

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

JOSE MORALES, on behalf of himself	)	
And those similarly situated,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	NO. 1:08-CV-3172 JTC
v.	)	(Three-Judge Court Requested)
	)	
KAREN HANDEL, in her official	)	
capacity as Georgia Secretary of State,	)	
	)	
Defendant.	)	

**ANSWER AND DEFENSES**

COMES NOW KAREN HANDEL, in her official capacity as the Secretary of State for the State of Georgia, by and through her counsel of record, Thurbert E. Baker, the Attorney General for the State of Georgia, and files this Answer and Defenses to the Plaintiff's "Complaint for Declaratory and Injunctive Relief – Class Action" as follows:

**FIRST DEFENSE**

The Complaint should be dismissed for failure to state a claim upon which relief can be granted.

## SECOND DEFENSE

Plaintiff lacks standing to bring the claims he has asserted in his Complaint.

## THIRD DEFENSE

Plaintiff lacks standing to bring these claims on behalf of the putative class of Plaintiffs as alleged in his Complaint.

## FOURTH DEFENSE

The putative class of Plaintiffs fails to meet the requirements of Fed.R.Civ.P. 23(a).

## FIFTH DEFENSE

Plaintiff's Complaint is subject to dismissal for failure to name indispensable parties by failing to name any of the county registrars as defendants in this action. *See* Fed.R.Civ.P. 12(b)(7) and 19(a)(1)(A).

## SIXTH DEFENSE

The actions challenged by Plaintiff are required pursuant to the Help America Vote Act ("HAVA"), 42 U.S.C. § 15301 *et seq.*, and the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg *et seq.*, and therefore are not subject to preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

### SEVENTH DEFENSE

The actions challenged by Plaintiff are required pursuant to HAVA and the NVRA and do not constitute systemic list maintenance in violation of either statute.

### EIGHTH DEFENSE

Without waiving any of the above defenses or any other defenses to which Defendant may be entitled, Defendant responds to the specifically numbered paragraphs of the Complaint as follows:

#### PRELIMINARY STATEMENT

1.

Paragraph 1 of the Complaint sets forth Plaintiff's claims, and, as such, requires no response from Defendant. To the extent any response is deemed required, Defendant denies that she has violated any state or federal law.

2.

Defendant denies that any of its voter registration practices violate any state or federal law. Defendant further denies that Plaintiff is entitled to either declaratory or injunctive relief.

## **REQUEST FOR THREE-JUDGE PANEL**

3.

Defendant admits that Plaintiff is entitled to a hearing before a three Judge Court as provided under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c and pursuant to 28 U.S.C. § 2284. Defendant avers that Plaintiff's claim under the NVRA is not required to be heard by a three Judge Court and that the Court's retention of jurisdiction over this claim is discretionary.

## **JURISDICTION**

4.

Defendant admits the allegations contained in Paragraph 4 of the Complaint.

5.

Defendant admits the allegations contained in Paragraph 5 of the Complaint.

## **PARTIES**

6.

Defendant admits the allegations contained in Paragraph 6 of the Complaint.

7.

Defendant admits the allegations contained in Paragraph 7 of the Complaint, but avers that the Secretary of State is not a voter registrar and has no authority to add an individual's name to the official voter registration rolls. The Secretary also has only limited authority to remove a voter from the rolls and has conducted no hearings to do so.

**STATEMENT OF FACTS AND LAW**

**The Help America Vote Act of 2002**

8.

Paragraph 8 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

9.

Paragraph 9 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

10.

Paragraph 10 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

11.

Paragraph 11 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of the NVRA or HAVA.

12.

Paragraph 12 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

13.

Paragraph 13 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To

the extent any response is required, Defendant denies that she has violated any provision of HAVA.

14.

Paragraph 14 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

15.

Paragraph 15 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

16.

Paragraph 16 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

17.

Paragraph 17 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

**The State of Georgia's Implementation of Database  
Matching for Registered Voters**

18.

