Caucuses, although less costly to hold than primaries, attract fewer voters.⁹ In Missouri, for example, 745,000 people voted in the 2000 primary; in stark contrast, only 20,000 people participated in the 1996 caucus.¹⁰ But low voter turnout is not the only complaint that the caucus system gleans. Other complaints include concerns that the caucus system could be easily controlled by special interests¹¹ and that the caucus system violates the one-person-one-vote doctrine.¹² Like them or not, the 2004 presidential nomination season saw an uptick in their usage, and given the economic and political incentives to cancel primaries when an incumbent is up for reelection, the trend is likely to continue. Enter the Internet.

Since the rise of the Internet, no consensus view on its potential for expanding participation in the political process has emerged.¹³ Rather, two competing schools of thought have developed. On the one hand, "mobilization" theorists postulate that the Internet will make the political process more accessible to the public, thereby greatly increasing participation in the process.¹⁴ On the other hand, "reinforcement" theorists postulate that the Internet "will strengthen, but not radically transform, existing patterns of political participation."¹⁵ The skepticism behind reinforcement theories stems in part from the disparity in Internet access

⁶ See Sadin, *supra* note 2.

⁷ See, e.g., Robert Tanner, *Some States are Scrapping Presidential Primaries, Citing Cost, Low Turnout*, Lawrence Journal—World, Nov. 10, 2003, available at <http://www.ljworld.com/section/nationalpolitics/story/15154>.

⁸ See Tanner, *supra* note 7. See *Presidential Primaries*, National Conference of State Legislatures, at <http://www.ncsl.org/programs/legman/elect/Changing-EliminatingPP.htm> (last updated Jan. 29, 2004), for a table listing all bills introduced in state legislatures that would cancel presidential primaries.

⁹ See Tanner, *supra* note 7.

¹⁰ See *id.* However, low turnout in 1996 may have been further exacerbated because then-incumbent President Bill Clinton ran for the Democratic nomination uncontested.

¹¹ See Greg Pierce, *Iowa Extremists*, WASH. TIMES, Jan. 9, 2004, at A6.

¹² See generally *Irish v. Democratic-Farmer-Labor Party*, 399 F.2d 119 (8th Cir. 1968). For cases addressing the applicability of the one-person-one-vote principle to legislative primaries, see *United States v. Classic*, 313 U.S. 299, 316–17 (1941) (holding, in regards to legislative elections, that constitutional protections do not cease to apply when the election process is changed from "a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the representative in Congress is to be chosen at the election"). See also *Newberry v. United States*, 256 U.S. 232, 285–86 (1921). For support that this logic applies equally to presidential primaries, see Leonard P. Stark, Note, *The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?*, 15 YALE L. & POL'Y REV. 331, 362 (1996); Michael S. Steinberg, Note, *A Critique of the Current Method of Scheduling Presidential Primary Elections and a Discussion of Potential Judicial Challenges*, 69 GEO. WASH. L. REV. 453, 465 (2001); and the "white primary" cases (series of U.S. Supreme Court cases striking down racial discrimination in primaries on equal protection grounds).

¹³ See generally Pippa Norris, *Revolution What Revolution? The Internet and U.S. Elections, 1992–2000*, in GOVERNANCE.COM: DEMOCRACY IN THE INFORMATION AGE 59 (Elaine Kamarck & Joseph Nye eds. 2002).

¹⁴ See *id.*

¹⁵ See *id.*

rates among various demographics.¹⁶ Groups that are already politically active, like affluent whites, tend to have higher rates of Internet access than the politically inactive.¹⁷ Thus, as Internet access remains in line with the status quo in politics, reinforcement theorists don't believe the internet will cause political transformation.

This Note argues that party caucuses are a *unique* space where utilizing the Internet would increase participation without repercussion because so few people participate in traditional caucuses in the first place. This Note does not contend that the exclusive use of electronic voting ("e-voting") can achieve more favorable results than holding an actual primary. Rather, it reasons that given the current political environment (where states have the power, as well as financial and political incentives, to eliminate primaries and replace them with caucuses) virtual caucuses present a more level playing field, and should be preferred over traditional caucuses, in states that have eliminated the primary. Because the transaction costs of participating in a virtual caucus are lower than for traditional caucuses, they can help reduce the barriers to participation presented by the traditional caucus format.

Part II of this Note consists of an overview of the presidential nomination process, a summarization of the tenets of mobilization and reinforcement theories, an examination of the success of social networking websites, and a discussion of the relationship of Internet voting and the Voting Rights Act. Part III puts forth a proposal for modeling a virtual caucus on highly successful social networking websites such as Friendster.com. Part IV then addresses how this model would eliminate several of the problems perceived in traditional caucuses without raising concerns typical to Internet usage in elections or violating the Voting Rights Act.

II. AN OVERVIEW

A. THE PRESIDENTIAL NOMINATION PROCESS

Democrats and Republicans formally nominate candidates for president and vice president at national nominating conventions held in the middle of each presidential election year.¹⁸ Delegates to the nominating convention are apportioned among the states by rules dictated by each of the political parties.¹⁹ State laws, or in some cases, party rules, govern the process of selecting delegates to send to the nominating convention.²⁰ The two most

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See Andrew Pierce, *Regulating Our Mischievous Factions: Presidential Nominations and the Law*, 78 KY. L.J. 311, 315 (1990). See *id.* at 314–16 for a look at the history of the presidential nomination process.

¹⁹ For an historical analysis of the apportionment of delegate votes at the National Conventions of the two major parties, see Richard E. Berg-Andersson, *Why Are They All Here, Anyway?*, The Green Papers: History, July 24, 2000, at <http://www.thegreenpapers.com/Hx/NatDelegates.html>.

²⁰ See Stark, *supra* note 12, at 363.

common methods of choosing delegates for the nominating convention and determining each party's nominees are the caucus and the primary.²¹ In both methods, the final result is that the candidates who were able to win some minimum amount of support are apportioned a percentage of that states' delegates.²² Or, in a winner-take-all-state, the candidate that received the most support from caucus participants, or voters, receives all of the delegates apportioned to that state.²³ But in getting to this point, caucuses and primaries differ vastly.

*"Caucus: a private meeting of members of a political party to plan action or to select delegates for a nominating convention."*²⁴

Caucuses, first appearing in 1800, were the original method for selecting candidates by the Federalist Party and the Democratic-Republican Party (ancestor of the modern Democratic Party).²⁵ However, they have decreased in popularity since the primary was introduced in the early 1900s.²⁶ In modern caucuses, people go to a meeting held by their party at a designated time and place.²⁷ At this meeting, participants express their preference for a candidate through a method chosen by the convener, such as a show of hands or by standing in a particular location in the room.²⁸ For example, at a town caucus the convener might bring the meeting to order by saying, "All those who prefer John Kerry as presidential nominee go to this corner, all those for Howard Dean go to that corner," and so forth. Consequently, out of the one hundred party members who show up at the caucus, fifty might go to the "Kerry Corner," twenty might go to the "Dean Corner," and thirty others whose vote is split among the other candidates might go to other areas in the room. At a Democratic caucus, a candidate must meet the viability threshold rule and attract a minimum of fifteen percent of those present to gain a delegate; the Republicans, by contrast, allow the states to set their own thresholds.²⁹

After this initial showing, the thirty participants who are split among the other candidates must recast their votes for a candidate who can muster at least the minimum percentage to earn a convention delegate. An uncommitted participant can try to gather support among the other uncommitted participants to earn at least one delegate for one of the other candidates, or can move to the Kerry or Dean corner. This process is then repeated at the state level. Proponents of the caucus point to this process of

²¹ See CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 479-86 (3d ed. 1994) [hereinafter CONGRESSIONAL QUARTERLY'S GUIDE].

²² See *id.*

²³ The Democratic Party always uses a proportional method for awarding delegates. The Republican Party, unlike the Democratic Party, allows each state to decide whether to use the winner-take-all method or the proportional method, and allows the states to set its own viability thresholds. See *id.*

²⁴ *iAmerican Spirit Political Dictionary*, at <http://www.fast-times.com/dictionaryca-cl.html> (last visited Mar. 24, 2004).

²⁵ See Pierce, *supra* note 18, at 315.

²⁶ See *id.*

²⁷ See CONGRESSIONAL QUARTERLY'S GUIDE, *supra* note 21, at 483.

²⁸ See Bob Kalish, *Caucus 101: A Primer*, TIMES REC. (ME), Feb. 3, 2004, available at <http://www.timesrecord.com/website/archives.nsf/56606056e44e37508525696f00737257/8525696e00630dfe05256e2f0062dfde?OpenDocument> (last updated Apr. 15, 2005).

²⁹ See CONGRESSIONAL QUARTERLY'S GUIDE, *supra* note 21, at 480.

deliberating about issues and attempting to persuade voters to lend their support to a given candidate as the main strength of the system.³⁰ They argue that the caucus results in better decisions because each voter shares what he or she knows with other voters, leading to a more informed electorate which, in turn, makes well-informed decisions instead of haphazard guesses.

The benefits of deliberation have also been demonstrated in “deliberative polls,” a technique of polling established by James Fishkin.³¹ In a deliberative poll, a representative sample of the population is selected and given both neutral and partisan information regarding an issue.³² The group then deliberates on the issue and makes a decision.³³ Participants are polled both before and after this deliberation.³⁴ The purpose of the poll is to allow participants to learn from one another and come to an informed judgment on the issue.³⁵

A deliberative poll overcomes the conditions that foster rational ignorance. Instead of one vote in millions, a participant in the deliberative poll has one vote in several hundred. He or she has every reason to invest in political information and to be attentive to the conflicting claims in political debate

The point of an ordinary poll is descriptive. It depicts the actual distribution of public opinion at a snapshot in time. The point of a deliberative poll is prescriptive; it has the recommending force of what the country, in all its diversity, would think if it were better informed and had a better opportunity to debate and reflect on the questions at issue. In a sense, a deliberative poll is an actual sample from a hypothetical society—a hypothetical version of our actual society transformed by the opportunity to become more informed and more thoughtful on the issues in question.³⁶

This same process is replicated in caucuses. Because caucuses are conducted at the local level, caucus-goers have one vote in a few hundred, even in a well-attended caucus, rather than one in a few thousand. Issues are presented by delegates and each voter has the opportunity to become informed about these issues through one another. The end result is that voters who entered the caucus supporting a candidate with little chance of winning are persuaded to rally around more electable candidates until one candidate emerges at the state level as the one most fit for nomination. Similarly, supporters of a less popular candidate are given an opportunity to

³⁰ See CONGRESSIONAL QUARTERLY'S GUIDE, *supra* note 21, at 483.

