

**State of Michigan
Bureau of Elections**

The Verified Complaint of

Pure Integrity Michigan Elections
4891 Dexter Trail
Stockbridge MI 49285

Patrice Johnson
4891 Dexter Trail
Stockbridge MI 49285

Against Complaint Respondents

Hon. Jocelyn Benson, Secretary of State
430 W. Allegan St.
Richard H. Austin Building - 4th Floor
Lansing, MI 48918

I, as one of the above-named complainants believe that probable cause exists for violations of the Help America Vote Act, 52 U.S. Code § 21083 (Pub. L. 107–252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708).

Introduction

1. This complaint is made under the State of Michigan Bureau of Elections Complaint Process and includes claims of violations of the Help America Vote Act (HAVA), 52 U.S. Code § 21083 (Pub. L. 107–252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708) regarding federal elections in Michigan. The complainants claim a violation has occurred. HAVA requires respondent Michigan Secretary of State and election officials, by themselves, respectively, to maintain and implement the Qualified Voter File (QVF). HAVA requires the Michigan Secretary of State to maintain the QVF.

2. The Secretary has entered into an agreement with Electronic Registration Information Center (ERIC) to share registered voter and non-registered voter information in the State of Michigan. (ERIC Agreement). Michigan is one of numerous state Members of ERIC. ERIC in turn, is to provide services with shared election related data for the alleged purpose of maintaining the State's registration lists. In addition, the State is contractually obligated to contact every non-registered voter and inform him or her how to register to vote.

3. The ERIC Agreement is meant to supplant Congressional or State legislative prerogatives in the absence of explicit election policy. This is shown by contractual mandates for

- a mechanism by which any eligible voter whose registration appears to have been erroneously processed or unprocessed shall be offered an opportunity to cast a ballot that will be counted;
- a mechanism by which an eligible voter may register to vote over the internet without need to complete and/or deliver a paper voter registration form; and
- a mechanism by which voter registration transactions performed at state agencies is more fully automated and reduces or eliminates paper transactions.

4. Under HAVA, maintaining the state voter database is seen as such a core governmental purpose that it cannot be delegated to organizations to share data. Nor does HAVA permit a non-profit corporation to direct the State through contractual mandates to create uniform election processes among all Members. However, in violation of HAVA, the Michigan Secretary of State has contracted with ERIC to maintain and implement the QVF. This is legally unauthorized by law.

Parties

5. Complainant Pure Integrity Michigan Elections is a non-partisan Michigan non-profit, non-stock corporation dedicated to election integrity in Michigan.

6. Complainant Patrice Johnson is President of Pure Integrity Michigan Elections.

7. Respondent Jocelyn Benson is Michigan's Secretary of State. Secretary Benson is the election authority who has violated HAVA.

Jurisdiction

8. The Michigan Bureau of Elections has jurisdiction over this complaint under federal law, 52 U.S.C. §21112 (a)(2), and the State of Michigan Bureau of Elections Complaint Process.

Request for Hearing on Record

9. Pursuant to 52 U.S.C. §21112 (a)(2)(E), the above-named complainants request a hearing on the record.

HAVA Violation

Michigan Secretary of State's ERIC contract violates HAVA

10. The U.S. Constitution's Elections Clause states:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const., art. I, sec. 4, cl. 1.

11. Pursuant to the Elections Clause, Congress enacted HAVA to regulate statewide voter registration system databases. *Id.*

12. The complainants claim that HAVA requires respondent Secretary of State and Michigan election officials, by themselves, respectively, to maintain and implement the statewide voter registration system database called Qualified Voter File (QVF).

13. HAVA requires Michigan election officials, exclusively, to maintain the QVF without the outside assistance of third-party entities.

14. Under HAVA, maintaining the statewide voter registration system database is seen as a core governmental function.

15. The governmental function of maintaining the statewide voter registration system, here the QVF, cannot be delegated to any other organization like ERIC.

16. ERIC is a non-profit corporation with “members.” Exhibit 1(Bylaws). ERIC asserts its purpose as an entity to engage in “meaningful, evidence-based reform of the election system in the United States.” Exhibit 1, Attachment A at 13 (unsigned membership agreement); Exhibit B at 13 (signed membership agreement).

