



*State of New Jersey*

CHRIS CHRISTIE  
*Governor*

OFFICE OF THE ATTORNEY GENERAL  
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JOHN J. HOFFMAN  
*Acting Attorney General*

KIM GUADAGNO  
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JEFFREY S. JACOBSON  
*Director*

May 1, 2015

Clerk of the Court  
Civil Division Manager  
Superior Court of New Jersey  
Civil Courthouse  
175 S. Broad Street  
Trenton, NJ 08650

Re: Luis Gutierrez v. Michael Halper, et al.  
Docket No. MER-L-884-15

Dear Sir/Madam:

Enclosed please find an original and one copy of a letter, certifications of Michael Harper and Kevin Lacey, and certification of service on behalf of Defendants New Jersey Division of Elections, Michael Harper and Hudson County Board of Election in opposition to Plaintiff's request for injunctive relief in the above-captioned matter.

Respectfully submitted,

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:

George N. Cohen  
Deputy Attorney General  
Attorney ID #002941985

c: Hon. Mary C. Jacobson, A.J.S.C.  
Mario M. Blanch, Esq.  
Michael D. Witt, Esq.



JOHN J. HOFFMAN  
Acting Attorney General of New Jersey  
Attorney for Defendants, NJ Division of  
Elections, Michael Harper and Hudson  
County Board of Election  
R.J. Hughes Justice Complex  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-MERCER COUNTY  
DOCKET NO. MER-L-884-15

LUIS GUTIERREZ, ) Civil Action  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL HALPER, in his capacity ) CERTIFICATION OF SERVICE  
as the Clerk for the Hudson )  
County Board of Elections; HUDSON )  
COUNTY BOARD OF ELECTIONS; NEW )  
JERSEY DEPARTMENT OF STATE, )  
DIVISION OF ELECTIONS; JOHN DOES )  
1-99; ABC CORPS. 1-99, )  
 )  
Defendants. )

CAROL BURTON, of full age, hereby certifies:

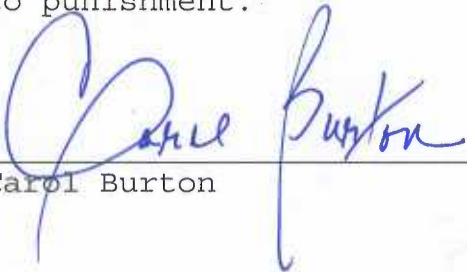
1. I am a legal secretary in the Division of Law,  
Department of Law and Public Safety, State of New Jersey.

2. On May 1, 2015, at the direction of Deputy Attorney General George N. Cohen, I sent a copy of a letter in opposition to plaintiff's request for injunctive relief, and certifications of Michael Harper and Kevin Lacey, on behalf of defendants New Jersey Division of Elections, Michael Harper and Hudson County Board of Election in the above matter, by email and overnight mail, to:

Mario M. Blanch, Esq.  
440-65<sup>th</sup> Street  
West New York, New Jersey 07093

Michael D. Witt, Esq.  
Chasan Leyner & Lamparello  
300 Harmon Meadow Blvd.  
Secaucus, New Jersey 07094-3621

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

  
\_\_\_\_\_  
Carol Burton

Dated: May 1, 2015



*State of New Jersey*

CHRIS CHRISTIE  
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JEFFREY S. JACOBSON  
*Director*

May 1, 2015

The Honorable Mary C. Jacobson, A.J.S.C.  
Superior Court of New Jersey  
Criminal Courthouse  
400 S. Warren Street  
P.O. Box 8068  
Trenton, New Jersey 08650-0068

Re: Luis Gutierrez v. Michael Halper, et al.  
Docket No. MER-L-884-15

Dear Judge Jacobson:

Please accept this letter on behalf of Defendants Michael Harper, the Hudson County Board of Elections and the New Jersey Department of State, Division of Elections ("Election Defendants"), in opposition to Plaintiffs' Amended Verified Complaint and Order to Show Cause seeking temporary restraints in the above-captioned matter. Plaintiff has failed to provide any factual evidence that the Election Defendants will be unable to enforce the required provisions of Title 19 in the May 12, 2015 municipal election in the Township of North Bergen. To the contrary, the certifications submitted by the Election Defendants clearly demonstrate that all necessary procedures are



in place, including the necessary election personnel and State Police, in order to conduct the election in an orderly and proper fashion. Therefore, Plaintiff's request for temporary restraints should be denied and his Complaint dismissed.

