

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

RALPH LOPEZ  
Plaintiff

v.

WILLIAM FRANCIS GALVIN,  
SECRETARY OF THE COMMONWEALTH  
OF MASSACHUSETTS, TANYA L. FORD,  
EXECUTIVE DIRECTOR, CAMBRIDGE ELECTION  
COMMISSION, SUSAN M. LEDOUX  
CITY CLERK, CITY OF WORCESTER,  
MARY COURTNEY KENNEDY,  
TOWN CLERK, TOWN OF WILLIAMSTOWN  
Defendants

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SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
DOCKET NO.

AMENDED COMPLAINT

STATEMENT OF THE CASE

1. The hand-count audit of paper ballots is the most fundamental mechanism by which confidence is maintained in electronic ballot counting systems. The citizens' organization VerifiedVoting.org states: "Such audits are arguably the most economical component of a quality voting system, adding a very small cost for a large set of benefits." In the Massachusetts Democratic primary on March 1<sup>st</sup>, 2016, extraordinarily pronounced anomalies were discovered by voting rights activists and experts. In the relatively small number of districts where votes are still counted by hand, Bernie Sanders won by an average of 17%. In contrast, overall in MA, where votes are mostly counted by optical scan machine, Hillary Clinton was the victor, by 1.4%. This is true even though hand-count districts are spread throughout the state, with no apparent geographic or demographic distinction. In a further anomaly, and one seen consistently across the country, exit polls showed Bernie Sanders doing significantly better than the official results. Although exit polls err, they rarely err in the same direction, and by so much, in relation to just one candidate. In contrast, all exit polls in the Republican primaries in 2016 were a close match to final results. In the interest of preserving confidence in the Massachusetts primary system, and in accordance with the Massachusetts Public Records Law, plaintiff, a member of voting rights group Election Justice Massachusetts, will request the opportunity to examine and count, under supervision, the ballots in a small sampling of voting

districts. Alternatively, plaintiff requests that the court order a hand count of said districts, in a manner which allows the MA voting rights team to discern and tabulate ballot markings themselves as the audit progresses.

## THE PARTIES

2. William J. Galvin is Secretary of the Commonwealth of Massachusetts, the duly sworn officer overseeing the Elections Division of the state of Massachusetts, with offices in Suffolk County.
3. Tanya L. Ford is the Executive Director of the Cambridge Election Commission, 51 Inman Street, First Floor, Cambridge MA 0213.
4. Susan M. Ledoux is City Clerk, City of Worcester, 455 Main Street, Worcester, MA 01608.
5. Mary Courtney Kennedy is the Town Clerk of the Town of Williamstown, 31 North Street, Williamstown, MA 01267.
6. Ralph Lopez is a US citizen, a resident of MA, registered voter, writer, and member of Election Justice Massachusetts.

## JURISDICTION

7. This Court has jurisdiction over this action pursuant to its power to address voting rights disputes under the 14<sup>th</sup> Amendment of the US Constitution, which include voting rights in both the general election and in party primaries. The US Supreme Court has held, in *United States v. Classic*, that "the primary is by law made an integral part of the election machinery." In *Smith v. Allwright*, the US Supreme Court reasoned that primary elections are an integral component of general elections and the democratic process, and that primaries must be seen as sanctioned by the state and are therefore subject to 14th and 15th Amendment scrutiny. The most famous instance of the judiciary asserting itself in fair election issues is *Bush v. Gore*, when the Florida Supreme Court ordered a recount to proceed despite state statutory limitations.

## STATEMENT OF FACTS

8. On March 1<sup>st</sup>, 2016, "Super Tuesday," Hillary Clinton was announced the winner of the Massachusetts Democratic primary by 1.4%.
9. In towns where ballots were counted by hand, rather than optical scan machine, Bernie Sanders was the winner by an average of 17%. These towns are not contiguous and are across the state, from the New York border to the Cape.
10. A study coming out of Stanford University dated June 7, 2016 concludes that: "data suggest that election fraud is occurring in the 2016 Democratic Party Presidential Primary election. This fraud has overwhelmingly benefited Secretary Clinton at the expense of Senator Sanders." The study, by Rodolfo Cortes Barragan and Axel

Geijssel, is entitled “Are We Witnessing a Dishonest Election?” The study is based primarily on discrepancies between hand-counted precincts and machine counted precincts across America displaying a strong bias against Sanders, of which Massachusetts is the most egregious example (please see Exhibit F.)

