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Austrian Takes Bids on U.S. Votes

 by [Mark K. Anderson](#)

3:00 a.m. Sep. 6, 2000 PDT

When a website that offered to auction presidential votes to the highest bidder was shut down last month, lamentations over a democracy for sale shifted into the past tense.

The threat of whoisaid vote-buying had come and gone -- or so it seemed.

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However, in the meantime, voteauction.com has changed owners as well as modus operandi. And this time, it appears, the prospect of squelching the wrongdoing is going to involve more than a threatening phone call.

"Our server is in Bulgaria at the moment," said Hans Bernhard, an Austrian investor and new owner of Voteauction. "It's a Twilight Zone out there. And we can even move it further on, if it's necessary. We can disconnect it from my person. We're very flexible with this. Because we're very interested in the core business, in the idea -- and in the future of this idea."

On Aug. 22, Bernhard bought the fledgling site from James Baumgartner, an art graduate student at Rensselaer Polytechnic Institute in Troy, New York, who had conceived of the site as a satire on the American campaign finance system. However, where Baumgartner -- who ran Voteauction himself from his studio in upstate New York -- viewed the site as a commentary on the vagaries of American plutocracy, Bernhard espouses no such higher motives.

For the Austrian businessman, American voters have a product that can be sold. Simple as that.

"They're proving the point that the market knows no bounds," said Jamin Raskin, a law professor at American University. "These people are just 50 years ahead of their time in seeing that the ultimate destination of the current [electoral] process is that everything will be for sale -- from the votes of citizens to the votes of legislators to perhaps even, heaven forbid, the votes of Supreme Court justices.

"So the society has got to get serious and figure out what are in fact the principled limitations on the logic of the marketplace. Because right now 'May the highest bidder win' is the logic for everything."

Presently, according to Bernhard, Voteauction has a core team of seven employees: lawyers, communications experts, and marketing people. As of Tuesday morning, the site was trafficking in 376 votes with \$10,600 in bids already posted. Bids are submitted via email to the Austrian



clearinghouse and are broken down state by state.

New York, whose electoral boards shut down Voteauction with one phone call when it was run stateside, has been excluded from the bidding. But in every other state in the union -- where, according to Raskin, vote buying and selling are also unambiguously illegal activities -- Voteauction blithely continues to facilitate vote fraud as if it were just another Beenie Baby auction on eBay.

The 68 California voters who have reportedly offered up their presidential votes to the highest bidder currently face a \$34.56 paycheck for marking their ballots as told -- as well as the possibility of criminal prosecution if they get caught. As of Tuesday morning, the price-per-vote in Illinois was up to \$64.70, while Kansas' two Voteauction participants are promised \$100 each.

According to Brad Smith, a law professor at Capital University and current member of the Federal Election Commission, the only distinction between Voteauction and other electoral fraud systems is size.

"Conceptually, the enforcement problem is really no different from any other vote-fraud or vote-buying scheme," Smith said. "If I'm going to go out and buy votes with street money I'm going to try to keep it underground, and make sure people can't track it or get witnesses. What's different here is the potential magnitude of operation. Because what the Web does, as it does in all kinds of legitimate commerce, is provide this great worldwide auction market."

Smith, who also pointed out that prosecution of such illegal activities would most likely be up to individual states, questioned the ultimate feasibility of the Voteauction scheme -- since verification is a bottleneck that fortunately no one has been able to work around.

However, verification is only as much of a concern as buyers want it to be.

"Verification will now be the responsibility of the winning bidder," a spokesman for Voteauction said in a recent email interview. "They can choose from a variety of methods for verification of the votes. They may have the voters send in their absentee ballots for verification, they may have the voters take a photograph inside the voting booth, or they may go on the honor system -- this is the system that many vote-purchasing endeavors have used in the past.

"We have chosen to have the winning bidders responsible for the verification because it would not be feasible to have people send their absentee ballots all the way to Austria and have us send them back to America within an appropriate time frame."

As for the obvious and undoubtedly immediate reaction Voteauction will inspire when state prosecutors and boards of election get wind of its activities, Bernhard sounded a sentiment all too familiar in an age where the difference between onshore and offshore commerce can be measured in mouse clicks.

"Why should we react on a state prosecution level?" Bernhard asked. "Outside of the U.S., we don't care about state law. We only care about any kind of international law that might be affected. On the other hand, there might be a reaction on our side, if it might affect the users who sell their vote. That would be the only reason why we would react. But then we would be protecting our customers, and not our company."

Should Voteauction actually manage to weather the coming tempest of summons and prosecutions -- and also somehow insulate its buyers and sellers from detection and conviction -- Bernhard said he has plans to venture beyond what he calls "the American election industry."

"For us, it's a double strategy," said Bernhard, whose investments include the wily conglomerate of Internet mischief makers etoy. "On the one side, we do run Voteauction for this election. On the other side, we definitely see it as a test pilot for [elections] in Europe."

Roger Pilon of the libertarian Cato Institute noted that Voteauction's illegal activities should indeed be curtailed. But he also understood the frustration of the American voters and vote-buyers who participate in the process:

"When Al Gore promises prescription benefits for seniors, is he not buying votes? When George W. Bush says to college students, I'm going to give you free tuition if you vote for me, it's the same thing, isn't it?"

Still, according to Smith of the FEC, an important distinction remains between vote-influencing and outright vote-buying.

"There is much that is problematic about any system of financing elections, including the way we finance our elections now," Smith said. "But there is a fundamental difference between paying someone to vote in a certain way and trying to convince someone to vote in a certain way. Trying to convince any large group of people involves spending money to communicate, and that's what the Supreme Court said in Buckley v. Valeo.

"But the voter remains under no obligation to vote in any particular way. There's a reason why every state in the union makes it illegal to buy votes. But no state makes it illegal for individuals to contribute money to a candidate."

Raskin of American University reiterated that Voteauction has entered the American marketplace when accusations of corruption and influence peddling have become so rampant that outright vote fraud loses some of its outrageous taint.

"Traditionally, we have thought that votes operate in a separate sphere from dollars," he said. "But the Supreme Court has not helped to build a wall of separation between public elections and the private economy. On the contrary, that wall is riddled with holes and crumbling all the time. So I think this business is appealing to a strong public sense that everybody's getting rich in politics but the voters."

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Selling Votes or Peddling Lies?

2:00 a.m. Oct. 30, 2000 PST

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As RTMark's Ray Thomas said in an e-mail earlier this week, "In everything that RTMark has done in regards to [Voteauction.com](#), from project listing to investment procuring to sale facilitating, we have always assumed that the intention of the site was to highlight the way corporations currently choose candidates and procure votes in essentially the same way that a vote-auctioning website would.

"We have never actually wished to see vote-selling become legal -- we only hoped that through such a shocking example as this, people would become alert to the similarities of current reality to this hypothetical nightmare and, ultimately, that the soft-money system would become illegal just as vote-auctioning is."

Still, regardless of what side eventually prevails in the lawsuit, the [Chicago Board of Election Commissioners](#) is not laughing.

Its suit -- which names both [Bernhard](#) and [Baumgartner](#) -- succeeded in obtaining a preliminary injunction on Oct. 18 which resulted in [Voteauction.com](#)'s original domain-name registrar, [Domain Bank](#), removing [Voteauction.com](#) from its rolls.

But now that [Vote-auction.com](#), 'logged' via a different name bank, has surfaced, Tom Leach of the Chicago Board says they'll be pressing for a contempt of court citation on Monday.

"They're in violation of this court order, and we're going to present that to the court and ask for a contempt citation," Leach said. "This is just part of a suit that's going to play out long after the election's over with."

On Thursday, an official from the office of Illinois State Attorney General Jim Ryan said that the Illinois Board of Elections has requested that the state intervene in the [Vote-auction](#) lawsuit.

Leach noted that this office has apprised the Austrian Ministry of Justice of its lawsuit via the Austrian ambassador in Washington -- although, when contacted, the consul general from the embassy said he was not able to confirm or deny this claim.

Leach also added that he's heard from officials in Connecticut, California, Colorado, Indiana, Michigan and Texas, all of whom are considering taking their own legal actions against the site.

"Here in California, we are engaged in criminal investigations of ([Vote-auction](#))," William Wood, chief counsel for the California Secretary of State said in a [CNN](#) interview on Tuesday. "We will continue those investigations through the election."

Bernhard said that the CNN piece -- as part of the network's half-hour legal show *Burden of Proof* devoted to [Vote-auction.com](#) -- substantially increased [Vote-auction](#)'s traffic and, he claims, also brought in new bids.

"In the aftermath of the CNN feature, we received 35 bidding offers within some hours," he said. "It's really getting hot. The numbers are just crackling. It's amazing. The bids are massive. It's unbelievable."

But Stewart said that barring proof that [Vote-auction](#) actually facilitates vote fraud -- rather than just cleverly drawing media attention to "soft-money" elections -- he's pursuing the case as a straightforward issue of free speech.

"There clearly are exceptions to free speech, but one of the things we cherish most dearly is the ability to speak on issues of politics," Stewart said. "Now insofar as this was a site to actually purchase a vote, authorities are right to want to get to the bottom of this. But insofar as this was just a parody, any



attorney would be hard-pressed to say this wasn't protected by the First Amendment.

"We have no information that any vote was ever bought or sold, nor was there any mechanism created for connecting sellers with buyers."

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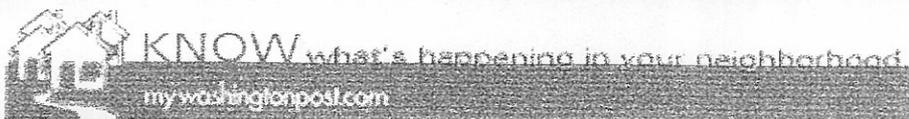
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The Tangled Web of E-Voting

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Buy This Vote!

