

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MERCER COUNTY
DOCKET NO. MER-L-2691-04

ASSEMBLY REED GUSCIORA,
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.

MEMORANDUM OF
UNDERSTANDING

1) This agreement applies to electronic ballot voting procedures to be used exclusively by voters with disabilities and military and overseas voters for the July 2020 Primary Election, and if need be, for public health purposes, for the November 3, 2020 General Election. This Agreement deals only with the matters described herein.

2) This agreement has no force and effect on the election ballot process that is in place exclusively for military and overseas voters, pursuant to N.J.S.A. 19:59-1 to -16, except as specified herein.

3) For the purposes of this agreement, "electronic ballot return system" means any system that is used by a voter to transmit their voted ballot to county election officials, or any other entity, via the internet.

4) An “electronic ballot access or delivery system,” as defined herein, may be used exclusively for the July 7, 2020 Primary Election, and if need be, for public health purposes, for the November 3, 2020 General Election, only for voters with disabilities, and military and overseas voters. For the purposes of this agreement, "electronic ballot access or delivery system" means a system where all of the following criteria are met¹:

a- Unvoted ballots are electronically delivered to the voters with disabilities, and/or military and overseas voters, and the voter’s ballot selections (votes) are never transmitted on the internet.

b- A voter with disabilities may print an unvoted ballot for hand marking, and then return the ballot (by U.S. mail or other non-electronic means). The military or overseas voter may print unvoted ballots for hand marking, and then return the ballot by the means articulated in N.J.S.A 19:59-1 to -16.

c- A voter with a disability, who is unable to hand mark a ballot privately and independently, as specified in paragraph 4b, may be given the choice to use accessible technology to indicate vote selections on the computer. The voter will then print the ballot marked on the computer with the voter’s selection on paper (to verify the ballot), and return the ballot (by U.S. mail or other non-electronic means).

d- No information about the voter’s ballot selections and/or votes may be transmitted over the internet.

e- No personal voter information, including information from or about the voter’s computer and browser may be gathered, analyzed and/or sold.

5) The State must include all of the security criteria in paragraph 4 of this MOU in any Requests for Proposals that the State issues for the use of an electronic ballot access or delivery system, and any contracts that the State enters

¹ At the signing of this agreement, the following are examples of “electronic ballot access or delivery systems” that meet the requirements enumerated in this agreement: Democracy Live Secure Select 1.2.2, Five Cedars Group Alternate Format Ballot (AFB) v5.2.1, and Dominion ImageCast Remote 5.2. These systems are all certified in California.

into with vendors for the use of an electronic ballot access or delivery system for the July 7, 2020 Primary Election and November 3, 2020 General Election.

6) The State has advised the Court and Plaintiffs' counsel that the State will not be using the Democracy Live system that the State used in the May 12, 2020 elections for the upcoming July 7, 2020 Primary or November 3, 2020 General Elections.

7) Plaintiffs agree that the State may use an “electronic ballot access or delivery system,” as defined herein, for voters with disabilities and/or military and overseas voters, solely in the July 7, 2020 Primary Election, and in the November 3, 2020 General Election, without giving an opinion about whether such actions would be permissible under the court's March 8, 2010 order, after the November 2020 General election.

8) If the State is contemplating using any electronic ballot voting procedures system for the November 3, 2020 General Election other than: i) an “electronic ballot access or delivery system,” as specified herein , for voters with disabilities and/or military and overseas voters; and/or, ii) what is specified in N.J.S.A. 19:59-1 to -16 exclusively for military and overseas voters, then:

a- The State may consult with Plaintiffs about potential systems to use in the November 3, 2020 General Election; or

b- The State shall advise Plaintiffs' counsel of such an intention no later than August 21, 2020, and will provide Plaintiffs’ counsel with the following information about each system the State is contemplating using: i) detailed information about which vendor the State is contemplating working with; ii) which system, and version of the system the State is contemplating using; and iii) detailed information about how the contemplated system works.

c- Plaintiffs may file a brief with the Court within 14 days of the State's notification;

d- The State shall file a response to Plaintiffs' application within 14 days of Plaintiff's filing; and

e- Plaintiffs' reply shall be filed within 7 days of the State’s response.

9) The parties may seek relief from the dates set forth in paragraph 8 of the

agreement if circumstances change or new information is obtained. That notwithstanding, if the State does not notify Plaintiffs' counsel pursuant to paragraph 8 by August 21, 2020, then the State shall be prohibited from using any electronic ballot voting procedures or "electronic ballot return system," as defined herein, for the November 3, 2020 General Election. This matter shall remain open until after the November 3, 2020 General Election.

STIPULATED AND AGREED AS TO FORM AND ENTRY:

RUTGERS INTERNATIONAL
HUMAN RIGHTS CLINIC

New Jersey Office of the
Attorney General

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By: s/Susan M. Scott
Susan M. Scott
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Counsel for Defendants

Dated: June 19, 2020