11. In MA, exit polls showed Bernie Sanders winning by a margin of 8%, rather than losing, as the official results showed, by a margin of 1.4%. In exit polls in the Democratic primaries so far this year, Sanders has exceeded the official reported vote in 24 out of 26 primaries. Absent a cause for this, the statistical probability of this occurring as a chance pattern is the same as the odds of 26 total coin tosses coming up heads 24 times.
12. Exit polls are one form of data accepted by the UN as indicators of possible election fraud.
13. In at least eleven primaries, according to mathematician Richard Charnin, the unusually consistent error suggesting more votes for Sanders is outside the margin of error, which would according to UN criteria qualify as a red flag for further investigation (Exhibit A.)
14. In the award-winning 2016 HBO documentary, Hacking Democracy, the ease of tampering with (“hacking”) the results in the same kind of vote tabulating machine as is used in MA and in thousands of jurisdictions is clearly demonstrated.
15. Further oddities exist. Bernie Sanders has generally done well, in very broad terms, in poorer rather than wealthier demographics. Yet in the city of Worcester, with machine-tabulated results, he polled 48.3% to Clinton's 50.4%, which was very close to the results in the adjacent town of Shrewsbury. However, Worcester has numerous large colleges, where Sanders does well, and is an economically distressed community. Shrewsbury is a well-off suburb with twice the average household income.
16. To date, the Democratic primaries this season have been the most controversial in many years. Official investigations are open in New York by the New York City comptroller's office and the NYC state attorney general. In Arizona, investigations are ongoing by the US Department of Justice and the state attorney general. In Illinois, another state where Clinton edged out a razor-thin victory, a county state's attorney filed suit on behalf of voters who did not get to vote in the primary because some precincts ran out of ballots. A judge's decision to grant an extension of time to vote was reversed when the state attorney general Lisa Madigan, a strong Clinton supporter, appealed to a higher court to disallow the extension. In short, the confidence of many voters in the voting system is at an all-time low, and Reuters reported on April 27, 2016 that more than half of Americans believe the primary process is “rigged.” In light of this, measures favoring transparency have become especially important.

## LEGAL BACKGROUND

17. The Massachusetts Public Records Law G. L. c. 4, § 7(26) states:

““Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions...”

Paper ballots qualify as “papers” and “statistical tabulation.” There is no exemption within the law for paper ballots, which are in the custody of the Secretary of State.

18. In *Bush v. Gore*, the US Supreme Court wrote:

“None are more conscious of the vital limits on judicial authority than are the members of this Court, and none stand more in admiration of the Constitution’s design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.”

19. In *United States v. Classic*, a Louisiana case, the US Supreme Court established the principle that primaries were an “integral” part of the election process meriting 14<sup>th</sup> Amendment scrutiny by the judiciary. The Court wrote:

“The primary in Louisiana is an integral part of the procedure for the popular choice of Congressman. The right of qualified voters to vote at the Congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice.”

In *Smith v. Allwright*, the US Supreme Court reiterated this principle, and refuted head-on the notion that political parties were “private” entities not subject to judicial review:

“The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party.”

## ALLEGATIONS

20. The plaintiff alleges that the lack of a transparent and accountable voting process is a

violation of Due Process covered by the 5<sup>th</sup> Amendment and voting rights covered by the 14<sup>th</sup> Amendment. Where multiple indicators of fraud or error are apparent, audits must confirm that results have been accurate, in a targeted or random sampling of precincts, or Due Process and 14<sup>th</sup> Amendment voting rights are violated.