By Jeremy Derfner
Slate
Wednesday, August 23, 2000; 1:45 PM

Last Tuesday, an eBay user offered his vote to the highest bidder, and five copycat vote-sellers followed suit. Meanwhile, James Baumgartner, a graduate student at Rensselaer Polytechnic Institute, had launched Voteauction.com, an Internet marketplace for the wholesale purchase of votes. The model was simple: Recruit willing voters, auction them off in state blocs, double-check their absentee ballots for accuracy, and split the proceeds evenly. The schemes generated a lot of media attention and some sellers and buyers—the bidding on eBay reached \$10,100, and Voteauction found 200 takers in a single day.

But it was all over inside a week. Baumgartner shut down Voteauction after his academic adviser received a call from the state board of elections, and he sold the content and domain name to an Austrian company. eBay pulled all six auctions after a day.

The problem is that vote-buying and -selling is clearly illegal. Every state prohibits a market in votes, and buying or selling votes in a federal election is a federal crime punishable by a \$10,000 fine and five years in jail. (So far, no Internet vote-sellers have been charged.) Though Baumgartner isn't testing it, he has suggested that he could mount a defense on the grounds that money equals speech, a reference to the landmark Supreme Court decision in Buckley vs. Valeo, which struck down campaign spending limits and is anathema to campaign-finance reformers. In fact, a Buckley defense would fail. In 1982, the court ruled (in Brown vs. Hartlage) that buying, selling, or arranging to buy or sell votes is not constitutionally protected speech.

Baumgartner insists that votes have been for sale in America at least since 1757, when George Washington bought alcohol for every voter in his House of Burgesses district. But the reality of colonial corruption was rarely so simple. Voters were tied to each other through business and family connections, and a man was expected to vote for his patrons.

Flagrant vote-buying came into prominence with the expansion of the franchise and the rise of the political boss in the mid-1800s. Big city machines routinely got out the vote by paying for it with cash on election morning. The practice was so common that cartoonist Thomas Nast



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started his career depicting it. On a deeper level, the machines unapologetically operated on the principle of giving favors for votes. Poor voters especially could count on food, coal, and patronage jobs as long as they voted with the boss.

By the late-1800s, reformers were sure the machines had corrupted democracy. They pushed for secret ballots and Australian ballots (as opposed to pre-marked party ballots) in part so that bosses could never be sure who voted for whom. Most political machines broke down by the 1920s, and yet a vote-buying scandal still crops up every few years. In 1996, for instance, 21 Georgians were indicted for selling their votes in a county election for \$50 a piece.

Some experts saw the abortive Internet vote auctions as old-style machine politics with a high-tech twist. The chairman of the Voting Integrity Project, a conservative front group, called Voteauction an "obscurity" and warned of a "bloodless coup." But few would disagree that the problem with money in politics today is the hundreds of millions of dollars at the top, not a few dollars at the bottom. Which is why the short-lived vote sale should be seen less as a serious act of sabotage and more as guerrilla theater.

One eBay seller confirmed that the auction of his vote was a "political prank." His original posting included the following description: "Why should the American citizen be left out? Congressmen and senators regularly sell their vote to the highest bidder. Democracy for sale!"

Baumgartner's intentions are harder to figure because he never recanted or even cracked a smile, but his sense of irony is undeniable. According to Baumgartner, the biggest spenders invariably win elections today, but they do it messily, with big advertising budgets and paid consultants. Voteauction, he claimed, would bring market efficiency to the electoral process by "cutting out the middle man." Voteauction's slogan? "Bringing Democracy and Capitalism Closer Together."

Ralph Nader's now-famous MasterCard parody makes the same point, as did the protesters outside the conventions, when they offered delegates money for their credentials. Many campaign-finance reformers, including Sheila Krumholz of the Center for Responsive Politics and American University law professor Jamin Raskin, have said they appreciate the vote-selling sentiment, though they would deplore the practice.

John Bonifaz, the executive director of the National Voting Rights Institute, said the vote auctions are indeed bribery, but so is "a lot of what goes on in the halls of Congress and in the White House." What Baumgartner and the eBay seller did is "only one or two steps removed from the existing campaign-finance system," Bonifaz said.

Jeremy Derfner is a Slate editorial assistant.

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legal challenges.

"I worry for the author of the site," she said.

Baumgartner, for his part, remains optimistic.

"I hope to get investors and advertisements soon," he said.

Philips thinks he should look for something else.

"This is real vote fraud taking place on the Internet. I don't care how you couch it. I hope this guy has some good pro bono lawyers backing him up."

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Selling Votes or Peddling Lies?

by [Mark K. Anderson](#)

2:00 a.m. Oct. 30, 2000 PST

As election authorities in Chicago prepare for Monday's court hearing in a [lawsuit](#) against the Austrian scofflaw website [Vote-auction.com](#), a crucial question of veracity has emerged.

Is Vote-auction -- which changed its name from Voteauction.com this week after the original domain name had been shut down by court order -- actually facilitating the sale of tens of thousands of American presidential votes? Or is it all satire, with no such activity ever having taken place?

See also:

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Whether that question will be answered in court has yet to be seen. What's clear is that even the defendants in the case disagree.

Current [site](#) owner Hans Bernhard says, absolutely, such commerce is under way. The creator and former adviser, James Baumgartner [maintains](#) that his brainchild is only a work of satire and does not engage in illegal vote-trading activities.

"The question of if it's a hoax, I can answer with a clear no," Bernhard said in a phone interview Thursday. "It's very obvious, because we're not running projects like that to make hoaxes. We're running businesses."

Dan Stewart, a lawyer in Albany, New York representing Baumgartner, says it's not so.

"The whole point of this was not to have people sell their votes," said Stewart, who said Bernhard sold Voteauction.com in mid-August for 1 euro (less than \$1). "The point was to have people draw their attention to the issue of money and politics... James Baumgartner would not have consented to selling the site if he did not think Mr. Bernhard held the same position."

Clearly, Baumgartner has reason to deny he's involved in selling votes. As a defendant in the suit, he could be slapped with damages.

But at least one interested observer believes Bernhard is telling the truth.

"I've always been skeptical of the satire argument," said Deborah Phillips, chair of the [Voting Integrity Project](#), which has followed the Voteauction story since its [early days](#) in August, when it was run as an MFA thesis project in New York state.

"Satire doesn't usually involve the exchange of money, nor does it usually cross international boundaries or involve international security threats," she said.

"If it's true it's just been a hoax, then the only way they can prove that is to open their site to FBI



technologists," Phillips said. "Otherwise, we have no way of verifying."

But Stewart said, "That's exactly what we did. The FBI conducted an investigation.... I'm not in a position right now to comment on the outcome of the investigation, but we have provided them everything they requested."

Pressed for verification of the quarter-million-dollar bid tallies now being posted at the site -- which Baumgartner deflated last week by alleging that Voteauction never actually received any offers to buy votes, even when it was posting bid totals of over \$100,000 -- Bernhard laughs.

"We have absolutely no possibility to disclose any information," he said. "This would be like handing it over to the feds. And the bidders especially are very, very concerned about the security. That's the reason they don't just come in via e-mail, but also via fax and telephone. They exactly know that this is not public information."

Bernhard's credibility as a straight-shooting businessman is certainly undercut by Baumgartner's revelation that his sale of Voteauction.com in August was brokered by the corporate satire collective RTMark.

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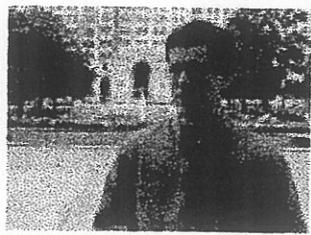
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Website to Make It Possible to Sell Your Vote Online

DIAL UP ROAD RUNNER

AUGUST 22ND, 2000

Choosing a president is an American tradition, but this November, you may be able to sell your vote by clicking on Voteauction.com.

"We're allowing people to register with Voteauction.com and they're placed into voting blocks by state and then each block is sold to the highest bidder," said Voteauction.com founder James Baumgartner. "They'll be voting by absentee ballot. They fill out everything except for president, then the person or organization that wins the auction will say I want such and such group to vote for this person."

The voters will then fill in the bidder's choice for president and send the ballot to Voteauctoin.com for verification.

Participating voters get a portion of the proceeds from the sale of their vote. Baumgartner wouldn't say how much a vote goes for these days.

He says he's heard from interested parties on both sides of the auction, but he wouldn't divulge their names either.

Go out and tell someone about this website and almost always the first response will be "that can't be legal!" Here in New York, Voteauction.com and participating voters could end up in some trouble.

"There are statutes on the books that prohibit you from even offering to sell your vote," said Tom Wilkey from the New York State Board of Elections. There are other statutes where it is even a violation to pay for that consideration."

Just last week, auction site eBay put the kabosh on six people who tried to sell their votes. Selling votes violates state and federal law.

Still, Voteauction.com insists it's following a precedent set by the highest court in the land.

"In 1976 there was a Supreme Court decision, Buckley vs. Valeo, that equated campaign contributions with free speech," said Baumgarten. "The Internet is the largest world forum for free speech right now. So we're combining those two and

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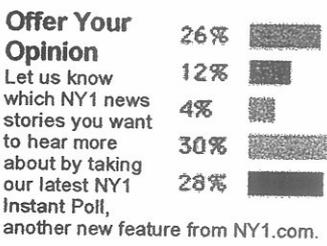
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allowing the campaign contributions to go directly to the voters."

"It's a verified endorsement," he continued. "Voteauction.com, like a labor union or political action group, will endorse this candidate for each state that the winning bidders want the people to vote on, and I'm just verifying they're voting for the endorsed candidate."