³¹ See generally JAMES S. FISHKIN, DEMOCRACY AND DELIBERATION: NEW DIRECTIONS FOR DEMOCRATIC REFORM (1991); JAMES S. FISHKIN, THE DIALOGUE OF JUSTICE: TOWARD A SELF-REFLECTIVE SOCIETY (1992); JAMES S. FISHKIN, THE VOICE OF THE PEOPLE: PUBLIC OPINION AND DEMOCRACY (1995).

³² See, e.g., FISHKIN, THE DIALOGUE OF JUSTICE: TOWARD A SELF-REFLECTIVE SOCIETY, *supra* note 31, at 200–01.

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ James S. Fishkin, *The Televised Deliberative Poll: An Experiment in Democracy*, 546 ANNALS AM. ACAD. POL. & SOC. SCI. 132, 134–35 (1996).

share their knowledge with others as they attempt to rally support for their own candidate. Some voters change their minds based on new information gained through the deliberation process of the caucus, making better decisions as a result.³⁷

In a primary election, by contrast, registered voters choose the candidate for the party's nomination by voting through secret ballot.³⁸ Eligibility to participate in a party's primary generally depends on whether it is open or closed.³⁹ In a closed primary, a registered voter may vote only in the election for the party with which that voter is affiliated.⁴⁰ In an open primary, a registered voter can vote in either primary regardless of party membership, but cannot participate in more than one.

B. TENETS OF MOBILIZATION AND REINFORCEMENT THEORIES

Two competing schools of thought on the Internet's impact on political participation have evolved over a short time. The more optimistic "mobilization" theorists postulate that the Internet will greatly increase participation in the political process.⁴¹ On the other hand, the more measured "reinforcement" theorists postulate that the Internet "will strengthen, but not radically transform, existing patterns of political participation."⁴²

1. Mobilization Theories

Proponents of mobilization theories "proclaim that 'the Internet offers a potential for direct democracy so profound that it may well transform not only our system of politics but our very form of government.'"⁴³ The argument is that the Internet increases the amount of information readily available to the average citizen while simultaneously giving him or her more control over what information is received.⁴⁴ Previously passive, this revitalized class of informed citizenry is expected to become politically active as a result of this improved access to information.⁴⁵

During the run-up to the 2004 presidential primary season, interest in the Internet's ability to mobilize the masses was renewed as a result of the Dean campaign's success in cyberspace.⁴⁶ With the help of the Internet, the

³⁷ See *id.*

³⁸ See CONGRESSIONAL QUARTERLY'S GUIDE, *supra* note 21, at 480.

³⁹ See *id.* There are also semi-open primaries in which only voters registered as independents can choose which primary they wish to participate in. *Id.*

⁴⁰ See *id.*

⁴¹ See Norris, *supra* note 13, at 60. See generally Elizabeth Garrett, *Political Intermediaries and the Internet "Revolution,"* 34 LOY. L.A. L. REV. 1055 (2001) (arguing in support of the reinforcement theory).

⁴² See Norris, *supra* note 13, at 60.

⁴³ Garrett, *supra* note 41, at 1055 (quoting Dick Morris, *Direct Democracy and the Internet,* 34 LOY. L.A. L. REV. 1033, 1033 (2001)).

⁴⁴ See RICHARD DAVIS, *THE WEB OF POLITICS: THE INTERNET'S IMPACT ON THE AMERICAN POLITICAL SYSTEM* 21 (1999).

⁴⁵ See *id.* at 21-22.

⁴⁶ See Scott Duke Harris, *MoveOn.org*, L.A. TIMES MAG., Feb. 29, 2004, at 22; Robbie Hudson, *Web as the Voters' Weapon*, SUNDAY TIMES (London), Jan. 25, 2004, at 14; Samantha M. Shapiro, *The Dean Connection*, N.Y. TIMES MAG., Dec. 7, 2003, at 56.

Dean campaign raised \$25 million by December 2003, mostly through small checks written by individuals, earning him the positions of top Democratic fundraiser and early front-runner.⁴⁷ Ultimately, Dean was unsuccessful in his bid to win the Democratic Party's nomination, but nonetheless, the success of his Internet campaign is notable.⁴⁸ In addition to helping Dean raise significant amounts of money from nontraditional sources—twenty-five percent of his donations came from people under the age of thirty—the Internet helped Dean actually build his campaign.⁴⁹ MeetUp.com, a website that arranges in-person meetings for people with similar interests, arranged a few meetings between Dean and his supporters:

MeetUp . . . wanted a presidential campaign to embrace its product. . . . [I]t persuaded Joe Trippi, Dean's campaign manager, to arrange some meetings. After a few Dean MeetUps, widely publicized by this active peer-to-peer community, 180,000 supporters are now [as of January 2004] registered online.⁵⁰

"[MeetUp] takes its inspiration from books like 'Bowling Alone,' by Robert D. Putnam, about the decline of American public life."⁵¹ The website makes it easier to prescreen whom you meet, increasing the bang for your buck when you go out to socialize, thus helping to reverse the "decline of American public life."⁵² Perhaps the best testimony to MeetUp.com's power to mobilize groups is the rapid speed with which other campaigns embraced the site. John Kerry, Wesley Clark, and both the Democratic and Republican parties have used MeetUp.com to organize meetings for supporters and members.⁵³

Dean's Internet supporters did more than register on a website and donate money; they donated their time, energy, and the names and e-mail addresses of their friends.⁵⁴ DeanLink, which mimics Friendster,⁵⁵ for example, allowed Dean's supporters to link to one another and invite friends to join the virtual community.⁵⁶ DeanSpace, created by a group of one hundred volunteer programmers, allowed unofficial Dean websites to communicate with each other and copy each others' content.⁵⁷ This enabled the unofficial websites to update content more frequently during the campaign and provided a "dashboard" for the campaign to track patterns and determine what content was the most popular.⁵⁸

⁴⁷ See Shapiro, *supra* note 46.

⁴⁸ See Hudson, *supra* note 46.

⁴⁹ See Shapiro, *supra* note 46.

⁵⁰ See Hudson, *supra* note 46.

⁵¹ See Shapiro, *supra* note 46.

⁵² See *id.*

⁵³ See generally MeetUp.com official website, at <http://www.meetup.com>.

⁵⁴ See Shapiro, *supra* note 46.

⁵⁵ See discussion of social networking websites *infra* Part II.C.

⁵⁶ See Shapiro, *supra* note 46.

⁵⁷ See *id.*

⁵⁸ See *id.*

MoveOn.org, an online issues advocacy group, is another website that has gained the attention of political and Internet analysts.⁵⁹ The website organizes information on political issues and then finds ways to get its almost two million members involved.⁶⁰ For example, the left-leaning site held a “Bush in 30 Seconds” contest, which asked members to produce and submit a thirty-second ad about the Bush administration.⁶¹ Visitors to the site voted for the best ad and contributed a total of \$1 million to buy airtime for the winner during the 2004 Super Bowl.⁶² However, the CBS network refused to air it because it violated the network’s long-standing policy against running controversial issue ads. MoveOn.org called on the public to contact local CBS affiliates and ask the network to run all issue ads, without favoritism.⁶³ The result—in the first twenty-four hours, more than 200,000 e-mails had been sent to CBS headquarters and thousands of calls placed to local affiliates—is a testament to the site’s ability to mobilize voters, and explains why it has recently been the subject of dozens of newspaper articles.⁶⁴

2. Reinforcement Theories

By contrast, reinforcement theorists argue that an “active, informed electorate gathering information and expressing opinions electronically is accurate for some individuals—those who are already politically interested and motivated.”⁶⁵ According to reinforcement theorists, the faulty assumption underlying mobilization theories is that there has been a dramatic change in human behavior.⁶⁶ “As Russell Neuman has noted, ‘the mass citizenry, for most issues, simply will not take the time to learn more or understand more deeply, no matter how inexpensive or convenient further learning may be.’”⁶⁷ The more measured conclusions reached are that the Internet will “offer[] new possibilities to provide all voters with shortcuts to improve their competence at election time . . . expand access to information . . . and it will engage some interested citizens in new forms of political interactions.”⁶⁸ However, because “Internet activists are self-selecting, the Internet does not change people,”⁶⁹ and will not “radically transform existing patterns of political participation.”⁷⁰

⁵⁹ A study released by Washington, D.C.-based Center for Social Media at American University noted that one of the most visible signs of the upsurge in online political participation “has been Howard Dean’s online presidential campaign and such sites as MoveOn.org.” Erin Ailworth, *On the Web, Gen-Y and Civic Duty Click*, L.A. TIMES, Mar. 23, 2004, at E10.

⁶⁰ See Harris, *supra* note 46.

⁶¹ See *id.*

⁶² See *If the Kids in the MoveOn.org Voter Fund Ad Were YOUR Kids, Would You Want Them to Watch These Other Super Bowl Ads?*, MoveOn.org, Jan. 23, 2004, available at <http://www.moveon.org/press/pdfs/Super%20Bowl%20controversial%20ads.pdf>.

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ DAVIS, *supra* note 44, at 23.

⁶⁶ See *id.*

⁶⁷ *Id.*

⁶⁸ See Garrett, *supra* note 41, at 1069.

⁶⁹ KEVIN HILL & JOHN HUGHES, CYBERPOLITICS 44 (1998).

⁷⁰ See Norris, *supra* note 13, at 60.

