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Posted on Fri, Sep. 25, 2009

Judge considers bid to block merger of voting machine giants

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last updated: September 25, 2009 07:32:49 PM

WASHINGTON — A federal judge in Camden, N.J., agreed late Friday to hear a request for an emergency injunction that could halt Election Systems & Software's announced acquisition of Diebold Inc.'s Premier Election Solutions.

The quietly arranged shotgun wedding between the two voting-machine giants would give ES&S control of election systems in use in almost 70 percent of the nation's voting precincts. Federal Judge Robert Kugler agreed to hear Tuesday the request for immediate injunction brought by a small competitor, Hart InterCivic Inc.

Hart argues that waiting to resolve the matter could affect elections across the nation because state and local officials won't be able to wait on a decision and would have to do business with ES&S.

Hart's attorney, Jonathan Rubin, an anti-trust specialist for the Washington law firm Patton Boggs, contends that jurisdictions across the nation select voting-machines based on competitive bids, which would be next to impossible if the acquisition went through.

"We're hopeful that the judge will recognize the profound public importance of putting an immediate stop to the deal," Rubin told McClatchy.

Although the law does not require ES&S to inform the federal government of its merger plans, the public nature of voting machines demands a certain measure of advance disclosure, Rubin maintains.

"The reason the government isn't here is because these parties did a stealth transaction in an apparent attempt to end-run the government," he said.

ES&S executives could not be reached Friday night, but have defended the merger with a weaker rival as in the public interest.

Premier Election Solutions is owned by Diebold, a company caught in a swirl of controversy during the 2004 presidential election amid charges of irregularities and technical glitches.