"Spending money to get ideas out and spending money to support candidates have constitutional protection under the First Amendment, but bribing politicians to act or buying and selling votes have never been held to have First Amendment protection and it's inconceivable that it would be or ought to be," says NYU Law professor Richard Pildes.

Voteauction.com can't be found on the web now. Baumgartner says it will officially launch in about two weeks, when a lawyer finishes hammering out the final details.

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Votes up for auction draw official inquiries

By Janet Kornblum, USA TODAY

Pranks or not, legal officials and election watchdogs are taking seriously the recent attempts to buy and sell political votes on the Internet. Authorities, including the Department of Justice, are looking into several cases of Net vote commerce: In the past week a handful of people have put their votes up for sale on general auction sites, and a New York student launched a site designed to match vote buyers and sellers.

For more information:

▶ voting-integrity.org



For past E-Briefing columns, click here.

Both eBay and Yahoo! have removed the auctions and are cooperating with the Justice Department, says an agency spokeswoman.

Officials in New York and Maryland also are investigating.

It's unclear if anyone will be prosecuted, but Deborah Phillips, chairwoman of the Voting Integrity Project, a watchdog group based in Arlington, Va., worries that the Net is creating a "fundamentally dangerous" venue for fraud.

Phillips is especially concerned because James Baumgartner, 26, a student at Rensselaer Polytechnic Institute in Troy, N.Y., is selling his site, VoteAuction.com, to an Austrian businessman. Baumgartner, who says he launched the site to make money, shut it Friday after New York City's Board of Elections raised concerns. He's selling it for an undisclosed price to Hans Bernhard, a Vienna businessman who says he intends to put it back up once he figures out how to run it legally (possibly moving it offshore) and how to profit from voters wanting to make a buck.

"We'll evaluate it and have it running during the presidential election and see if this is a fruitful business," Bernhard says.

eworld

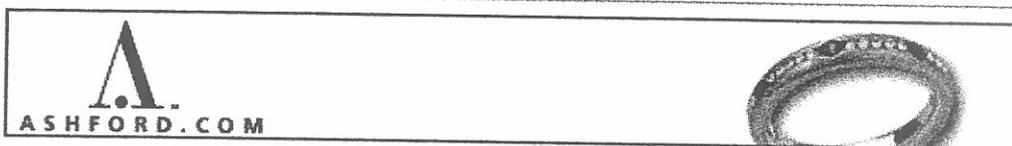
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Whether the site is successful or intended to be a parody — and even though votes can't be legally sold — the cases raise troublesome issues to Phillips. "I love the Internet. But the more I've looked at this issue, the more concerned I've become, because there's a different mind-set that goes hand-in-hand with Internet entrepreneurs."

Brian Ward, 28, an Ellicott City, Md., database developer who says he was the first to offer his vote on eBay last week, has told Maryland officials that he meant it as satire. "Even if you were serious, you couldn't do this. This warrants some attention, but I think the Internet community is pretty vigilant."



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Straight Talk from Voteauction.com

by Chris Connor
August 18, 2000, 3 p.m. PT

If the pandering and vaudeville antics of the Republican and Democratic conventions inspired you with nausea instead of idealism, you're not alone.

The politicians spend millions of tax dollars and corporate and special interest contributions to purchase your vote; sadly that green goes to consultants and ad geeks. You, the taxpayer who finances the monkey show, now has a chance to partake of the corrupt that is politics.

Voteauction.com (click here for a mirror site) puts the power in your hands—and the cash in your wallet—allowing you to sell your vote directly to the entity that is ready to shell out.

As the site says: "The election industry is spending hundreds of millions of dollars in an attempt to influence the presidential election. This system is an inefficient waste of money for the candidates and their supporters. Voteauction.com is committed to improving this system by bringing the campaign contributors' money directly to the voters."

They also post a history of vote-purchasing starting in the days of old George Washington.

To sell their votes, users must first register at Voteauction.com, giving their name and address. Whoever bids the most for Voteauction.com's users, which are broken down by electoral district, will be able to choose the candidate the group will vote for en masse via absentee ballot. The winnings will be split equally among each state's Voteauction.com voters.

"The free market will determine the value of the votes in each state," Voteauction.com explains. "Votes in heavily populated states may be more valuable than votes in less populous states, however, if there is a large number of voteauction voters in a small state, the voteauction voters could help swing that state and thus the state's electoral votes."

The starting bid for voteauction.com's votes is \$100, with a minimum bid increase of \$50. Individuals, corporations, and organizations must first register in order to bid.

In related news, those Honest Abes over at eBay have done it again, halting auctions by people trying to sell their votes in the upcoming U.S. presidential election. Apparently the Department of Justice and the Federal Elections Commission are investigating. Yahoo was also investigating a vote up for auction.

Voteauction.com did not respond to emails by press time, so it's unclear whether it is also facing flak from the feds for its Web site. In this afternoon it was experiencing very heavy traffic, with more than 200 people registering to sell their vote in one day.

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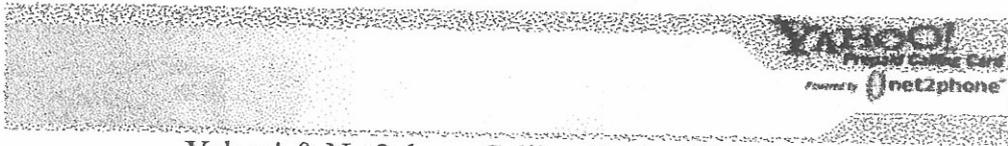
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Wednesday October 4 7:43 PM ET

Chicago Tries To Shut Vote Web Site

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by [DON BABWIN](#), Associated Press Writer

CHICAGO (AP) - Mindful of the city's history as a place where elections have been bought, Chicago officials are trying to shut down a Web site that offers votes to the highest bidder.

The Board of Elections sent letters on Tuesday to federal and state prosecutors, saying that the site [www.voteauction.com](#) should be shut down.

"In Chicago we react strongly and quickly to this type of activity - whether it's tongue-in-cheek or not - because we need to guard our reputation here that this is a place where voting activity is legal and above board and beyond reproach," board chairman Langdon Neal said.

Voteauction.com provides "a forum for campaign contributors and voters to come together in a free market exchange," according to the site. Voteauction.com says it will collect absentee ballots from voters, verify them, and then sell them to the highest bidder who can "choose who the group will vote for en masse." Sellers then receive money depending on how much is bid.

So far, the site boasts that 8,313 voters nationwide have signed up - 380 in Illinois. The price tag thus far in Illinois, according to the Web site, is \$15.79 a vote or \$6,000 for the state.

California, the national prize because of its 54 electoral college votes, has a high bid of \$22,000 offered to make the choice for 1,230 voters. The Web site notes that it is not valid in New York after that state questioned its legality.

Neal said there is no indication any money or ballots have changed hands. Nor, he said, is there any way to verify how many voters have signed up or even contacted the Web site. But, he said, "we don't think it can work."

The U.S. Attorney's office has forwarded the board's letter to the Department of Justice in Washington, and the state's attorney's office would only say it received the letter.

A New York graduate student, James Baumgartner, launched the site this summer and said it wasn't really meant to work, at the time.

"It was more to make a point that the campaign financing system operates as a business," he said.

Neal said while others may think the site is funny, "To us it is not, particularly because of the history of Chicago."

Stopping it, though, may be tough. The site has been sold to a Vienna businessman, Hans Bernhard who, Baumgartner said, is "in Austria and the server is in Bulgaria, so he thinks he's outside the jurisdiction" of any American board of elections.

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Buy This Vote!

The Web puts democracy on sale.

By Jeremy Derfner

Posted Wednesday, Aug. 23, 2000, at 12:30 p.m. PT



Last Tuesday, an eBay user offered his vote to the highest bidder, and five copycat vote-sellers followed suit. Meanwhile, James Baumgartner, a graduate student at Rensselaer Polytechnic Institute, had launched Voteauction.com, an Internet marketplace for the wholesale purchase of votes. The model was simple: Recruit willing voters, auction them off in state blocs, double-check their absentee ballots for accuracy, and split the proceeds evenly. The schemes generated a lot of media attention and some sellers and buyers—the bidding on eBay reached \$10,100, and Voteauction found 200 takers in a single day.

But it was all over inside a week. Baumgartner shut down Voteauction after his academic adviser received a call from the state board of elections, and he sold the content and domain name to an Austrian company. eBay pulled all six auctions after a day.

The problem is that vote-buying and -selling is clearly illegal. Every state prohibits a market in votes, and buying or selling votes in a federal election is a federal crime punishable by a \$10,000 fine and five years in jail. (So far, no Internet vote-sellers have been charged.) Though Baumgartner isn't testing it, he has suggested that he could mount a defense on the grounds that money equals speech, a reference to the landmark Supreme Court decision in Buckley vs. Valeo, which struck down campaign spending limits and is anathema to campaign-finance reformers. In fact, a Buckley defense would fail. In 1982, the court ruled (in Brown vs. Hartlage) that buying, selling, or arranging to buy or sell votes is not constitutionally protected speech.

Baumgartner insists that votes have been for sale in America at least since 1757, when George Washington bought alcohol for every voter in his House of Burgesses district. But the reality of colonial corruption was rarely so simple. Voters were tied to each other through business and family connections, and a man was expected to vote for his patrons.

Flagrant vote-buying came into prominence with the expansion of the franchise and the rise of the political boss in the mid-1800s. Big-city machines routinely got out the vote by paying for it with cash on election morning. The practice was so common that cartoonist Thomas Nast started his career depicting it ([click here](#) for an example). On a deeper level, the machines unapologetically operated on the principle of giving favors for votes. Poor voters especially could count on food, coal, and patronage jobs as long as they voted with the boss.