Howard Dean's rise captured imaginations and analysts' attention because it offered dramatic evidence that the Web can be a powerful electioneering tool. But his inability to win the party's nomination "shows how hard it is to translate internet hype into real-world success."⁷¹ In 2003, Kerry was the presumed front-runner in the race for the Democratic Party's nomination. When Dean, once described by the chairman of the Democratic Leadership Council as detrimental to the Democratic Party, emerged as the front-runner late in the year, it stunned the political community and forced Kerry to shake up his campaign. In November, Kerry fired his campaign manager, "a reflection of his fall from front-runner to underdog in the Democratic presidential race,"⁷² and began to develop his Internet campaign.⁷³ Although his Internet presence never rivaled that of the Dean campaign's, Kerry secured the nomination with almost a clean sweep of the contests held.⁷⁴ By the first week of March 2004, he was the presumptive nominee, and all other viable candidates had withdrawn from the race.⁷⁵ In hindsight, the indications that the Internet "might prove a tipping point" were arguably premature, and Kerry's win seems to reinforce that theory. Nevertheless, the arguments made by mobilization theorists may be bolstered by the remarkably close campaign Kerry was able to run after adopting many of Dean's techniques—not only did Kerry raise more than any other Democratic candidate ever, he even outpaced Bush's fundraising efforts at times, a true feat for a Democrat challenging an incumbent Republican president.⁷⁶

C. SOCIAL NETWORKING WEBSITES

"Dean's campaign—with its grassroots use of blogs, meeting setup services and fund-raising Web sites—established a template that winning candidates copied, after Dean opened his mouth the wrong way and imploded."⁷⁷ Kerry's fundraising success, based upon Dean's model, has forced pundits to take another look at the Internet's ability to transform politics. This time the focus is on the power of social networking websites, such as Friendster.com and MoveOn.org, which have cropped up in recent years.⁷⁸ In each of these online communities, "users link with their friends and friends of friends—to date, or to find jobs or apartments."⁷⁹ This Note focuses mainly on the Friendster model, although observations about Friendster are generally true of many social networking sites.

⁷¹ See Hudson, *supra* note 46.

⁷² See Jim Drinkard, *Kerry Fires Campaign Manager to Invigorate Bid*, USA TODAY, Nov. 11, 2003, at 10A.

⁷³ See *Democrats' Effort to Catch Up with Dean on Internet Fundraising Noted*, BULLETIN'S FRONTRUNNER, Oct. 8, 2003.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See Jonathan D. Salant, *Kerry Raised \$233 Million, Most Ever for A Democrat*, BLOOMBERG.COM, available at http://quote.bloomberg.com/apps/news?pid=71000001&refer=top_world_news&sid=aJF2nAN8KSBg (last visited Feb. 1, 2005).

⁷⁷ Larry Dignan, *Marketing Of The President 2008*, BASELINE, Nov. 3, 2004.

⁷⁸ See Victoria Murphy, *You're Not My Friendster*, FORBES, Dec. 8, 2003, at 58.

⁷⁹ *Id.*

The way Friendster works is simple. First, users create profiles of themselves, and then they link to their friends' profiles, or ask their nonmember friends to join.⁸⁰ The exact mechanics of Friendster are not extremely important because the virtual caucus concept this Note proposes is only loosely based on the Friendster model. What is important to note is that a member can log on to Friendster and read what his or her friends, their friends, and the friends of their friends' friends, have to say about themselves and each other.⁸¹ Members separated by less than four degrees of separation can send each other messages through Friendster without having to know, or ever learning, the other person's e-mail address. Friends that are directly connected can either send each other messages or post messages to bulletin boards for all of their friends to see.⁸²

Since its launch, Friendster has experienced tremendous success by several different measures.⁸³ Its meteoric rise in popularity helps predict how quickly voters would be willing to accept virtual caucuses modeled on social networking websites. Around 5.3 million users have joined Friendster in less than one year,⁸⁴ despite the fact that the company spends no money on marketing.⁸⁵ According to Nielsen/NetRatings, users spent nearly two hours on Friendster's site in October as compared to thirty-five to fifty-five minutes on more traditional dating websites.⁸⁶ Social-networking sites have attracted more than \$40 million in venture-capital money between the fall of 2003 and February 2004;⁸⁷ Friendster itself raised \$13 million in its first round of venture-capital fundraising in October 2003.⁸⁸ And, perhaps the best indication of its success: Friendster has been copied over and over again by such established Internet players as Google, with others such as Microsoft currently looking into the phenomenon.⁸⁹

D. THE VOTING RIGHTS ACT

Although social networking sites are becoming increasingly popular, before they can be used in any type of election they must first pass the test of the Voting Rights Act of 1965 ("VRA"). The VRA made unlawful any laws or tactics that proscribed political participation by nonwhites.⁹⁰ Four years later, the Supreme Court held that the VRA protected not only the

⁸⁰ See *Friendster Website*, at <http://www.friendster.com>

⁸¹ See *id.*

⁸² See *id.*

⁸³ Many recent articles point out the failure of social networking websites to successfully transform their business model from a free service to a pay service. See, e.g., John C. Dvorak, *The New Networking Crock*, PC MAG., Feb. 11, 2004. Because the point of virtual caucuses is to attract voters, not generate a profit, the success of these websites as a pay service is not relevant. Their ability to attract participants, on the other hand, is relevant.

⁸⁴ See Leanne Potts, *Won't You be my FRIENDSTER?*, ALBUQUERQUE J., Feb. 15, 2004, at E8.

⁸⁵ See Jim Hopkins, *Investors Court Social-Networking Sites*, USA TODAY, Dec. 9, 2003, at 3B.

⁸⁶ See *id.*

⁸⁷ See Jane Black, *The Perils and Promise of Online Schmoozing*, BUS. WK. ONLINE, Feb. 20, 2004.

⁸⁸ See Bob Tedeschi, *Social Networks: Will Users Pay to Get Friends?*, N.Y. TIMES, Feb. 9, 2004, at C1.

⁸⁹ See Richard J. Dalton Jr., *Google Breaks Ice with Orkut; Latest to Launch Social Network*, NEWSDAY, Jan. 27, 2004, at A55.

⁹⁰ See VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1971(a) (2004).

right to vote, but also against the systematic dilution of the voting power of racial minorities by means of changes to election systems.⁹¹ The court made clear that the right to vote can be affected not only by an absolute prohibition on casting a ballot, but also by a dilution of voting power.⁹²

There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted. . . . It also includes the right to have the vote counted at full value without dilution or discount. . . . That federally protected right suffers substantial dilution . . . [where a] favored group has full voting strength . . . [and] [t]he groups not in favor have their votes discounted.⁹³

“The Reynolds decision [quoted above] is significant because it recognized ‘vote dilution’ as a new cause of action”⁹⁴ This cause of action has since been used to challenge various changes in voting methods, including the implementation of Internet voting. Opponents argue that Internet voting violates the VRA by diluting the voting power of minorities in relation to whites because of the unequal access to the Internet that whites enjoy over minorities (this gap is often referred to as the “digital divide”).⁹⁵ Summarized, the argument is that because the electronic constituency is still fairly elitist, a large segment of the voting population may be unable to participate in the political process if politicians are elected only by the Web-enabled.⁹⁶ Phrased in this way, the analogy of Internet voting to the more obvious VRA violations (such as extremely inconvenient siting of polling places or the imposition of poll taxes) that the Act was enacted to prevent seems compelling.

Two sections of the VRA are particularly relevant to Internet voting challenges: Section 2, which states that no one can be denied the right to vote based on race, color, or previous condition of servitude; and Section 5, which states that Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and parts of Alaska, Arizona, Hawaii, Idaho, and North Carolina must submit any voting changes to the Department of Justice for “preclearance” before any such change can take effect.⁹⁷ These changes can include, but are not limited to: changing the location of a polling place, changing an elected position to an appointive one, and changing the existing voting system.⁹⁸ If the Department of Justice determines that a change dilutes or weakens the voting strength of minority

⁹¹ See *Allen v. State Bd. of Elections*, 393 U.S. 544, 563–71 (1969).

⁹² See *id.* at 569.

⁹³ *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (quoting Justice Douglas, dissenting, in *South v. Peters*, 339 U.S. 276, 279).

⁹⁴ Jeffrey P. Lisenby, *Racial Politics Alive and Well in Alabama: The Impact of Recent Voting Rights Decisions on Alabama's Electoral Districts*, 46 ALA. L. REV. 641, 646 (1995).

⁹⁵ See *Arizona Democrats Point and Click for a Presidential Nominee*, CNN.com, Mar. 10, 2000, available at <http://edition.cnn.com/2000/ALLPOLITICS/stories/03/10/net.vote/index.html>.

⁹⁶ See Don MacLeod, *From the Editor: Vote for Online Elections*, INTERNET LAW RESEARCHER, Mar. 2000, at 2.

⁹⁷ See Fred McBride, *You've Got Mail: Voting Rights Myth Over the Internet*, at <http://www.fairvote.org/vra/myths.htm> (last visited Feb. 1, 2005).

⁹⁸ See *id.*

voters, it can refuse to grant the necessary clearance.⁹⁹ Section 5 is set to expire in 2007, while Section 2 has no expiration date.¹⁰⁰

We are unlikely to see a Supreme Court decision directly addressing the legality of using Internet voting in the near future. A case challenging the use of the Internet during the 2000 Arizona primary was dismissed at the district court level. Meanwhile challenges to the use of the Internet in the 2004 Michigan caucus are currently being brought directly to the Democratic National Committee (“DNC”), rather than a federal court, for review. No other cases challenging these two uses of the Internet are currently pending. However, the 1976 case *Beer v. United States* is telling.¹⁰¹ In *Beer*, the city of New Orleans sought a declaratory judgment holding that its plan to reapportion districts did not deny or abridge “the right to vote on account of race or color.”¹⁰² In an opinion by Justice Stewart, the Supreme Court articulated the “nonretrogression” principle of Section 5. The Court found that the City’s plan actually improved the position of blacks in local elections, and therefore did not violate Section 5 of the VRA:

[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.

It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the “effect” of diluting or abridging the right to vote on account of race within the meaning of § 5. We conclude, therefore, that such an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution.¹⁰³

Beer therefore stands for the proposition that ameliorative measures, changes that are meant to improve the effectiveness of the vote of racial minorities, do not violate Section 5 of the VRA. Applying this reasoning to virtual caucuses, this Note argues that there is compelling evidence to replace the traditional caucus with virtual ones. Because so few nonwhites participate in traditional caucuses, the virtual caucus, with its increased flexibility and anonymity, is in essence an ameliorative effort that can help to improve the “effective exercise of the electoral franchise” by nonwhites.

III. VIRTUAL CAUCUSES: HOW WOULD THEY WORK?

A virtual caucus would in essence be an online version of the caucus room. All of the functions currently performed within the confines of the caucus room would be available in an online forum. Candidates running for a party’s nomination would create a profile listing their positions on

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ 425 U.S. 130 (1976).

¹⁰² *Id.* at 133.

