STATE OF WISCONSIN CIRCUIT COURT BRANCH 2 DANE COUNTY

J.B. VAN HOLLEN
In his official capacity as
Attorney General of Wisconsin, et al.,

Plaintiffs,

Case No. 08-CV-4085

v.

GOVERNMENT ACCOUNTABILITY BOARD, et al.,

Defendants.

BRIEF AS AMICI CURIAE OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, THE CAMPAIGN LEGAL CENTER, THE LEAGUE OF WOMEN VOTERS OF WISCONSIN EDUCATION FUND, AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION, INC., THE VOTING RIGHTS PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION, FAIR ELECTIONS WISCONSIN, AND DANIEL P. TOKAJI

Amici curiae, seven civil rights and public interest groups and a law professor at Ohio State University's Moritz College of Law, submit this brief in support of defendants' motion to dismiss. This case involves an effort by the Wisconsin Attorney General to wrongfully impose obligations on Wisconsin election officials, based on the Attorney General's mistaken reading of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 et seq., that potentially would deny eligible Wisconsin residents the right to vote in the November 4, 2008 election. The Attorney General's claim not only finds no support in HAVA, the relief he seeks violates a specific HAVA prohibition.

The Attorney General's Complaint concerns the decision by state election officials to not retroactively review the validity of voter registrations submitted by Wisconsin residents between

January 1, 2006 and August 5, 2008. In particular, the Complaint revolves around the decision by election officials to not attempt to match these registration records by computer with records contained in the state's driver's license database and the Social Security Administration database. The Attorney General contends that such computer matching is required by HAVA, that HAVA requires that computer matching be used as a means for verifying eligibility to vote, and that the decision of Wisconsin election officials to not retroactively conduct computer matching therefore means that the Wisconsin registration rolls may contain some number of ineligible voters. To cure this alleged problem, the Attorney General asks this Court to order state election officials to conduct computer matching with regard to the identified class of voter registrants and, apparently, to order election officials to remove from the registration rolls those persons for whom the attempted computer matching is unsuccessful.

There are two fundamental errors in the Attorney General's reasoning. *First*, although HAVA does include a limited database matching requirement, HAVA does not require that database matching be utilized to determine whether registration applicants are eligible to vote. Instead, HAVA instituted database matching generally for the unrelated goal of providing states with the technical means for identifying duplicate registration records (which may occur, for example, when a person moves within a state and updates his or her voter registration).

Second, HAVA imposes specific restrictions on the authority of states to remove persons from the registration rolls so as to ensure that persons who are eligible to vote, and are registered to vote, are not mistakenly deleted from the rolls. The restrictions applicable to Wisconsin do not permit the removal of registered voters based on the inability of the state computer to match an individual's registration record with a driver's license or social security record for the same individual.

I. OVERVIEW OF HAVA'S VOTER REGISTRATION REQUIREMENTS AND WISCONSIN'S HAVA IMPLEMENTATION EFFORTS

A. HAVA's Voter Registration Requirements

In 2002, Congress enacted the Help America Vote Act to respond to the serious problems with election administration that were revealed by the 2000 presidential election. *Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1155 (11th Cir. 2008). HAVA includes a wide variety of remedial measures, including: the establishment of the United States Election Assistance Commission (with the responsibility for taking specific steps to improve the voting process), 42 U.S.C. §§ 15321, 15322; the provision of funding to the states to enable them to improve their administration of elections, 42 U.S.C. § 15301; the specification of minimum standards for voting systems and the establishment of a provisional voting mechanism, 42 U.S.C. §§ 15481, 15482; and the specification of minimum standards for improving the accuracy and reliability of voter registration lists, 42 U.S.C. § 15483.

At the center of HAVA's voter registration reform effort is the requirement that all states (except those that do not conduct voter registration) implement a single, statewide, computerized database of registered voters. 42 U.S.C. § 15483(a)(1)(A). HAVA specifies various standards for creating and maintaining these databases, including three basic principles that must guide the states.

First, "the name of each registered voter [must] appear[] in the computerized list." 42 U.S.C. § 15483(a)(1)(B)(i). In order to ensure that this is accomplished, HAVA provides that "[a]ll voter registration information obtained by any local election official . . . shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official." 42 U.S.C. § 15483(a)(1)(A)(vi).

