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	SUPERIOR COURT OF NEW JERSEY
	LAW DIVISION - MERCER COUNTY
	DOCKET NO.

IN THE MATTER OF THE APPLICATION OF STUART RABNER, in His Dual Capacity as the Chief Law Enforcement Officer and Chief Election Official of the State of New Jersey, FOR A DECLARATORY JUDGMENT REGARDING THE STATEWIDE VOTER REGISTRATION SYSTEM ESTABLISHED BY N.J.S.A. 19:31-31 ET SEQ.	Civil Action

PLAINTIFF'S BRIEF IN SUPPORT OF AN ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT ISSUE A DECLARATORY JUDGMENT REGARDING THE STATEWIDE VOTER REGISTRATION SYSTEM

TABLE OF CONTENTS

PRELIMINARY STATEMENT

The Attorney General is the State's Chief Law Enforcement Officer, and he is empowered to bring lawsuits in the public interest. Additionally, he is the State's Chief Election Official, and it is his duty to safeguard the integrity of the electoral process, ensure the orderly administration of elections, and guarantee that all eligible voters are able to exercise their franchise. In fulfillment of these mandates, the Attorney General brings this suit seeking a declarative judgment that, for the November 7, 2006 General Election, existing county registration systems be the official voter registration system and that the newly devised Statewide Voter Registration System be run in parallel.[1]

In assessing the merits of this suit, the Court should take into consideration four important factors: 1) the SVRS that both State and federal law require is exceedingly complex; 2) the State has made good faith efforts to meet all statutory mandates requiring use of the SVRS; 3) nevertheless, there are problems with the SVRS such that, if used as the exclusive system for administering the upcoming November federal election, would threaten the integrity and orderly administration of the election; and 4) the United States Department of Justice, which is charged with the obligation to enforce the Help America Vote Act and the National Voter Registration Act, has signed a Stipulation and Order with the Attorney General

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[1]The relief being sought is for each county in the State, with the exception of Hunterdon County. That County has completely cut-over to the SVRS and no longer maintains a county legacy voter registration system.

that sanctions the very relief that the Attorney General seeks here on the State

level.

On balance, the relief requested in this application provides the best means

of ensuring the orderly process of the November 7, 2006 election and the orderly

implementation of the SVRS. The Attorney General therefore respectfully requests

that the court grant this application.

STATEMENT OF FACTS

A. Federal and State Requirements for Implementation of a Statewide Voter Registration System.

Pursuant to the federal Help America Vote Act of 2002 ("HAVA"), New Jersey was required to implement for all federal elections after January 1, 2006 a "single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained and administered at the State level." 42 U.S.C. §15483(a)(1)(A)(i)-(viii), (d)(1)(A). On July 9, 2005, in response to HAVA's mandates concerning the establishment of a Statewide voter registration system ("SVRS" or the "System"), the Legislature enacted N.J.S.A. 19:31-31 et seq. (the "VRA") and required that the SVRS "be established by January 1, 2006." N.J.S.A. 19:31-31(a).

HAVA's and the VRA's criteria for the SVRS are complex and comprehensive. First, the SVRS must contain the "name and registration information of every legally registered voter in the State" and assign a "unique identifier" to each voter. 42 U.S.C. §15483(a)(1)(A)(ii)-(iii); N.J.S.A. 19:31-31(b)(1). Voter information that must be entered includes: last, first, and middle name; street address with apartment number, if any; city and zip code; date of birth; phone number, if provided; previous address, if person is re-registering due to a move; ward and election district number, if available; New Jersey driver's license number, if issued; the last four digits of the Social Security Number, if the registrant does not have a New Jersey driver's license; notation of which documents, if any, were

submitted with the registration; method by which the person registered; the political party affiliation of the voter; a digitalized signature; the date of registration; and the person's voting participation record for a ten-year period. N.J.S.A. 19:31-31(8)-(15).

