



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

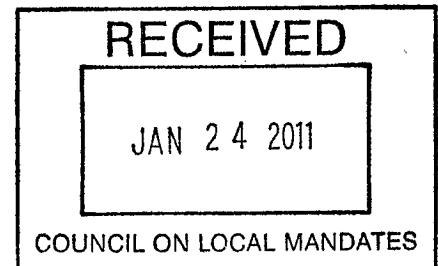
PAULA T. DOW
Attorney General

ROBERT M. HANNA
Director

January 24, 2011

VIA ELECTRONIC MAIL AND HAND DELIVERY

Honorable Jack Tarditi, Chairman
and the Council Members
State of New Jersey
Council on Local Mandates
135 West Hanover Street, 4th Floor
P.O. Box 627
Trenton, NJ 08625-0627



Re: In the Matter of the Complaint
Filed by the County of Atlantic (12-10)_____

Dear Chairman Tarditi and Council Members:


I am enclosing for filing on behalf of respondent, New Jersey Department of State, an original and two copies each of the following documents:

1. Answer for New Jersey Department of State;
2. Notice of Motion to Dismiss Complaint;
3. Letter for Department of State in Support of Motion to Dismiss Complaint; and
4. Certification of Service.



One copy each of these documents has also been filed with the Council by electronic mailing. Thank you for your attention to this filing.

Respectfully submitted,
PAULA T. DOW
ATTORNEY GENERAL STATE OF NEW JERSEY


Todd A. Wigder
Deputy Attorney General
Todd.Wigder@dol.lps.state.nj.us

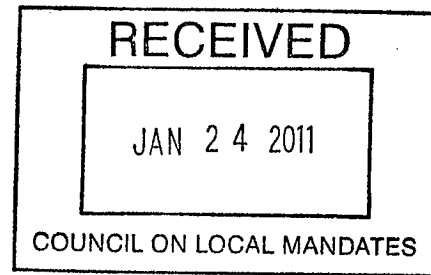
fsl

Enclosures

c: John W. Mooney,
Atlantic County Superintendent of Elections

Robert F. Giles, Director
Division of Elections, Department of State

By: Todd A. Wigder
Deputy Attorney General
(609) 292-8569



IN THE MATTER OF THE : COUNCIL ON LOCAL MANDATES
COMPLAINT FILED BY THE COUNTY : DOCKET NO. 12-10
OF ATLANTIC :
(12-10) : Civil Action
:
:
: NOTICE OF MOTION
: TO
: DISMISS COMPLAINT
:
:
:

TO: COUNCIL ON LOCAL MANDATES
135 West Hanover Street, 4th Floor
P.O. Box 627
Trenton, NJ 08625-0627

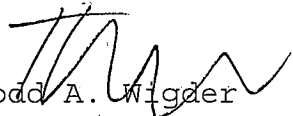
JOHN W. MOONEY,
ATLANTIC COUNTY
SUPERINTENDENT OF
ELECTIONS
1333 Atlantic Avenue
Suite 400
Atlantic City, NJ 08401

PLEASE TAKE NOTICE that Paula T. Dow, Attorney General of New Jersey (by Todd A. Wigder, Deputy Attorney General), attorney for respondent Department of State, will apply to the Council on Local Mandates on a date and time to be determined by the Council for an order dismissing the complaint by John W. Mooney, Atlantic County Superintendent of Elections.

Respondent Department of State will rely on the accompanying letter and exhibits in support of the motion to dismiss the complaint.

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
Department of State



Todd A. Wigder
Deputy Attorney General

Dated: January 24, 2011

Exhibit A



STATE OF NEW JERSEY
DEPARTMENT OF STATE
TRENTON, NJ 08625
(609) 984-1900

CHRIS CHRISTIE
Governor

LT. GOVERNOR KIM GUADAGNOLI
Secretary of State

MEMORANDUM

TO: County Boards of Election
County Superintendents of Elections

FROM: Robert F. Giles, Director *R.F.*

DATE: November 16, 2010

SUBJECT: Seal-Use Protocol Training and Anticipated Sequoia AVC Advantage
Firmware Upgrade

As you have been advised, by way of the March 8, 2010 Order in the matter of Gusclora, et al. v. Corzine, et al., the State is required to implement a seal-use protocol for the security enhancements used on all voting machines in the 21 counties. This protocol must include training, which will be conducted as follows. First, any individual whose job duties encompass access to the internal components of a voting machine is mandated to attend training. This requirement applies to any individual employed by a county, whether on a full-time or part-time basis, and it also applies to any individual employed by a vendor who is contracted for voting machine purposes. To be clear, even if an individual is hired only for the day of an election to perform voting machine duties, that person is subject to training. There will be no exceptions to this requirement. Any person who is not so trained cannot perform any voting machine duties that require or may entail access to the internal components of the voting machines. This requirement does not apply to district board workers.

The classes will be held at the Ocean County Voting Technology Center, 110 Lehigh Avenue, Lakewood, New Jersey. The class dates are as follows: January 11, 12, 13, 18, 19 and 20. Each class will be limited to 20 attendees and choice of class will be honored on a first-come/first-serve basis. Please notify the affected individuals in your office to send an email or fax to Madeline Rodriguez of the Division of Elections to provide the following information: name, home address, telephone number, email address and class preferences. The fax number is (609)777-1280 and the email address is Madeline.Rodriguez@sos.state.nj.us. You are further reminded that all attendees will be subject to criminal background checks.

The training will encompass the security enhancements that are currently on the voting machines throughout the State: Avante, ES&S, Sequoia AVC Advantage and Edge. For the counties with the Sequoia AVC Advantage the training will also include future enhancements that will be used after the anticipated installment of new firmware. On that point, you are advised that Dominion Voting Systems, which recently purchased the rights to the Sequoia AVC Advantage voting machine, has recently proposed the development of new firmware, 9.0K to address the following concerns: the primary election "option switch issue"; the ability to overwrite the audio firmware with no warning or evidence which was the basis for the claim that "viruses can propagate the audio firmware"; "between voter switch module test mode" issue which was claimed to possibly cause voters to think they voted on a machine that was not activated; the buffer overrun error in the communication to the audio subsystem; the return-oriented programming attack; and improve how the random number generator works. In addition, Dominion is also working towards making WinEDS 4.0 available as part of this upgrade. Assuming these upgrades are implemented, it is anticipated that installation will commence after the June 2011 primary election, and to be completed by September 2011. Each affected county will be responsible for installation of the new firmware, including all associated labor and budget requirements. Upon installation of the new firmware, the new security enhancements and computerized asset tracking system will be put in place in the affected counties.