#### PRAYER FOR INJUNCTIVE RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Taken together, the anomalies and red flags for fraud which present themselves in the present case are more than adequate to justify a preliminary audit. Under the Public Records Law, plaintiffs request the court order the access to ballots in selected districts and precincts, under supervision, in order that citizen watchdogs may either hand count and tabulate ballot markings for themselves, or witness officials open properly sealed boxes, the seals to be inspected, and hand count the ballot markings contained within, in a manner which allows citizen representatives to discern ballot markings for individual candidates.
2. Given the timeliness and relevance of results to the upcoming Democratic Convention, plaintiff requests court so order on an emergency basis, as soon as possible.
3. Districts plaintiff prays for the court to so order to be audited are the City of Worcester, the Town of Williamstown, and one randomly selected precinct in the City of Boston.
4. Award such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED

Ralph Lopez  
Member, Election Justice Massachusetts  
153 Auburn St.  
Cambridge, MA 02139

# EXHIBITS

## Exhibit A

Chart of Exit Polls versus Final Results in Democratic Party Primaries, 2016

Source: [https://c1.staticflickr.com/8/7342/26774250664\\_8d3c3aee9b\\_b.jpg](https://c1.staticflickr.com/8/7342/26774250664_8d3c3aee9b_b.jpg)

### EXIT POLLS VERSUS REPORTED VOTE COUNT. MARCH 1- MAY 10, 2016 PRIMARIES

Democratic Party Clinton v. Sanders	CNN EXIT POLLS [1]				NYT REPORTED VOTE COUNT [2]			EP / VC DISCREPANCIES	
	CLINTON	SANDERS	MARGIN CLINTON- SANDERS	NUMBER RESPONDENTS	MoE [3] ON THE DIFFERENCE	CLINTON	SANDERS	DISCREPANCY IN FAVOR OF CLINTON	DISCREPANCY GREATER THAN EP MoE
GEORGIA	64.8%	33.8%	31.0%	1,277	5.18%	71.33%	28.16%	12.2%	7.0%
VIRGINIA	62.2%	37.4%	24.8%	1,370	5.12%	64.29%	35.19%	4.3%	
VERMONT	12.9%	86.5%	-73.6%	1,453	3.46%	13.62%	86.10%	1.1%	
MASSACHUSETTS	45.7%	52.3%	-6.6%	1,297	5.38%	50.11%	48.69%	1.4%	2.6%
ALABAMA	70.6%	25.9%	44.7%	806	6.05%	77.84%	19.19%	58.7%	7.9%
TENNESSEE	60.9%	35.5%	25.4%	949	6.04%	66.11%	32.43%	33.7%	2.3%
OKLAHOMA	46.6%	50.9%	-4.3%	811	6.80%	41.52%	51.87%	-10.3%	-6.1%
ARKANSAS	64.7%	33.3%	31.4%	900	6.14%	66.29%	29.74%	36.6%	5.2%
TEXAS	60.6%	37.9%	22.7%	1,282	5.29%	65.20%	33.20%	32.0%	9.3%
MICHIGAN	45.9%	52.1%	-6.2%	1,510	4.98%	48.27%	49.83%	-1.6%	4.6%
MISSISSIPPI	77.7%	21.3%	56.3%	966	5.18%	82.63%	16.46%	66.2%	9.9%
NORTH CAROLINA	53.8%	41.7%	12.1%	1,744	4.55%	54.60%	40.80%	13.8%	1.7%
FLORIDA	63.7%	35.9%	27.9%	1,632	4.65%	64.50%	33.30%	31.2%	3.4%
ILLINOIS	48.4%	50.7%	-2.3%	1,341	5.33%	50.46%	48.72%	1.7%	4.1%
MISSOURI	47.4%	51.1%	-3.7%	831	6.75%	49.60%	49.40%	0.2%	3.9%
OHIO	51.4%	47.6%	3.8%	1,670	4.77%	56.50%	42.70%	13.8%	10.0%
WISCONSIN	43.5%	55.0%	-11.5%	1,681	4.71%	43.11%	56.57%	-13.5%	-2.0%
NEW YORK	52.0%	47.6%	4.3%	1,307	5.41%	57.99%	42.01%	16.0%	11.6%
CONNECTICUT	50.4%	47.2%	3.2%	1,223	5.54%	51.80%	46.42%	5.4%	2.2%
MARYLAND	63.8%	33.4%	30.4%	848	6.32%	63.03%	33.25%	29.8%	-0.6%
PENNSYLVANIA	54.5%	45.1%	9.4%	1,313	5.38%	55.58%	43.56%	12.0%	2.6%
INDIANA	44.6%	55.4%	-10.7%	1,323	5.36%	47.51%	52.49%	-5.0%	5.7%
WEST VIRGINIA	38.1%	57.4%	-19.3%	734	6.94%	35.83%	51.39%	-15.6%	3.7%
WEST VIRGINIA * "Other" versus Sanders	4.5%	57.4%	-52.9%	734	4.21%	12.78%	51.39%	Discrepancy 14.3%	Discr. > MoE 10.1%