Defendant denies the allegations of Paragraph 18 of the Complaint as pled. Following the enactment of HAVA in 2002, the State of Georgia asserted that it was subject to one of its exceptions and sought to comply with the law by using social security numbers, which, at that time, were also used as Georgia driver's license numbers. *See* 42 U.S.C. § 15483(a)(5)(D). The Eleventh Circuit subsequently held that Georgia was not subject to that exception. *Schwier v. Cox*, 439 F.3d 1285 (2006).

19.

Defendant denies the allegations of Paragraph 19 of the Complaint as pled. Defendant admits that the United States Department of Justice sent a letter to the Georgia Secretary of State on April 23, 2007 regarding the State

of Georgia's implementation of HAVA. A copy of that letter is attached to Jon Greenbaum's Declaration as Exhibit 4. [Doc. 1]. The content of that letter speaks for itself.

20.

Defendant admits the allegations contained in Paragraph 20 of the Complaint.

21.

In response to Paragraph 21 of the Complaint, Defendant states that the Georgia Department of Drivers Services ("DDS") signed the User Agreement for Voter Registration Verification System Services with the Social Security Administration ("SSA") on February 14, 2007. *See* Greenbaum Decl., Exh. 4. [Doc. 1]. The Social Security Administration signed the Agreement on April 23, 2007. Defendant denies any remaining allegations contained in Paragraph 21 of the Complaint.

**The State of Georgia’s Implementation of  
Database Matching for Registered Voters**

**Class Action Allegations**

22.

Defendant denies the allegations contained in Paragraph 22 of the Complaint.

23.

Paragraph 23 of the Complaint contains Plaintiff’s description of the putative class. Defendant denies that Plaintiff can establish that there is a class of similarly-situated individuals who can state a claim for relief under Section 5 or the NVRA. Defendant denies any remaining allegations contained in Paragraph 23 of the Complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25.

Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26.

Defendant denies the allegations contained in Paragraph 26 of the Complaint.

27.

Defendant denies that there is a question of fact common to a class of individuals, as alleged by Plaintiff in Paragraph 27 of the Complaint.

Defendant denies the remaining allegations contained in Paragraph 27 of the Complaint.

28.

Defendant denies that Plaintiff has presented a question of law that states a class action claim. Defendant denies the remaining allegations contained in Paragraph 28 of the Complaint.

**The State of Georgia's Use of Database Matching to Attempt to Verify that Certain Registrants are United States Citizens and Thus Are Eligible to Vote in Georgia**

29.

Defendant admits the allegations contained in Paragraph 29 of the Complaint. *See also* Ga. Const. Art. II., Sec. I., Para. II.

30.

Paragraph 30 of the Complaint consists of purely legal allegations

and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provision of HAVA.

31.

Defendant admits the allegations contained in Paragraph 31 of the Complaint.

32.

Defendant admits the allegations contained in the first sentence in Paragraph 32 of the Complaint. In response to the second sentence of Paragraph 32, Defendant admits that DDS' personal information is only as current as the information provided by the licensee or the ID holder. Nonetheless, this DDS verification process is mandated by HAVA. 42 U.S.C. § 15483(a)(5)(B). Defendant denies the remaining allegations contained in Paragraph 32 of the Complaint as pled.

33.

In response to the allegations contained in Paragraph 33 of the Complaint, Defendant states that the User Agreement between DDS and SSA was signed by SSA on April 23, 2007. *See* Greenbaum Decl., Exh. 4. [Doc. 1]. Defendant began implementation of the data matching process

shortly thereafter. Defendant denies that she violated any federal law in implementing this matching process.

34.

Defendant denies the allegations as stated in Paragraph 34 of the Complaint.

35.

Defendant admits the allegations contained in Paragraph 35 of the Complaint. By way of further response, Defendant states that she has no authority over county boards of elections or county registrars.

**Guidance from the Georgia Secretary of State**

36.

In response to Paragraph 36, Defendant states that a copy of the September 12, 2008 Memorandum from the Elections Division Director addressed to County Election Officials is attached to the Declaration of Jon Greenbaum as Exhibit 6. [Doc. 1]. The content of that Memorandum speaks for itself. The Defendant denies any remaining allegations contained in Paragraph 36 of the Complaint.