17. ERIC further asserts as its purpose to “lessen the burdens of government by facilitating the collaboration of states and local government units to conduct research, develop technology, and perform other charitable and educational activities designed to reduce the costs and increase the accuracies and efficiencies associated with their use of voter registration systems.” *Id.*

18. ERIC identifies “Members” as “solely...state, territorial governmental units, or the District of Columbia.” To that end, the member is represented by the “chief election official or a chief election official’s designee to act on the member’s behalf for all purposes related to the Corporation.” Exhibit 1.

19. Michigan is a member of ERIC. Exhibit B.

20. Michigan’s membership with ERIC is limited by state law. MCL 168.509o(5) is accurately quoted as follows:

Subject to this subsection, the secretary of state shall participate with other states in 1 or more recognized multistate programs or services, if available, to assist in the verification of the current residence and voter registration status of electors. The secretary of state shall not participate in any recognized multistate program or service described in this subsection that requires this state to promote or adopt legislation as a condition of participation in that program or service. In addition, the secretary of state shall not participate in any recognized multistate program or service described in this subsection if the secretary of state determines that data of that program or service are not being adequately secured or protected. The secretary of state shall follow the procedures under section 509aa(5) with regard to any electors affected by information obtained through any multistate program or service.

21. States and their election officials are to maintain and implement statewide voter registration lists. 52 U.S. Code § 21083 (Pub. L. 107–252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708

22. Section 21083 (a)(1)(A)(viii) is accurately quoted as follows: a state’s “computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.”

23. Section § 21083 (a)(1)(A) is accurately quoted as follows: “[E]ach State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a

unique identifier to each legally registered voter in the State (in this subsection referred to as the ‘computerized list’)....”

24. Section 21083 (a)(1)(A)(i), is accurately quoted as follows: “[The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.”

25. Section 21083 (a)(1)(A)(iv) is accurately quoted as follows: “The computerized list shall be coordinated with other agency databases within the State.”

26. Section 21083 (a)(1)(A)(v) is accurately quoted as follows: “Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.”

27. Section § 21083 (a)(2)(A), governing computerized list maintenance, is accurately quoted as follows: “The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis”

28. Section § 21083 (a)(2)(A)(ii)(I) is accurately quoted as follows: “[T]he State shall coordinate the computerized list with State agency records on felony status.”

29. Section 21083 (a)(2)(A)(ii)(II) is accurately quoted as follows: “[T]he State shall coordinate the computerized list with State agency records on death.”

30. Section 21083 (a)(2)(A)(ii)(II) is accurately quoted as follows: “[S]tate[s] shall remove the names of ineligible voters from the computerized list in accordance with State law.”

31. Section 21083 (a)(3), governing the technological security of the computerized list (here, the QVF) is accurately quoted as follows: “The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.”

32. Section 21083 (a)(5)(B)(i) governs the requirements of State officials, including the sharing of information in databases is accurately quoted as follows: ”Sharing information in databases The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. (ii)Agreements with Commissioner of Social Security The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) [1] of title 42 (as added by subparagraph (C)).”

33. Based on these accurate quotes of the text of § 21083, HAVA requires that states and their election officials are to maintain and implement statewide voter registration lists.

34. Because HAVA mandates that states and their election officials are to maintain the statewide voter registration lists, that responsibility cannot be delegated to a third-party.

35. ERIC, as a non-profit corporation, is neither a “state” nor an “election official” of a state under HAVA.

36. ERIC, as a non-profit corporation, is neither a state agency nor federal agency under HAVA.

37. HAVA does not authorize voter data sharing or voter data use, or both, with third-party non-profit or for-profit corporate entities such as the non-profit entity ERIC.

38. ERIC has no authority to accept election related data from a statewide registration system, such as Michigan's QVF, under HAVA the purpose of maintaining or implementing that system.

39. Likewise, the Michigan Secretary of State has no authority to share election related data from a statewide registration system, such as the QVF, with a third-party corporate entity under HAVA for the purpose of maintaining or implementing that system.

40. In contradiction of HAVA, Secretary of State's ERIC contracts authorize the transmission of information and data related to the registration of electors in this state, by the Secretary of State, to the ERIC for processing and sharing with other ERIC Members.

41. Secretary of State has contracted with ERIC to maintain and implement the QVF.

42. The Secretary of State's agreement with ERIC requires the Secretary of State to transmit information and data related to the registration of electors in this state to ERIC for processing and sharing with other member states and governmental units.