¹⁰³ *Id.* at 141.

issues of interest to participants. Each caucus “participant” could go to the caucus (login to the website), listen to the speeches (read the profiles), and then pick the corner of the room he or she wants to stand in (submit a vote for a candidate). After the initial showing (by 5:00 P.M. on a given day, for example), the convener (Web administrator), would tally the votes and determine which of the candidates received the minimum percentage of votes required to earn at least one delegate, and announce this to the participants. Uncommitted participants would now be able to chat with each other (in chat rooms or through instant messages), post their opinions on bulletin boards, and/or send each other messages in order to strategize and form new alliances.¹⁰⁴

After some amount of time had elapsed, the administrator (convener) would ask the uncommitted participants to again pick their corners. Alternatively, participants who did not wish to login to the site repeatedly could cast votes at the outset for their first, second, and third choice. If a participant’s first-choice candidate received the requisite number of votes to earn a delegate, the administrator would ignore the participant’s second and third choices. Otherwise, during the second iteration, the administrator would cast a vote on behalf of the participant for his or her second-choice candidate and so on. If the participant so chooses, he or she could elect the same candidate all three times, or else he or she could choose different candidates in order of preference. The exact number of times this procedure would be repeated can be indeterminate (i.e., repeated until every participant has picked a viable candidate), or can be fixed beforehand.

Three key features of this model deserve special attention. First, although this model incorporates deliberation into the process, it does so without sacrificing anonymity, the benefit of which is discussed in Part IV. Second, although some participants will choose to engage in the iterative process of casting and recasting ballots for candidates, voters may alternatively choose to simply specify their top three choices for candidates in the first instance. This allows political types to engage in the caucus politicking that is so appealing to ideologues, without excluding the more time-constrained participants from the process. Finally, although participants cannot learn the identity of other participants, the administrator can access this information for the purpose of confirming votes in the case that fraud is suspected, or to take legally appropriate measures if a participant uses the system to make false or defamatory statements.

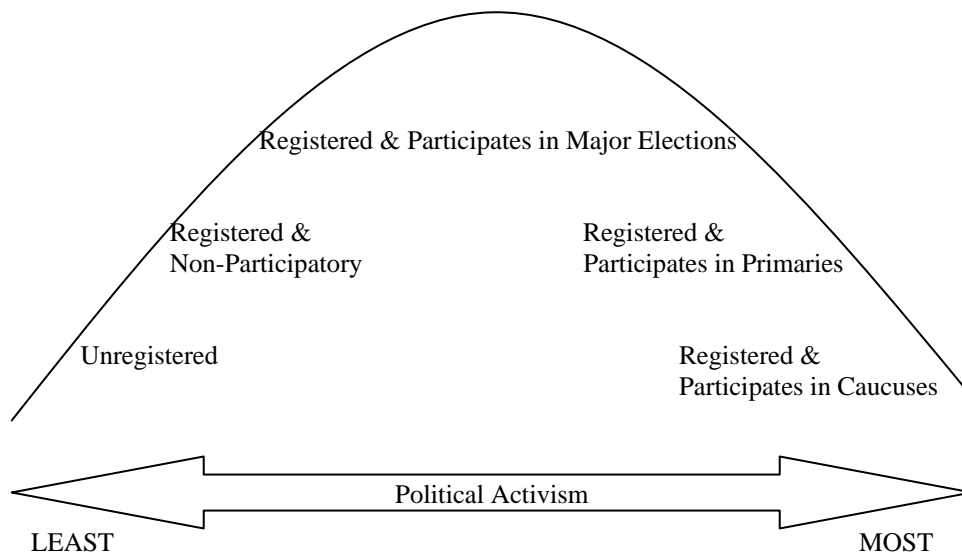
¹⁰⁴ For a discussion on the adaptability of deliberation to the online environment, see James S. Fishkin, *Deliberative Polling as a Model for ICANN Membership*, at <http://cyber.law.harvard.edu/rcs/fish.html> (last visited Mar. 25, 2004). The key to this part of virtual caucuses is that participants can communicate without revealing their identity. This eliminates, at least to a large extent, the fear of being sanctioned (by one’s peers, coworkers, boss, etc., who may be present in the caucus room) for expressing one’s political beliefs, while maintaining the “grassroots” element of caucuses often touted as their strongest benefit. See discussion *infra* Part IV.D.

IV. THE VIRTUAL CAUCUS VERSUS THE TRADITIONAL CAUCUS

This Note does not address whether or not unequal access to the Internet violates the VRA if used in a binding election for political office, either as the sole ballot casting method or in combination with other methods. Rather, this Note argues that although the cost of Internet access may be burdensome to some minority groups, this burden must be weighed against that of having to physically attend a party caucus.

If political participation is mapped on a scale, people who are eligible to vote, but do not register, would fall at one extreme, and those who participate in caucuses would fall at the other.¹⁰⁵ (See Figure 1.) If the more measured reinforcement theories better describe the Internet's impact on political activism, the "most politically active" will be early adopters of the virtual caucus. As Figure 1 illustrates, this suggests that the entire group of caucus participants would continue to participate should caucuses become "virtual." Further, to the extent that barriers to participation are removed by the Internet, many people who fall in the "more politically active" group would also participate in virtual caucuses, thereby increasing participation in the process. Finally, if the success of existing social networking websites is any indication of the acceptance of virtual forums, virtual caucuses have a strong chance of attracting the middle-of-the-road political participants as well.

Figure 1: Political Activism



¹⁰⁵ This depends, in part, on how difficult registration procedures are in the eligible voter's state.

Put another way, as the total cost of participating in a caucus is reduced for an individual, he or she will become more likely to participate in one. A given individual's disposition to participate in the political process will obviously vary from person to person, with some individuals being predisposed to participating heavily, and others not at all. Therefore, if individual political activism is understood to fall along a continuum, its shape would be a rough bell curve. (See Figure 1.) The bell-curved shape of political participation can be seen in current participation trends: some voting-age citizens do not register to vote; some register to vote but do not participate in elections; most register to vote and participate in major elections; few citizens actually participate in primaries; and even fewer participate in caucuses.¹⁰⁶ As transaction costs are reduced for a particular individual, that individual is more likely to move towards more active political participation.¹⁰⁷ Conversely, as costs increase, an individual is more likely to move away from political participation.¹⁰⁸ The magnitude of movement in either direction along the continuum will correlate to the magnitude of the increase or decrease in transaction costs, although not necessarily by a one-to-one ratio.

If this is true, then the key to increasing participation by certain demographic groups is to decrease the cost of participation for that group, without increasing costs for other groups or, perhaps just as important, without decreasing costs for majority groups to a greater extent. Additionally, under the VRA, the more severe the disparity of voting access resulting from a challenged practice, the more likely the challenged practice is to be struck down.¹⁰⁹ Therefore, the greater the cost of Internet access in comparison to the cost of attending a traditional caucus, and the greater the disparity of voting access that results because of it, the more likely it is to violate the VRA.

It follows, then, that the chief inquiry into virtual caucuses is whether the cost of Internet access is greater than, equal to, or less than the cost of attending a traditional caucus. The answer to this question depends on how the term "cost" is defined. At first blush, the cost of attending a caucus may appear to be free (certainly, within one's party, anyone can attend a caucus free of charge), while the Internet is a pay service which can cost up to twenty dollars a month for dial-up service, excluding the cost of the computer itself. But understanding costs in this way is overly simplistic.

Although opponents of Internet voting are rightly concerned with the burden that the cost of Internet access places on a minority voter, this cost is only one side of the equation. A fair comparison must take this cost and compare it to the costs associated with attending a caucus to determine whether or not minority voters are truly disadvantaged at a disproportionate

¹⁰⁶ See U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 (Feb. 2002), available at <http://www.census.gov/prod/2002pubs/p20-542.pdf> [hereinafter CENSUS REPORT].

¹⁰⁷ See Mark S. Bonchek, *Grassroots in Cyberspace: Using Computer Networks to Facilitate Political Participation*, at §§ 5.1–5.3 (1995), available at <http://www.organizenow.net/techtips/bonchek-grassroots.html>.

¹⁰⁸ See *id.*

¹⁰⁹ See discussion of the Voting Rights Act *supra* Part II.D.

level. The “cost” of attending a caucus can be economic in nature: a participant may have to take time off from work, hire a babysitter, or pay for transportation in order to attend the caucus. But economic costs are not all the costs involved—the costs of attending a caucus can also be social and psychological in nature. For example, an eligible participant may fear being sanctioned for expressing his or her political beliefs, going to an unknown person’s home, being embarrassed in front of his or her peers, being embarrassed in front of people that are more affluent, more educated, or members of a different race, and so on. Further, participants that do not speak English may be unwilling, and in fact unable, to participate in a caucus at all. Potential participants weigh these social and psychological costs, in addition to the economic costs of attending a caucus, against the perceived economic, social, and psychological benefits of participating in a caucus when deciding whether or not to attend.

Of course, there are similar factors that must be considered when calculating the cost of using the Internet. For example, there is the cost of the service, the cost of the hardware, the value of the time spent on the Internet and, if the participant does not have access to the Internet at his or her home, there is the value of the additional time spent seeking out an Internet connection. Table 1 compares certain attributes of the current system to the proposed virtual caucus.

	Traditional Caucus	Virtual Caucus	Significance
When?	Weekday evening (usually a Monday or Tuesday).	Any time during a specified window (could be as long as a few days).	Increase in flexibility decreases chances of scheduling conflicts.
How Much Time?	2–3 hours.	5–20 minutes, or longer, depending on participant’s desire.	Decrease in amount of time required mimics general election, where participation rates are higher, but more involved members are still able to participate more fully.
Where?	Church basement, private home, library, or other place designated by the party’s precinct person.	Own home, place of work, library, relative’s home, or any other place with Internet access that is conveniently accessible.	Increase in the number of potential caucus sites decreases need for transportation, increases flexibility for disabled, and reduces possibility that eligible voters won’t participate because they feel

			apprehensive about going to a particular location.
Language?	Primarily English	Multiple Languages	Increase in number of languages that caucus is conducted in enables non-English speaking voters to participate in the process.

As illustrated, under the current system every participant must dedicate a significant amount of time on a specified day to the caucus, whereas the virtual caucus would allow for much more flexibility: participants can go online whenever, from wherever, and spend whatever amount of time they choose. Theoretically, the Internet would decrease time-related costs and increase flexibility across the board.