Thank you for your anticipated cooperation and please do not hesitate to contact this office if you have any questions.

c: Assistant Attorney General Donna Kelly
County Clerks

Exhibit B

PAULA T...DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625
Attorney for Defendants

By: Leslie M. Gore
Assistant Attorney General
(609) 984-9504

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

A True Copy

MAR 08 2010

Sue Regan

Sue Regan

SUE REGAN
Deputy Clerk of Superior Court

SUE REGAN
Deputy Clerk of Superior Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY

DOCKET NO. MER-L-2691-04

ASSEMBLYMAN REED GUSCIORA,
STEPHANIE HARRIS, COALITION
FOR PEACE ACTION, and
NEW JERSEY PEACE ACTION,

Civil Action

Plaintiffs,

ORDER

v.

JON S. CORZINE, GOVERNOR OF
THE STATE OF NEW JERSEY (in
his official capacity) and
NINA MITCHELL WELLS,
SECRETARY OF STATE OF THE
STATE OF NEW JERSEY (in her
official capacity),

Defendants.

This matter, having come before the Court by way of a
Complaint in Lieu of Prerogative Writ, in the presence of the Rutgers
Constitutional Litigation Clinic (Penny Venetis, Esq., appearing);

Patton Boggs, Esqs. (John McGahren, Esq. and Caroline Bartlett, Esq., appearing), attorneys for plaintiffs; and Paula T. Dow, Acting Attorney General, attorney for defendants (Assistant Attorney General Leslie Gore, Assistant Attorney General Donna Kelly, Deputy Attorney General Brian G. Flanagan, Deputy Attorney General Victor DiFrancesco and Deputy Attorney General Jason Postelnik, appearing); and Beattie Padova, LLC (Arthur Charagis, Esq., George A. Campion, Esq., and Annalisa Siracusa, appearing), attorneys for Sequoia Voting Systems (having participated on a limited basis); and the Court having considered all the testimony, exhibits, expert reports, and other evidence adduced at trial; proposed Findings of Fact and Conclusions of Law, and all other papers submitted by the parties and having found that the Sequoia AVC Advantage satisfies applicable State statutory and constitutional provisions, as fully set forth in the Court's Opinion of February 1, 2010;

IT IS on this 8th day of March, 2010,

ORDERED that judgment be entered ~~in favor of Defendants and against Plaintiffs~~ as follows: and it is,

~~THE COURT~~ ORDERED that the Title 19 Voting Machine Committee be reconstituted to include two "mechanic experts" who, have an understanding of computer system operations, as well as software and hardware architecture; and it is,

FURTHER ORDERED that, within 120 days of the Court's Opinion, the reconstituted Title 19 Committee shall conduct a full certification examination of the Sequoia AVC Advantage DRE system as currently configured and issue a report to the Secretary of State as to whether to recommend continued use of the Sequoia AVC Advantage in this State. Whereupon the Secretary of State shall have 60 days from the receipt of the report from the newly constituted Title 19 Committee to render a final decision on this matter; and it is,

FURTHER ORDERED that both hardening and anti-virus software applications be installed on all computer systems in the State that are used for election management purposes, within 120 days of the Court's Opinion; and it is,

FURTHER ORDERED that the State shall develop a seal-use protocol for the tamper-evident seals on the State's voting machines, and that such protocol shall include a training curriculum and standardized procedures for the recording of seal serial numbers and maintenance of appropriate serial number records; and it is,

Clerks shall submit the seal use protocol w/in 120 days of the order
FURTHER ORDERED that the State shall advise the County Clerks that computers utilized for election-related duties shall at no time be connected to the Internet (emphasis added); and it is,

w/in 60 days of the order
FURTHER ORDERED that each County Clerk shall conduct an examination of the means in which election data is transmitted to his

or her office after an election. Once this information is collected, the State shall assist the counties in developing action plans to ensure the integrity of the transmittal of voting data between the municipal clerks' offices and the County Clerk. In the event a county does not provide a plan, results cartridges in that county shall be personally delivered to the County Clerk for tabulation; and it is,

RECOMMENDED that the State require election office employees as well as any vendors and consultants with access to voting machines be subject to criminal and security background checks; and it is,

FURTHER RECOMMENDED that access to the voting machines by outside consultants and vendors be done under the strict supervision and control of the county election offices; and it is,

FURTHER RECOMMENDED that the State, County, and Municipal election representatives be directed to undertake an examination of the current procedures regarding the storage, transportation or return of the voting machines to the warehouses and to make recommendations to guard against potential voting machine tampering; and it is,

FURTHER RECOMMENDED that the State develop and implement Statewide training and training materials for county clerks, boards

of election, superintendents of elections, technicians, warehouse personnel, and district board workers. Part of that training must include protocols for the chain of custody and maintenance of election records and documentation, including, but not limited to, authorization slips, poll books, results cartridges, seals and serial numbers, emergency ballots, provisional ballots, mail-in ballots, military and overseas ballots, ballot bags, voting machine tapes and printouts; and it is,

FURTHER RECOMMENDED that the Secretary of State develop auditing criteria to verify election results and to ensure adherence to protocols in all municipal, county, state, and federal elections.

This Court shall retain jurisdiction, for a limited period of time, to ensure compliance with the above-listed items. *of 101 days of the Pishig & the Miller.*

A copy of this Order shall be served upon the parties or their counsel within 10 days from the date of this Order by counsel for the State.

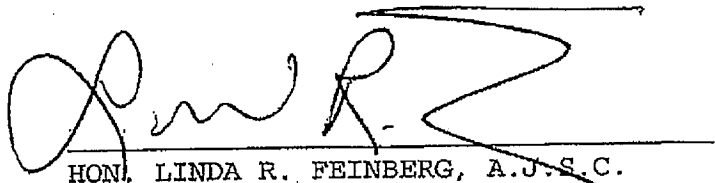

HON. LINDA R. FEINBERG, A.J.S.C.

Exhibit C

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS

ASSEMBLYMAN REED GUSCORA,
STEPHANIE HARRIS, COALITION
FOR PEACE ACTION, and NEW
JERSEY PEACE ACTION,

Plaintiffs,

v.

JON S. CORZINE, GOVERNOR
OF THE STATE OF NEW JERSEY,
(in his official capacity)
and NINA MITCHELL WELLS,
SECRETARY OF STATE OF THE
STATE OF NEW JERSEY (in her
official capacity),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MERCER COUNTY

DOCKET No.: MER-L-2691-04

CIVIL ACTION
OPINION

Decided: February 1, 2010

Penny M. Venetis, for the plaintiffs (Rutgers Constitutional
Litigation Clinic, attorneys; Ms. Venetis, on the brief).

John McGahren and Caroline F. Bartlett, for the plaintiffs (Patton
Boggs, attorneys; Mr. McGahren and Ms. Bartlett, on the brief).