By the late 1800s, reformers were sure the machines had corrupted democracy. They pushed for secret ballots and Australian ballots (as opposed to pre-marked party ballots) in part so that bosses could never be sure who voted for whom. Most political machines broke down by the 1920s, and yet a vote-buying scandal still crops up every few years. In 1996, for instance, 21 Georgians were indicted for selling their votes in a county election for \$50 apiece.

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Some experts saw the abortive Internet vote auctions as old-style machine politics with a high-tech twist. The chairman of the [Voting Integrity Project](#), a conservative front group, called Voteauction an "obscurity" and warned of a "bloodless coup." But few would disagree that the problem with money in politics today is the hundreds of millions of dollars at the top, not a few dollars at the bottom. Which is why the short-lived vote sale should be seen less as a serious act of sabotage and more as guerrilla theater.

One eBay seller confirmed that the auction of his vote was a "political prank." His original posting included the following description: "Why should the American citizen be left out? Congressmen and senators regularly sell their vote to the highest bidder. Democracy for sale!"

Baumgartner's intentions are harder to figure because he never recanted or even cracked a smile, but his sense of irony is undeniable. According to Baumgartner, the biggest spenders invariably win elections today, but they do it messily, with big advertising budgets and paid consultants. Voteauction, he claimed, would bring market efficiency to the electoral process by "cutting out the middle man." Voteauction's slogan? "Bringing Democracy and Capitalism Closer Together."

Ralph Nader's now-famous MasterCard parody makes the same point (click [here](#) to see the ad), as did the protesters outside the conventions when they offered delegates money for their credentials. Many campaign-finance reformers, including Sheila Krumholz of the [Center for Responsive Politics](#) and American University law professor Jamin Raskin, have said they appreciate the vote-selling sentiment, though they would deplore the practice.

John Bonifaz, the executive director of the [National Voting Rights Institute](#), said the vote auctions are indeed bribery, but so is "a lot of what goes on in the halls of Congress and in the White House." What Baumgartner and the eBay seller did is "only one or two steps removed from the existing campaign-finance system," Bonifaz said.

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Reader Comment from The Fray:

Lucky Janet Reno doesn't run eBay. It would take four years to decide whether or not selling votes is illegal.

—Dennis

(To reply, click here.)

The article raised in my mind the following question: Would it not be appropriate to establish a vote-buy-back program similar to the gun-buy-backs promoted by the gun control crowd? Suppose one were to offer, oh, \$25 to any registered voter (in a selected city or neighborhood, of course) who *did not* vote at all in a particular election? Obviously, anyone offering to sell their right to vote for such a modest sum has no particular business voting and the sponsors of the buy-back are not asking anyone to vote for or against a particular candidate so what would be the problem? In the one case, people are bribed not to exercise their right to arms, in the other they are bribed not to exercise their right to vote.

—Jack Dupont

(To reply, click here.)

I wonder if it would pass legal muster if the voter offered to sell merely his attention to some free speech by the politician, rather than his vote itself. This is the theory by which campaign contributions are not held to be bribery of the politician involved, in that there is supposedly no *quid pro quo* that the politician will change his vote to favor the contributor, so that the contributor is given nothing but access and a hearing in exchange for the money. Why can't a voter make the same claim, ie that "Of course I didn't vote for Smith because his campaign credited my account for that \$50. That money simply got me to scroll through their informative web site, where I found arguments so compelling I

could not but vote for Smith. That auction I held to get to the figure of \$50? Well, my time is limited, I can't waste it scrolling through everyone's web sites. My time is certainly worth more than the \$10 the Vegetarian Party offered me."

-Glen Tomkins

(To reply, click here.)

[A number of readers made similar points--"Politicians try to buy my vote, so why can't I sell it" and "While I will not sell my vote to anyone, if someone wants to lobby me, I'm having a dinner party at \$10,000 per plate." One poster tried to answer them:]

What politicians provide in return for campaign donations is access to their time. A politician's schedule is discretionary, not an inalienable right. There is no sale of access, but rather a predisposition to hear out those who help fund election success. Be careful condemning this predisposition, for it applies to small donors as well as large, and to citizen groups as well as fat cats. If a politician assures he/she will vote a certain way in return for a specified amount money, then that is graft. The legal point with graft is not the transfer of an inalienable right but rather a dereliction of duty, a willful failure to represent the citizenry. The worst disservice to democracy created by our current campaign finance system is the time it requires from politicians and staff that is diverted from attending to public business. A representative democracy will fail if it is not both deliberative and participatory. As things stand, there is little time available for negotiated synergy, and little incentive to pursue issues that don't return a high dollar value to campaign coffers.

-Aghast

(To reply, click here.)

(8/24)

Jeremy Derfner is a Slate editorial assistant.

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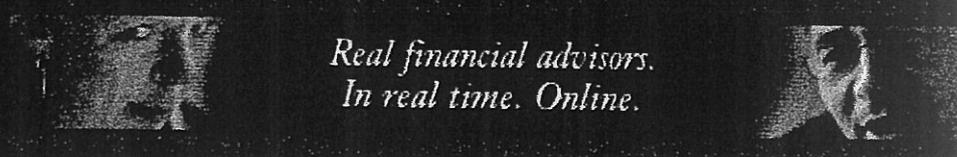
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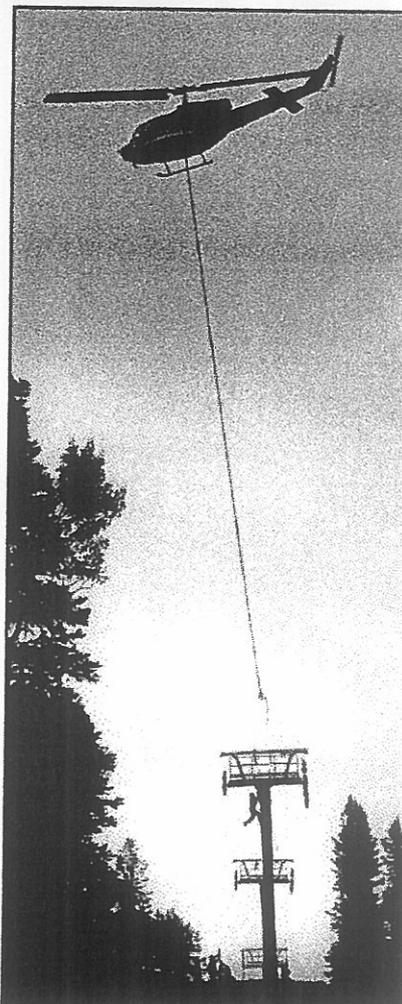
BY DAN HARRIE
SALT LAKE TRIBUNE

Challenging the notion that the right to vote is priceless, a new Internet site has sprung up to exchange money for votes.

Voteauction.com allows voters to register their votes for sale to the highest bidder -- presumably politicians or special interests looking for the best bang for their campaign-contribution buck. Votes are grouped by state to be sold in blocs for the presidential election.

The Web site carries the slogan: "Bringing capitalism and democracy closer together."

Created by 26-year-old graduate student James Baumgartner of New York, the site was shut down temporarily last week amid a flurry of news stories about Department of Justice scrutiny of the scheme, along with similar attempted auctions on eBay. But voteauction.com already has reopened under Austrian ownership. **DETAILS▶**



Workers for C tech guide the top of the new Dreamscape ski lift into place Tuesday at The Canyons in Park City. Helicopters flew in the towers, then held them in position while ground crews anchored them. (Steve Griffin/The Salt Lake Tribune)

Joint Private, Public Effort Gives Utah 1st Toll Road

BY BRANDON LOOMIS
THE SALT LAKE TRIBUNE

WASHINGTON TERRACE -- Thirty years of lobbying state road builders couldn't get Ogden's south side a new freeway access until a private landowner put up \$5 million to get the job done.

The result: Utah's first toll road, a \$10 million



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Thousands sign up to sell votes
 by **Mark K. Anderson**

3:00 a.m. Sep. 22, 2000 PDT

According to detective novels and TV shows, criminals are those who perform illegal actions clandestinely. But some real-world scofflaws get more mileage out of the adage, "If you've got it, flaunt it."

Recently, the Austrian owner of Voteauction.com flaunted it.

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 Everybody's got issues in [Politics](#)

Boasting of the more than 6,000 Americans who have signed up to auction off their presidential votes to the highest bidder -- illegal activity under the laws of every state in the union -- Voteauction is now detailing its plans to begin an outreach campaign.

Using its "Voter Empowerment Kits" and "Action Teams," the company claims in a press release that it can reach more potential customers and facilitate voter fraud without the intervention of an online middleman.

Such activity leaves Deborah Phillips of the [Voting Integrity Project](#) flummoxed.

Phillips has been observing the [ups](#) and [downs](#) of the blatantly felonious site since August, when *Wired News* first [reported](#) on this curious conglomeration of satire, lawlessness and voracious capitalism.

"Why isn't the Justice Department getting involved?" she said. "Why hasn't there been any comment from the White House? Why hasn't Congress held any hearings?"

Federal Election Commission member Brad Smith noted that federal and state officials may be hesitating for three reasons.

First, the site probably hasn't garnered enough media attention yet to mobilize all the forces who should be opposing Voteauction.

Second, since the site traffics in a novel form of overseas-instigated vote fraud, it's also undoubtedly unclear just who those forces are -- whether they be the Department of Justice, Department of State, municipal or statewide boards of election, state attorneys general or other offices tasked specifically to monitor the Internet. (Voteauction, he guessed, would probably not be handled by the FEC.)