Many opponents of Internet voting argue that this decrease in costs would result in voting dilution because the increased convenience would result in a greater number of votes cast by those on top of the digital divide—who tend to be economically advantaged and white—than by those on the bottom, who tend to be economically disadvantaged and minorities.¹¹⁰ In fact, Internet voting has been called the new millennium's version of the literacy test.¹¹¹ However, a recent U.S. Census Bureau survey of reasons given by registered voters for not voting in the November 2000 election lends support to the idea that minority groups are more likely to benefit from the flexibility Internet voting offers over traditional caucuses than majority groups.¹¹² Keeping in mind the benefits of a virtual caucus listed in Table 1, consider some of the Census Bureau's findings:

- Younger adults (eighteen to forty-four years) and Hispanics were more likely to report that they did not vote because they were too busy or had conflicting work or school schedules compared with the elderly, white non-Hispanics and blacks.¹¹³

¹¹⁰ See *Dispute Over Use of Internet Voting in Michigan Democratic Caucuses Appears Headed to DNC*, WHITE HOUSE BULL., Nov. 4, 2003 [hereinafter WHITE HOUSE BULL.].

In examining disappointing electoral participation in the United States, public choice scholars have examined the issues of both, "Why don't people vote?" and "Why do people vote?" In answering these questions, the scholars have raised "the paradox of voting." This term refers to the puzzle that many Americans still vote although: (1) virtually no one expects that her vote will affect the outcome of an election, and (2) voting itself is not "costless," as it takes time to cast a ballot, and, for those who are conscientious, to find out how they should vote. Under this framework, Internet voting has the potential to lower the "costs" of electoral participation. It reduces the necessary investment in the time that it takes to cast a ballot or to find out information that will help one decide for whom to vote. Yet, this cost reduction only takes place for those who are already connected to the information superhighway.

See Paul M. Schwartz, *Symposium: Vote.Com and Internet Politics: A Comment on Dick Morris's Version of Internet Democracy*, 34 LOY. L.A. L. REV. 1071, 1079 (2001). But see discussion *supra* about how this calculus differs for deliberative caucuses.

¹¹¹ See *Arizona Democrats Point and Click for a Presidential Nominee*, *supra* note 95.

¹¹² See CENSUS REPORT, *supra* note 106.

¹¹³ See *id.*

- Women, the elderly, and those with less education were more likely than men, younger people, and people with more education to report that they did not vote because they were ill or disabled or had a family emergency.¹¹⁴
- Blacks were more likely than white non-Hispanics and Hispanics to have transportation problems,¹¹⁵ whereas white non-Hispanics were more likely than blacks and Hispanics to report that they did not vote because they did not prefer any of the candidates.¹¹⁶

Although the reasons given to the U.S. Census Bureau were related to a voter's decision not to participate in the presidential election, not a party caucus, it logically follows that many of the reasons that voters give for not participating in an election would pertain equally to the reasons why people chose not to participate in caucuses. This is especially true because participating in a caucus requires even more time than voting in an election.¹¹⁷ Therefore, to the extent that minorities are more heavily deterred from participating in the traditional caucus due to these time-related constraints, a decrease in these costs should help increase the percentage of participants from this minority group, more so than from the majority, whose reasons not to participate appear to have less to do with time constraints.

In addition to the above cost-benefit analysis, in determining whether virtual caucuses will broaden or narrow political participation, at least five more costs and benefits must be taken into account: (1) the impact that decreased party control over the system will have on participation; (2) whether the demographic makeup of current caucus participants is more or less diverse than the Web-enabled; (3) the impact that the Internet would have on groups such as the almost invisible eighteen- to twenty-four-year-old demographic that rarely votes; (4) the impact anonymity will have on participation; and (5) the impact that the social networking aspect of virtual caucuses will have on the currently alienated voter who does not think his or her vote counts for anything. Each one of these factors will be considered in turn.

A. IMPACT OF DECREASED PARTY CONTROL

The caucus method of selecting delegates to the National Convention fell out of favor in the 1970s, because the low voter turnout at caucuses enabled party bosses to easily control the outcome.¹¹⁸ As a result, some state and regional political parties came to be known as "political machines," so named because the parties operated like well-oiled

¹¹⁴ *See id.*

¹¹⁵ *See id.*

¹¹⁶ *See id.*

¹¹⁷ Still, if a similar survey was conducted on reasons why people chose not to participate in a party caucus, it is likely that several new reasons would be given, which might include: did not understand the process, did not feel comfortable with expressing my choice of candidate in public, and did not feel comfortable going to the caucus or the caucus location.

¹¹⁸ *See Green Papers, supra* note 1.

machines; at the head was the party boss, or small group of autocratic leaders, whose orders were carried out by a small group of loyal members.¹¹⁹ Party bosses were able to maintain such support because before the creation of the civil service, party bosses often had many jobs at their disposal.¹²⁰ They often offered these jobs and other benefits to voters in exchange for their loyalty on Election Day.¹²¹ In the early 1970s, the McGovern-Fraser reforms—seeking to reduce the influence of “bossism” in the nominating process—encouraged many states to change from the caucus system to the primary system.¹²² The proliferation of party primaries, the use of the secret ballot, the creation of a civil service, and New Deal welfare legislation has been credited with helping to decrease the influence of bossism on the nomination process.¹²³

Today, states holding caucuses are still concerned with the appearance of back dealings.¹²⁴ Many Democrats see Internet voting as a way to increase participation in caucuses and boost confidence in the nomination process.¹²⁵ In 2004, the Michigan Democratic Party allowed online voting in its caucus.¹²⁶ Before the caucus was held, Bill Ballenger, editor and publisher of *Inside Michigan Politics* said:

The party leadership is at pains to show that the Democratic Party here is not a bunch of old fashioned pols in a back room making deals, and that they can get a lot of people involved. The Internet is the trump card that they want to point to and be able to say, “We did it before the Republicans.”¹²⁷

Unlike many caucuses, Michigan’s caucus is very similar to a primary.¹²⁸ Michigan state law requires open primaries, which the Democratic Party’s rules prohibit.¹²⁹ As a result, the Michigan Democratic

¹¹⁹ See Sue Nelson, *Political Parties and Candidates*, ADMIN. & COST OF ELECTIONS PROJECT, at <http://www.aceproject.org/main/english/ei/eif01.htm> (last modified Nov. 17, 2000).

¹²⁰ See LARRY BERMAN & BRUCE ALLEN MURPHY, *APPROACHING DEMOCRACY—POLITICAL PARTIES: CHAPTER OVERVIEW* (4th ed. 2004), at http://wps.prenhall.com/hss_berman_democracy_4/0%2C6433%2C475905-%2C00.html (last visited Mar. 25, 2004).

¹²¹ See *id.*

¹²² See *Green Papers*, *supra* note 1.

¹²³ See BERMAN & MURPHY, *supra* note 120. But see Stephen E. Gottlieb, *Rebuilding the Right of Association: The Right to Hold a Convention as a Test Case*, 11 HOFSTRA L. REV. 191, 241 (1982) (arguing “[t]he impact of the secret ballot in making bribery and intimidation more difficult, and of New Deal welfare legislation in leaving people less vulnerable to party handouts, combined with the impact of two World Wars and a great depression on social awareness, [and not the proliferation of primaries] may have been substantially or entirely responsible for diminishing the power of political machines”).

¹²⁴ See WHITE HOUSE BULL., *supra* note 110.

¹²⁵ See *id.*

¹²⁶ See *id.*

¹²⁷ *Id.*

¹²⁸ See James A. Barnes, *On Wisconsin—and Michigan, Too*, 35 NAT’L J. 21 (May 24, 2003).

¹²⁹ In 1972, Wisconsin held an open primary, which permitted everyone to vote in the primary of their choice. Although George McGovern won that primary, the runner-up to McGovern in Wisconsin was Alabama Governor George C. Wallace, a renegade conservative. His strong showing was one of the factors that prompted the liberal reform wing of the Democratic Party to reconsider the wisdom of allowing Wisconsin’s open primary. Liberals complained that Republicans had “crossed over” to vote for Wallace and to sow confusion in the Democratic race. Subsequently, the Democratic National Committee (“DNC”) restricted participation in its primaries to party members. However, Wisconsin challenged the rule on the ground that it violated the state’s progressive tradition of open primaries that dated back to 1903. In 1981, the U.S. Supreme Court sided with the DNC, ruling that freedom of

Party will conduct a caucus that is better known as a party-run “firehouse primary.”¹³⁰ Only those people who are willing to certify that they are Democrats may participate in the caucus, which is funded by the party.¹³¹ However, unlike other caucuses, voters who certify that they are Democrats can simply cast a ballot for their candidate of choice.¹³² They do not have to dedicate several hours to the deliberative process used in the more typical caucus, such as the ones held in Iowa and in Maine in 2004.¹³³ In this way, Michigan’s caucus is much like the virtual caucus’s option to just cast a ballot, without participating in the other deliberations. This similarity is crucial in two respects. As we know, primaries turn out more voters than caucuses. To the extent that the virtual caucus mimics primaries, it too is likely to turn out more participation than caucuses. If this is true, then it follows that the two-fold effect of the introduction of the secret ballot primary—increased participation and a resulting decrease in the effectiveness of “bossism”—will be mimicked in caucus states.

Although these effects may not be felt with the same force in the virtual caucus as in primary states, the assumption of this Note is that virtual caucuses will only be held in states that do not have the option of holding a primary because of an act of legislature. Because the desirability of these effects is not seriously questioned, as long as greater participation does not skew the demographic makeup of the constituency in favor of some elite group, achieving them should be an aim of both parties.

B. DEMOGRAPHIC COMPARISON OF CAUCUS PARTICIPANTS AND THE WEB-ENABLED

As we already know, increased participation may still disenfranchise minority voters if the increase in participation comes only from an elite group of voters. Whether or not the current caucus-going participants are more diverse than the online constituency that would participate in virtual caucuses is an empirical question that can be proven if the proper statistics are gathered. For example, Michigan’s experimental caucus in 2004 led to

association gives a national political party the right to determine how delegates to its national convention are chosen.

The DNC granted Wisconsin an exemption in 1976 and 1980, but in 1984, with the Supreme Court on its side, the national party did not grant Wisconsin an exemption. Because the party was unable to change the state law that mandated open primaries, the Wisconsin Democrats conducted a party-funded caucus in which only participants that identified themselves as Democrats could participate. However, in 1988, the DNC again granted Wisconsin an exemption from the rule that prohibits open primaries.