Second, "only voters who are not registered or who are not eligible to vote [may be] removed from the computerized list." 42 U.S.C. § 15483(a)(1)(B)(ii). In order to ensure that only ineligible voters are removed, HAVA includes specific restrictions on the authority of states to remove persons from the registration list. All states must provide "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." 42 U.S.C. § 15483(a)(4)(B). In addition, in Wisconsin and other states not covered by the National Voter Registration Act, ineligible voters may be removed under HAVA only "in accordance with state law." 42 U.S.C. 15483(a)(2)(A)(iii).[1]

Third, "duplicate names [must be] eliminated from the computerized list." 42 U.S.C. § 15483(a)(1)(B)(iii). To facilitate this, HAVA provides for a two-step maintenance system. States begin by assigning "a unique identifier [in the database] . . . to each legally registered voter in the State." 42 U.S.C. § 15483(a)(1)(A)(iii). The identifier is either: the registrant's driver's license number (supplied by the registrant on the voter registration application); the last four digits of the registrant's social security number, for those applicants without a driver's license (again supplied by the registrant on the registration application); or another number generated by the state, for those who lack both a driver's license and a social security number. 42 U.S.C. § 15483(a)(5)(A). Next, in order to make sure that the identifying numbers are correctly entered into the registration database, states must "coordinate" their voter registration database with the state driver's license database and the Social Security Administration database. 42 U.S.C. §§ 15483(a)(1)(A)(iv), 15483(a)(5)(B).

[1] Wisconsin is not subject to the requirements of the National Voter Registration Act because it provides for election-day registration. 42 U.S.C. § 1973gg-2(b); Wis. Stat. § 6.55.

B. Wisconsin's Implementation of HAVA

Wisconsin is a state that conducts voter registration, Wis. Stat. § 6.27, and thus is subject to the HAVA computerized registration-database requirement. Under HAVA, Wisconsin was supposed to have its statewide database fully implemented as of January 1, 2006. 42 U.S.C. § 15483(d)(1)(B); Complaint, ¶ 16.

State law delegates the responsibility for administering elections in Wisconsin to the Government Accountability Board ("GAB"). Wis. Stat § 5.05(1). The Board is a nonpartisan body composed of six retired state court judges appointed by the Governor and confirmed by the state senate. Wis. Stat. § 15.07.

According to the Attorney General's Complaint, Wisconsin's computerized database began functioning on August 6, 2008. Complaint, ¶ 24. For persons who register on or after that date, state election officials attempt to match their registration record with a record in the state driver's license database or the Social Security Administration database. Complaint, ¶¶ 21, 30. On the other hand, the GAB has decided not to retroactively apply that matching routine to persons who registered before August 6, 2008 and on or after the HAVA effective date of January 1, 2006. Complaint, ¶ 31.

The Complaint, however, says nothing about what actions, if any, Wisconsin election officials take in those instances where the computer is unable to perform a successful match for an individual who registered on or after August 6, 2008. The Complaint does not identify the procedural safeguards that election officials may be following (*e.g.*, reviewing mismatches to determine whether they resulted from a data entry error by election officials, and to provide notice to affected registrants). It also does not specify whether election officials are placing applicants on the registration rolls notwithstanding a computer mismatch and, if mismatched

registrants are being placed on the rolls, whether they are permitted to vote in same manner as other registrants or are subjected to any special qualification procedure (*e.g.*, requiring mismatched registrants to produce identification at the polls).

In fact, the GAB has decided not to link database matching with voter eligibility in any manner. Thus, persons who register on or after August 6, 2008, and who are the subject of an unsuccessful computer matching effort, are being placed on the registration rolls and will be able to vote in the November 4, 2008 election in the same manner as all other persons who registered before the close of the registration period.[2] The GAB estimates that, of the voters who registered between January 1, 2006 and August 5, 2008, more than 20,000 would be the subject of an unsuccessful computer match, Complaint, ¶ 45, including four of the six retired judges who serve on the GAB (all long-time voters in Wisconsin). "Accountability Board Members' Voter Data Do Not Match Department of Transportation Records," *supra* at n.2. The GAB believes that the mismatches typically result from database snafus (typographical errors and registrants being listed by slightly different versions of their names in different databases); these database snafus were indeed the reason the state computer was unable to successfully match the four GAB members. *Id.*

