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

Civil Action

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.)

COMPLAINT FOR
DECLARATORY JUDGMENT

NATURE OF ACTION

1. This action is brought pursuant to the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-50 et seq. The Attorney General seeks an Order declaring that the State shall be authorized to implement certain procedures

relating to the Statewide Voter Registration System ("SVRS") to assure, in part, the integrity of the November 7, 2006 General Election. Although State law explicitly provides that the SVRS is to be the single, official registration list for all elections, the Attorney General seeks an Order declaring that, for the November 7, 2006 General Election, the voter registration system ("legacy system") of every county except Hunterdon be the official voter registration system and the SVRS be run in parallel in every county except Hunterdon.

PARTIES

2. Plaintiff, Stuart Rabner, in his official capacity as the Attorney General of New Jersey, is the State's Chief Law Enforcement Officer. The Attorney General is empowered to enforce and interpret the Constitution and laws of this State, and to bring lawsuits which are in the public interest on behalf of the citizens of the State as he deems appropriate.

3. The Attorney General is also the State's Chief Election Official charged with the duty to secure proper administration of all electoral mandates. In that capacity, the Attorney General serves as exclusive counsel to the State's 10 county superintendents of elections and the 21 county boards of election to ensure consistency and uniformity in the application of laws relating to the electoral process. Judicial resolution of the current controversy is in the public interest to assure the orderly administration of the State's electoral structure and the preservation of its integrity.

4. The Attorney General is statutorily responsible for the coordination of the State's responsibilities pursuant to the federal "Help America Vote Act of 2002" ("HAVA"), P.L. 107-252 42 U.S.C. §15301 et seq., N.J.S.A. 19:31-6a; and the implementation of the Statewide voter registration system, N.J.S.A. 19:31-31.

5. Defendant Republican State Committee is an organization which represents the interests of the Republican Party, one of the two certified political parties in the State. N.J.S.A. 19:5-4.

6. Defendant Democratic State Committee is an organization which represents the interests of the Democratic Party, one of the two certified political parties in the State. N.J.S.A. 19:5-4.

STATUTORY ELECTION REQUIREMENTS

7. In the State of New Jersey, only duly qualified persons, who are registered to vote, may cast a ballot at an election. In order to qualify, a person (a) must be a citizen of the United States; (b) must be a resident of the State and county at least 30 days before the election; (c) must not be serving a sentence; and (d) must not be on probation or parole as the result of conviction for an indictable offense. N. J. Const. Art. II, ¶¶6-7; N.J.S.A. 19:4-1.

8. Each of the State's twenty-one county commissioners of registration is responsible for maintaining the registration records for each registered voter in the commissioner's county. N.J.S.A. 19:31-32 (b).

9. Until recently, the State's voter registration system was county-based, with twenty-one discrete and separate voter registration systems. N.J.S.A. 19:31-2.

10. The federal "Help America Vote Act of 2002," P.L. 107-252 (42 U.S.C. §15301 et seq.) ("HAVA"), which was enacted on October 29, 2002, now mandates each state with voter registration requirements to implement a "single, uniform, official, centralized, interactive, computerized state-wide voter registration list that is defined, maintained and administered at the state level" for all federal elections. This statewide voter registration system ("SVRS") must provide for the elimination of duplicate registrations and the purging of ineligible voters, in accordance with the National Voter Registration Act, 42 U.S.C.A. 1973gg-1, et seq. ("NVRA").

11. To further this purpose, the SVRS must interface with the computerized records of the State agencies responsible for maintaining driver license records, social security numbers, decedent records, and criminal records. 42 U.S.C. §15483 (a)(1)(A)(iv).

12. Federal law required each state to establish a SVRS on or after January 1, 2004, or if the state obtained a waiver, on or after January 1, 2006. New Jersey sought and obtained such a waiver. 42 U.S.C. §15483.

13. On July 9, 2005, in response to the mandates of HAVA, the New Jersey Legislature enacted L. 2005, c. 145, which requires the establishment no

later than January 1, 2006 of a single statewide voter registration system in the Department of Law and Public Safety, under the authority of the Attorney General as the State's Chief Election Official, for all elections held in the State. N.J.S.A. 19:31-31.