Table by Theodore de Macedo Soares

Email: [tedsoares@yahoo.com](mailto:tedsoares@yahoo.com)

[1] Exit polls published by CNN shortly after the closing of polls for the state and downloaded by TdMS. Copies are available.

[2] New York Times reported 100% vote count (99% for NY, CT, MD, PA Primaries 4/27/2016, IN 98% 5/4/2016) <http://www.nytimes.com/elections/results>

[3] Note that the Margin of Error (MoE) is for the differences between the two candidates (at 95% CI). This MoE is about double the usual MoE for each candidate. MoE calculated according to: Franklin, C. *The 'Margin of Error' for Differences in Polls*. University of Wisconsin, Madison, Wisconsin. October 2002, revised February 2007. Available at:

<https://abcnews.go.com/images/PollingUnit/MOEFranklin.pdf>

\* Although the 3.7 % discrepancy in favor of Clinton in West Virginia was within the exit poll's MoE, the discrepancy including the "other" category was huge at 14.3%, exceeding the MoE for the "other" / Sanders exit poll's margin of error by 10.1%. In this row Clinton vote percentages are replaced by votes for "other" and margins and discrepancies are between "other" and Sanders. See separate table cataloging the Sanders / "other" exit polls versus reported vote count discrepancies in all primary states since March 1, 2016

Exhibit B

2016 HBO Documentary "Hacking Democracy" link to: <https://www.youtube.com/watch?v=M7W7rHxTsH0>

Exhibit C

Richard Charnin's Blog: <https://richardcharnin.wordpress.com>

Exhibit D

"Half of Americans think presidential nominating system 'rigged' – poll," by Chris Kahn, Reuters, April 27, 2016

Exhibit E

Election Justice Massachusetts, members partial list:

Audrey Proctor, Swampscott

John Proctor, Swampscott

Ralph Lopez, Cambridge

Mary Few, Cambridge

Kathleen Cody, Boston

Lee Ann Ferrier

Linda Pinti, member Ward 6 Cambridge Democratic Committee, member Democratic State Committee

Are we witnessing a dishonest election?

A between state comparison based on the used voting procedures

of the 2016 Democratic Party Primary for

the Presidency of the United States of America

Axel Geijssel

Tilburg University – The Netherlands

Rodolfo Cortes Barragan

Stanford University – U.S.A.

June 7, 2016

“You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time.” - *Abraham Lincoln*

“No one has yet figured out a straightforward method of ensuring that one of the most revered democratic institutions – in this case, electing a U.S. president – can be double checked for fraud, particularly when paperless e-voting systems are used.” - Larry Greenemeier, *Scientific American*



## Summary Statement

Given the stakes in the outcome of the American presidential elections, ensuring the integrity of the electoral process is of the utmost importance. Are the results we are witnessing in the 2016 primary elections trustworthy? While Donald Trump enjoyed a clear and early edge over his Republican rivals, the Democratic contest between former Secretary of State Hillary Clinton and Senator Bernard Sanders has been far more competitive. At present, Secretary Clinton enjoys an apparent advantage over Sanders. Is this claimed advantage legitimate? We contend that it is not, and suggest an explanation for the advantage: States that are at risk for election fraud in 2016 systematically and overwhelmingly favor Secretary Clinton. We provide converging evidence for this claim.