Second, this "computerized list shall be coordinated with other agency databases within the State" to ensure that ineligible voters and duplicate records are purged. 42 U.S.C. § 15483(a)(1)(A)(iv), (a)(2)(A)-(B). As a practical matter, this means that the SVRS has to be able to interface with the computerized records of the New Jersey Motor Vehicle Commission ("MVC") (to verify drivers licenses); the Social Security Administration (to verify the last four digits of a social security number); the Department of Health and Senior Services (to verify deaths); and the Department of Corrections, the Administrative Office of the Courts and the State Parole Board (to verify registrants who are criminally disenfranchised). See N.J.S.A. 19:31-32(e).

Third, "[a]ny election official in the State, including any local election official" must be able to obtain "immediate electronic access" to the registration information. 42 U.S.C. § 15483(a)(1)(A)(v), N.J.S.A. 19:31-31(b)(3). In addition, the 21 county commissioners of registration, 21 county clerks, and the 566 municipal clerks must, as authorized by the Attorney General, also be able to access the information contained in the SVRS. N.J.S.A. 19:31-31(b)(3).

Fourth, the System must have "adequate technological security measures to prevent unauthorized access." 42 U.S.C. § 15483(A)(3); N.J.S.A. 19:31-31(b)(6). Fifth, the System must have a "State-wide street index and map in electronic form that can accurately identify the location of every legally registered voter in the State." N.J.S.A. 19:31-31(b)(7). Sixth, the SVRS must be able to permit every voter to verify on the internet "whether that individual, and only that individual" is included in the System as a legally registered voter. N.J.S.A. 19:31-31(b)(6).

Finally, pursuant to federal mandate, the SVRS "shall serve as the official voter registration list" for all federal elections in the State. 42 U.S.C. §15483(a)(1)(A)(8); N.J.S.A. 19:31-31(a). In this respect, it is to replace the current "legacy" systems through which the 21 counties maintain their own independent computerized voter registration files.

In addition, the State Legislature has mandated that the SVRS be the exclusive system for the administration of elections. N.J.S.A. 19:31-31(a). Accordingly, the SVRS was enhanced with a number of modules to assist the counties in processing absentee ballots, maintaining the records regarding district board workers and challengers, issuing the various election notices, and printing the poll books. HAVA does not require any of these enhancements. They are, however, State-mandated to further the overall uniformity and consistency in the election process.

B.   The State's Efforts to Implement the SVRS

On or about March 1, 2005, the State, after having issued a formal Request for Quotation, awarded the contract for the development, installation, and implementation of the SVRS to Covansys Corporation ("Covansys"). (Gallagher Cert. at ¶4, attached hereto as Exh. A). The State chose Covansys because the Company had already implemented computerized statewide voter registration systems in several other states. (Ibid.). Covansys subcontracted with PCC Technology Group ("PCC" or the "Subcontractor"), a vendor that owned a proprietary election administration software program called ElectioNet. (Id. at ¶5). PCC was contractually obligated to refine ElectioNet to meet New Jersey's specific needs. (Ibid.).

In the next few weeks after awarding the contract, the State held over a dozen joint development sessions with Covansys and with county election officials in order to develop the specifications for the SVRS. (Id. at ¶6). The specifications were completed on June 9, 2005. (Ibid.). However, on August 22, 2005, when PCC delivered ElectioNet to the State and the "user acceptance phase" of the project began, it became evident that the vast majority of the ElectioNet modules were not working properly. (Id. at ¶7). PCC was required to re-program a number of critical modules, which were delivered to the State in early October 2005, and also found to be inoperable. (Ibid.). By November 2005, the State concluded that

PCC did not have the capacity to complete the project, and the State demanded that Covansys take immediate corrective action.[2] (Id. at ¶8).

As a result, Covansys acquired from PCC the source code and licensing rights to ElectioNet, and removed PCC from the project effective January 1, 2006. (Ibid.). Because of PCC's failures, Covansys was not able to deploy the SVRS in all twenty-one counties until May 19, 2006. (Id. at ¶9). Since this deployment, testing and use has unfortunately revealed significant problems.

C.   Problems with the SVRS

There were problems with the SVRS that threaten to disenfranchise voters, compromise the integrity of the electoral process, and disrupt the administration of the upcoming election if the State is compelled to use the SVRS as the election administration system and to generate the official voter list.