Finally, he said, it's still unclear just how widespread a threat a site like Voteauction represents.

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"I suspect that if this began to appear to be a problem on a large enough scale, though, you'd see action, and it'd come quickly," Smith said.

According to Hans Bernhard, the Austrian businessman who bought Voteauction from James Baumgartner, a New York graduate student who developed the site, American reaction against his investment has already begun.

In addition to the hate emails he receives for running an offshore enterprise that facilitates American felonies, Bernhard reports that the site has also been the recipient of numerous hacks and electronic attacks.

"We do understand that there is a certain interest on the part of certain services of the U.S. government who most probably are interested in this data," Bernhard said of Voteauction's list of vote sellers and buyers. "Our job is to protect this data. We don't want this data to be public."

According to James Baumgartner, the MFA student who first conceived of the site as a commentary on wholesale corruption in American politics, a few facts can be divulged about the \$75,000 in bids so far and the 6,000 participants.

Vote-sellers on the whole tend to be in their twenties, male and with at least some college education -- including a lot of college students, he said. Vote buyers, on the other hand, tend to be in their forties, affluent and Republican.

Almost all of the bids for votes -- broken down by state -- have come from individuals seeking to increase the number of votes for their favorite candidates. Only three companies, in the "\$200 million sales range," Baumgartner said, have yet placed any bids for Voteauction votes.

The profile of both sides of the Internet auction does jibe with the history of vote-buying in America, said Larry J. Sabato, a University of Virginia political scientist and author of the 1996 book *Dirty Little Secrets: The Persistence of Corruption in American Politics*.

Especially telling is the fact that the payoff-per-vote, as tallied on the site, is settling into the \$10-\$20 range -- the amount of cash an individual vote tends to command in other, non-Internet-based schemes.

"It always seems to be about \$20," Sabato said. "That must be the going rate. And when you think about it, it makes sense. Because 10 bucks is not what it used to be. With 20 bucks you can get a pretty good meal, if you know where to go. And I think that's how some people conceive of it. Their vote may be worth a meal. It's sad, but that may be true."

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Thousands Sign up to Sell votes

3:00 a.m. Sep. 22, 2000 PDT

(page 2)

Sabato and co-author Glenn R. Simpson of *The Wall Street Journal* write in *Secrets*: "Contrary to the belief of some that voter fraud is a thing of the past existing today only in isolated packets, if at all, the evidence ... strongly suggests a persistent pattern of criminal fraud that is well organized and a continuing part of the political culture in some areas

"The fact that fraud is generally not recognized as a serious problem by press, public and law enforcement creates the perfect environment for it to flourish."

The Voteauction experience certainly leaves little room to doubt that. As Baumgartner observed, voteauction "Action Teams" now plan to spread their message -- along with the "Empowerment Kits" containing vote-selling bumper stickers, flyers and handbills -- at such prominent venues as the Oct. 3 presidential debate at the University of Massachusetts in Boston.

The Voting Integrity Project's Phillips sees such over-the-top expressions as commentary in itself. Noting that it appeals to a younger, more cynical generation, she does wonder about the mixed message the "Action Teams" spread.

"They see chaos as a legitimate political expression," she said. "If that is indeed what this game is all about, then it's a different animal. Then they may be doing America a tremendous favor -- if they succeed in awakening the country to making the changes in election law that need to be made. But it could also go in just the opposite direction."

For one, she said, Voteauction's logistics leave her highly suspicious.

"You've got a Bulgarian ISP," she said. "Now Bulgaria is not necessarily the friendliest nation to the U.S. Then you've got an Austrian businessman, and there are extreme right-wing elements there. To me, it's an unusual congruence."

Sabato, who himself exposed many modern-day examples of vote fraud in *Secrets*, found the case of Voteauction alternately dispiriting and comical -- if only in a dark and bitter way.

"That's really incredible," he said, stifling a laugh. "I'm glad it's only 6,000 people. Of course, it's not very well known. Once it becomes better known, I wouldn't be surprised to see that number grow substantially."

"It is an accurate commentary to some degree on the current shape of American politics. Everybody's making money except for the voters. So this way the voters make money too," he said. "But (vote-sellers) have forgotten the literally millions of people in our history who have given their lives to preserve the vote. They've forgotten the civil rights marchers who gave their lives to get the vote, all the women's suffrage workers who gave large portions of their lives to get the vote for women. It's sad in my book."

Although Phillips said some editors and journalists around the country have neglected to cover the Voteauction story so far because they fear it's a prank or a particularly dastardly piece of "guerrilla marketing," it is indeed for real.

"It's another aspect of the Internet that was completely unpredicted and still is," Sabato said. "I just don't think hardly anybody out there knows this is there or would believe that it's there. And that's what the Internet can do."

"There are light forces and dark forces produced by the Internet -- this great new technology that has such potential for good and for ill. Well, here's an example of ill."

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Voteauction Booth is Closed
by [Mark K. Anderson](#)

2:00 a.m. Oct. 21, 2000 PDT

After two months of going up and down and back up again, Voteauction.com is taking no more bidders. And this time, actually, that may be for good.

Following a preliminary injunction issued on Wednesday by the Circuit Court of Cook County, Illinois, the Austrian-based site -- purporting to sell presidential votes to the highest bidder -- has closed its doors.

See also:

- [Chicago to Sue Vote Auctioneers](#)
- [Thousands Sign Up to Sell Votes](#)
- [Austrian Takes Bids on U.S. Votes](#)
- [Close Vote? You Can Bid On It](#)

The Chicago Board of Election Commissioners sued the creator and current owner on Monday, alleging the site trafficked in the buying and selling of votes.

The graduate student who began the vote-fraud saga in August also revealed that it's been cooking its books all along. James Baumgartner sold the site to an Austrian entrepreneur later that month, but has continued to provide content for the site and consult with the owner.

"The numbers were highly exaggerated ... to increase the hyperbole of the site," said Baumgartner, an MFA student in upstate New York.

The number of voters who have requested to sell their votes -- last reported on the site at over 15,000 -- was actually "somewhere between one and 3,000," Baumgartner said.

And the bids, he said, were nil. The site had boasted almost \$200,000 in offers. In fact, Baumgartner said, there were never any bids.

Most important, he said, neither he nor Austrian owner Hans Bernhard -- who declined comment when contacted Friday -- ever intended to go through with actually trafficking the votes bought and sold.

"It was never my intent to sell votes," Baumgartner said. "And it was clear when I was setting it up with Hans that he and I had the same principles in mind. We were both doing this as a political satire or media intervention kind of thing."

That may be so, but it apparently doesn't have much sway with the folks in Chicago.

"We've said from the beginning that they may think it's a parody," said Tom Leach of the Chicago Board of Election Commissioners. "But we don't think it's funny... If I'm going on an airplane and yelling fire even if there's no fire, it's still a federal crime."

Now that the Chicago board has obtained the temporary order to shut down Voteauction, Leach



said his team still plans to continue pursuing its lawsuit. They seek both a permanent injunction against Baumgartner, Bernhard et. al. from continuing any such vote-fraud -- whether practiced on Voteauction or elsewhere, whether a hoax or not -- and to recoup the attorneys' fees spent in investigating and litigating Voteauction.

Baumgartner, one of the defendants named in the lawsuit, said he had two main prototypes in mind when he created Voteauction.

First, he pointed to the recent hoax website Ronsangels.com, which inspired hundreds of news stories over a virtual venue that allegedly offered to sell the eggs and sperm of fashion models to facilitate "Darwin's natural selection at its very best."

"The news organizations that interviewed (the Ronsangels operator) didn't want to reveal later that it wasn't for real," Baumgartner said. "But what he did was help generate a great deal of discussion over the issue."

Second, Baumgartner took a few pointers from perhaps the most talked-about and imitated piece of satire in Western history -- Jonathan Swift's "A Modest Proposal."

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"He proposes killing the poor and eating them to help solve hunger problems," Baumgartner said. "His method was to create an extreme example of some people's ideas. And that was my intent -- to create an extreme example of the 'election industry' in order to accent what the real issue is. And I don't think I was the first person to come up with the term 'election industry' either."

However much high-minded talk of satire there may be, Leach countered, the bottom line remains: "We still don't consider it a gag," he said. "We consider it a crime."

Larry J. Sabato, a University of Virginia political scientist who has studied the history of vote fraud in America, noted his approval of the injunction and Baumgartner's assertion that the site is a parody.

"I take some comfort from the way it's worked out," he said. "Not only that the site has been shut down and it turns out not to be serious; but also that relatively few people did sign up for it. I have a hard time thinking that this is a major crisis for democracy."

"Of course, it's a shame that anybody would (sell their vote)," Sabato said. "But you can probably get 3,000 (people) to sell any particular body part."

On Aug. 18, when Baumgartner ran Voteauction out of his home studio in Troy, New York, the New York City Board of Elections indicated its intent to take him to court if the site continued to operate.

Baumgartner then shut it down, but transferred the site to Bernhard of the Austrian company Ubermorgen.

What he did not reveal at the time was that the two parties were put in touch with one another by the culture-jamming organization RTMark.

As of press time, no representative from RTMark had responded to requests for an interview.

Baumgartner said he intends to continue the discussion his project has generated on a meta-site about the whole Voteauction saga, election4sale.com.

On election4sale -- a domain he originally registered with Voteauction -- he'll also feature the discussion board that has found both supporters and detractors so heatedly squaring off against one another.

"Whatever you may think of the intellectual underpinnings of a law that criminalizes the sale or purchase of votes, or the offer to do so, the sale or purchase of a vote is still a Class 4 felony in Illinois," wrote A.L. Zimmer of the Illinois State Board of Elections on Oct. 5. "Illinois residents who sell their votes or offer to do so, expose themselves to criminal penalties, like it or not."