First, we show that it is possible to detect irregularities in the 2016 Democratic Primaries by comparing the states that have hard paper evidence of all the placed votes to states that do not have this hard paper evidence. Second, we compare the final results in 2016 to the discrepant exit polls. Furthermore, we show that no such irregularities occurred in the 2008 competitive election cycle involving Secretary Clinton against President Obama. As such, we find that in states wherein voting fraud has the highest potential to occur, systematic efforts may have taken place to provide Secretary Clinton with an exaggerated margin of support.

### Different outcomes in primary states with paper trails and without paper trails

Data procurement: Given the potential that the underlying voting number has been corrupted, we had to restrict our analysis to a proxy: the percentage of delegates won by Secretary Clinton and Senator Sanders. To group states according to the accountability of the vote, we used Ballotpedia and created two groups. First, there are 18 states that feature voting procedures wherein the accuracy of electoral results of a primary ballot vote are backed by a paper trail. Second, there are 13 states that do not have such a paper trail.

Analysis: The [data] show a statistically significant difference between the groups. States without paper trails yielded higher support for Secretary Clinton, ( $M_{\text{no paper trail}} = 65.13\%$ ,  $SD_{\text{no paper trail}} = 10.41\%$ ) than states with paper trails ( $M_{\text{paper trail}} = 48.53\%$ ,  $SD_{\text{paper trail}} = 16.00\%$ ),  $t(29) = 3.21$ ,  $P = 0.003$ ,  $d = 1.19$  [Figure 1]. As such, the potential for election fraud in voting procedures is strongly related to enhanced electoral outcomes for Secretary Clinton. In the Appendix, we show that this relationship holds even above and beyond alternative explanations, including the prevailing political ideology and the changes in support over time.

Supplemental analysis on caucus states: Does the pattern seen in ballot states occur in caucus states? By the very nature of caucusing procedures, caucus results are generally thought to be more trustworthy. However, in the current Democratic caucusing cycle, Iowa and Nevada had caucuses widely alleged to have involved a considerable level of voter suppression and potential fraud. We examined the [data] and found that these two states had far higher support for Secretary Clinton, [ $M_{\text{fraud allegations}} = 54.71\%$ ,  $SD_{\text{fraud allegation}} = 3.44\%$ ] than the other caucus

states,  $[M_{\text{no fraud allegations}} = 31.61\%, SD_{\text{no fraud allegations}} = 9.98\%]$ ,  $t_{\text{independent-means}}(11) = 3.13$ ,  $P = 0.009$ ,  $d = 3.10$ .

## **Anomalies exist between exit polls and final results**

Data procurement: We obtained exit poll data from a database kept by an expert on the American elections.