Michigan also has a progressive political history of holding open primaries. However, Wallace’s victory in Michigan’s 1972 Democratic presidential primary sealed Michigan’s open primary’s fate. In 1992, Michigan Democrats did hold a presidential primary in which state law required participants to request a Democratic ballot and be recorded as having voted in the Democratic contest, thus satisfying the DNC rules. “But the backlash from Michigan voters to that encroachment on their anonymity forced the state to revert to its no-questions-asked format.” (Interestingly, despite the backlash caused by this approach in Michigan, Virginia, another state without party registration, used this method to hold its primary in 2004.) Because the only other state to be granted an exemption by the DNC is Montana, Michigan is forced to have a party-funded caucus. *See id.*

¹³⁰ *See id.*

¹³¹ *See id.*

¹³² *See id.*

¹³³ *See id.*

a dramatic increase in participation: in 2000, when the Internet was not used, only 19,600 people voted in the Democratic caucus, compared to the 46,000 people that voted using the Internet in 2004.¹³⁴ However, in 2004, Michigan moved its caucus forward by more than a month.¹³⁵ Because the field of viable candidates was narrower by the time of Michigan's 2000 caucus, participation may have been especially depressed. In 2004, Michigan allowed voting at caucus sites, online, and via mail.¹³⁶ Early estimates by the Democratic Party Executive Chairman Mark Brewer predicted that over 400,000 people would vote in Michigan's caucus, when in fact, only 123,000 people requested mail or Internet ballots.¹³⁷ But before Michigan could hold its caucus, Richard Gephardt withdrew from the race, taking the labor union constituencies with him; and Kerry had won seven of the first nine primaries and caucuses held before Michigan's caucus on February 7, 2004, taking much of the contest out of the contest.¹³⁸

Nonetheless, Michigan's caucus is still an interesting experiment because it helps provide the statistics necessary to determine whether virtual caucuses can draw participation from a more diverse constituency than traditional caucuses. For example, because multiple voting methods were used, the party can compare the ethnic and socioeconomic makeup of those who voted at caucus sites to those who voted over the Internet to determine whether minorities accounted for a smaller percentage of the online constituency. As of the writing of this Note, however, such statistics were not available, although the Michigan Democratic Party has analyzed the age distribution of those that cast votes over the Internet.¹³⁹

Because such statistics are not available, other statistics can be used as a proxy. A November 2002 Michigan statewide survey by Public Sector Consultants found that sixty-six percent of Michigan residents have a computer at home.¹⁴⁰ One estimate places the voting-age citizen population of Michigan at 7.2 million.¹⁴¹ If sixty-six percent of this group has a computer at home, that is more than thirty times the number of people that participated in the 2004 caucus.¹⁴² The poll by Public Sector Consultants also concluded that sixty-nine percent of whites in Michigan have used the Internet and fifty-seven percent of blacks have gone online.¹⁴³ These numbers help to show that caucus-goers are an extremely small percentage

¹³⁴ See Range Stacey, *Internet Voting Wins Praise of Party Leadership*, LANSING ST. J., Feb. 8, 2004, at 9A.

¹³⁵ See *Presidential Primaries*, *supra* note 8.

¹³⁶ See Stacey, *supra* note 134.

¹³⁷ See *id.*

¹³⁸ See *id.*

¹³⁹ Implications of the age distribution are discussed *infra* in Part IV.C.

¹⁴⁰ See Public Sector Consultants, *Information Technology in Michigan Survey: Home and Business Use 3*, Nov. 2002, available at http://www.pscinc.com/Documents/cyberstate/2002/2002_Cyberstate_Report.pdf.

¹⁴¹ See *2004 Presidential Primary Turnout Rates*, UNITED STATES ELECTION PROJECT, at http://elections.gmu.edu/Voter_Turnout_2004_Primarys.htm (last visited Mar. 24, 2004).

¹⁴² Of course, the Republicans among this 7.2 million population were not eligible to vote in the Democratic caucus.

¹⁴³ See Public Sector Consultants, *supra* note 140, at 7.

of the voting-age population, and that access to the Internet is not necessarily an issue because many more people of both races have access than actually participate in caucuses.

The shortcoming of these statistics is that they do not take into account potential socioeconomic differences between those that have computers and those that do not. The considerably larger size of the computer-owning population suggests that the entire caucus-going constituency could be encompassed within this group, but this is not necessarily so.

Other statistics released by the Michigan Democratic Party, however, also support the idea that the demographic makeup of the online constituency is not very different from that of the traditional voters.¹⁴⁴ Table 2 shows the number of votes cast for each candidate by voting method. When taking into account the standard deviation for each sample size, we can see that each candidate received a statistically similar percent of votes by each of the three voting methods. For example, Kerry received 49.4% of the votes cast by the Internet, and 52.5% of the votes cast at caucus sites. To the extent that each of the candidates attracts a particular demographic, the data support the idea that each demographic was equally well represented in each of the three voting methods. The one notable exception was Howard Dean—more votes were cast for him using the Internet or mail ballot than at caucus sites. Dean's ability to utilize the Internet to mobilize large groups of voters renewed interest in the Internet's ability to attract new participants to the political process.¹⁴⁵ This difference is discussed in more detail *infra* Part IV.E.

The data also indicate that in Michigan, twice as many people voted at caucus sites than over the Internet. This may seem like bad news for the virtual caucus idea, but it is important to remember that Michigan's caucus does not require participants to spend several hours deliberating. Therefore, these data are not necessarily relevant because it is difficult to know how many of the 93,000 people that voted at caucus sites would have still participated if the time commitment was three hours instead of a few minutes. Intuition and experience at caucuses in other states, however, suggest that turnout would have been significantly lower.

¹⁴⁴ *Michigan Caucus Totals by Voting Method*, 2004 MICHIGAN DEMOCRATIC PRESIDENTIAL CAUCUS INTERNET VOTING STATISTICS, at <http://www.mi-democrats.com/topics/Caucus%20Vote%20Totals.xls>.

¹⁴⁵ Several proponents of Internet use in the Michigan caucus suggest that opponents were not concerned with the digital divide, but were actually concerned that their campaign would suffer if Internet voting was allowed because Dean and Clark had unexpectedly developed a better Internet presence than the other candidates. When Internet usage was proposed in 2003, "none of the candidates objected. But when Howard Dean started climbing in the polls, they had a change of heart, fearing that his Web-surfing followers would have an inherent advantage." Katharine Q. Seelye, *The 2004 Campaign: Online Voting: Michigan's Online Ballot Spurs New Strategies for Democrats*, N.Y. TIMES, Jan. 10, 2004, at A1.

	Kerry	Dean	Edward	Clark	Other	Total
Internet	22,999	8,944	7,046	4,047	3,507	46,543
	49.4%	19.2%	15.1%	8.7%	7.5%	
Caucus Site	49,208	13,285	12,263	5,346	13,642	93,744
	52.5%	14.2%	13.1%	5.7%	14.6%	
Mail	12,611	4,796	2,596	1,562	1,917	23,482
	53.7%	20.4%	11.1%	6.7%	8.2%	
Total	84,818	27,025	21,905	10,955	19,066	163,769
Total Percent	51.8%	16.5%	13.4%	6.7%	11.6%	
+/- 3 Standard Deviations	50.8–52.8%	14.7–18.3%	11.3–15.4%	3.8–9.6%	9.5–13.8%	

Michigan provides at least one more lesson learned: if voters are given a longer time frame within which to vote and are capable of participating from wherever a computer is present, campaigns will have a strong incentive to bridge the access gap. For example, in Michigan, Local 79 of the Service Employees International Union, which endorsed Howard Dean, brought twenty laptop computers to the work sites of its 17,000 members in Detroit.¹⁴⁷ The local has more than 1,200 members at the Detroit Medical Center, which allowed organizers to help members apply for ballots online.¹⁴⁸ The organizers also notified union members that they could drop by kiosks during their lunch breaks to register to vote online.¹⁴⁹ One twenty-nine-year-old dietary aide was one of the people who requested a ballot online, with an organizer guiding her on the keyboard.¹⁵⁰ In an interview, she said that she would vote via the Internet when she received her ballot, “if all I’ve got to do is what he just showed me.”¹⁵¹ Another woman interviewed, Patsy Bell, a fifty-four-year-old janitor, also applied for a ballot.¹⁵² “Ms. Bell has a computer at home and said she was comfortable voting online. ‘It won’t take but a second,’ she said.”¹⁵³

Similarly, Clark’s campaign used the Internet to encourage rural voters in northern and western Michigan to vote online, and Kerry’s supporters used college campus newspaper advertisements to encourage students to vote online.¹⁵⁴ A spokesman for Clark’s campaign noted that in many rural areas of the state, voters have to travel for long distances just to get to a store, and the Internet is their way “to be part of the world on a real-time basis With the Internet, it’s much easier [] to mobilize a field operation without devoting a huge staff and resources to cover vast areas of the

¹⁴⁶ See *Michigan Caucus Totals by Voting Method*, *supra* note 144.

¹⁴⁷ See Seelye, *supra* note 145.

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *See id.*

¹⁵¹ *Id.*

¹⁵² *See id.*

¹⁵³ *Id.*

¹⁵⁴ *See id.*

state.”¹⁵⁵ Because “politics is a market,”¹⁵⁶ it should not surprise us that those candidates who appeal the most to minority voters will take it upon themselves to ensure that access is available when it comes time to vote. Another illustration of this effort can be seen on the Democratic Party’s website, which offers Internet access for the promotional rate of \$9.95 a month, with the first six months only half-priced.¹⁵⁷ In fact, as Clark and Kerry illustrated, using the Internet can make it easier for campaigns to court votes from demographic groups that would otherwise not receive any attention, such as those living in rural areas.

C. IMPACT OF VIRTUAL CAUCUS ON AGE OF PARTICIPANTS

The Internet has been seen by many political analysts as a way to draw more participation from younger voters who tend to be less active political participants. However, others argue that Internet voting violates the VRA because it disenfranchises not only those that can’t afford access, but also those that do not know how to use the Internet, such as the elderly. For these reasons, Internet voting has been analogized to both a poll tax and a literacy test. Therefore, it is important to consider the impact that Internet voting will have not only on the younger age groups, but also on the older age groups.