14. Pursuant to federal and State mandates, the New Jersey SVRS is to interface with the computerized records of the New Jersey Motor Vehicle Commission ("MVC") (for driver license verification); the Social Security Administration (through the MVC to verify the last four digits of a social security number); the Department of Health and Senior Services regarding decedent verification; and the Department of Corrections, the Administrative Office of the Courts, and the State Parole Board regarding any registrant who may be serving a sentence or who is on probation or parole as the result of a conviction for an indictable offense. N.J.S.A. 19:31-32(e).

15. The SVRS must permit any county commissioner of registration to enter voter registration information into the system expeditiously at the time the information is provided to the commissioner. The SVRS must also allow immediate electronic access for county commissioners of registration, county boards of election and county clerks for the receipt, transmission, printing, or review of files in the system, in order for each office to perform its respective duties. N.J.S.A. 19:31-31(b).

16. Pursuant to Title 19, each county commissioner of registration is responsible for verifying the accuracy of the name, address, and other data of registered voters in the commissioner's respective county as contained in the system. On a regular basis, each county commissioner of registration must review the files on the SVRS and make all necessary additions, deletions and amendments. All information from voter registration forms of individuals who have registered or re-registered to vote in the county shall be entered into the system on an expedited basis. N.J.S.A. 19:31-32 (b).

17. The SVRS is to replace each of the counties' computerized voter registration files maintained for voter registration and election administration purposes. N.J.S.A. 19:31-32 (a).

18. On or about March 1, 2005, the Attorney General contracted with an outside vendor, Covansys, after conducting the procurement process to develop and implement the State's SVRS. Covansys was chosen because it had implemented an SVRS system in several other states, and the Company had assured the State that its system would fully meet New Jersey's voter registration requirements. Covansys subcontracted with PCC Technology Group ("PCC") for development and use of ElectionNet, their proprietary software. (See Certification of Michael Gallagher at ¶¶4, 5.)

19. After the contract had been awarded, there were approximately 15 joint application development sessions conducted over the next several weeks

with representatives of the vendor and the county election offices to develop the specifications of the SVRS. (Gallagher Cert. at ¶6).

20. On or about June 9, 2005, Covansys was provided with the specifications to program the SVRS. (Gallagher Cert. at ¶6).

21. On or about August 22, 2005, the vendor delivered the SVRS program, and user acceptance testing by the State and representatives of the various county election offices commenced. Over the next two weeks, testing indicated there were significant problems with many modules, requiring the vendor to do further substantial reprogramming. To meet the January 1, 2006 deadline, the HAVA Unit directed the vendor immediately to prioritize the reprogramming of the those modules required for HAVA compliance and election administration such as those for voter registration, absentee ballot, district board workers, and polling places. (Gallagher Cert. at ¶7).

22. In early October 2005, PCC delivered reprogrammed modules to the State which were also inoperable. Despite these failures, PCC continued to assure the State that it could meet the January 1, 2006 deadline. (Gallagher Cert. at ¶7).

23. In November 2005, the State determined that PCC did not have the capacity to complete the project and demanded Covansys take immediate remedial action. (Gallagher Cert. at ¶8).

24. Other states such as New Hampshire, Nevada, and Idaho had problems with PCC that required Covansys to agree to assume the development and system support activities for these implementations. Ultimately, Nevada terminated its contract with Covansys opting to build an in-house system. Further, the State of Maine entered into an agreement with the United States Department of Justice due to unresolved data conversion issues for which Covansys is the primary vendor. In fact, several states have entered into agreements with the United States Department of Justice because of their inability to fully meet the HAVA deadline. (Gallagher Cert. at ¶16).

25. On or about January 1, 2006, Covansys terminated PCC from the project and secured PCC's licensing rights for New Jersey so that the programming of the SVRS could continue. Covansys further committed to deploying the SVRS fully by May 19, 2006, adding more than double the professional staff to complete the project. (Gallagher Cert. at ¶¶8-9).

26. The implementation of the SVRS required the conversion of over six million records from the twenty-one county registration systems. (Gallagher Cert. at ¶15),

27. From approximately February 16 through March 2, 2006, there was a second round of acceptance testing for the re-coded application, which initially indicated the new program was substantially functional. (Gallagher Cert. at ¶10).

28. Based on the State's conditional acceptance of the SVRS program and Covansys' understanding that there was still considerable development work to be done, the application was deployed to all twenty-one counties by May 19, 2006. (Gallagher Cert. at ¶10).