Paula T. Dow, Acting Attorney General, for the defendants (Leslie M.
Gore, Assistant Attorney General; Donna J. Kelly, Assistant Attorney
General; Jason S. Postelnik, Deputy Attorney General; Brian G.
Flanagan, Deputy Attorney General; and Victor N. DiFrancesco, Jr.,
Deputy Attorney General, attorneys; Ms. Gore, Ms. Kelly and Mr.
Postelnik, on the brief).

Arthur Chagaris, George A. Campion and Annalisa Siracusa for Sequoia
Voting Systems (participated in a limited capacity); (Beattie
Padovano, attorneys).

FEINBERG, A.J.S.C.

I.

BACKGROUND

On October 19, 2004, Mercer County Assemblyman Reed Gusciora; Stephanie Harris, a registered voter in Mercer County; and two citizens' organizations – the Coalition for Peace Action and New Jersey Peace Action (collectively “plaintiffs”), filed a complaint in lieu of prerogative writs and order to show cause seeking to restrain the use of direct recording electronic (“DRE”) voting machines in this State. The complaint named former Governor James E. McGreevey and former Attorney General Peter C. Harvey as the State’s Chief Election Official, in their official capacities (“defendants” or “State”).¹

Since the inception of this litigation over five years ago, this court has addressed a myriad of procedural and substantive issues set forth in numerous written and oral opinions. These have arisen in the context of: (1) multiple orders to show cause seeking temporary restraints; (2) a remand from the Appellate Division directing the court to conduct a hearing regarding the feasibility of the State meeting the statutory deadline to implement a DRE with a voter verified paper audit trail (“VVPAT”)²; (3) the request, as part of the remand hearing, for the court to determine the criteria to be applied if the State sought a waiver; (4) a decision by the Appellate Division directing the Law Division to monitor compliance with the statutory mandate that the State satisfy the requirement that each voting machine produce a VVPAT; and (5) a trial that commenced on January 27, 2009 and ended on May 11, 2009, that focused on the AVC Advantage (“AVC”) made by Sequoia Voting Systems (“Sequoia”).³

¹ Counsel for the parties, in their trial summations, list the parties as former Governor Jon C. Corzine and former Secretary of State Nina Mitchell Wells. There is, however, no order in the court’s file or on the Automated Civil Case Management system to establish that the complaint was formally amended.

² The remand hearing addressed ten voting machines manufactured by three different companies: (1) Sequoia Edge; (2) Sequoia Edge/VVPAT; (3) Sequoia AVC Advantage; (4) Sequoia AVC Advantage/VVPAT; (5) ES&S iVotronic; (6) ES&S iVotronic-RTAL; (7) ES&S RTAL with a cut-and-drop system; (8) ES&S Precinct Based Optical Scanner; (9) AVANTE Vote-Trakker EVC 308-SPR; and (10) AVANTE Vote-Trakker EVC 308-FF.

³ The Sequoia Edge, made by Sequoia, is used in one county. With the Sequoia Edge the voter is required to go through multiple pages to view all of the different contests and candidates. The AVC, a full-face

During four and one-half years of the pre-trial phase of the litigation, the court had the opportunity to review certifications from election officials throughout the State. At trial, the witnesses included private citizens, State and County election officials, members of the Title 19 Committee, N.J.S.A. 19:48-2, and well-known computer science experts. Without exception, each of the trial witnesses has contributed to the court's understanding and appreciation of how voters in this State cast their votes. The attorneys in this case were well-prepared and dedicated significant time and energy to present their respective positions. I am grateful to have had the opportunity to have these fine men and woman appear before me.

II.

PRE-TRIAL PROCEDURAL HISTORY

As noted heretofore, when the complaint was filed plaintiffs sought to: (1) enjoin the use of DREs in the November 2004 general election; (2) require that all DREs be retrofitted to provide a VVPAT after the November election; (3) require all new DREs purchased in the State to be equipped with a VVPAT; and (4) grant reasonable attorney's fees and costs. R. 4:52-1 et seq.

The complaint, consisting of eighty-nine paragraphs, alleged the continued use of DREs violated: (1) the Constitutional requirement in N.J. Const. Art. II, ¶ 3(a) that every vote be counted; (2) the guarantee of Equal Protection in N.J. Const. Art. I, ¶ 1; (3) the statutory guidelines for recounts found in N.J.S.A. 19:28-1 et seq.; (4) the statutory requirement that each voter's intent be tabulated in accordance with N.J.S.A. 19:48-1(d) and (f) and N.J.S.A. 19:53A-3(b); (5) the statutory requirement that voting equipment be secure as mandated by N.J.S.A. 19:53A-3(g); and (6) the statutory requirement that votes be counted accurately under N.J.S.A. 19:48-1(h) and N.J.S.A. 19:53A-3(h).

On October 25, 2004, the State filed a cross-motion to dismiss. R. 4:6-2(e). In support of its application, the State filed approximately three hundred pages of certifications from forty-two election officials from counties around the State. This included County Clerks, Superintendents of Elections and

machine, permits the voter to view the entire ballot on one surface. The full-face, in that respect, is similar to the former lever machine.

enhancements/modifications should be evaluated by a newly-constituted Title 19 Committee, or if the Legislature deems it appropriate, by a new entity to review voting systems.

D.

TRIAL FINDINGS

On January 27, 2009, when the trial commenced, the State had not implemented the VVPAT. Six weeks later on March 6, 2009, the statutory deadline was extended indefinitely. It is undisputed that the DRE voting system has been in use since as early as 1979. While this opinion will discuss important steps the State must take to address certain issues raised during trial, not one witness presented evidence that the AVC, outside of a controlled academic setting, has ever been hacked. In fact, other than the "option switch bug," the expert witnesses and county election officials agreed that, absent purposeful and criminal intrusion by an outsider or insider, the AVC records votes cast and produces accurate results.⁸² N.J.S.A. 19:48-1 and N.J.S.A. 19:53A-3.

The court agrees with defendants that the claims regarding security risks of the AVC are not consistent with the State's over fifteen year record of successful elections using this voting system. The record is void of any evidence to establish that any election has ever been compromised due to the fraudulent manipulation of an AVC voting system. As noted by defendants, "if the mere physical or technological possibility of criminals to supersede government activity were to warrant strict scrutiny, then many regulatory decisions, both in and out of the election context would not survive constitutional review." Def. Br. at 17, citing DeShaney v. Winnebago Cty. Soc. Servs. Dept., 489 U.S. 189

⁸² The option switch problem occurred when a board worker pressed an inappropriate sequence of buttons on the option switch panel. This problem was discovered in the February 2008 primary. The problem, once identified, was corrected by placing a plastic shield over the operator panel. In the primary elections held since that time, no problems have been reported.

(1989)(holding that states are not constitutionally required to "protect the life, liberty and property of its citizens against invasion by private actors.).