### Injunctive Relief

As our courts have noted, a party is only entitled to the remedy of injunctive relief if it can demonstrate that there is a reasonable likelihood of eventual success on the merits, the party will suffer irreparable injury if equitable relief is not granted, the grant of the requested relief will not work an inequitable result considering the hardships to the parties against whom relief is sought, and restraints will not harm the public interest. Crowe v. DeGioia, 90 N.J. 126 (1982). There must be a "strong showing of necessity" for injunctive relief to be granted. A.O. Smith Corp. v. FTC, 530 F.2d 515, 527 (3d Cir. 1976). Far from demonstrating any irreparable harm, hardships or a showing of necessity, Plaintiff makes unsupported assertions that are countered by the actions of the Hudson County Board of Election ("Board") and the Hudson County Superintendent of Elections ("Superintendent"). The Board and Superintendent follow the requirements set forth in Title 19, to ensure the integrity of the voting process in Hudson County, including the Township of North Bergen, through proper voter

registration, proper conduct of the polling places on election day, and finally, the counting of all valid ballots cast.

In the instant case, Plaintiff alleges unverified voter fraud in a prior election(s) in the form of improper voter assistance from district board workers or others; improper electioneering within 100 feet of a polling place; "voter intimidation,"; and "spying on how people vote," as the basis for his application for injunctive relief. None of these allegations is supported by credible certifications or affidavits, nor are there any facts provided to support such allegations, such as the date and time such alleged action occurred, who committed the alleged acts or who the district board workers were that allegedly failed to take action.

Indeed, Plaintiff states that most of the allegations are based upon anonymous tips or information relayed "in confidence" by voters. As an example, the photographs included with Plaintiff's papers show more than one person in a voting booth. However, there is no information as to the polling place at which this occurred or who the voter and assistor are in the voting booth. As such, the photographs do not demonstrate any improper conduct since voters requiring either physical assistance or assistance due to language or learning issues in reading the ballot are entitled to an assistor of their choice

to aid them in a voting booth in casting their ballot. N.J.S.A.  
19:50-3.

Contrary to Plaintiff's anonymous tips or information, district polling place workers do not engage in improper activity. Each poll worker is required to undergo training at least once every two years. N.J.S.A. 19:50-1; Certification of Michael Harper (hereinafter referred to as "Harper cert."), ¶2. The training is given pursuant to the training manual provided by the State Division of Elections. Ibid., Exhibit A. This training includes, but is not limited to, prohibiting electioneering within 100 feet of the entrance of a polling place (N.J.S.A. 19:34-6); how to set-up and operate the polling place (N.J.S.A. 19:8-7 to -9); when to issue provisional ballots; and when a voter is permitted to have an assistor in the voting booth (N.J.S.A. 19:50-3). Harper cert., ¶¶3-7. Notwithstanding Plaintiff's assertions, no one can see how a voter is voting when the voter is in the voting booth behind closed curtains. Harper cert., ¶4.

#### Voter Residency Issues

As Plaintiff admits, the majority of the issues relied upon in his Amended Complaint are voter residency issues. Specifically, that the named voters in the Amended Complaint are registered to vote in North Bergen but the addresses listed on

their voter registration are not their actual place of residency. Again, this is not an issue that requires any action by the court. Any complaint concerning the residency of a voter is investigated by the Superintendent. Certification of Kevin Lacey (hereinafter referred to as "Lacey cert."), ¶3. That investigation includes going out to the actual address listed on the registration of the voter in question and determining if the address is an actual residence and if so, if the voter in question resides there. Ibid.

Acting in the capacity as the county Commissioner of Registration, the Hudson County Superintendent conducted an investigation of all of the names contained in Plaintiff's Complaint that allege voters who are not properly registered North Bergen voters. Lacey cert., ¶6, Exhibit A. The investigation of the names contained in Plaintiff's Amended Complaint was conducted pursuant to the Superintendent's authority set forth at N.J.S.A. 19:31-1 et seq. and 19:32-1 et seq. As a result of the investigations, the Superintendent will have the poll books for the May 12, 2105 municipal election updated to reflect any change in a voter's registration status based upon the findings of the investigations. Lacey cert., ¶6.

#### Enforcement of Title 19

In addition to complying with the requirements set



forth in Title 19 for the operation of the polls on election day and the prevention of voter fraud through proper voter registration, per usual the Superintendent will have State Police troopers on hand in case the need arises for any enforcement action requiring police assistance. Lacey cert., ¶7. In any incident at a polling place, be it electioneering within 100 feet of the entrance to a polling place, or any behavior that is disruptive of a polling place, the poll workers have been trained and instructed to call the Board and/or the Superintendent's office if they are in need of assistance. Harper cert., ¶3.

The Board and Superintendent have staff on-call during the entire time the polls are open, in order to deal with any issues that arise. And when necessary, they will use the assistance of the assigned State Troopers to resolve any issues. Ibid. For the May 12, 2015 municipal elections in Hudson County, six State Troopers have been assigned to the Superintendent's office. Lacey cert., ¶7. In addition, three county sheriff's cars have been assigned to the Superintendent for any transportation needs of the Superintendent, such as visiting or investigating a specific polling place during the course of the election. Ibid.