In a 2001 symposium on the likely consequences of Internet voting for political representation, Professors Michael Alvarez and Jonathan Nagler studied the age distribution of adults in (1) the general population; (2) the politically active population; (3) the Internet-using population; and (4) the politically active, Internet-using population. Table 3 presents their age distribution findings and compares it to the age distribution of the Internet participants in the Michigan caucus.¹⁵⁸

	18-29	30-39	40-49	50-59	60-69	70+
American Population	17.2%	20.6%	22.7%	16.0%	10.3%	13.2%
Politically Active Population	9.7%	20.0%	25.4%	17.8%	11.8%	15.5%
Internet-using Population	21.6%	25.3%	25.2%	16.9%	5.8%	5.1%
Politically Active, Internet-using Population	13.3%	26.2%	29.4%	19.1%	7.1%	4.8%
2004 Michigan Caucus Participants - Internet	13.1%	14.0%	20.2%	31.3%	15.0%	6.4%

¹⁵⁵ *Id.*

¹⁵⁶ Most politicians in a modern democracy operate within the constraints of a competitive electoral market. No matter why you’re a politician—if you want to adopt your vision of the best policies, if you’re motivated by influence, prestige, and power, or if you seek the benefits from special interests that accrue to those who are lawmakers—you must be reelected in a competition, and that is the quintessential market.

Elizabeth Garrett, *Law and Economics Panel Discussion*, 31 N.M.L. REV. 107 (2001).

¹⁵⁷ See Democratic Nat’l Comm. Website, at <http://www.democrats.org> (last visited Mar. 24, 2004).

¹⁵⁸ See R. Michael Alvarez & Jonathan Nagler, *The Likely Consequences of Internet Voting for Political Representation*, 34 LoY. L.A. L. REV. 1115 (2001) for Professors Alvarez and Nagler’s discussion on the Arizona experiment. See also *Michigan Caucus Internet Votes by Age*, 2004 MICH. DEMOCRATIC PRESIDENTIAL CAUCUS INTERNET VOTING STATISTICS, at <http://www.mi-democrats.com/topics/Caucus%20Internet%20Vote%20Age.xls> (last visited Mar. 24, 2004).

As Professors Alvarez and Nagler's table indicates:

The adult population is concentrated in the thirty to thirty-nine [] and forty to forty-nine [] age groups The politically-active population is decidedly older than the American adult population On the other hand, the Internet user population has a strong skewness to the younger age groups This skewness towards the younger groups persists when we look at the politically-active, Internet-using population, which is primarily concentrated in the thirty to thirty-nine age group [] and the forty to forty-nine age group Notice that while the youngest American adults are slightly less represented in the Internet-using, politically-active population than in the overall American adult population, the former population is very much concentrated in the thirty to thirty-nine and forty to forty-nine age groups.¹⁵⁹

In contrast to Professors Alvarez and Nagler's findings in 2001, the age distribution among Internet users in the Michigan caucus was concentrated not in the thirty to thirty-nine and forty to forty-nine age groups, but in the fifty to fifty-nine age group.¹⁶⁰ In fact, almost a third of the votes cast online came from members of this group. Another interesting fact this data highlights is that, although the eighteen to twenty-nine age group makes up less than ten percent of the politically active population, they accounted for over thirteen percent of the votes cast online.¹⁶¹ Although it is not unexpected to see that younger participants are better represented in the politically active, Internet-using population, the sharp increase in the fifty to fifty-nine and sixty to sixty-nine age group is surprising. To a proponent of the Internet's ability to transform political participation, the acceptance of the Internet by these age groups is expected.

Similarly, because these age groups tend to be the most politically active, the more measured reinforcement theorists, who believe that existing patterns of political participation will carry over to the Internet, expect the most politically active to be early adopters of Internet voting. In fact, these data seem to support the conclusion that the disparity among age groups has been exacerbated by the Internet, because almost one-third of the votes cast over the Internet in Michigan came from the fifty to fifty-nine age group. However, before this conclusion can rightly be drawn, data on the age distribution of Michigan caucus participants must be gathered. In a 1988 survey of Michigan, Iowa, and Virginia, William G. Mayer found that less than seven percent of the Democratic and Republican participants

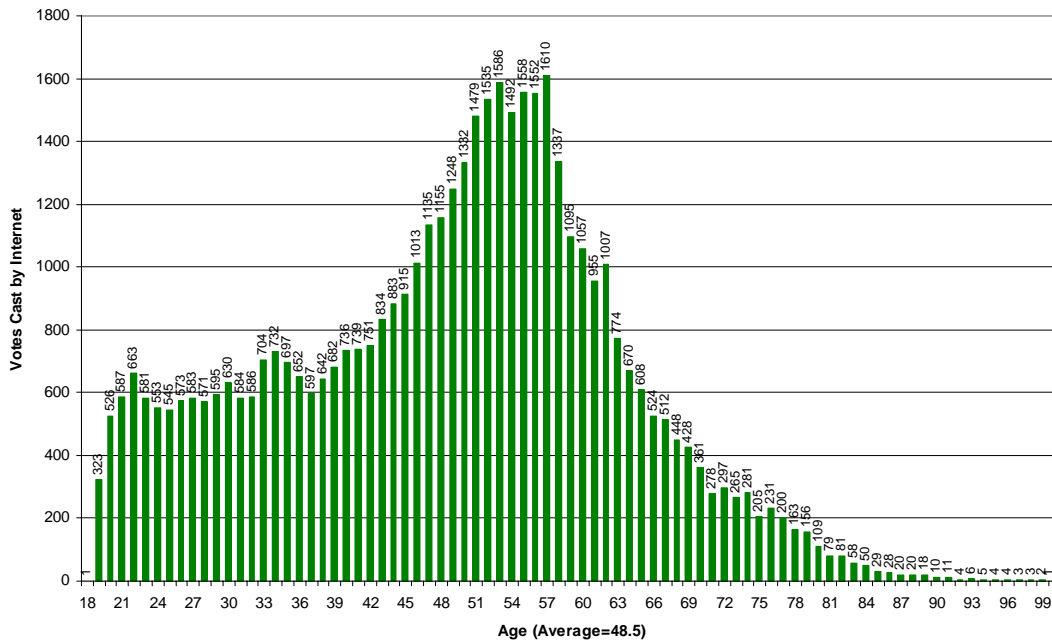
¹⁵⁹ See Alvarez & Nagler, *supra* note 158, at 1133.

¹⁶⁰ See 2004 MICH. DEMOCRATIC PRESIDENTIAL CAUCUS INTERNET VOTING STATISTICS, *supra* note 158.

¹⁶¹ However, the two groups that accounted for the largest percentage of the Internet-using politically active age groups, thirty to thirty-nine and forty to forty-nine, accounted for a much smaller percentage of the votes cast online. Although the forty to forty-nine age group was represented in this population at about the same rate as in the general population, the thirty to thirty-nine age group was significantly under represented. Because this age group is the most likely to have Internet access, and because the age distribution of the voters that participated at caucus sites is not available as of the writing of this note, it is not clear to what this change is attributable. Possible explanations might include age skewness in the Democratic Party, lack of interest due to the Gephardt's withdrawal and Kerry's near sweep, as well as decreased acceptance of the Internet. See *id.*

were under thirty years old, and almost one-third of caucus attendees were sixty-five or older.¹⁶² If this still holds true, then the age distribution of Internet participants more closely mimics the actual age distribution of age groups in the regular population than at traditional caucuses. Here again is an important way in which the disadvantages of Internet voting are reduced or reversed in caucus states.

Graph 1: Michigan Caucus 2004 Internet Votes by Age



Several interviews of older Michigan voters seem to indicate that they did not feel comfortable voting online and planned to vote in person, even though the Internet option was available. The data back this up: the seventy and over age group accounted for only 6.4% of the votes cast over the Internet in the Michigan caucus, even though statistics indicate that 15.5% of the politically active population is seventy and over. However, because Internet voting is like online banking in that

[o]nline banking is about confidence as well as convenience. It takes time and experience for Internet users to become comfortable with online transactions and to trust the security and privacy measures put in place by

¹⁶² See JAMES W. DAVIS, U.S. PRESIDENTIAL PRIMARIES AND THE CAUCUS-CONVENTION SYSTEM: A SOURCEBOOK 182 (1997).

their financial institutions. The longer an Internet user has been online, the more likely he is to migrate his banking to the Web.¹⁶³

A closer look at the growth of online banking, which has been around longer in the United States than Internet voting, may therefore provide a glimpse into how the future acceptance rates of Internet voting may look.

The Pew Internet & American Life Project found that while younger Internet users have been the most ardent about online banking, seniors with Internet access have increasingly become more active online bankers.¹⁶⁴ Their slow but steady increase in online banking rates suggests that their confidence in online banking is gradually increasing, and that they are being won over by its potential benefits.¹⁶⁵ Although they have consistently been the least likely of all the age groups to bank online, the number of seniors that bank online has increased with each survey.¹⁶⁶ From 2000 to 2002, when this research was conducted, more seniors with Internet access started banking online than any other demographic group.¹⁶⁷

This research provides an interesting contrast to the idea that distrust of the Internet by the elderly cannot be overcome and supports the idea that Internet voting can increase participation among the youngest age groups, especially in caucus states where participation by the youngest age group is the most sparse. To the extent that voting habits are formed early, virtual caucuses should gain acceptance as the population ages. Therefore, to the extent that reinforcement theorists correctly predict that the most politically active will be early adopters of Internet voting, fears that the oldest age groups will be disenfranchised seem exaggerated; especially considering the effort that individual campaigns will invest to garner votes from their constituents.

D. ANONYMITY

“If you were in an Iowa caucus wearing a Dean T-shirt and your boss walked in carrying the colors of Kerry, you might feel compelled to change your uniform, your allegiance and your vote. All of which takes place with great intensity at the Iowa caucuses.”

—Jeff Smith¹⁶⁸

One of the most common complaints about the caucus system is that votes are cast publicly. The above quote captures the reality that just because one has the freedom to express his or her political opinion, he or she may not necessarily feel comfortable doing so. On Friendster, users can communicate without knowing each others' names or e-mail addresses,

¹⁶³ Mary Madden, *America's Online Pursuits: The Changing Picture of Who's Online and What They Do*, PEW INTERNET & AM. LIFE PROJECT, Dec. 22, 2003, at 52, available at http://www.pewinternet.org/PPF/r/106/report_display.asp.