Interestingly, absent the hypothetical situation of criminal access and the installation of fraudulent software, plaintiffs' own expert did not find any malicious software in the source code or any irregularities that would result in the AVC failing to count votes as cast.

While the AVC is not a perfect voting system and there are serious issues that remain to be addressed, based on the evidence adduced at trial, the court finds the following:

- (1) No AVC has ever been demonstrated to have been hacked, other than in an academic setting, in this State or any other state.
- (2) There has never been a demonstrated incident of an attempted attack or a verified attack of any AVC voting system in the United States since its use began at least as early as 1979.
- (3) Replacement of the AVC ROM chip with a fraudulent ROM chip is not a realistic risk. The systematic one-by-one replacement of ROM chips by an intruder, or even an insider, would require mechanical and physical changes to each and every machine.
- (4) It would be extremely unlikely that one could replace DRE firmware with fraudulent firmware while leaving no detectable evidence of that under real election conditions.⁸³
- (5) The tamper-evident seals and locks serve as a deterrent. While these seals may be visually inspected by election officials and their serial number checked against records upon the voting machines' return to the warehouse post-election, the State does not have an adequate inspection protocol.
- (6) The new seals used in New Jersey will have serial numbers to aid in identifying tampering. The State must take steps to require election officials to: (1) check and record the serial numbers; (2) adopt a uniform seal-use inspection protocol; and (3) provide inspectors with

⁸³ The three election representatives in charge of the handling and storage of the voting machines each outlined the measures taken to secure the voting machines. Given the alarm systems in place, limited password or key access, and precautions undertaken by the election representatives who testified, outsiders cannot realistically perpetrate such an attack at voting machine warehouses.

adequate training.

(7) While insiders may pose a security risk, this is true with all voting systems; it is not a risk unique to the AVC or any other DRE or voting system.⁸⁴

(8) The record demonstrates that the DRE is a complicated system. Thus, the creation of a Trojan horse – in which a voting machine outwardly appears to the user to be using the legitimate program, but is secretly doing other things unseen by the user – is not a trivial process.⁸⁵

(9) The technical barriers to producing fraudulent firmware, and the necessary step of reverse engineering the source code, are substantial.⁸⁶

(10) The notion that fraudulent firmware can continue to operate, as anticipated, for future elections, is completely unrealistic.⁸⁷

11. Security vulnerabilities are present, to some degree, in every voting system. There is simply no such thing as a voting system that is impossible to manipulate.⁸⁸

12. Viruses do not present a legitimate risk to the AVC. The notion that some kinds of fraudulent firmware can automatically propagate themselves from one AVC to another is purely hypothetical.

13. The viral mode theorized by plaintiffs' expert through the use of the daughterboard is fictional.⁸⁹

⁸⁴ As a result, this concern does not warrant banning the use of the AVC. This is particularly true where plaintiff offered no proof of any "insider" manipulation.

⁸⁵ Further, a hacker without the benefit of the source code would need to reverse engineer the ROM chip to create a fraudulent program in order to know what to change.

⁸⁶ It has taken world-renowned security experts substantial time to perpetrate such hacks in a laboratory setting.

⁸⁷ No one knows how each future election will be set-up and no one can anticipate changes in the law, changes in the outcome of ballot rotations affecting the election setup, changes in the ballot formation, changes in the demographics of the jurisdiction or changes in the rotations of machines in different jurisdictions.

⁸⁸ As a result, in evaluating the reasonableness of a particular voting system, the court cannot apply the "perfection" standard proposed by plaintiffs' experts. Rather, the appropriate standard is whether a particular voting system can be safely used under normal election conditions. This is the standard adopted in New Jersey and in other states.

⁸⁹ Even if this was possible, the theoretical attacks could only cause votes to be altered if they had been cast by an audio voter and could only affect the motherboard into believing the machine was in a state ready for voting, requiring it to be taken out of service. As reference, only four people voted by way of

case also presents the issue of the scientific reliability of the voting system used in this State. Here, unlike many cases that address novel issues of scientific reliability of new devices, the DRE has been in use for twenty years and the State has a comprehensive legislatively-defined process for the review and certification of voting machines. State v Chun, supra, 194 N.J. at 54; Romano v. Kimmelman, 96 N.J. 66 (1984). Title 19, more specifically, N.J.S.A. 19:48-1 and N.J.S.A. 19:53, outlines the statutory factors that must be met to certify voting systems. While the statute provides that a certified voting system is entitled to a conclusive presumption, this court has already held a rebuttable presumption applies.

In this case, the court finds that the voting rights are not severely restricted by the use of paperless voting machines. First, the court finds that, absent pre-meditated criminal activity, the voting systems in this State are safe, accurate and reliable. In the case at bar, Appel and his team examined the AVC under artificial laboratory conditions with unfettered access to two AVC machines and the source code, for a period of one month. Second, there is no evidence of tampering of an AVC in any election in this State, or any impermissible alteration of any vote. Instead, the record is replete with testimony from State and County election officials that, over the many years of use, not one election result in the State has been adversely affected.⁹⁶ As a result, the heightened scrutiny test does not apply.

⁹⁶ The option switch bug has been remedied. The redundant memory capabilities of the AVC disclosed the error. The error was insufficient to have changed the results of the election.

V.

SPECIFIC REQUIREMENTS OR RECOMMENDATIONS

1. HARDENING GUIDELINES ANTI-VIRUS SOFTWARE (REQUIRED)

Chapter Eight of the Sequoia Voting Systems, Election Management System Manual, entitled "Additional Security Guidelines," dated March 5, 2008, identifies steps to take to ensure an election tabulation environment as free from outside contamination as possible. It specifically recommends that certain steps be taken.

This document is under seal. Therefore, the court will not disclose the specific recommendations. Based on the testimony adduced at trial, Sequoia recommends customers to install both hardening and anti-virus applications.⁹⁹ Additionally, customers are advised that laptops not be connected to the Internet or be used for any other purpose. The record reflects that New Jersey has not adopted any of the hardening guidelines and that anti-virus software, if installed, is done so sporadically.

According to Sequoia, hardening techniques and anti-virus software are available at little or no cost to the State.¹⁰⁰ This shall be completed on or before the 120 days set forth in the prior section.

2. BACKGROUND CHECKS (RECOMMENDED)

The integrity of our voting system depends on a system designed to protect voting machines against attack by intruders. During the trial, Clayton, Giles, Mahoney and Gentile described the manner in which voting machines are stored in the warehouse. The voting machine warehouses are located separate and apart from county administration offices in buildings that are either owned or rented by the county.

Without exception, the premises are locked and each employee utilizes a code to enter the building and/or activate or deactivate the alarm. During the evening and on the weekends, the buildings do not have security personnel on site. While these rudimentary security measures are most likely

⁹⁹ The State's experts also recommend implementation of hardening and antivirus measures.