### Challengers

It should also be noted that Plaintiff is not without recourse to observe polling places during the May 12, 2015 municipal elections and to contact the Board and/or Superintendent if any issues arise. Pursuant to N.J.S.A. 19:7-2, a candidate may not only act as a challenger, but the candidate may also appoint two challengers "for each district in which he is to be voted for" (emphasis added). Therefore, Plaintiff may appoint a total of 78 challengers (two for each of the 39 election districts in North Bergen), to appear in North Bergen polling places. N.J.S.A. 19:7-6.1 limits one challenger per candidate per polling place at any given time unless express permission is given by the district board.

As authorized challengers, such challengers,

shall have the power to challenge the right to vote therein of any person claiming such right and shall have power to ask all necessary questions to determine this right. They may be present while the votes cast at any election are being counted, hear and see the ballots counted and shall have the right and power to challenge the counting or rejecting of any ballot or any part of a ballot.

[N.J.S.A. 19:7-5].

Clearly, Plaintiff has the option of having an authorized challenger in attendance at every polling place where

his candidate is on the ballot, as well as the candidate himself, from before the opening of the polls until after the closing of the polls, including having a challenger present at the Board when they meet to count any mail-in or provisional ballots. The right to have an authorized challenger at each polling place, in addition to the actions of the Board and Superintendent in carrying out their duties to ensure compliance with the requirements of Title 19, demonstrates that Plaintiff's need for temporary injunctive relief is unsupported by the both statutory provisions and the facts in this matter.

**Late Certifications Provided by Plaintiff on April 29, 2015,  
Contrary to the Court's Scheduling Order**

On April 29, 2015, at 12:33 p.m., Plaintiff's counsel emailed seven certifications to the Election Defendants, asserting alleged improper activity at polling places in North Bergen on April 21, 2015, during the North Bergen School Board election. The court's April 23, 2015 Scheduling Order states that Plaintiff "must" file a revised Complaint and Order to Show Cause by April 24, 2015. During the telephone conference with the court on April 23, 2015, Plaintiff stated that he would be filing additional affidavits or certifications concerning the April 21, 2015 school board election held in North Bergen. Election Defendants recall the court stating that given the

short time frame involved in this matter, any additional filing from Plaintiff must be submitted no later than April 27, 2015.

Plaintiff's filing of new certifications on the afternoon of April 29, 2015, clearly was not contemplated by this court or any of the defendants. This improper late filing does not afford Election Defendants the opportunity to conduct a proper investigation of the signers of these certifications or of the allegations contained within them in the two days that remained before the required May 1, 2015 filing of defendants' opposition papers. The court should not permit Plaintiff's late filings to be considered as part of the record in this matter, especially where Plaintiff stated on April 23, 2015, that he intended to file these certifications and then failed to do until two days after the court's deadline in this time sensitive matter.

Even if the court were to consider the late certifications, they do not provide any credible facts upon which the court may rely upon to grant Plaintiff injunctive relief. Michael Harper, clerk at the Hudson County Board of Elections, responded to several telephone calls from Mario Blanch on April 21, 2015, concerning alleged improper conduct at North Bergen polling places. Harper cert., ¶9. In each instance, Harper and Superintendent John Brzozowski, Brian

Cardino of the Superintendent's office, and Frank Gigante, field investigator for the Board, traveled with Mr. Harper in visiting North Bergen polling places. Harper cert., ¶8. In each of their inspections, Harper and the others did not find any improper activity. In one particular instance, the poll workers, and even the challengers for the opposing candidates at the visited polling place responded to Harper's inquiry by stating that no improper activity had occurred at their polling place. Harper cert., ¶¶9-10.

In most instances, Plaintiff's certifications fail to provide the name of any specific person engaged in improper activity or voting. For example, the fact that an Arabic speaking person assisted other Arabic speaking voters at a polling place is not in and of itself improper activity if the voter needed a translator in order to understand the ballot. Again, without specific factual assertions, neither defendants nor the court can respond to such accusations. It is sufficient for purposes of the instant matter, that representatives of the Board and Superintendent responded to complaints received on April 21 and investigated said complaints as soon as they were received. Harper cert., ¶¶8-10.

As noted above, the county election officials will continue to carry out their duties during the May 12, 2015

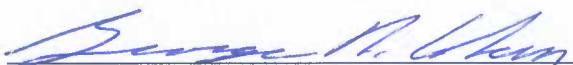
municipal election in North Bergen. This has already been demonstrated by the Superintendent's investigation of the residency of names listed in Plaintiff's Complaint. Lacey cert., Exhibit A. As in any election, the Board and Superintendent's offices are sufficiently staffed and trained, as are the 39 district polling place workers, to handle any incident that may arise during the course of election day to ensure that all qualified voters are able to exercise their right to vote in compliance with all provisions of Title 19.

CONCLUSION

For all of the above-stated reasons, the court should deny Plaintiffs' request for temporary restraints.

Respectfully submitted,

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:   
George N. Cohen  
Deputy Attorney General  
Attorney ID #002941985

c: Mario M. Blanch, Esq.  
Michael D. Witt, Esq.