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *See id.*

¹⁶⁷ *See id.*

¹⁶⁸ *Smith Column*, TUCSON CITIZEN, Jan. 21, 2004, at 5B.

although most people choose to disclose their first name. Similarly, a virtual caucus system can be designed in which the identity of participants would only be known to the Web administrator;¹⁶⁹ others could communicate with each other by use of a generic username or identification number. This method would allow participants to express opinions and attempt to persuade undecided voters, capitalizing on the “grass roots politics” aspect of the caucus system that proponents tout, while reducing, if not eliminating, the fear that a voter will be ostracized or punished in some way for expressing his or her political beliefs.

A key concern raised by the use of secret ballots over the Internet is the possibility of hackers jeopardizing the integrity of the election process. In order to increase confidence in election results, several states and the U.S. Congress are considering legislation that would require all new voting technologies to maintain a “voter verifiable paper trail” or, in other words, a paper record of the vote. This would allow a voter to inspect his or her ballot and can be used by tabulation equipment to verify that the vote has been accurately counted.¹⁷⁰ The Caltech/MIT Voting Technology Project, in its Statement on Verifying the Vote and Auditing Elections, said:

Voters and election officers must have confidence in particular election *results*, and the ability to audit elections is critical for that goal.

To that end, we believe that all new voting equipment should have a voter verifiable *audit* system that both allows a voter to double check the vote before it is cast and provides assurance that the tabulator counts all votes as they were cast.¹⁷¹

If confidence in election results is boosted through the maintenance of a paper trail as the new bills suggest, then caucuses are again uniquely positioned to benefit from the Internet because both parties can dictate the rules by which caucuses are conducted. The Democratic Party, for example, has a rule that requires all ballots be temporarily kept on file so that there is a record of individual votes in case the results are challenged. Therefore, virtual caucuses, which are conducted according to party rules, can enjoy the benefit of paper trails without waiting for states or the federal government to adopt legislation requiring them. Additionally, security procedures will actually be strengthened online in comparison to the lack of precautions taken in current caucus settings—often, caucus-goers are not even required to provide identification.¹⁷²

¹⁶⁹ Party rules may require that a record be kept of how a party member votes in a caucus or primary. In this way the ballot is not as secret as when the state administers the election, because no record of the vote is kept. Yet, the amount of privacy is still greatly increased over the open deliberation method used at many caucuses. Again, this is a case where although a state administered primary is best, the virtual caucus is still better than traditional caucuses. See also Part III *supra* for a discussion on how virtual caucus would work.

¹⁷⁰ See CALTECH/MIT VOTING TECHNOLOGY PROJECT *Statement on Verifying the Vote and Auditing Elections*, Feb. 10, 2004, available at http://www.vote.caltech.edu/media/documents/Caltech_MIT_Audit.pdf.

¹⁷¹ *Id.*

¹⁷² Paul Andrews, *Online Voting Wins Many Over in Michigan E-conomy*, SEATTLE TIMES, Feb. 16, 2004, at C1.

Also, this type of paper trail will not sacrifice the benefits of the secret ballot. First, any reduction in the benefits reaped from the secret ballot by the party's maintenance of voting records is not exacerbated by the introduction of the Internet into the mix. The Democratic Party, for example, applies the paper trail rule to all party-run elections, regardless of whether they are conducted online or at a caucus site. Second, in a traditional open ballot caucus everyone in the room knows how a person voted, whereas in a virtual caucus, only poll workers know how an individual voted, and they are sworn to secrecy—not a perfect result, but significantly better than the intimidation and coercion a voter is subject to when his or her preferences are known by all. Finally, as stated by the Voting Technology Project:

Paper is the most obvious method and one with which election officials have a great deal of experience. Paper ballots are the standard against which other systems must be measured.

However, an auditable voting system need not be based on paper. Other technologies might emerge in the coming years that would guarantee confidence in election results and would improve on paper ballots in other ways.¹⁷³

Properly designed, a virtual caucus system could incorporate automated verification methods, thereby eliminating the need for an actual paper trail or other method that is viewable by party members or workers.

Moreover, as the Voting Technology Project suggests, the virtual caucus could improve on paper ballots in other ways. For example, ElectionsOnline.us is a private corporation offering election services to businesses. In its sales literature, it highlights the following additional benefits that can be reaped from conducting an online election:

- Ability to correct mistakes: In the event the voter makes a mistake, they may correct it prior to submission. Once a ballot has been submitted, it is final, but should they accidentally select Candidate A when they meant to choose Candidate B, they may make the necessary correction prior to submission.¹⁷⁴
- Ballot shuffling: Shuffling the ballot means the order in which the candidates' names appear is different each time the ballot is requested eliminating the concern that the candidate whose name appears near the top of the ballot has an advantage.¹⁷⁵
- Automated tallying: Human fallibility is removed from the tabulating process. Once the election period is over, the results may be known in seconds with guaranteed accuracy.¹⁷⁶

¹⁷³ CALTECH/MIT VOTING TECHNOLOGY PROJECT, *supra* note 170.

¹⁷⁴ See *The Advantages*, ELECTIONSONLINE, at <http://www.electionsonline.us/advantages.htm> (last visited Mar. 24, 2004).

¹⁷⁵ See *id.*

¹⁷⁶ See *id.*

- Reduced costs: The costs associated with Web ballots are typically much lower than those associated with paper ballots.¹⁷⁷
- Ballot scrubbing: Eliminates entirely the possibility of overvoting.¹⁷⁸

In designing a virtual caucus system, several or all of these features could be built in to achieve similar benefits.

As previously mentioned, another minority demographic that will benefit from the anonymity that virtual caucuses could offer is the blind and physically disabled. According to Fred Wurtzel, President of the National Federation of the Blind of Michigan, “The Michigan Democratic Party’s Internet voting website has established this Presidential Caucus as the most accessible election for the blind in Michigan history.”¹⁷⁹ Although blind voters will need assistance in the application process to request a ballot, they could cast their vote online independently using special software.¹⁸⁰ In fact, any disabled person who has Internet access at home or work will be able to benefit from the ability to independently cast votes.

E. IMPACT OF SOCIAL NETWORKING ON ALIENATED VOTERS

Low voter turnout is frequently attributed to voter alienation, a lack of motivation resulting from the premise that one vote cannot influence the outcome of an election. This feeling of alienation can be described interchangeably as either a lack of expected psychological benefit, or a psychological cost. In trying to ascertain why some people experience more psychological benefits from voting than others, sociologist Ruy Teixeira found that voters who feel connected to their communities tend to be the most likely to vote.¹⁸¹ Accordingly, voter turnout has decreased because the Twenty-Sixth Amendment, which lowered the voting age to eighteen, greatly increased the pool of young voters, who tend to be less rooted in a community and therefore less likely to vote.¹⁸²

Voter alienation is addressed by online forums, as demonstrated by the success of Dean’s social networks. While actual social networks provide a feeling of community to their members, virtual social networks capture that feeling of connectivity in a less time-consuming and less intrusive way—part of the appeal is that you can socialize from the comfort of your own home, which takes some of the doubt out of meeting new people. A *New York Times* article interviewed various people that became involved in

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ Michigan Democratic Party, *Internet Voting for the Blind in Presidential Caucus Demonstrated*, Jan. 7, 2004, available at <http://www.mi-democrats.com/press/2004pr/blind%20vote.pdf> (quoting Fred Wurtzel).

¹⁸⁰ See *id.*

¹⁸¹ See generally RUY A. TEIXEIRA, *WHY AMERICANS DON’T VOTE: TURNOUT DECLINE IN THE UNITED STATES 1960–1984* (1987).

¹⁸² See *id.* at 23–24.

Dean's campaign through MeetUp.com.¹⁸³ Greg DeMarco, a computer salesman, said of the Dean campaign, "My wife and I have met more people in Hooksett [NH] through the campaign than we have living here."¹⁸⁴ Eileen Ehlers agreed:

I don't know what it is—maybe that the town has no sidewalks and no physical center, just strips, but people just don't talk to each other like we do [online]. People come to Hooksett to sleep, and go to work somewhere else. But the brilliance of the campaign is that it is leaving behind a community.¹⁸⁵

The article recounts at least another dozen such anecdotes about happy people who became involved with the Dean campaign through local "meet ups."¹⁸⁶

The Dean campaign and the success of social networking sites such as Friendster strongly suggest that the Internet can help to foster a sense of community by combining virtual interaction with actual interaction. To the extent eligible voters choose not to participate in the political process because they lack a sense of community, the Virtual Caucus can be a powerful tool to help diminish feelings of voter alienation.

V. CONCLUSION

Given the reemergence of party caucuses, it is important that parties consider creative new ways to increase participation and diversity in caucuses. Although unequal Internet access issues persist, the cost imposed on minorities by the Internet is less than the cost of attending a caucus when all of the economic, social, and psychological costs are considered. Party caucuses, therefore, are a *unique* space where utilizing the Internet can increase participation and diversity. Although this improvement is unlikely to make participation in caucuses as broad or as diverse as in state-run primaries, if a state's only option is the caucus, then at least the integration of the Internet can make the process better.

¹⁸³ See SHAPIRO, *supra* note 46.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ For each person who decided to arrive unannounced at the Dean office, dozens more stayed home and appointed themselves director of one unofficial Dean organization or another. There are now 900 unofficial Dean groups. Some of the activities undertaken on behalf of Dean qualify as recognizable politics: people hand out fliers at farmer's markets or attend local Democratic Party meetings. Others take steps of their own invention: they cover their pajamas with stickers that say "Howard Dean Has a Posse" and wear them to an art opening, or they organize a squadron to do "Yoga for Dean." They compose original songs in honor of Dean. (About two dozen people have done that; another man wrote a set of 23 limericks.) They marry each other wearing Dean paraphernalia. Overweight supporters create Web pages documenting, in daily dispatches, their efforts to lose 100 pounds in time for Dean's election. One woman, Kelly Jacobs of Hernando, Miss., took it upon herself to travel around the Memphis area for 15 weeks, standing on a single street corner for a week at a time, to promote Dean. I saw a middle-aged man at a garden party in New Hampshire preface a question to Dean by saying he was associated with Howards for Howard. Dean nodded, as if the man had said he was with the AARP.

Id.