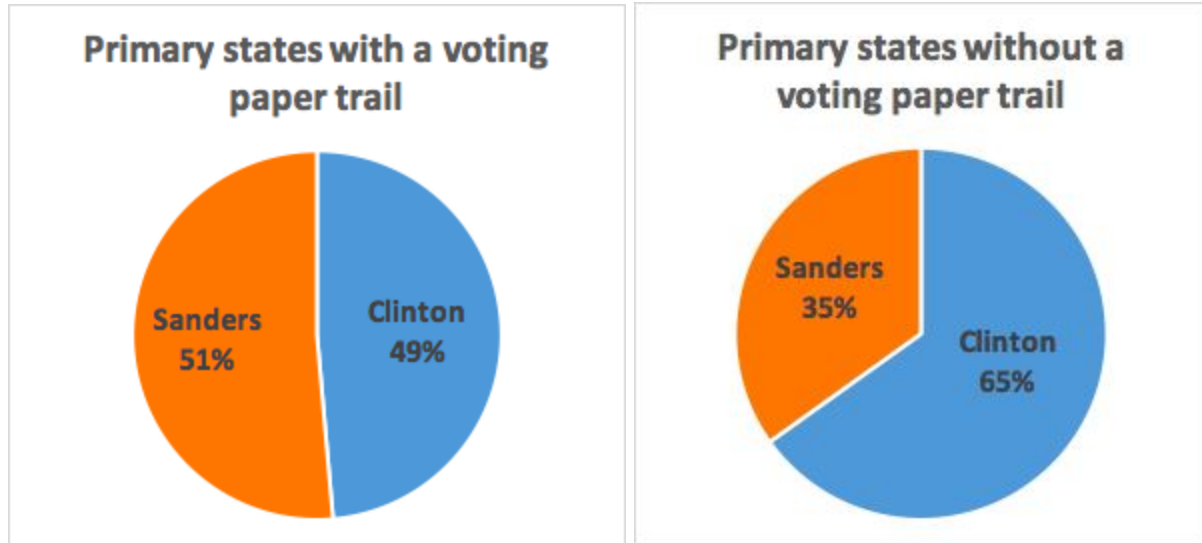
Analysis: On the overall, are the exit polls different from the final results? Yes they are. The [data](#) show lower support for Secretary Clinton in exit polls than the final results would suggest,  $[M_{\text{exit}} = 54.38\%, SD_{\text{exit}} = 13.95\%; M_{\text{final}} = 57.52\%, SD_{\text{final}} = 13.87\%]$ ,  $t_{\text{dependent-means}}(23) = 3.49$ ,  $P = 0.002$ ,  $d = 0.71$ . While an effect size of 0.71 is quite substantial, and suggests a considerable difference between exit polls and outcomes, we expected that this difference would be even more exaggerated in states without paper voting trails. Indeed, the effect size in states without paper voting trails is considerably larger: 1.50, and yields more exaggerated support for the Secretary in the hours following the exit polls  $[M_{\text{exit}} = 62.93\%, SD_{\text{exit}} = 8.80\%; M_{\text{final}} = 65.68\%, SD_{\text{final}} = 9.52\%]$ ,  $t_{\text{dependent-means}}(9) = 4.68$ ,  $P < 0.001$ . In contrast, the effect size is much smaller in states with paper trails,  $[M_{\text{exit}} = 48.28\%, SD_{\text{exit}} = 13.94\%; M_{\text{final}} = 51.69\%, SD_{\text{final}} = 13.77\%]$ ,  $t_{\text{dependent-means}}(13) = 2.27$ ,  $P = 0.04$ ,  $d = 0.58$ .

## **Irregularities are unique to 2016**

To show that the pattern of votes may suggest a systematic effort to undercut Senator Sanders, we must show that no such patterns were in place in similar elections. Given that Secretary Clinton lost to President Obama in 2008, their data is a natural control and the best possible point of comparison for the 2016 data. Thus, as we did for 2016, we tabulated the percentage of delegates won in each state by (then Senator) Hillary Clinton. The [data](#) show that, contrary to the 2016 data, there is no evidence that primary states without paper trails favored Senator Clinton in 2008,  $P = 0.38$ . As such, the patterns of 2016 are different from their best point of comparison.

## **Conclusion**

Are we witnessing a dishonest election? Our first analysis showed that states wherein the voting outcomes are difficult to verify show far greater support for Secretary Clinton. Second, our examination of exit polling suggested large differences between the respondents that took the exit polls and the claimed voters in the final tally. Beyond these points, these irregular patterns of results did not exist in 2008. As such, as a whole, these data suggest that election fraud is occurring in the 2016 Democratic Party Presidential Primary election. This fraud has overwhelmingly benefited Secretary Clinton at the expense of Senator Sanders.



**Figure 1. Percent of support for Clinton and Sanders by state voting paper trail status.**

[Appendix, Supplemental Analyses, and References](#)