¹⁰⁰ The court also recommends that the results cartridges be encrypted in future systems.

adequate to preclude entry from an outside intruder, the most likely attack will occur through the actions of an employee, contract vendor, or consultant.

None of the witnesses were aware of any policy that required warehouse employees, contract vendors, or consultants to undergo criminal or security background checks. Given the importance of ensuring the safety and security of voting machines, election officials should require all new employees, vendors, and consultants to be subject to criminal background investigations. While this will not necessarily prevent an attack in all circumstances, requiring a criminal background check will help to protect the integrity of the process. As noted in the trial record, some of the counties utilize outside vendors or consultants to conduct Pre-LAT, upgrade software, installations, maintenance, or other tests. While performing these tasks, these individuals are oftentimes given unsupervised access. Clearly, election officials should require employees, vendors or consultants with access to voting machines to be subject to criminal and security background checks. Additionally, access by outside consultants and vendors should be done under strict supervision and control.

**3. TRANSPORTATION/DELIVERY/RETURN OF VOTING MACHINES
(RECOMMENDED)**

The record reflects that in New Jersey, and many other states, voting machines are left unattended for weeks before the election and weeks after the election. The risk is not unique to the AVC voting system. This schedule results from the large number of polling places and the number of voting machines to be delivered to polling places.

Warehouse election representatives testified that voting machines are transported to polling places by third party vendors hired by the county. But for one of these counties, warehouse election personnel do not accompany the movers during the transportation and delivery of the machines. Furthermore, once the machines are delivered to the polling place, the warehouse is not advised by the movers or representatives from the polling places that the machines have been delivered.

According to warehouse representatives, delivery of voting machines to the polling places begins as early as two weeks before the election. The testimony and photographs produced by Felton disclosed

polling places left open during the day and sometimes into the evening. There are no security cameras and there are often signs that direct individuals to the place of the voting machines. As confirmed by Felton, an intruder can go undetected for long periods of time and have unrestricted access to the machines.

Since voting machines are left unattended in public places for several days, sometimes weeks, before and after each election, it is not difficult to gain unsupervised access to the voting machines. After the election, the voting machines remain at the polling places for up to two weeks before being returned to the warehouse. Importantly, there are no written or unwritten policies or protocols in place that govern the storage, transportation, or return of the voting machines to the warehouse.

While the court understands the difficulty in delivering the voting machines on the day of the election, voting machines should not be left in unsecured areas. Even though tamper-evident seals help remediate the risk associated with leaving voting machines unguarded, leaving machines unattended for several weeks is problematic. Still, having both these locks and seals means the intruder must know how to pick a lock without breaking it, and know how to break and replace a seal without leaving detectable evidence. Tamper-evident seals also generally have serial numbers on them, requiring the intruder to replace the seals with ones that have the identical numbers.

Based on this information, the court directs the State, County, and Municipal election representatives to undertake an examination of the current procedures and make recommendations to guard against potential voting machine tampering. One recommendation is that security cameras be required for any facility where voting machines are left prior to and after an election. The cost of these devices in today's market should be minimal. A cost-benefit analysis clearly weighs in favor of this kind of security equipment.

4. SEALS AND SEAL-USE PROTOCOLS (REQUIRED)

For a system of tamper-evident seals to provide effective protection seals must be consistently installed, they must be truly tamper-evident, and they must be consistently inspected. While the new seals proposed by the State will provide enhanced security and protection against intruders, it is critical for the State to develop a seal protocol, in writing, and to provide appropriate training for individuals

charged with seal inspection. Without a seal-use protocol, use of tamper-evident seals significantly reduces their effectiveness.

The court directs the State to develop a seal-use protocol. This shall include a training curriculum and standardized procedures for the recording of serial numbers and maintenance of appropriate serial number records.

5. INTERNET CONNECTION AND OTHER TRANSMISSION LINES (REQUIRED)

As long as computers, dedicated to handling election matters, are connected to the Internet, the safety and security of our voting systems are in jeopardy. Therefore, if the State has not done so already, Clerks shall be advised that computers utilized for election-related duties shall at no time be connected to the Internet. (emphasis added.)

Each Clerk shall conduct an examination of the means in which election data is transmitted to the Clerk after an election. Once the information is collected, the State shall assist the counties in developing action plans to ensure the integrity of the transmittal of voting data between the Municipal Clerks' offices and the Clerk. If counties do not provide a plan, then and in that event, results cartridges shall be personally delivered to the Clerk for tabulation.

6. TRAINING AND RECORD-KEEPING (RECOMMENDED)

It is imperative for the State to develop and implement Statewide training and training materials for Clerks, Boards, Superintendents, technicians, warehouse personnel and poll workers. Part of that training must include protocols for the chain of custody and maintenance of election records and documentation, including, but not limited to, authorization slips, poll books, results cartridges, seals and serial numbers, emergency ballots, provisional ballots, mail-in, military and overseas ballots, ballot bags and machine tapes and printouts.

In addition, the Secretary of State should develop auditing criteria to verify election results and to ensure adherence to protocols in all municipal, county, state and federal elections.

VI.

CONCLUSION

Counsel for the State shall prepare an order consistent with this opinion. To ensure compliance with the items listed in the prior section, for a limited period of time, this court shall retain jurisdiction.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Department of State
and Division of Elections
R.J. Hughes Justice Complex
P.O. Box 112
Trenton, New Jersey 08625
(609) 292-8569

By: Todd A. Wigder
Deputy Attorney General

IN THE MATTER OF COMPLAINT)	COUNCIL ON LOCAL MANDATES
FILED BY		
THE COUNTY OF ATLANTIC)	Docket No. 12-10
_____)	<u>CERTIFICATE OF SERVICE</u>

CECILIA ASHBOCK, of full age, hereby certifies that:

1. I am employed with the Division of Law, Department of Law and Public Safety, State of New Jersey.

2. On January 18, 2011, at the direction of Todd A. Wigder, Deputy Attorney General, and on behalf of the Department of State and its Division of Elections, a letter and exhibits in opposition to preliminary injunction in the above-captioned matter was sent via electronic mail to:


Honorable Jack Tarditi
Council.onLocalMandates@treas.state.nj.us
clmand@treas.state.state.nj.us

John W. Mooney
mooney_johnw@aclink.org

Robert F. Giles, Director
Robert.giles@sos.state.nj.us

NJ.Elections@sos.state.nj.us

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


Cecilia Ashbock

Dated: January 18, 2011

Exhibit D

STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES

RE: COMPLAINT FILED BY THE
COUNTY OF ATLANTIC (12-10)

ORDER
ENJOINING ENFORCEMENT

Claimant Atlantic County having filed a complaint with the Council on Local Mandates (Council) challenging the November 16, 2010 Seal-Use Training Protocol order of the Director of the Division of Elections that *"Any individual whose job duties encompass access to the internal components of a voting machine is mandated to attend training"* as an unconstitutional unfunded mandate, and