29. Although the SVRS was deployed in all the counties on or about May 19, 2006, the counties were not able to begin using the SVRS immediately because their resources were dedicated to the administration of the June 2006 Primary Election. (Gallagher Cert. at ¶10).

30. After the June 2006 Primary Election and up to the present time, the counties have used the SVRS with real data, going through their entire election process. They continue to identify bugs, data conversion issues, and design inefficiencies, which the HAVA Unit addresses as they arise. (Gallagher Cert. at ¶¶10-14).

31. For example, one of the data conversion issues related to the inability of the SVRS to accept into the system a street address with no house number. This impacted a number of voters and could affect their ability to receive sample ballots and other election-related material for the upcoming election. (Gallagher Cert. at ¶11).

32. Another data conversion issue related to the need to ensure the use of accurate addresses when more than one municipality is located within a zip code. Because of this, a risk exists that election-related mail will not be

properly delivered to all registered voters in advance of the November 2006 election. (Gallagher Cert. at ¶13).

33. State law mandates that the SVRS is to constitute the sole voter registration list and also to be the sole system for all election administration purposes, including the handling of absentee ballots. Although the SVRS absentee ballot module was recently modified to allow for the accurate issuance of these ballots, with the absentee ballot process normally commencing about sixty days before an election, this SVRS module could not be used by the counties. If the State were forced to use the SVRS, it faces the risk of duplicate votes in the election because the issuance of absentee ballots would not be designated in the poll books generated by the SVRS. (Gallagher Cert. at ¶12).

34. Upon information and belief, due to the unresolved issues with the SVRS, the county commissioners of registration, who have exerted all due diligence and are fully committed to the successful deployment of the SVRS, have nevertheless been running their county legacy systems parallel to the SVRS, to safeguard the rights of duly registered, qualified voters by assuring the preservation of records that might otherwise be lost in the data conversion process.

35. In light of the ongoing SVRS deployment issues, the Attorney General has determined, in consultation with several county commissioners of registration, that in order to protect the integrity of the November 7, 2006 General

Election and the rights of all qualified voters, each county's legacy system should be the official voter registration list for the election, with the SVRS running in parallel.

36. On or about September 13, 2006, the Acting Attorney General met with the counsel for the Democratic and Republican State Committee, as well as several county election officials, at which time all parties agreed, in principle, that use of the county legacy systems as the official voter registration lists for the November 7, 2006 General Election, while running the SVRS in parallel, was more protective of the integrity of the election than utilizing the SVRS alone.

37. On or about September 14, 2006, the Office of the Attorney General notified the United States Department of Justice ("USDOJ") of the State's position that the use of the SVRS alone for the upcoming November 7, 2006 General Election would not be in the best interest of the voters.

38. On or about October 12, 2006, 2006, the Attorney General's office entered into a Stipulation ("Stipulation") with the USDOJ which would sanction the use of each county's legacy system as the official voter registration system for that county (with the exception of Hunterdon County which only uses the SVRS system), with the SVRS running in parallel. (Exh. 1 to the Brand Cert.)

39. Pursuant to the Stipulation, for the November 7, 2006 General Election, the poll books for each election district in the State (with the exception of Hunterdon County) shall be printed from the county legacy system. Each

eligible voter whose name appears in the poll book shall be permitted to cast a regular ballot, ie., vote in the voting machine. Any person whose name is not in the poll book, but who claims to be an eligible voter, will be permitted to cast a provisional ballot. In determining the eligibility of a provisional ballot voter, the county commissioner of registration will review the county legacy registration list and a supplemental list generated from the SVRS to ascertain if the voter's name appears on either list. (Exh. 1 to the Brand Cert. at ¶2).

40. 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. (Exh. 1 to the Brand Cert. at ¶¶3,4,5,7,8 and 9).

41. Finally, pursuant to the Stipulation, the State shall ensure that the SVRS will be fully compliant with HAVA by May 30, 2007. (Exh. 1 to the Brand Cert. at ¶2).

42. The federal issues surrounding the SVRS have thus been fully resolved. To secure the orderliness of the upcoming November 7, 2006 General Election, and the overall stability of the electoral process, it is imperative that the State law issues relating to the SVRS also be resolved expeditiously.