The Attorney General asks this Court to compel the GAB to implement database matching of persons who registered to vote between January 1, 2006 and August 5, 2008 and apparently to remove from the rolls any persons who are the subject of an unsuccessful computer

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[2] "Accountability Board Replies to Attorney General's Lawsuit," Sept. 10, 2008, *available at* http://elections.state.wi.us/docview.asp?docid=14778&locid=47; "Accountability Board Members' Voter Data Do Not Match Department of Transportation Records," Sept. 4, 2008, *available at* http://elections.state.wi.us/docview.asp?docid=14689&locid=47; Draft Minutes of the August 27 and 28, 2008 Meeting of the Wisconsin Government Accountability Board, *available at* http://elections.state.wi.us/docview.asp?docid=15039&locid=47.

match, at least where follow-up by election officials is unable to resolve the computer discrepancy. Complaint, ¶¶ 46, 49, & 55.[3]

II. HAVA DOES NOT OBLIGATE THE STATE OF WISCONSIN TO UTILIZE COMPUTER MATCHING TO REVIEW THE ELIGIBILITY TO VOTE OF WISCONSIN VOTER REGISTRANTS

A. HAVA's Database Coordination Requirement Generally Does Not Concern the Eligibility of Voter Registrants to Vote in Elections

Contrary to the assertions made by the Wisconsin Attorney General, HAVA's database "coordination" provision does not require that Wisconsin (or any other state) use database matching to determine whether persons who register to vote are eligible to vote in elections. Likewise, HAVA generally does not require that Wisconsin (or any other state) use database matching to identify registered voters who should be subjected to any special review at the polls before being allowed to vote (such as by imposing an identification requirement on such voters). In other words, HAVA neither requires that Wisconsin link database matching and voter eligibility for persons who registered between January 1, 2006 and August 5, 2008, nor does the statute require that Wisconsin link database matching and voter eligibility for those who register on or after August 6, 2008. Instead, HAVA generally only requires Wisconsin (and other states) to utilize database matching for the limited purpose of ensuring that accurate identifying numbers are assigned to registered voters.

The HAVA section that addresses the obligation of each state to create and maintain a statewide registration database, 42 U.S.C. § 15483, does not include any language specifying that

[3] The Complaint does not include language that specifically states that mismatched registrants should be removed from the state registration list. However, this would appear to be the only reasonable interpretation of the Attorney General's claim. (If the Attorney General only wants the GAB to undertake matching for the pre-August 6 registrants, and is not asking that the occurrence of computer mismatches impact the right to vote of the affected registrants, it would be difficult to see why the Attorney General is seeking the intervention of this Court just weeks prior to the election.)

an unsuccessful computer match should result in the registration applicant being excluded from the rolls. It likewise does not include any language specifying that an unsuccessful match generally should result in any limitation being placed on the registrant's ability to vote. Both in his Complaint and in his Brief in Support of Summary Judgment, the Attorney General does not cite to any such language in HAVA. Instead, the Attorney General essentially contends that what Congress meant to say, but did not say, when it specified that "[t]he computerized [registration] list shall be coordinated with other agency databases within the State," 42 U.S.C. § 15483(a)(1)(A)(iv), and specified that matching should include use of the driver's license and Social Security Administration databases, was that states are required to disqualify registrants (or otherwise generally limit their right to vote) if and when they are the subject of an unresolved computer mismatch.

The flaw in this reading of HAVA is demonstrated by the language of HAVA itself. Specifically, Congress explicitly linked computer matching and voter eligibility with regard to one narrow group of voters, while not doing so with regard to voters in general. The affected group consists of those persons who register by mail and have not voted previously in an election for federal office in the voter's state. HAVA provides that these voters generally must provide certain documentary proof of identity at the time of registering or voting, but are excused from this requirement if election officials are able to match their voter registration data with a driver's license record or a record that contains at least the last four digits of the registrant's social security number. 42 U.S.C. § 15483(b). Thus, Congress clearly understood that database matching potentially could be linked with voter eligibility, understood how to write specific

language that links the two, and chose not to require such a link except with regard to a narrow group of voters.[4]