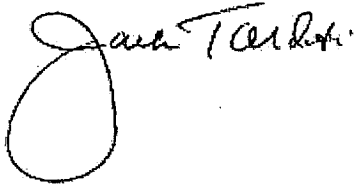
Pursuant to Article VIII, Section II, paragraph 5 of the New Jersey State Constitution and N.J.S.A. 52:13H-16, the Council is enjoining enforcement of the order of the Director of the Division of Elections that *"Any individual whose job duties encompass access to the internal components of a voting machine is mandated to attend training"*, pending the Council's considerations of whether the order constitutes an unfunded mandate, and

It is on this 7th day of January 2011, ordered by the Council as follows:

1. The Director of the Division of Elections is hereby enjoined from requiring any individual whose job duties encompass access to the internal components of a voting machine to attend training, pending the Council's considerations of whether the order constitutes an unfunded mandate.
2. Prior to said hearing, the Director of the Division of Elections may require attendance at such training if the Director compensates each county for the expenses incurred by the county in order to send individuals to said training courses.
3. Nothing in this order shall be construed as prohibiting the Seal-Use Training from being held prior to the hearing by the Council; however, attendance at such training shall not be mandatory.

4. It is further ORDERED that the State Department shall file and serve its Answer on or before the 17th day of January, 2011; and

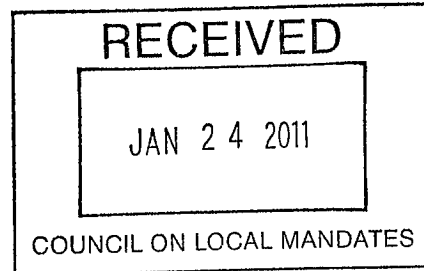
5. The hearing on whether to make enjoinderment of the Seal-Use Training Protocol order of the Director of the Division of Elections permanent will be held in the State House Annex at 1:00 p.m. on Monday, January 24, 2011.

A handwritten signature in black ink, appearing to read "Jack Tarditi". The signature is stylized, with a large, looping initial "J" and a cursive "Tarditi".

Hon. Jack Tarditi, Chair

Council on Local Mandates

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
New Jersey Department of State
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625



By: Todd A. Wigder
Deputy Attorney General
(609) 292-8569
todd.wigder@dol.lps.state.nj.us

COUNCIL ON LOCAL MANDATES
DOCKET NO. 12-10

IN THE MATTER OF THE	:	Civil Action
COMPLAINT FILED BY	:	
COUNTY OF ATLANTIC	:	ANSWER OF RESPONDENT
	:	NEW JERSEY DEPARTMENT OF STATE

Respondent New Jersey Department of State (the "Department"), by way of Answer to the Complaint by the County of Atlantic County Superintendent of Elections ("County" or "Superintendent"), states:

1. Respondent Department denies the allegation that the November 16, 2010 memorandum, captioned "Seal-Use Protocol Training and Anticipated Sequoia AVC Advantage Firmware Upgrade" and issued by Robert F. Giles, Director of the Division of Elections, to all County Superintendents and Boards of Election (the "Giles memorandum"), is a statute, rule or regulation.

2. Respondent Department denies that the Giles memorandum is an unfunded mandate or that it violates art. VIII, §2, ¶5 of the New Jersey Constitution or N.J.S.A. 52:13H-2.

3. Respondent Department denies that the Giles memorandum requires additional direct expenditures by the County or Superintendent.

4. Respondent Department denies that the Giles memorandum requires the Superintendent to compensate part-time voting machine technicians for their time and travel to attend a training class on the seal-use protocol.

5. Respondent Department does not have sufficient knowledge or information to form a belief as to the truth of the allegation of the complaint that Atlantic County utilities 13 part-time technicians on election days.

6. Respondent Department does not have sufficient knowledge or information to form a belief as to the truth of the County's suggestion that each of the 13 part-time technicians should be reimbursed at \$125, or a total of \$1625, for attending a day's training.

7. Respondent Department admits that the County requested reimbursement to the part-time technicians for time and travel and that the Department denied the request for reimbursement.

WHEREFORE, respondent Department of State demands judgment against the County and Superintendent dismissing the Complaint in its entirety.

REASONS WHY THE COMPLAINT SHOULD BE
DISMISSED AND/OR JUDGMENT ENTERED AGAINST
CLAIMANT.

FIRST REASON

The Council lacks jurisdiction to consider the complaint.

SECOND REASON

The complaint fails to state a claim.

THIRD REASON

The Council cannot grant effective relief.

FOURTH REASON

The complaint does not implicate a statute, rule or regulation.

FIFTH REASON

The Giles memorandum does not constitute an impermissible unfunded State mandate.

SIXTH REASON

The Giles memorandum does not require any additional direct expenditures.

SEVENTH REASON

Any additional expenditures are the result of actions by the claimant.

EIGHTH REASON

Any additional expenditures are the result of actions by third parties, not respondent Department.

NINTH REASON

Respondent Department reserves the right to assert any additional reasons to dismiss and/or to enter judgment against the claimant that may be developed during the course of this proceeding.

WHEREFORE, respondent Department of State demands judgment against the County and Superintendent dismissing the complaint in its entirety.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
New Jersey Department of State


Todd A. Wigder
Deputy Attorney General

Dated: January 24, 2011



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

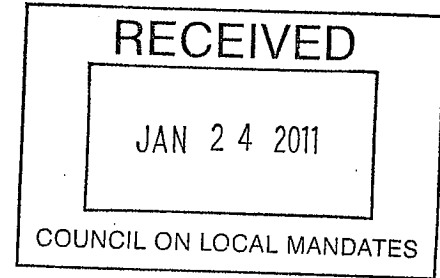
PAULA T. DOW
Attorney General

ROBERT M. HANNA
Director

January 24, 2011

VIA ELECTRONIC MAIL AND HAND DELIVERY

Honorable Jack Tarditi, Chairman
and the Council Members
State of New Jersey
Council on Local Mandates
135 West Hanover Street, 4th Floor
P.O. Box 627
Trenton, NJ 08625-0627



Re: IMO Complaint filed by the
County of Atlantic, (12-10)

Letter for Department of State in
Support of Motion to Dismiss Complaint

Dear Chairman Tarditi and Council Members:

Please accept this letter and exhibits in support of the motion by respondent Department of State (the "Department") to dismiss the complaint filed by the Atlantic County Superintendent of Elections (the "Superintendent"). The complaint should be dismissed because the complaint does not allege, as it must, that a statute, rule or regulation is an impermissible unfunded State mandate.