First, there were data conversion problems. Some of the data in the twenty-one county computerized registration systems ("legacy systems") was not compatible with the SVRS. (Id. at ¶11). For example, the SVRS did not accept a street address without a house number. (Ibid.). Similarly, there were reports that, when there was more than one municipality within a zip code, the SVRS

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[2]Covansys' problems multiplied as PCC defaulted on its obligations to implement ElectioNet in New Hampshire, Nevada, and Idaho as well. (Id. at ¶16). Further Maine, another Covansys client, had to enter into stipulated agreements with the USDOJ due to unresolved data conversion problems in that state's SVRS. (Ibid.). In fact, several states, including New York and California, have entered into stipulated agreements with the USDOJ because of their inability to meet the HAVA deadline. (Ibid.).

printed incorrect municipalities on letters and labels. (Id. at ¶13). An effort is underway to ensure each municipality is properly coded, but currently there is still the risk that affected voters will not receive a sample ballot or other election-related materials. (Id. at ¶¶11, 13).

Second, the SVRS does not allow for the specific poll book format that is required by each county and although this issue is being addressed, it will not be resolved in time for the upcoming election. (Id. at ¶14).

Third, it was necessary for the State to make modifications to the SVRS to allow for the accurate issuance of absentee ballots. (Id. at ¶12). The State was not able to make these modifications in time for the November election, given that the absentee ballot process commences approximately sixty days before an election. The counties, therefore, had no choice but to process absentee ballots for the November 2006 election using their legacy system data. (Ibid.). If the State were forced to use the SVRS absentee ballot module, there would be the risk of duplicate votes because the poll books generated by the SVRS would not reflect the fact that absentee ballots had already been issued. (Ibid.). Thus, the potential exists for a voter to vote both by absentee ballot and in the machine.

D. The Federal Stipulation and Order

Recognizing the complexity of the process, the federal government has entered into stipulated agreements with several states, including New Jersey, to

ensure that the SVRS is implemented in a manner that will not disrupt the orderly conduct of an election or potentially disenfranchise voters. The Stipulation and Order with New Jersey ("Stipulation") provides in pertinent part:

> For the November 7, 2006 general election, each election district in the State of New Jersey, with the exception of Hunterdon[3] County, shall have a poll book(s) of valid registered voters for that district generated using the pre-existing county voter registration system and a supplemental poll book of valid registered voters generated from the statewide voter registration system which includes at least any additional voter registrations for that district that were not on the county list. Each eligible voter whose name appears in the poll book shall be able to cast a regular ballot, and each person whose name does not appear in the poll book, and who claims to be registered and eligible to vote, shall have an opportunity to cast a provisional ballot. For the purpose of confirming the eligibility of voters casting provisional ballots, a supplemental list of valid registered voters shall be generated from the statewide voter registration system against which provisional ballots will be checked by the county commissioner of registration.

> [Stipulation at ¶2 (attached hereto as Exh. B1).]

Pursuant to the Stipulation, the State must also take specific steps by specific dates to obtain missing birth dates and identification numbers from voters; and to verify and delete duplicate registrations, disenfranchised offenders, deceased registrants, and registrants who have moved. (Id. at ¶¶3-10). Further, the state will ensure SVRS will have to be fully compliant with HAVA by May 30, 2007. (Id. at ¶2).

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[3]In Hunterdon County, the SVRS will be the official voter registration list.

For all of the foregoing reasons, and the reasons explained more fully below, the Court should 1) declare the county legacy system of every county except Hunterdon to be the official voter registration list for the November 7, 2006 General Election; 2) authorize the State to mandate that the commissioner of registration of every county, except Hunterdon, print poll books from the county legacy system; 3)authorize the State to mandate each county, with the exception of Hunterdon, provide the Attorney General with its county legacy voter registration system, and 4) declare that the State's compliance with the Agreement reached with the USDOJ will be deemed compliance with the corresponding State law. Such a result would not only be "best practices," it would also ensure that voters are not disenfranchised or unduly impaired in the exercise of the franchise; that the integrity of the electoral process is preserved; and that the election is administered efficiently, equitably, and without confusion.