The Attorney General's position is further contradicted by the two court decisions that have addressed the issue of whether HAVA generally establishes a link between database matching and voter eligibility. *Florida State Conference of the NAACP*, *supra*; *Washington Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2006). In both cases, the courts concluded that HAVA does not require that states utilize database matching to verify the voting eligibility of persons who register to vote. *Florida State Conference of the NAACP*, 522 F.3d at 1172 ("There is nothing at all in [HAVA] that discusses the requirements and procedures for establishing eligibility and identity of in-person registrants."); *Washington Ass'n of Churches*, 492 F. Supp. 2d at 1268 ("It is clear from the language of [HAVA] and by looking at legislative history that HAVA's matching requirement was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility.").[5]

The absence of any "database-matching, voter eligibility" requirement in HAVA (except with regard to the aforementioned narrow group of voters) also means that the GAB's actions do

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[4] It also should be noted that HAVA does not require any matching at all for registration applicants that lack a driver's license number or a Social Security number, 42 U.S.C. § 15483(a)(5)(A)(ii), and does not require matching in states that specify that voters must provide their full (and more reliably unique) Social Security number. 42 U.S.C. § 15483(a)(5)(D).

[5] Both cases dealt with challenges to state statutes (in Florida and Washington, respectively) that specified that in order to successfully register to vote in the state, state officials had to first match the applicant's voter registration record with a state driver's license record or a Social Security Administration record. Plaintiffs argued that this linkage was prohibited by HAVA on the ground that HAVA does not include any such requirement and preempts state law on this subject. The Eleventh Circuit held that HAVA is not preemptive and that Florida was permitted – but, significantly, *was not required* – to create this linkage, *Florida State Conference of the NAACP*, 522 F.3d at 1167-1172, while the District Court for the Western District of Washington found HAVA to be preemptive. *Washington Ass'n of Churches*, 492 F. Supp. 2d at 1269-70. Since the Attorney General's interpretation of HAVA is faulty regardless of whether HAVA is deemed to be permissive or preemptive, this Court need not resolve the preemption question and we do not address that question here.

not, under HAVA, raise any specter that persons ineligible to vote have been included in the state's voter registration database. The Attorney General's assertion to the contrary is simply his personal, unsupported opinion.

Finally, the invalidity of the Attorney General's legal claim is illustrated by the fact that the states have followed a variety of approaches with regard to whether, or to what extent, the occurrence of a database mismatch affects the validity of an individual's voter registration. Only a handful of states require a match as a prerequisite to registration. Some accept registrations from mismatched voters but require that they provide additional information, some specify that a mismatch is relevant only with respect to whether first-time voters who registered by mail must produce identification, and some do not provide for any consequence with respect to voter registration when a mismatch occurs. Levitt, Weiser & Munoz, *Making the List: Database Matching and Verification Processes for Voter Registration* (2006), 16-17, *available at* http://tinyurl.com/66t6r8.[6]

B. The HAVA Requirement That Wisconsin's Registration Database Be Implemented in a "Uniform and Nondiscriminatory Manner" Does Not Mandate That Wisconsin Utilize Database Matching to Review the Eligibility to Vote of Persons Who Registered Between January 1, 2006 and August 5, 2008

HAVA requires each state that conducts voter registration to implement its computerized registration database "in a uniform and nondiscriminatory manner." 42 U.S.C. § 15483(a)(1)(A). The Attorney General apparently contends that even if the HAVA coordination requirement does

[6] Since this report was issued, a number of states have further amended their practice with regard to the use of database matching. Cal. Code Regs., tit. 2, §§ 20108.38(c), 20108.65(e), 20108.71; Md. Regs. Code tit. 33, §§ 33.05.04.04(A)(3), (B)(3)-(4), 33.05.04.05(C)(5); N.C. Gen. Stat. § 163-166.12(b2); Alert Re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA), *available at* http://tinyurl.com/36o2lt (Pennsylvania); Election Advisory No. 2006-19, *at* http://tinyurl.com/2stlcp (Texas); Washington Ass'n of Churches, No. CV06-0726 (W.D. Wash. 2006) (stipulated final order and judgment), *available at* http://www.brennancenter.org/page/-/d/download_file_48236.pdf.

not itself mandate a linkage between database matching and voter eligibility, that mandate exists in Wisconsin based on the asserted need to treat all persons who registered to vote in Wisconsin, on or after the HAVA effective date of January 1, 2006, in precisely the same manner. The Attorney General's argument is again mistaken.