43. The Secretary of State currently has a voter-data-sharing and voter-data-base use agreement with ERIC.

44. For example, after entering the Agreement, the Secretary agreed on behalf of the State, as the agreement mandated, to transmit to ERIC which is accurately quoted in part

as “all inactive and active voter files...” and all licensing or identification records contained in the motor vehicles database....”

45. After entering into the ERIC Agreement, the Secretary agreed on behalf of the State to use her best efforts which is accurately quoted in part, “to transmit, on a regular basis, data relating to individuals that exists in the records of other agencies within its jurisdiction that perform any voter registration functions, including, but not limited to, those required to perform voter registration pursuant to the National Voter Registration Act, 43 U.S.C. 1973gg-5....”

46. In turn, the Secretary for the State through the ERIC Agreement, is mandated to contact citizens who have not registered to vote and inform them how to register to vote. Paragraph 5a is accurately quoted in part as follows: “When the Member receives ERIC Data regarding eligible or possible eligible citizens who are not registered to vote, the Member shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote....”

47. In addition under paragraph 5c of the ERIC Agreement, accurately quoted in part as follows, the Secretary has obligated the State to provide “a mechanism by which any eligible voter whose registration appears to have been erroneously processed or unprocessed shall be offered an opportunity to cast a ballot that will be counted....”

48. In addition under paragraph 5d of the ERIC Agreement, accurately quoted in part as follows, the Secretary has obligated the State to provide “a mechanism by which an eligible voter may register to vote over the internet without need to complete and/or deliver a paper voter registration form.”

49. In addition under paragraph 5d of the ERIC Agreement, accurately quoted in part as follows, the Secretary has obligated the State to provide “a mechanism by which voter registration transactions performed at state agencies is more fully automated and reduces or eliminates paper transactions.”

50. In return, ERIC sends voter record updates to the Secretary of State.

51. The authorizing language of the State Legislature regarding the entering of “multistate programs or services” is limited to “assist[ing] in the verification of the current residence and voter registration status of electors.” This represents State legislative policy that also exceeds the Congressional limitations of HAVA because it allows for data sharing as limited as a matter of federal public policy.

52. Moreover, the Secretary’s entering into the ERIC Agreement reflects an effort to supersede the State’s legislative policy limitation to the verification of the “current residence and voter registration status of electors” to force the implementation of public policies by an out-side non-profit organization of Members and not by the Secretary’s Office itself, resulting in the violation of HAVA by means of database sharing.

53. Regardless, under § 21083, Congress has limited Secretary of State’s database sharing and uses to the state’s motor vehicle authority and to the Commissioner of Social Security.

54. The database sharing with ERIC and the database uses by ERIC are legally unauthorized under HAVA.

55. Michigan’s contract with ERIC authorizing database sharing and database uses by ERIC violates HAVA.

56. By entering into the contract with ERIC authorizing database sharing and database uses by ERIC, the Secretary of State also violated Michigan law, specifically MCL 168.509o(5).

57. The Michigan law, MCL 168.509o(5) that authorized the participation with other states in one or more recognized multistate programs or services to assist in the verification or the current verification of the current residence and voter registration status of electors allowing or authorizing the Secretary to act resulting in Michigan's ERIC Agreement also violates HAVA.

58. The Michigan law, MCL 168.509o(5) that authorized the participation with other states in one or more recognized multistate programs or services to assist in the verification or the current verification of the current residence and voter registration status of electors violates HAVA.

59. The complainants seek an administrative determination, declaration or declaratory judgment that the Secretary of State's agreements with ERIC permitting ERIC database sharing and database uses are violations of HAVA.

Prayer for Relief

The complainants make the following prayer for relief. The complainants seek an administrative determination, declaration or declaratory judgment as follows: the Secretary of State's agreements with ERIC permitting ERIC database sharing and ERIC database uses are legally unauthorized under HAVA.

Dated: September 21, 2022

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VERIFICATION

I, Patrice Johnson, President of Pure Integrity Michigan Elections, complainant, state that the above allegations are true and correct based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Dated: _____, 2022 _____

STATE OF MICHIGAN)
)ss.
COUNTY OF _____)

Signed and sworn before me this _____, 2022, by _____.

(Seal, if any)

Signature of Notarial Officer

Title (and Rank)

My Commission expires: _____