On the other hand, Zimmer's foes have been equally adamant. "If you will review your history, sir, you will note that before there was 'VoteAuction,' there was 'Vote Early, Vote Often,'" wrote one anonymous supporter on the Voteauction forum.

"If it weren't for the 'Grateful Dead' of Cook County in 1960, you guys couldn't have slipped the fair-haired son of ol' Joe the Bootlegger into the Oval Office. As they say: 'There's None So Righteous As the Reformed Sinner.'"

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Chicago to Sue vote Auctioneers

by [Mark K. Anderson](#)

2:50 p.m. Oct. 12, 2000 PDT

Finding 1,131 of Illinois' presidential votes up on the virtual auction block, election officials in Chicago are expected to file a lawsuit Friday against the website Voteauction.com.

The court action attempts to obtain a cease and desist order against any buying or selling of votes -- Voteauction's unique and illegal niche of e-commerce -- within Chicago's jurisdiction.

See also:

[Thousands Sign Up to Sell Votes](#)
[Austrian Takes Bids on U.S. Votes](#)
[Voteauction Bites the Dust](#)
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"We continue to have many investigators out there trying to locate the gentleman responsible in Vienna, Austria and then determine how we might bring him under jurisdiction of the Illinois courts," said Langdon Neal, chairman of Chicago's [Board of Election Commissioners](#).

Such actions are, of course, easier said than done. Voteauction is run by an Austrian company and its website's server is, according to Voteauction's chief investor Hans Bernhard, somewhere in Bulgaria.

Neal countered that any court order arising from the lawsuit could be enforceable since he had information that part of Voteauction is being run via servers in Maryland -- a charge that Bernhard denies.

"I don't even know about it yet," Bernhard said of the lawsuit. "I have some indirect information that Chicago is going out to the press. But we did not receive anything legal. No official documents, no contact."

He added, however, that Voteauction recently did receive an official cease and desist letter from California's secretary of state, where 1,836 presidential votes are reportedly currently up for auction.

"To be honest we don't see a problem at the moment," Bernhard said. "The only point where there is a possibility to do something is towards the voters who sell their votes. But we don't give out this information."

Begun in August by a graduate student in upstate New York developing the site for his master of fine arts thesis, Voteauction had previously received one legal threat. At the time, the site was being run stateside and was thus readily subject to enforcement actions by American prosecutors and electoral boards.



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The advertisement features the Palm logo in the top left corner. Below it is a small image of a Palm handheld device. To the right of the device is a vertical line of small squares, likely representing a list or menu. Below the device is a larger image of a Palm handheld device, showing its screen and keypad.

When New York City's board of elections filed its cease and desist letter with Voteauction on Aug. 18, the site was shut down before the end of the day.

However, when Bernhard bought the site and moved it offshore, he simply removed New York state from the bidding but continued to trade in presidential votes for the other 49 states.

And now, according to the tallies on Voteauction, over 15,000 Americans have offered up their vote for sale, with \$170,600 in winning bids registered so far.

"You wonder what soldiers who died to preserve our right to vote in a democracy would think about citizens willing to sell their vote for \$10 to \$20," said Larry J. Sabato, a University of Virginia professor who studies corruption in American politics.

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Chicago to Sue Vote Auctioneers

2:50 p.m. Oct. 12, 2000 PDT

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He added, however, that American court orders may not succeed in stopping this particularly slippery new breed of vote fraud.

"The real problem is that a substantial number of citizens are willing to sell a vote for money," Sabato said. "I think it's probable that (the Voteauction lawsuit) would be a losing battle. I'm not going to write off all the possibilities without knowing them. But it would be very difficult to do what the judge may want to do."

On the other hand, according to Harvard University law professor Terry Fisher, several legal avenues may still remain open to shut down, or at least strongly curtail voteauction's mega dealings.

For starters, he said, courts have previously obtained personal jurisdiction over some "aggressive" website operators overseas engaging in or encouraging allegedly criminal conduct within American borders. This has resulted in the seizure and transfer of overseas-owned domain names to American plaintiffs.

"The upshot is Voteauction is a quite novel enterprise," Fisher said. "I've never actually heard of anything like this before. But it would seem to be of the sort that would be likely to give rise to constitutionally legitimate personal jurisdiction."

He added that the newly adopted anti-cybersquatting act contains a little-known provision that could also come into play, even though what Voteauction.com does technically has nothing to do with the primarily trademark-oriented legislation.

The law stipulates that courts can in extreme circumstances obtain "in rem" jurisdiction over a website, enabling law enforcement to shut it down even if that site is based offshore.

"You couldn't base in rem jurisdiction (for Voteauction.com) on the cybersquatting statute," Fisher said. "But an innovative legal argument might enable an outraged judge to assert in rem jurisdiction over the domain name here if he or she couldn't obtain personal jurisdiction over the individual actors."

Still, Neal of the Chicago Board of Elections added that even if the legal remedies prove fruitless in stopping Voteauction.com, the felonious conduct demands that action be taken.

"There's a bigger picture here than the specifics of enjoining and stopping this website," Neal said. "The bigger issue is we enforce the election laws that prevent vote fraud."

"So there's a message here not just to those that access this website but to anybody who tries to fool around with selling their vote or interfering with absentee voting law: We are watching," he said. "And we will aggressively pursue what we see to be vote fraud."

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Voteauction Bids the Dust
by [Mark K. Anderson](#)

8:20 a.m. Aug. 22, 2000 PDT

Voteauction.com, which attempted to sell presidential votes to the highest bidder, is no more.

Quietly operating since the beginning of August, the site posed a simple question: If entire elections can be bought and sold to the individual or corporation with the most money, why can't individual votes?

See also:

- [Close Vote? You Can Bid On It](#)
- [Parties Dancing With the Net](#)
- [Reform Voting Evokes E-Votes](#)
- Everybody's got issues in [Politics](#)

Last week, Voteauction received a spate of publicity that began with a [Wired News story](#). Two days of intense press and Internet attention followed, which concluded in legal threats that compelled its operator to shut it down.

"I acted immediately when I found out about [Voteauction]," said Doug Kellner, one of two Manhattan representatives on the New York City Board of Elections.

Kellner said selling votes is not only illegal within New York state law, but the state constitution also bars it. The only other crime the constitution defines, he said, is treason.

Before last week, Voteauction had received emails from five voters indicating their interest in selling their votes. When it shut down on Aug. 18, Baumgartner said, an estimated 200 had expressed their initial interest in participating. Although no contracts had been signed -- legal language was still being worked out when the site was shut down -- the interests of potential participants ranged from the pecuniary to the polemic.

"Some were doing it as a joke, some were serious, some were cynical, some were sincere," Baumgartner said. "Somebody else said they were going to buy [voterauction.com](#)."

When visited on Monday afternoon, [Voterauction.com](#) -- with the extra "r" -- appeared to be a mirror of the George W. Bush [campaign website](#). Although given the history of web-based [satire](#) inspired by the Texas governor's presidential bid, one can never be sure.

Kellner stressed the seriousness of the criminal consequences for those who even indicate their interest in buying or selling a vote.

"The message to get out to the public is that posting (intent to sell votes) to a website even in jest is a serious matter. It could subject you to prosecution, or in New York you could forfeit your vote," Kellner said, referring to a New York state law that imposes a one-year forfeiture on vote buyers and sellers.



Baumgartner, who continues to stress that his site holds a mirror up to a larger corrupt electoral system, offered no comment in response to Kellner's charges.

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Kellner indicated that the New York City Board of Elections will meet this week to decide whether to open an investigation into Voteauction participants within the five New York metro-area boroughs.

"There's nothing we can do to him," Kellner said of Baumgartner. "That's in the hands of the Rensselaer County District Attorney."

Kris Thompson, a spokesman for Rensselaer County District Attorney Kenneth R. Bruno declined to elaborate on any plans for to pursue legal action.

"This is very new stuff," he said. "We've never really ventured into something like this before."

Baumgartner, who created Voteaction.com as the subject of a master's thesis, said he intends to do no more with the site and was uncertain what his next step will be in developing the academic project. He speculated that he may simply center his thesis around the outpouring of press, publicity, and public outcry that his site generated.

Nevertheless, the site itself appears to have a life beyond Baumgartner's plans. Solicited by an Austrian investor over the weekend, Baumgartner said he has taken steps to sell Voteauction itself. However, the purchaser's plans for Voteauction.com remain unclear. Attempts to reach the reported buyer proved fruitless.

Baumgartner sees the immediate public and prosecutorial reaction to Voteauction as a confirmation that his idea resonated with the American public. "I got 80,000 hits on Thursday and Friday alone," Baumgartner said. "I think that that along with what was going on with eBay and Yahoo auctions shows that this is something people are really concerned about: If the politicians are selling their votes -- and they clearly are -- then the people should be allowed to as well."

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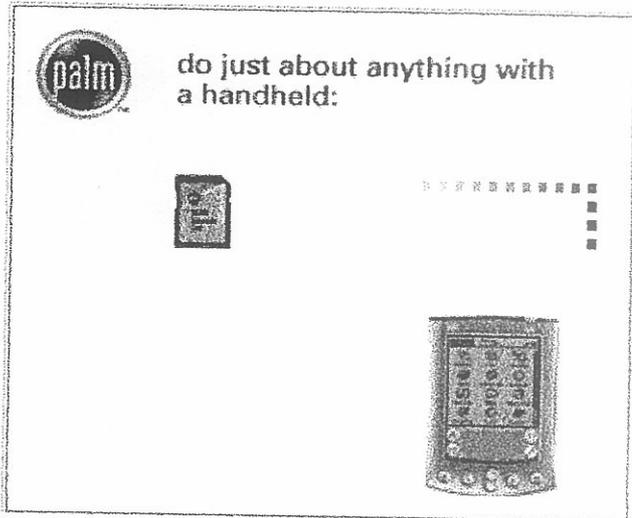
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Will culture-jam for food

The prankster behind the Voteauction.com satire needs your help to pay off his \$3,800 legal debt.

by Katharine Mieszkowski

May 18, 2001 | Last year, James Baumgartner of Albany, N.Y., caused a media firestorm with his satirical Web site, Voteauction.com, which invites citizens to sell their votes to the highest bidder. It was a real new economy business model: Why not do an end run around all those fat-cat middlemen—the political consultants, lobbyists and pollsters -- and let all the cash being spent to buy votes go straight to the people?