At the outset, the Attorney General's Complaint is missing a factual predicate critical to his argument: as noted, the Complaint does not allege that the GAB is requiring that database matching be used to review the validity of registrations submitted on or after August 6, 2008. Thus, the Complaint does not support the claim that, in the name of uniformity, database matching must be used to review the validity of registrations submitted between January 1, 2006 and August 5, 2008. Indeed, since Wisconsin in fact is *not* implementing any "database-matching/voter-eligibility" requirement with respect to the post-August 6 registrants, the Attorney General's uniformity argument cannot lead to the conclusion that a "database-matching/voter-eligibility" requirement must be applied to the pre-August 6 registrants.

The Attorney General's claim is also built on a faulty legal predicate. HAVA specifically recognizes that new registration applicants and existing voter registrants are not similarly situated, and thus need not be treated in exactly the same manner in the name of uniformity. The statute explicitly distinguishes between the procedures used to register new voters and the procedures used to address the eligibility of voters who already have been placed on the registration list. 42 U.S.C. §§ 15483(a)(2)(A), 15483(a)(4) (limitations on conducting voter removal).

C. Computer Matching Does Not Provide a Reliable Means for Reviewing Voter Eligibility

It is well recognized that database matching is an inherently flawed process that routinely fails to identify records for the same individual that in fact are contained in both of the databases

being compared. *See generally Making the List: Database Matching and Verification Processes for Voter Registration, supra.* Accordingly, database matching does not provide a reliable means for reviewing voter eligibility.

Database matching often fails because of trivial data errors that prevent the computer from recognizing that the databases being compared actually do contain records for the same person. These errors include typos, data entry errors made when processing registration forms, use of married and maiden names in different databases, and inconsistent treatment of hyphenated or compound last names. *Id.*[7]

The end result is that database matching generates a high rate of putative "no matches." In the first six months of 2006, before its "no match, no vote" law was enjoined, Washington's matching system had a failure rate of 16 percent statewide, with up to 30 percent in King County where Seattle is located.[8] Through April 2006, 18 percent of applications in Los Angeles County did not yield a successful computer match.[9] Nearly 20 percent of an audit sample of 15,000 applications submitted in New York City in September 2004 could not be matched due to typos and other data entry errors.[10] And in the first three weeks after Florida renewed enforcement of its matching program (on September 8, 2008), approximately 15 percent of attempted matches

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[7] The former Commissioner of the Social Security Administration noted that matches with the social security database often fail because of "name change[s] after a marriage or divorce, . . . incomplete, transposed or missing names . . . in SSA records[,] . . . [and] discrepanc[ies] created by use of multiple or compound names." *American Federation of Labor v. Chertoff*, No. 07-4472, Decl. of Kenneth S. Apfel, ¶ 7 (N.D. Cal. Aug. 29, 2007) *available at* http://tinyurl.com/4jbsbg. In November 2007, the Social Security Administration reported that of 2.3 million voter applications it had processed, nearly half — fully 44.5% — were not successfully matched. Pete Monaghan, SSA Help America Vote Act Powerpoint 14, Nov. 29, 2007, *available at* http://tinyurl.com/4dp663.

[8] *See Fla. NAACP v. Browning*, No. 07-402, Decl. of Andrew Borthwick, ¶ 47 (N.D. Fla. Sept. 17, 2007) ("Borthwick Decl."), *available at* http://tinyurl.com/4k69sm.

[9] *See Fla. NAACP v. Browning*, No. 07-402, Decl. of Conny McCormack, ¶ 13 (N.D. Fla. Sept. 17, 2007), *available at* http://tinyurl.com/4z66bc.

[10] *See* Borthwick Decl., *supra*, ¶ 12 & Ex. F.

failed, keeping at least 5,000 voters off the registration rolls.[11]

As indicated, Wisconsin's experience has been no different. The GAB's analysis indicates that its database matching system is unreliable since it yields a significant number of "false negatives" based on database snafus.