PLEADING SUMMARY

This is a motion by respondent Department of State that asks the Council on Local Mandates to dismiss the complaint filed by the Atlantic County Superintendent of Elections. The Council should dismiss the complaint because it fails to state a claim that is cognizable by the Council. The Superintendent alleges that a memorandum scheduling seal-use protocol training for County elections employees is an unfunded State mandate. However, the training is required by a court order and the memorandum merely schedules the training. Therefore, no statute, rule or regulation is implicated by the complaint or imposes any unfunded State mandate, as required by the Constitution and the Local Mandates Act. Indeed, the memorandum does not require any additional direct expenditures by the County. Rather, the County's arrangement with its part-time employees is the cause for any additional expenditures. Thus, the Council should dismiss the complaint.

PROCEDURAL HISTORY
AND
STATEMENT OF FACTS

On December 3, 2010 John W. Mooney, Superintendent of Elections for Atlantic County ("Superintendent"), filed a complaint with the Council on Local Mandates (the "Council") alleging that a November 16, 2010 memorandum from Robert Giles, Director of the Division of Elections (the "Giles memorandum"), is a "statute, rule, or regulation" that does not authorize resources, other than

the property tax, to offset the additional direct expenditures required for its implementation and, therefore, is an impermissible unfunded State mandate.¹ Complaint, II.1.

The Giles memorandum informed all County Superintendents and Boards of Election that the State is required by Superior Court order in Gusciora v. Corzine, MER-L-2691-04, to implement a seal-use protocol for security enhancements used on all voting machines in the 21 counties and that the "protocol must include training." See Exhibit A, Giles Memorandum. Consistent with the Court's order, the Giles memorandum provided that "any individual whose job duties encompass access to internal components of a voting machine is mandated to attend training." The memorandum then informed Superintendents and County Boards that classes will be held at the Ocean County Voting Technology Center in Lakewood, New Jersey and that affected individuals may choose from one of six different days between January 11 and 20, 2011. Giles also reminded County election officials that attendees will be subject to criminal background checks. Ibid.

¹ The Superintendent, acting alone, could not invoke the Council's jurisdiction. N.J.S.A. 52:13H-12. The procedural history of the Superintendent's complaint, which appears on the Council's website, indicates that Dennis Levison, the Atlantic County Executive, submitted a letter to the Council on December 22, 2010 "in support of the complaint," and that the Atlantic County Board of Chosen Freeholders was sent a copy of this letter. The Department reserves the right to develop this jurisdictional question. Neither the Department nor the Attorney General was served with the County Executive's letter.

The Court order in Gusciora, which requires the training that is the subject of the Giles memorandum, resolved a lawsuit brought by Assemblyman Reed Gusciora and others against Governor Corzine and Nina Wells, the Secretary of State at the time responsible to regulate elections and voting in New Jersey. See Exhibit B, March 8, 2010 Court order. The complaint in Gusciora alleged in essence that the direct recording electronic voting machines used in New Jersey were inherently unreliable and susceptible to hacking. The plaintiffs claimed among other things that the State had not implemented security measures and could not assure the safe and accurate operation of its electronic machines, all in violation of the constitutional right to vote and statutory election law requirements. The complaint demanded initially that all electronic machines be retrofitted to provide a voter-verified paper audit trail and, later, that all electronic voting machines be replaced with optical scan voting systems.

In a 207-page opinion issued on February 1, 2010, Judge Linda Feinberg did not find any constitutional or statutory violation associated with the State's use of the electronic voting machines and, instead, found that the electronic voting machines have not been hacked and that they are safe, accurate and reliable.

See Exhibit C, Excerpts from Court's Opinion, at pp. 171, 194.² However, the Court observed that "there are serious issues that remain to be addressed." Exhibit C, at p. 172. As the Court found, the State does not have an adequate inspection protocol for the tamper-evident seals and locks, Id. at p. 172, and "the State must take steps to require election officials to adopt a uniform seal-use inspection protocol and to provide inspectors of the machines with adequate training." Exhibit C, at pp. 172-73.

Thus, the Court ordered the State to develop a seal-use protocol that includes a "training curriculum and standardized procedures for the recording of serial numbers and maintenance of appropriate serial number records." Id., at p. 206. To carry out its opinion the Court entered an order on March 8, 2010 that, among other things, mandated that the State

shall develop a seal-use protocol for tamper-evident seals on the State's voting machines, and such protocols shall include a training curriculum and standardized procedures for the recording of seal serial numbers and maintenance of appropriate serial number records. (emphasis supplied).

Exhibit B, at p.3. In addition to these orders requiring training, the Court also made several recommendations to enhance voting machine security or safety, including one that the State require

² Because of its length, only the relevant excerpts of the Court's opinion are attached to this letter. A complete copy of the opinion is available, and will be provided upon the Council's request.

all election office employees, vendors and consultants with access to voting machines be subject to criminal and security background checks. Id., at p.4.

The Superintendent claims in his complaint that the County has 13 part-time voting machine technicians who, unlike regular County elections employees, must be compensated for time and travel to attend required training. The Superintendent suggests that the total cost for the 13 part-time technicians to attend the day's training is \$1,625.00. He alleges that he asked the Division of Elections for reimbursement to the part-time technicians, and was denied. Complaint, II.3. The Superintendent did not ask the Council for injunctive relief, and he did not assert any imminent irreparable injury in the absence of injunctive relief. Complaint, II.5.

Nevertheless, the Council entered an order on January 7, 2011 that, reciting language in the Giles memorandum, temporarily enjoined the enforcement of training for "any individual whose job duties encompass access to internal components of a voting machine is mandated to attend training."³ Exhibit D, Council's January 7,

³ The Council's January 7 order applies literally to "any individual" with access to the internal components of a voting machine. However, the Superintendent does not claim that any regular or full-time employees are affected or that they cannot be required to attend training without compensation. Therefore, the January 7 order, properly construed, enjoins enforcement only against the part-time employees referred to in the Superintendent's complaint.

2011 order. The Council's order also directed the Department to file papers in connection with the injunction by January 17, 2011. A hearing to consider issuance of a permanent injunction was scheduled for January 24, 2011. These dates were later modified by the Council, and the Department filed and served its papers opposing any injunction on January 18, 2011. The hearing on a permanent injunction is now scheduled for February 22, 2011. Finally, the Council has directed that an Answer to the Superintendent's complaint and any motions are to be filed by January 24, 2011.

ARGUMENT

THE COUNCIL SHOULD DISMISS THE
SUPERINTENDENT'S COMPLAINT BECAUSE THE
TRAINING AT ISSUE WAS ORDERED BY A COURT NOT
THE DEPARTMENT OF STATE, AND THUS NO STATUTE,
RULE OR REGULATION IS IMPLICATED BY THE
COMPLAINT OR IS AN IMPERMISSIBLE, UNFUNDED
STATE MANDATE.

