

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

**JOSE MORALES, on behalf of )  
himself and those similarly situated, )  
NATIONAL ASSOCIATION )  
FOR THE ADVANCEMENT OF )  
COLORED PEOPLE (NAACP), as an )  
organization; GEORGIA )  
ASSOCIATION OF LATINO )  
ELECTED OFFICIALS (GALEO), )  
as an organization; and THE )  
CENTER FOR PAN ASIAN )  
COMMUNITY SERVICES (CPACS), )  
as an organization, )**

**CIVIL ACTION NO.  
1:08-CV-3172 JTC**

**Plaintiffs, )  
V )  
KAREN HANDEL, in her official )  
capacity as Georgia Secretary of State, )  
Defendant. )**

**ANSWER AND DEFENSES TO PLAINTIFFS’ AMENDED  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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 Amended Complaint for Declaratory and Injunctive Relief (“Amended Complaint”) as follows:

### FIRST DEFENSE

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

### SECOND DEFENSE

Plaintiffs lack standing to bring these claims on behalf of the putative class of Plaintiffs as alleged in their Amended Complaint.

### THIRD DEFENSE

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

### FOURTH DEFENSE

Plaintiffs' Amended 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).

### FIFTH DEFENSE

The actions challenged by Plaintiffs 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.

### SIXTH DEFENSE

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

### SEVENTH 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 Amended Complaint as follows:

### PRELIMINARY STATEMENT

1.

Paragraph 1 of the Amended Complaint sets forth Plaintiffs' 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 Plaintiffs are entitled to either declaratory or injunctive relief.

### **THREE-JUDGE PANEL**

3.

Defendant admits the allegations contained in the first sentence of Paragraph 3 of the Amended Complaint. Defendant admits that the Court entered an Order on October 27, 2008 granting Plaintiffs' Motion for Preliminary Injunction. Defendant denies the remaining allegations in Paragraph 3 of the Amended Complaint as pled.

### **JURISDICTION**

4.

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

5.

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

### **PARTIES**

6.

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

7.

Defendant admits that the Georgia Association of Latino Elected Officials (GALEO) maintains an office at 1100 Peachtree Street in Atlanta, Georgia. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 7 for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

8.

Defendant admits that the Center for Pan Asian Community Services, Inc. (CPACS) maintains an office at 3760 Park Ave. in Doraville, Georgia. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 7 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

9.

Defendant admits that the National Association for the Advancement of Colored People (NAACP) maintains many branch offices throughout the State of Georgia. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 7 of the Amended Complaint for want of

sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

10.

In response to the allegations contained in the first sentence of Paragraph 10, Defendants admit that the claims alleged in this lawsuit are relevant to the goals and purposes of the organizational plaintiffs.

Defendants can neither admit nor deny the remaining allegations contained in the first sentence of Paragraph 10 for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same. Defendants deny the allegations contained in the second sentence of Paragraph 10.

11.

Defendant admits the allegations contained in Paragraph 11 of the Amended 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**

12.

Paragraph 12 of the Amended 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 Amended 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 Amended 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.

15.

Paragraph 15 of the Amended 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 Amended 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.

17.

Paragraph 17 of the Amended 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.

18.

Paragraph 18 of the Amended 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.

19.

Paragraph 19 of the Amended 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.

20.

Paragraph 20 of the Amended 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.

21.

Paragraph 21 of the Amended 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.

22.

Paragraph 22 of the Amended 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**

23.

Defendant denies the allegations of Paragraph 23 of the Amended 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).

24.

Defendant denies the allegations of Paragraph 24 of the Amended 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.

25.

Defendant admits the allegations contained in Paragraph 25 of the Amended Complaint.

26.

In response to Paragraph 26 of the Amended 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 26 of the Amended Complaint.

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

**Class Action Allegations**

27.

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

28.

Paragraph 28 of the Amended Complaint contains Plaintiffs’ description of the putative class. Defendant denies that Plaintiffs can establish that there is a class of similarly-situated individuals who can state a claim for relief under the NVRA or HAVA. Defendant denies any remaining allegations contained in Paragraph 28 of the Amended Complaint.

29.

Defendant denies the allegations contained in Paragraph 29 of the Amended Complaint.

30.

Defendant denies the allegations contained in Paragraph 30 of the Amended Complaint.

31.

Defendant denies the allegations contained in Paragraph 31 of the Amended Complaint.

32.

Defendant denies that there are questions of fact common to a class of individuals, as alleged by Plaintiffs in Paragraph 32 of the Amended Complaint. Defendant denies the remaining allegations contained in Paragraph 32 of the Amended Complaint.

33.

Defendant denies that there are questions of law common to a class of individuals, as alleged by Plaintiffs in Paragraph 33 of the Amended Complaint. Defendant denies the remaining allegations contained in Paragraph 33 of the Amended 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**

34.