ARGUMENT

THE STATE'S REQUESTED DECLARATORY RELIEF SHOULD BE GRANTED BECAUSE THE REQUEST SATISFIES ALL PRONGS OF CROWE v. DeGIOIA

Under Crowe v. DeGioia, a court should grant preliminary injunctive relief 1) "when necessary to prevent irreparable harm;" 2) where the legal right underlying the plaintiff's claim is settled as a matter of law and the plaintiff makes "a preliminary showing of a reasonable probability of ultimate success on the merits;" and 3) the balancing of the equities favors the plaintiff. 90 N.J. 126, 132-34 (1982). Here, the State satisfies all three prongs and the court, accordingly, should grant the declaratory relief requested by the Attorney General.

A. The Requested Relief is Necessary to Prevent Irreparable Harm.

Utilizing the SVRS without the legacy systems for the November 7, 2006 General Election would result in irreparable harm to the voters of the State and the integrity of the electoral process.

"Harm is generally considered irreparable" if it "cannot be redressed adequately by monetary damages." Crowe, supra, at 132-33. Where a fundamental right is implicated, the deprivation of that right may be considered irreparable harm. See Elrod v. Burns, 427 U.S. 347, 373-4, 96 S. Ct. 2689-90, 49 L. Ed. 2d 565-66 (1976) ("the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); Covino v.

11

Patrissi, 967 F. 2d 73, 77 (2d Cir. 1992) (violation of Fourth Amendment right to be free from unreasonable searches constitutes irreparable harm); Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir. 1984)(violation of Eighth Amendment rights constitutes irreparable harm); but see Hohe v. Casey, 868 F.2d 69,73 (3d. Cir.) ("constitutional harm is not necessarily synonymous with irreparable harm" because sometimes the deprivation is not substantial and other times the harm can be remedied by money damages), cert. denied, 493 U.S. 848, 110 S. Ct. 144, 107 L. Ed. 2d 102 (1989).

Here, even if the potential impairment of the right to vote is not considered per se irreparable harm, there can be no doubt that the potential harm is substantial and cannot be redressed through monetary damages. If an eligible voter is disenfranchised due to missing data in the SVRS or the inability of one module to communicate with another, no damages will compensate that person for the impairment of this fundamental right in a democratic society. If even a small percentage of the eligible voters in the State are disenfranchised due to the SVRS's demonstrated problems, various local elections, if not the Statewide election in November, could potentially be compromised. Further, if process inefficiencies or incorrect data result in ineligible voters being permitted to vote, thus diluting the votes cast by qualified voters, the harm cannot be quantified, much less redressed by damages. The State, therefore, has satisfied the irreparable harm prong of Crowe.

While it cannot be known with certainty before the election whether the concerns regarding the functionality of the SVRS in its current state of development and testing will result in confusion or disenfranchisement on election day, the risk is very real. See generally pp. 7 to 9, supra, and the Gallagher Certification attached hereto as Exh. A. Although the State has been working diligently to modify the SVRS to correct the problems that were revealed in user testing, the use of the counties' legacy systems as the official voter registration list will avoid potentially disenfranchising voters and will promote the timely administration of elections. It will also enable the State to run the SVRS in parallel. The Court, therefore, should grant the declaratory relief the State requests.

B.   THE STATE IS LIKELY TO SUCCEED ON THE MERITS.

To establish an entitlement to preliminary injunctive relief, plaintiff must demonstrate that he is likely to succeed on the merits of his claim. That requirement is clearly satisfied in this case. It is not disputed that there are data conversion issues with the SVRS and that these issues raise legitimate concerns that utilizing the SVRS in its current stage of development may result in some qualified voters being turned away at the polls or unqualified voters being allowed to vote in person or by absentee ballot. Given the overarching purposes of the relevant statutes, it is the Attorney General's duty to ensure that such concerns are not realized in the November 7, 2006 General Election.

The New Jersey Supreme Court has held plainly, and repeatedly, that "[e]lection laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons." New Jersey Democratic Party v. Samson, 175 N.J. 178, 186 (2002) (quoting Kilmurray v. Gilfert, 10 N.J. 435 (1952)). See also Lesniak v. Budzash, 133 N.J. 1, 7 (1993). As the Court stated in Samson, supra, 175 N.J. at 186: "The concept is simple. At its center is the voter, whose fundamental right to exercise the franchise infuses our election statutes with purpose and meaning."