COUNT I

43. Petitioner repeats the allegations in paragraphs 1 through 42 as if set forth at length herein.

44. Election laws are to be liberally construed to effectuate their purpose.

45. The fundamental purpose and meaning of New Jersey's election statutes is to protect and advance the voter's fundamental right to exercise the franchise.

46. The fundamental purpose of the registration requirements in N.J.S.A. 19:31-1 et seq. is to protect the sanctity of the ballot box by ensuring that only persons who possess the qualifications to vote may register.

47. N.J.S.A. 2A:16-51 provides that the purpose of the Declaratory Judgment Act is to be liberally construed to effectuate its purpose, which is to "settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations."

48. The Declaratory Judgment Act empowers the court to declare rights, status and other legal relations, affected by a statute or otherwise within its legal and equitable jurisdiction. N.J.S.A. 2A:16-52, 2A:16-53.

49. As the State's Chief Law Enforcement Officer and Chief Election Official, the Attorney General has the duty to ensure that all voters who are legally eligible to vote shall be allowed to do so at each election.

50. Problems related to the establishment of the SVRS, including, but not limited to, data conversion issues and the inability of the SVRS to process absentee ballots efficiently, have caused the Attorney General to conclude that exclusive use of the SVRS to generate poll books for the November 2006 election could result in the impairment of the right to vote and has the potential to undermine the integrity of the election process.

51. Allowing the SVRS to run parallel for the November 7, 2006 General Election will assist the State in its continuing effort to assure the functionality of the system.

WHEREFORE, Plaintiff seeks an Order:

1. Declaring that the Attorney General's determination that the county legacy system be used as the official voter registration list for the November 7, 2006 General Election in each county (with the exception of Hunterdon County) and that the Statewide Voter Registration System established by N.J.S.A. 19:31-31 et seq. be run in parallel in every county except Hunterdon, is appropriate and is consistent with the purposes of the State's election laws and shall be implemented;

2. Declaring that each county's legacy system (with the exception of Hunterdon County) shall be the official voter registration list for the November 7, 2006 General Election;

3. Authorizing the Attorney General to mandate that, for the November 7, 2006 General Election, each county commissioner of registration (with the exception of Hunterdon County) shall print poll books utilizing the county's legacy system;

4. Authorizing the Attorney General to mandate that, for the November 7, 2006 General Election, each county commissioner of registration (with the exception of Hunterdon County) shall provide the Attorney General with its county legacy system for voter registration purposes;

5. Declaring that the State's compliance with the Stipulation entered into with the Federal Government regarding the Help America Vote Act, 42 U.S.C. §15483(a), and the National Voter Registration Act, 42 U.S.C. §1973gg-6(a), shall be deemed compliance with corresponding State law.

6. For such other relief as the Court may deem proper and necessary.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: Stefanie A. Brand
Stefanie A. Brand
Assistant Attorney General
In Charge of Litigation

Date: October 11, 2006

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned certifies, pursuant to R. 4:5-1, that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. I am not aware of any other persons who should be joined in this action and am not aware of any other persons who are subject to joinder.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: Stefanie A. Brand
Stefanie A. Brand
Assistant Attorney General
In Charge of Litigation

Dated: 10/11/06

DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:25-4

Pursuant to R. 4:2504, Stefanie Brand is hereby designated as trial counsel on behalf of plaintiff, Stuart Rabner, Attorney General of New Jersey.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: Stefanie A. Brand
Stefanie A. Brand
Assistant Attorney General
In Charge of Litigation

Dated: 10/11/06

VERIFICATION OF PLEADING

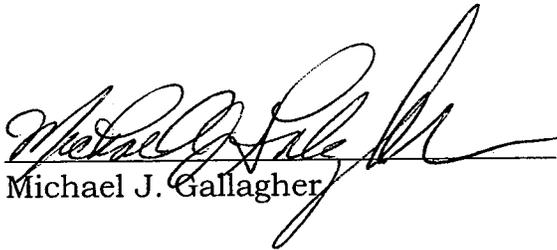
I, Michael J. Gallagher, being of full age, certify as follows:

1. I am the HAVA Administrator and the Statewide Voter Registration System ("SVRS") Project Manager for the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General.

2. I have served HAVA in this capacity since October 2004.

3. I have read the Complaint, and based on my personal knowledge, know that the facts contained in the Complaint are true, and I incorporate, by reference, those facts in this Certification.

I certify that foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Michael J. Gallagher

Date: October 11, 2006