Preconditioning registration and voting on successful matching is particularly problematic because failed matches occur more frequently among members of certain racial and ethnic groups. Latino citizens are susceptible to problems matching compound last names, and African Americans are frequently not matched because of their use of unique names or derivative spellings of common names. Thus, for example, in Florida, under the matching program in effect in 2006 and 2007, Latinos constituted 15 percent of the total registration applications but 39 percent of those blocked due to a computer mismatch, and African American voters made up 13 percent of the applicants but were 26 percent of those not matched. White voters, on the other hand, constituted 66 percent of the applicant pool but only 17 percent of the mismatched applicants.[12]

For these reasons, it is eminently reasonable that Congress and the GAB have chosen not to require successful database matching as a precondition for registering to vote.

III. THE REMOVAL OF WISCONSIN VOTER REGISTRANTS FROM THE ROLLS BASED ON COMPUTER MATCHING VIOLATES HAVA

As noted above, HAVA restricts the authority of states to remove registrants from the voter rolls in order to assure that eligible voters are not wrongly deleted. As applied to Wisconsin,

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[11] Aaron Deslatte and Mary Shanklin, *ID-match law stalls 5,000 voter applications*, Orlando Sentinel, Oct. 1, 2008, *available at* http://www.orlandosentinel.com/news/local/state/orl-novote0108oct01,0,6794080.story.

[12] *See* Daphne Eviatar, *Florida 2000 Redux?*, Washington Independent, Oct. 1, 2008, *available at* http://tinyurl.com/4d5ux5.

HAVA specifically provides that voter removal must be conducted "in accordance with State law." 42 U.S.C. § 15483(a)(2)(A)(iii).

Wisconsin law does not permit election officials to remove registrants based on the inability of a computer to match an existing registrant's voter registration record with a record contained in the state's driver's license database or the Social Security Administration database. Therefore, HAVA prohibits voter removal based on a computer mismatch. A state statute, Wis. Stat. § 6.50, specifies the circumstances in which a registered voter may be removed, but the statute does not include among these circumstances computer mismatches. The GAB also, of course, has not enacted any administrative provision that allows for removal based on a computer mismatch (assuming that it has the authority to supplement the statutory bases for voter removal).

Therefore, the relief sought by the Attorney General in his Complaint is prohibited by HAVA.

IV. GRANTING THE RELIEF SOUGHT BY THE ATTORNEY GENERAL COULD SIGNIFICANTLY INTERFERE WITH WISCONSIN'S CONDUCT OF THE NOVEMBER 4, 2008 ELECTION

There not only are strong legal reasons for dismissing the Attorney General's Complaint based on the failure to state a cause of action on which relief may be granted, there also are strong equitable concerns that counsel against pursuing the course that the Attorney General advocates.

Election officials are in the final stages of preparing for the November 4, 2008 election and, if they were required now to undertake computer matching for all persons who registered between January 1, 2006 and August 5, 2008, they likely would be forced to divert significant resources to the matching effort. This would not only involve triggering a computer matching

routine for the registrants at issue, but also could involve individual review of thousands of computer mismatches to determine whether the mismatches resulted from data entry errors by election officials, and further could involve a massive effort to notify thousands of individual registrants of the matching issue that has arisen with regard to their voter registration. This diversion of resources could well leave election officials unprepared on election day to administer this most important election.

Wisconsin voters also would likely be significantly confused about their right to vote if an eleventh-hour effort were undertaken to match registration records and restrict the right to vote of registrants who are the subject of a computer mismatch. Many of the affected voters participated without hindrance in the Wisconsin presidential primary earlier this year, and have voted in other elections since registering to vote. The sudden imposition of any restriction on their right to vote, with little notice, would inevitably cause much confusion and consternation, and could lead to chaos at the polls.

The Supreme Court recently warned about the danger to the election process that may arise when a court orders a change in election procedures immediately prior to an election. *Purcell v. Gonzalez*, 127 S. Ct. 5 (2006). The Court stated: "Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Id.* at 7.

V. CONCLUSION

For the reasons stated above, *amici* urge this Court to grant defendants' motion to dismiss on the ground that the Attorney General's Complaint fails to state a cause of action under which relief may be granted.

Dated this 6th day of October, 2008

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