The Council's authority is narrowly drawn by the Constitution and the controlling statute and is limited to considering whether a statute, rule or regulation is an impermissible, unfunded State mandate. N.J. Const., art. VIII, § 2, ¶ 5; N.J.S.A. 52:13H-2; N.J.S.A. 52:13H-12a. Because the Giles memorandum merely schedules court-ordered training, the Superintendent's complaint does not state a claim that the Council is authorized to consider.

There can be no question in this case that the Giles memorandum is based on an order by the Superior Court of New Jersey and does nothing more than follow the Court's clear and unmistakable orders requiring the State to develop a seal-use protocol and to provide training to appropriate County elections staff who are intimately involved with voting machine security and safety. Clearly, any expenditures resulting from this court-ordered training are not the product of a "statute, rule or regulation" as required by the Constitution and N.J.S.A. 52:13H-12a.

The Council has not hesitated to dismiss a complaint, like the Superintendent's complaint here, that does not implicate a statute, rule or regulation. For instance, in In the Matter of the Complaint filed by Township of Branchburg,⁴ Branchburg alleged in its complaint to the Council that the Appellate Division's holding in a case involving copying fees under the Open Public Records Act (OPRA) constituted an impermissible, unfunded State mandate. The court's holding had limited the fees a public agency like Branchburg could charge an OPRA requestor to the "actual cost" to the public agency for duplication. In dismissing the complaint, the Council reasoned that Branchburg had not relied on a statute,

⁴ This decision can be found on the Council's website under "Council Decisions" at [http://www.state.nj.us/local/mandates/decisions/8-12-10 Branchburg-Township-Memorandum](http://www.state.nj.us/local/mandates/decisions/8-12-10%20Branchburg-Township-Memorandum).

rule or regulation as required by the Constitution and, instead, had complained about the court's holding limiting the fees that agencies could charge. In these circumstances, the Council determined that "the complaint must be dismissed because it fails to place the statute [OPRA] squarely before us as the Constitution requires."

Similarly, in the present case, the Gusciora Court required the Department of State to deliver seal-use protocol training and, like the claimant in the Branchburg case, the Superintendent has not placed a "statute, rule or regulation" before the Council. Certainly, the source of the Superintendent's complaint in this case is the Gusciora Court's order requiring the training, not the Giles memorandum which merely implements the Court's order by scheduling the training. Hence, the Council should dismiss the Superintendent's complaint because it does not place a statute, rule or regulation before the Commission, as required by the Constitution and the Local Mandates Act.⁵

To the extent that the complaint can be read as a direct challenge to the Giles memorandum, rather than the training ordered

⁵ To be sure, the expenditures alleged here are the result of the County's arrangements with its part-time employees to pay them for their time and travel, not the Court's order or the Giles memorandum. As pointed out earlier in this letter, the Superintendent does not claim that his regular staff is subject to an unfunded mandate. The absence of an unfunded mandate also requires that the Council dismiss the complaint.

by the Gusciora court, neither the Superintendent nor the County Executive can raise that challenge before this Council. The Council has jurisdiction over laws, rules and regulations; it has no jurisdiction with respect to State agency action. N.J.S.A. 52:13H-2 and -12a; see also N.J. Const. art. VI, §5, ¶4 (providing for review by Superior Court in lieu of prerogative writs "on terms and in manner provided by the Rules of the Supreme Court"); N.J. Court Rules 2:2-3(a) (allocates review of "final decisions or actions of any State administrative agency or office" to Appellate Division); Infinity Broad Corp. v. New Jersey Meadowlands Comm'r, 187 N.J. 212, 224 (2006) (reaffirming that "save for condemnation or inverse condemnation actions, appeals from state agency action in the Appellate Division"). The Giles memorandum, if considered independent of the Gusciora court order, is unquestionably State agency action that can be reviewed only in the Appellate Division.

In sum, the Superintendent's complaint does not state a claim that the Council is authorized to consider. The training that is the subject of the complaint was ordered by the Superior Court, not the Department of State, and the Giles memorandum merely schedules the court-ordered training. So too, the expenditures alleged in the complaint are the direct result of the County's arrangements with its part-time employees, not any action by the Department of State. Therefore, no statute, rule or regulation is implicated by the complaint or is an impermissible, unfunded State

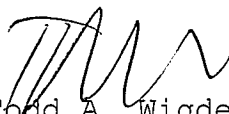
mandate, as required by the Constitution and the Local Mandates Act. In these circumstances, the Council should and must dismiss the complaint.

CONCLUSION

For all the reasons expressed in this letter, the Council should grant the Department of State's motion and dismiss the Superintendent's complaint in its entirety.

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL STATE OF NEW JERSEY

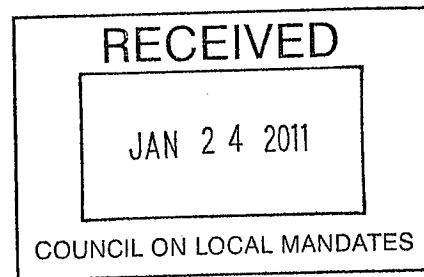

Todd A. Wigder
Deputy Attorney General
Todd.Wigder@dol.lps.state.nj.us

fsl

c: John W. Mooney,
Atlantic County Superintendent of Elections

Robert F. Giles, Director
Division of Elections, Department of State

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
New Jersey Department of State
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625



By: TODD A. WIGDER
Deputy Attorney General
(609)292-8569

COUNCIL ON LOCAL MANDATES
DOCKET NO. 12-10

IN THE MATTER OF THE) Civil Action
COMPLAINT FILED BY)
COUNTY OF ATLANTIC) CERTIFICATION OF SERVICE

I, FLORINE S. LINZIE, of full age, do of my own personal knowledge make the following statements by way of certification in lieu of affidavit pursuant to R. 1:4-4(b):

1. I am a Supervisor of Legal Secretarial Services employed by the State of New Jersey, Department of Law and Public Safety, Division of Law.

2. On Monday, January 24, 2011, at the direction of Todd A. Wigder, Deputy Attorney General, I caused to be filed by electronic mail and hand delivery with the Council on Local Mandates an Answer for New Jersey Department of State, Notice of Motion to Dismiss Complaint, Letter for Department of State in Support of Motion to Dismiss Complaint; and Certification of Service at:

Honorable Jack Tarditi, Chairman
and the Council Members
State of New Jersey
Council on Local Mandates
135 West Hanover Street, 4th Floor
P.O. Box 627
Trenton, NJ 08625-0627

3. On Monday, January 24, 2011, one copy each of the
above mentioned documents were sent via electronic mail to:

John W. Mooney
mooney_johnw@aclink.org
nj.elections@sos.state.nj.us

Robert F. Giles, Director
robert.giles@sos.state.nj.us

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



FLORINE S. LINZIE

Dated: January 24, 2011