In the 2000 election buildup and aftermath, more than 1,000 media outlets reported on the site that, like other attempts to sell votes, gave the media a chance to cover campaign finance reform in a funny light. But less than a year later, Baumgartner, 26, is \$3,800 in the hole in legal bills.

This Saturday night, there will be an "emergency benefit" in San Francisco at the Other Cinema at Artists' Television Access to help pay Baumgartner's legal debts. Baumgartner will be flying in from Boston, where he now lives, to give what's being billed as "a PowerPoint presentation on the benefits of the merger of capital and democracy."

to the audience as if they're shareholders and I present Voteauction as if it's a viable business model," he says. "I like to make an analogy to TV: The product of TV is people. The viewers are sold to the advertisers, and in return they get an entertainment or sports or news product. In the electric industry, the voters are sold to the candidates via the political consultants and advertising."

His pitch: "There's billions of dollars going around, but the voters aren't getting anything out of it except mediocre candidates. Why not bring that money directly to the consumer? Change it from a B-to-B to a B-to-C business model." And there's certainly a huge market. "I was targeting the 50 percent of the population that doesn't vote."

By giving speeches at places like Skidmore College, Baumgartner has recouped about \$900 to cover legal fees incurred when he was personally named as a defendant in a suit alleging election fraud brought in Chicago's Circuit Court of Cook County. Eventually, the Illinois branch of the American Civil Liberties Union took up his case, which is still pending. "I think I have a pretty clear free speech case," he says.

The joke about the lawsuits against Voteauction.com -- there have been 13 in all, many of which have since been dropped -- is that no votes were actually sold. But the original Voteauction.com site was shut down after that first lawsuit brought by Chicago officials, who saw the site as an act of election fraud, not a pointed art project from the merry wags of the "culture-jamming" group @TMark, which counts Baumgartner among its "agents." VoteAuction.com then reopened at a new URL, where it's owned and operated by Hans Bernhard, an Austrian artist and fellow @TMark agent.

@TMark is a scattered, global network of artists who critique capitalism by creating and distributing products that mock its excesses. They were co-conspirators with the etoy pranksters who created a Web site that ultimately outlasted the litigious online toy retailer eToys.com, which took it on in a trademark dispute.

With eToys.com kaput, and the election old news, the @TMark "agents" as they call themselves have moved on to a slew of new projects, including turning those annoying CueCat bar code scanners, which facilitate shopping at home, into a tool for disseminating information about nefarious corporate behavior.

While Baumgartner fundraises his way out of his current legal woes, it looks like the other @TMark agents will keep walking the line between parody and law bending. Like many of the @TMark projects, Voteauction.com is basically a clever joke that ran the risk of being too subtle for humor-impaired keepers of law and order. Says Baumgartner, "They thought that it was an actual auction, but there weren't any votes being sold. It was kind of a high concept satire on the election industry."

Still, compared to most corporate P.R. budgets, \$3,800 is a fairly small price to pay to get hundreds of media outlets to spread the word.

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Katharine Mieszkowski is a senior writer for Salon Technology.

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Web site offering to sell votes shut down

From...
INDUSTRY STANDARD
 AN **IDG.net** SITE

August 23, 2000
 Web posted at: 10:47 a.m. EDT (1447 GMT)

by *Ronna Abramson*

(IDG) -- If you were thinking of selling your vote in the presidential election, think again.

Voteauction.com, a Web site that offers a forum for citizens to sell their votes to the highest bidder, shut down Friday amid legal questions and technical glitches. EBay also has pulled the plug on at least seven people who have posted their votes for sale on its auction site since Wednesday.

The problem: Buying and selling votes violates federal and state statutes.

"You have to make your own decision how you want to vote," says Douglas Kellner, a New York City Board of Elections commissioner who helped persuade Voteauction to close. "People can spend money to influence your vote, but they can't buy it."

James Baumgartner, a graduate student working toward a master's in fine arts at Rensselaer Polytechnical Institute in Troy, N.Y., launched Voteauction earlier this month. He shut it down Friday and announced Monday that he was selling the content and domain name to an e-commerce developer in Austria. He did not disclose sales figures and did not know about the buyer's plans. No charges have been filed against Baumgartner.

Baumgartner's idea was to capitalize on undecided or disillusioned voters who intended to sit out during the November election o a group that comprises more than half the amount of voters from four years ago. Baumgartner also hoped to divert some of the millions of dollars being spent on advertising and consultants to get voters. "I thought it'd be more direct and more democratic to have these voters make money from their vote," Baumgartner says. The site's motto: "Bringing Democracy and Capitalism Closer Together."

Voteauction planned to auction votes in blocks according to state. Bids would start at \$100 per state and go up by \$50. Whoever had the highest bid would get to decide how the entire



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group of votes from the particular state would vote. Voters would divide the final price equally among themselves.

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Despite server crashes last week, about 200 voters signed up at Voteauction on Thursday after an online article featured the site. "Selling my vote I think is a very obvious political statement," said one enrollee from upstate New York, who would only give her online pseudonym, "Jenny Ondioline." "It's saying that if the buying and selling of votes is going on even now between closed doors, through the lobbyists, let's make it a little more obvious."

The vehicle for that political statement is following the course of other troubled dot-coms, albeit for a different reason. Although many Web sites have ceased operations in recent months because of financial problems, Baumgartner decided it would be "prudent" to shut the site down Friday night after his thesis adviser, Albany attorney Paul Rapp, received a call from Commissioner Kellner.

"Under New York law, it is a felony merely to offer to sell your vote or to offer to buy a vote," Kellner says. People who buy or sell votes or gamble on the outcome of an election forfeit their right to vote, he added.

Buying and selling votes also is illegal under federal law, according to a U.S. Justice Department spokeswoman. The Justice Department has been talking to eBay's counsel about the votes for sale on the auction site, which were removed, said company spokesman Kevin Pursglove.

Rapp suggests that Voteauction might not have violated the law because it merely proposed to provide a forum for votes to be bought and sold, without engaging in the actual practice. Baumgartner suggests another defense: a landmark 1976 legal decision called Buckley vs. Valeo. In the "money equals speech" decision, the U.S. Supreme Court found that to limit campaign spending was to violate free speech.

While Rapp finds the argument "interesting," he can imagine judges rolling their eyes in a courtroom. After all, "the end result would be the sanctioning the sale of an election," he says. "No judge is going to endorse that."

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Kellner indicated that the New York City Board of Elections will meet this week to decide whether to open an investigation into Voteauction participants within the five New York metro-area boroughs.

"There's nothing we can do to him," Kellner said of Baumgartner. "That's in the hands of the Rensselaer County District Attorney."

Kris Thompson, a spokesman for Rensselaer County District Attorney Kenneth R. Bruno declined to elaborate on any plans for to pursue legal action.

"This is very new stuff," he said. "We've never really ventured into something like this before."

Baumgartner, who created Voteaction.com as the subject of a master's thesis, said he intends to do no more with the site and was uncertain what his next step will be in developing the academic project. He speculated that he may simply center his thesis around the outpouring of press, publicity, and public outcry that his site generated.

Nevertheless, the site itself appears to have a life beyond Baumgartner's plans. Solicited by an Austrian investor over the weekend, Baumgartner said he has taken steps to sell Voteauction itself. However, the purchaser's plans for Voteauction.com remain unclear. Attempts to reach the reported buyer proved fruitless.

Baumgartner sees the immediate public and prosecutorial reaction to Voteauction as a confirmation that his idea resonated with the American public. "I got 80,000 hits on Thursday and Friday alone," Baumgartner said. "I think that that along with what was going on with eBay and Yahoo auctions shows that this is something people are really concerned about: If the politicians are selling their votes -- and they clearly are -- then the people should be allowed to as well."

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Close Vote? You Can Bid on It

by Mark K. Anderson

3:00 a.m. Aug. 17, 2000 PDT

This week, as the country endures a second foregone convention, a website is gearing up to convert voter cynicism into voter income. If citizens do indeed find the choice between Gush and Bore meaningless, the proprietors of Voteauction.com say, why not at least make a little cash on the side?

That is, after all, the American way.

"The clearest language is, we're selling votes," said James Baumgartner, an MFA student at Troy, New York's Rensselaer Polytechnic Institute and founder of Voteauction -- the subject of his thesis.

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"The person who raises the most money is the person who almost invariably wins," Baumgartner said of the current political system. "And they're treating the voter as an end-product, like how the television industry treats the viewers."

"In the current election system, the voter is a product to be sold to the corporations. But they're being sold through this convoluted method of advertising, consultants, (and) traveling. Voteauction is making a more direct line -- the old cutting-out-the-middle-man approach."

It's a ploy that certainly strikes the untrained ear as a violation of something -- whether it's election laws or just basic democratic values. It's also an eventuality some framers of the Constitution feared.

According to Sheila Krumholz, research director at campaign finance watchdog organization Center for Responsive Politics, the concept is clever as well as incendiary. "I can't imagine that this wouldn't be rife with legal entanglements and cause legal appeals," she said.