> Thus, the Court has held that [a] statute is not to be given an arbitrary construction, according to the strict letter, but rather one that will advance the sense and meaning fairly deducible from the context. The reason of the statute prevails over the literal sense of terms; the manifest policy is an implied limitation on the sense of the general terms, and a touchstone for the expansion of narrower terms.
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> [Wene v. Meyner, 13 N.J. 185, 197 (1953).].

Voter registration requirements are "designed 'to ensure that only eligible voters vote and [] that they vote only once.'" Lesniak, supra, 133 N.J. at 12 (quoting Note, Developments, Election Law, 88 Harv. L. Rev. 1111, 1116 (1975)). The purpose of registration requirements "is to protect the purity of the ballot box, by ascertaining before the vote is cast whether or not such persons possess the qualifications to vote and by preventing impersonations thereafter at the polls." In re Ray, 26 N.J. Misc. 56, 59 (1947).

Here, as set forth in the Certification of Michael Gallagher submitted with this application, data conversion and technical issues have created a genuine concern that the SVRS is not yet ready to be utilized as the official registration list. See Cert. at ¶¶10-14; see also pp. 7-9, supra. These problems have created a risk that qualified voters will be inadvertently omitted from the poll books, sample ballots will not reach voters, and the State will not be able to process absentee ballots adequately. Ibid. These and other problems have caused the Attorney General to conclude that, despite the statutory mandate, the sanctity of the election process will best be served by utilizing the county legacy systems as the official voter registration lists for the November 7, 2006 General Election, and running the SVRS in parallel.

Although the language of N.J.S.A. 19:31-31 requires use of the SVRS as the official voter registration system after January 1, 2006, this is not a situation where applying the strict letter of the statute will advance the statute's purposes. The integrity of the electoral process will be better served by granting the relief requested by the Attorney General. The USDOJ has already reached an Agreement with New Jersey to ensure the orderly implementation of the SVRS. The relief sought by the Attorney General here is therefore an acceptable measure to effectuate the intent of HAVA. The State thus seeks a declaratory judgment to resolve any uncertainty under the VRA regarding the ability of the Attorney General to go forward as the State and the federal government have agreed.

Given the clear mandate to construe election laws liberally to effectuate their purpose, and the Attorney General's reasonable determination that the exercise of the franchise and the orderly conduct of the November 7, 2006 election will best be served by utilizing the county legacy systems as the official registration list while running the SVRS parallel, plaintiff is likely to succeed on the merits. The preliminary relief requested should therefore be granted.

C. The Balance of Hardships Favors Granting the Requested Relief.

Where, as here, the voters' ability to vote and the orderly conduct of the election may be jeopardized by the use of the SVRS without the legacy systems, the equities favor granting the Attorney General's requested relief.

As described at length above, see pp. 6-9, supra, the SVRS is still a work in progress. Despite the State's sincere efforts, numerous open issues regarding the functionality of the system have caused the Attorney General to conclude that using only the SVRS for the November election would not be prudent. Best practices for system implementation suggest that a new system be run in parallel with an existing system for an extended time period prior to full implementation in order to ensure all application and data issues are identified and corrected. See Gallagher Cert. at ¶17. The use of the legacy systems, with the SVRS in parallel, for the November 7, 2006 election will serve a dual purpose. First, it will ensure that no voter is unduly impaired in the exercise of the franchise and that election administration is timely, thorough, and efficient. Second, it will allow for the

ability to address all SVRS issues before there is full cut-over to that system. <u>See</u> Gallagher Cert. at ¶17.

On the other hand, there is little--if any--hardship that will result if the requested relief is granted. Voters registered in either system will be permitted to vote. While the letter of the relevant statutes may be offended, their spirit will be served.

In short, the requested relief is a common-sense approach to dealing with the upcoming election and the issues relating to the deployment of the SVRS.

It is the best way to protect the rights of voters and the integrity of the election process. Accordingly, the balance of hardships favors granting the State's requested relief.

CONCLUSION

For all of the foregoing reasons, the court should grant the declaratory relief that the State seeks.

Respectfully submitted,

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