37.

In response to Paragraph 37, Defendant states that a copy of the September 24, 2008 Memorandum from the Elections Division Director addressed to County Election Officials is attached to the Declaration of Jon Greenbaum as Exhibit 4. [Doc. 1]. The content of that Memorandum speaks for itself. The Defendant denies any remaining allegations contained in Paragraph 36 of the Complaint.

38.

In response to Paragraph 38, Defendant states that a copy of the September 24, 2008 Memorandum from the Elections Division Director addressed to County Election Officials is attached to the Declaration of Jon Greenbaum as Exhibit 4. [Doc. 1]. The content of that Memorandum speaks for itself. The Defendant denies any remaining allegations contained in Paragraph 36 of the Complaint.

**County Responses to Secretary of State Guidance**

39.

In response to Paragraph 39 of the Complaint, Defendant states that she is aware that several county registrars have written to voters to ask them to provide proof of citizenship. Defendant can neither admit nor deny the

remaining allegations contained in Paragraph 39 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

40.

In response to Paragraph 40 of the Complaint, Defendant states that she is aware that two or three counties that have sent letters and scheduled hearing dates in order to provide registrants or electors with an opportunity to present proof of citizenship. By way of further response, Defendant states that she has no control over how each county sets its hearing process.

**The National Voter Registration Act of 1993**

41.

Defendant admits the allegations contained in Paragraph 41 of the Complaint.

42.

Defendant admits the allegations contained in Paragraph 42 of the Complaint.

43.

Defendant admits the allegations contained in Paragraph 43 of the Complaint.

**The Citizenship Check and Removal of Registered Voters Within 90 Days of A Federal Election Violates the National Voter Registration Act**

44.

Defendant denies the allegations contained in Paragraph 44 of the Complaint.

**The Voting Rights Act and Section 5 Pre-clearance**

45.

Paragraph 45 of the Complaint consists of purely legal allegations and legal conclusions. As such, it calls for no response by Defendant. To the extent any response is required, Defendant denies that she has violated any provisions of either state or federal law.

46.

Defendant admits the allegations contained in Paragraph 46 of the Complaint.

47.

Defendant denies the allegations as stated in Paragraph 47 of the Complaint.

48.

Defendant denies the allegations contained in Paragraph 48 of the Complaint.

**Plaintiff Jose Morales' Voting Rights Have Been Violated**

49.

Defendant can neither admit nor deny how long Plaintiff has been a resident of Cherokee County, Georgia. Defendant admits the remaining allegations contained in Paragraph 49 of the Complaint.

50.

Defendant can neither admit nor deny the allegations contained in Paragraph 50 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

51.

Defendant can neither admit nor deny the allegations contained in Paragraph 51 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

52.

In response to Paragraph 52 of the Complaint, Defendant states that she had been advised by the Cherokee county registrar that Plaintiff registered to vote on September 9, 2008. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 52 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

53.

In response to the allegations contained in Paragraph 53 of the Complaint, Defendant admits that the Cherokee County Board of Elections sent a letter to Plaintiff, which was dated September 19, 2008. A copy of the letter is attached to Janet Munda's Declaration, as Exh.1-B, which was filed with Defendant's Notice of Witnesses and Filing of Declarations and Documents for the October 22, 2008 Hearing. [Doc. 21]. The content of the letter speaks for itself. Defendant denies the remaining allegations contained in Paragraph 53 of the Complaint as pled.

54.

In response to the allegations contained in Paragraph 54 of the Complaint, Defendant admits that the Cherokee County Board of Elections

sent a second letter to Plaintiff, which was dated September 26, 2008. *See* Munda Dec., Exh. 1-C. [Doc. 21]. The content of the letter speaks for itself. The letter went out on or around the same day that Plaintiff came into the office to present proof of his citizenship. Defendant denies the remaining allegations contained in Paragraph 54 of the Complaint as pled.

55.