Nevertheless, she added, "I think it's really a brilliant ploy on their part. Through sarcasm it shows how absurd the system is. It tells voters to prize their voting franchise, and yet it tells them it's just another commodity."

Jamin Raskin, a law professor at American University, takes Krumholz's reactions further. He noted that, for starters: "For someone to facilitate an exchange of money for a vote would in most jurisdictions constitute criminal conspiracy."

However, he added, depending on the cleverness with

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which Voteauction is designed, the site could actually test the limits of the Supreme Court's 1976 "money equals speech" ruling.

"The proposition being tested here is whether the general theory that it's OK for money to buy elections extends to money buying individual votes," Raskin said. "The insight of the authors is that we have now evolved a system in which it's OK for money to buy elections, and yet we somehow cling to the fantasy that there's something deeply immoral about the purchase of an individual vote.

"It's as if we don't care about the big things -- that is, people purchasing public offices. But we obsess over the little things -- that is, people buying votes."

Sign up with Voteauction, and potential vote sellers are notified that the Voteauction legal agreement (still being hammered out) will be sent to them at the end of the month.

Baumgartner said he's currently considering a process in which the Voteauction participant fills out an absentee ballot and votes for whomever they want in every race but the presidency. Whether that choice will be Bush, Gore, Nader, Buchanan, or someone else entirely is determined by the outcome of the online auction.

"Then when the time comes, whoever wins the auction decides who this group is going to vote for," Baumgartner said. "So I tell those people you should vote for this person. Then they fill in the form, and then they send it to me. And I just verify that they're voting for the correct person."

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Online auctions will be conducted at Voteauction.com state-by-state in September and October, he continued. The blocks of votes will be marketed primarily to businesses and interest groups -- Voteauction does not plan to court the candidates themselves.

The kitty for each state will be split among the Voteauction voters in that state. And the winner of each state's auction will then be able to cast its procured ballots for the contender of its choosing.

Raskin audibly shuddered when he heard the process spelled out.

"That sounds pretty serious," he said. "It's possible that some aggressive prosecutor could try to bring solicitation charges against him just for setting up the possibility of this scheme."

For American historical precedent, Baumgartner cites the 1757 Virginia House of Burgesses race in which George Washington bought each of the 391 voters in his district a quart and a half of alcohol in exchange for their support.

And, of course, the presidential Iowa straw poll offers hardly little more than an opportunity to exchange money for political positioning.

Yet no American example Baumgartner can point to even approaches the proposed scope of Voteauction.com. For something of similar magnitude, one must look overseas to cases in India, Montenegro, Japan, Morocco, or Taiwan.

Given that upwards of 100 million potential eligible voters won't be casting their ballots this November, Baumgartner said perhaps an appeal to the bottom line might get them to the booth.

"Right now the corporations are just passing money around to other corporations," he said. "One corporation is giving money to the campaign, and the campaign is turning around and giving money to television stations, advertising agencies, consultants, things like that. The money is not reaching the people at all. It's leaving them out of the equation."

Raskin concurred. "If this is intended as a cyber satire on the commodification of American politics, one can only applaud the spirit of the authors," he said.

"Right now everyone is making money off elections except the voters.... Everyone is enjoying a lavishly subsidized ride on the back of the American people,

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and it is ironic that we have replaced old-fashioned vote-buying and bribery with much more sophisticated forms of financial takeover of the electoral process."

Paul Rapp, Albany attorney and thesis advisor to Baumgartner, did caution that individuals participating in Voteauction.com could technically be putting themselves in legal jeopardy.

"Then again, it strikes me that it's on the same level as the Napster controversy," he said. "If you're downloading a song, what is realistically the possibility that Lars Ulrich and the Feds are going to bust your door down and drag you off to art jail? Highly unlikely.

"It would be a victory for James if it generated the same sort of discussion about the nature of our democracy that Napster has had on the nature of ownership of music," said Rapp. "I suspect if James got the sort of traffic that Napster got, one of two things would happen. He would either be facing a considerable jail sentence, or he would become one of the most powerful men in America."

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WIREDNEWS
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Lawyers Are Cheap at Vote Auction

Mark K. Anderson

10 p.m. Nov. 9, 2000 PST

Election 2000 descends into an Elian's Revenge of tangled Florida lawsuits, Miami politics and federal interventions, it's probably fitting that the equally turbid tale of Internet vote-auctioning also finds a glorious end.

Ill that one to the defendants, though.

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[Vote-auction.com](#), the satirical vote-peddling website, is now caught in the crossfire of lawsuits from several states, with investigations in other states underway. Not to be outdone, the Austrian investor who has run Vote-auction since late August is preparing to mount his own legal challenge to the Nov. 1 shutdown of his site.

What began as a ruthless e-commerce project, boldly selling what no one had sold before, has become a freedom-of-speech case where the defendants remove their veils and cry, "Spoof!"

Harvey Grossman of the Chicago branch of the American Civil Liberties Union has entered the fray, defending the site's American creator, New York graduate student James Baumgartner, in a lawsuit filed with the Chicago Board of Election Commissioners.

The representation James is making is that no votes were ever bought or sold and no arrangements were ever made to buy or sell votes," Grossman said. "This was purely political satire."

Previous to the election, Hans Bernhard, the Austrian vote auctioneer, had maintained the legitimacy of vote-auction, breaking his cover once in an Oct. 31 French interview in which he admits Vote-auction is a hoax.

"Vote-auction *est un acte pour la liberte d'expression*," he said.

Bernhard was similarly candid in an interview Tuesday.

"We've made a strategic move, in order to prevent further madness in the U.S. legal system," he said. "We're going after the free speech argument. Everybody knows. We know it, you know it, the legal people know it: We've never ever sold or bought any votes. It's ridiculous."

Now, not only are the Chicago election board and the Illinois attorney general plying their trade against Bernhard et al., but state attorneys general in Massachusetts, Missouri, Texas and Wisconsin are also at various stages in the process of trying to restrain or eradicate the site. All of them, except for Missouri, have their respective state laws prohibiting the purchase or sale of votes.

The suit filed by Missouri Attorney General Jeremiah W. Nixon, on the other hand, says that the Austrian website violates his state's consumer protection statutes against vendors making misrepresenting claims

out their goods or services.

ne side is suing us for doing something illegal; the other side is suing us for *not* doing something legal," Bernhard said. "It is getting very funny."

ott Holste, a spokesman for Nixon, said on Thursday that his office's consumer protection division -- t the Secretary of State, who usually handles vote-fraud related cases -- took up the challenge, ecifically because it involved the Web.

le've done this in the past on Internet issues, such as over our attorney general filing a lawsuit ainst an Internet gambling site," Holste said. "The site wasn't sued over violating gambling but rather nsumer protection laws.... Insofar as this office being able to bring legal action in Internet cases, nsumer protection) is the best vehicle we've used."

the Vote-auction case, he said, "We're suing because they're saying it's legal to buy and sell votes, ien Missouri law says otherwise.... Where we stand right now, we've been in communication with ople in this organization. They've said they would sign a consent injunction that would require them to p making representations that it was legal to buy and sell Missouri votes and then to pro-actively ate the website was null and void in the state of Missouri."

e combination of all the lawsuits, Bernhard said, makes for quite an echo chamber of legalese.

re receiving so much legal spam now," he said, adding that hundreds of faxes -- sometimes sent to ; palm pilot -- now clog his hard drives and litter his desk.

d even if Bernhard, Baumgartner, Vote-auction and Vote-auction's ISP -- some or all of whom are med, depending on the lawsuit -- emerge from the cloud of affidavits anytime soon, there's also the vsuit Vote-auction itself is considering filing.

ording to a [message](#) submitted by Bernhard's vote-auctioneer partner "LizVlx" (Elisabeth Haas) to e Web-law e-mail group, the shutdown of Vote-auction followed a chain of command they hope to rance in their lawsuit.

e company that registered Vote-auction.com, she said, was the Dusseldorf-based [CSL GmbH](#), which urn brokers domain names via [The Internet Council of Registrars \(CORE\)](#), based in Geneva.

IF she said, responded to the American legal actions against Vote-auction by pulling the plug.

oarently, they feel that a Missouri restraining order is governed under Swiss law, and that e-mail es authenticity," Haas wrote.

aphanie Schliepack, a Berlin attorney representing Vote-auction, said the dynamic between the ties responsible for removing Vote-auction.com from the Internet has yet to be fully determined.

e're considering suing CSL with an intent to explore the relationship with CORE as well," she said.

d since the Vote-auction case now has elements of Americans attempting to silence European-based ire -- raising the questions of both jurisdiction and international Internet governance -- such legal ions could raise some important legal issues outside of the immediate Vote-auction arena.

e're trying to test how far different German judgments about the validity of American cases go," said hliepack, adding that the roles of ICANN and international law are being explored as well.

ese six legal actions -- five state cases and Vote-auction's suit -- now comprise a minuet of litigation it recall last year's legal battles over the fate of a Swiss Internet art corps Bernhard helped found, y. Sued by the toy retailer eToys for their nearly identical domain name, eToy turned the action into opportunity for guerrilla theater.

: seems that we are witnessing the birth of a new subgenre of action-art: Digital Legal Art," Bernhard Haas wrote in a Vote-auction press release that came out on election day. "Apparently it is even so much the end user in front of the terminal to whom we appeal most but the people in U.S. legal offices.... very sexy!

evertheless, we are sure that the cases will be dropped, as it will be obvious, even to the legal folk, at there are people out there buying and selling votes -- but that it is not us. We just gave you the owcase. The real dealers do their business quite openly in Washington. *Vive la difference!*"

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