Defendant incorporates herein by reference its response to Paragraph 54 of the Complaint. By way of further response, Defendant states that in Paragraph 54 Plaintiff refers to “another” letter and in Paragraph 55 he refers to a “second” letter. Defendant is not certain whether Plaintiff is referring to two different letters or the same letter. Defendant avers that Plaintiff was sent three letters by the Cherokee County Board of Elections. The first was dated September 19, 2008; the second was dated September 26, 2008; and the third was dated October 10, 2008. *See* Munda Decl., Exhs. 1-B, 1-C, and 1-D. [Doc. 21]. The content of those letters speak for themselves. Defendant denies any remaining allegations contained in Paragraph 55 of the Complaint as pled.

56.

Defendant admits that at some time during the month of September 2008 the Plaintiff went to the county registrar's office in Cherokee County and presented proof citizenship. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 56 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

57.

Defendant can neither admit nor deny the allegations contained in Paragraph 57 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

58.

In response to the allegations contained in Paragraph 58 of the Complaint, Defendant can neither admit nor deny what Plaintiff said to a member of the staff of the Cherokee County Elections and Registration Office or what the staff member may have said to Plaintiff. However, Defendant admits that the Cherokee County Elections and Registration Office did accept Plaintiff's passport and naturalization certificate as proof of Plaintiff's citizenship. By way of further response, Defendant states that

Plaintiff is currently on the Cherokee County active voter registration list as Registered Voter Number 7714698. *See* Munda Decl., ¶ 11. [Doc. 21].

59.

Defendant incorporates herein by reference its response to Paragraph 58 herein above.

60.

Defendant can neither admit nor deny the allegations contained in Paragraph 60 of the Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiff upon strict proof of same.

61.

In response to the allegations contained in Paragraph 61 of the Complaint, Defendant states that Plaintiff stated the date he received the letter but not the date of the letter itself. Defendant avers that the letter referred to in this paragraph is the September 26, 2008 letter referred to in Paragraph 54 herein above. *See* Munda Decl., Exh. 1-C. [Doc. 21]. The content of the letter speaks for itself. Defendant denies the remaining allegations contained in Paragraph 61 of the Complaint as pled.

62.

Defendant incorporates herein by reference its response to Paragraph 61 herein above.

63.

Defendant denies the allegations contained in the first sentence of Paragraph 63 of the Complaint. Defendant admits the allegations of the second sentence of Paragraph 63 of the Complaint.

**CLAIM ONE**

**(Section 5 of the Voting Rights Act of 1965)**

64.

Defendant hereby incorporates by reference its answers to Paragraphs 1 through 63 as if set forth fully herein.

65.

Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66.

Defendant denies the allegations contained in Paragraph 66 of the Complaint.

**CLAIM TWO**

**(Violation of Section 8(c) of the National Voter Registration Act)**

67.

Defendant hereby incorporates by reference its answers to Paragraphs 1 through 66 as if set forth fully herein.

68.

Defendant denies the allegations contained in Paragraph 68 of the Complaint.

69.

Defendant denies the allegations contained in Paragraph 69 of the Complaint.

**REQUEST FOR DECLARATORY RELIEF**

70.

Paragraph 70 of the Complaint sets forth Plaintiff's claims, and, as such, requires no response from Defendant. To the extent any response is deemed required, Defendant denies that she has violated any provision of the Voting Rights Act, HAVA, the NVRA, or any other applicable state or federal law.

**BASIS FOR EQUITABLE RELIEF**

71.

Defendant denies the allegations contained in Paragraph 71 of the Complaint.

72.

Defendant denies any remaining allegations in Plaintiff's Complaint not previously admitted, denied or otherwise controverted.

73.

Defendant denies that Plaintiff is entitled to any of the relief requested in his prayer for relief.

**WHEREFORE**, Defendant respectfully prays that the Court dismiss this action in its entirety and cast all costs against the Plaintiff.

Respectfully submitted,

THURBERT E. BAKER 033887  
Attorney General for the State of Georgia

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day electronically filed the within and foregoing **ANSWER AND DEFENSES** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification or otherwise:

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This 29th day of October, 2008.

/s/ Dennis R. Dunn  
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