Defendant admits the allegations contained in Paragraph 34 of the Amended Complaint. *See also* Ga. Const. Art. II., Sec. I., Para. II.

35.

Paragraph 35 of the Amended 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.

36.

Defendant admits the allegations contained in Paragraph 36 of the Amended Complaint.

37.

Defendant admits the allegations contained in the first sentence in Paragraph 37 of the Amended Complaint. In response to the second sentence of Paragraph 37, 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 37 of the Amended Complaint as pled.

38.

In response to the allegations contained in Paragraph 38 of the Amended 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.

39.

Defendant denies the allegations in Paragraph 39 of the Amended Complaint as pled.

40.

Defendant denies the allegations in Paragraph 40 of the Amended Complaint as pled.

**Guidance from the Georgia Secretary of State**

41.

In response to Paragraph 41 of the Amended Complaint, 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 41 of the Amended Complaint.

42.

In response to Paragraph 42 of the Amended Complaint, 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 42 of the Amended Complaint.

43.

In response to Paragraph 43 of the Amended Complaint, 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 43 of the Amended Complaint.

## **County Responses to Secretary of State Guidance**

44.

In response to Paragraph 44 of the Amended Complaint, Defendant states that she is aware that several county registrars wrote to voters to ask them to provide proof of citizenship. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 44 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

45.

In response to Paragraph 45 of the Amended Complaint, Defendant states that she is aware that two or three counties 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**

46.

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

47.

Defendant admits the allegations contained in Paragraph 47 of the Amended Complaint.

48.

Defendant admits the allegations contained in Paragraph 48 of the Amended Complaint.

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

49.

Defendant denies the allegations contained in Paragraph 49 of the Amended Complaint.

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

50.

Defendant admits the allegations contained in Paragraph 50 of the Amended Complaint.

51.

Defendant admits the allegations contained in Paragraph 51 of the Amended Complaint.

52.

Defendant denies the allegations as stated in Paragraph 52 of the Amended Complaint.

53.

Defendant denies the allegations contained in Paragraph 53 of the Amended Complaint.

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

54.

Defendant can neither admit nor deny how long Plaintiff Morales has been a resident of Cherokee County, Georgia. Defendant admits the remaining allegations contained in Paragraph 54 of the Amended Complaint.

55.

Defendant can neither admit nor deny the allegations contained in Paragraph 55 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

56.

Defendant can neither admit nor deny the allegations contained in Paragraph 56 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

57.

In response to Paragraph 57 of the Amended Complaint, Defendant states that she had been advised by the Cherokee county registrar that Plaintiff Morales registered to vote on September 9, 2008. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 57 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

58.

In response to the allegations contained in Paragraph 58 of the Amended Complaint, Defendant admits that the Cherokee County Board of Elections sent a letter to Plaintiff Morales, 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 58 of the Amended Complaint as pled.

59.

In response to the allegations contained in Paragraph 59 of the Amended Complaint, Defendant admits that the Cherokee County Board of Elections sent a second letter to Plaintiff Morales, 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 Morales came into the office to present proof of his citizenship. Defendant denies the remaining allegations contained in Paragraph 59 of the Amended Complaint as pled.

60.

Defendant incorporates herein by reference its response to Paragraph 59 of the Amended Complaint. By way of further response, Defendant states that in Paragraph 59 Plaintiffs refer to “another” letter and in Paragraph 60 Plaintiffs refer to a “second” letter. Defendant is not certain whether Plaintiffs are referring to two different letters or the same letter. Defendant avers that Plaintiff Morales 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 60 of the Amended Complaint as pled.

61.

Defendant admits that at some time during the month of September 2008 Plaintiff Morales went to the county registrar's office in Cherokee County and presented proof of citizenship. Defendant can neither admit nor deny the remaining allegations contained in Paragraph 61 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

62.

Defendant can neither admit nor deny the allegations contained in Paragraph 62 of the Amended Complaint for want of sufficient information to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

63.

In response to the allegations contained in Paragraph 63 of the Amended Complaint, Defendant can neither admit nor deny what Plaintiff Morales said to any member of the staff of the Cherokee County Elections and Registration Office. However, Defendant admits that the Cherokee County Elections and Registration Office did accept Plaintiff Morales' passport and naturalization certificate as proof of his citizenship. By way of further response, Defendant states that Plaintiff Morales is currently on the Cherokee County active voter registration list as Registered Voter Number 7714698. *See* Munda Decl., ¶ 11. [Doc. 21]. Upon information and belief, Plaintiff Morales was allowed to vote on a Direct Record Electronic ("DRE") voting machine for both the November 2008 regular election and the December 2008 run-off election.

64.

Defendant incorporates herein by reference her response to Paragraph 63 herein above.

65.

Defendant can neither admit nor deny the allegations contained in Paragraph 65 of the Amended Complaint for want of sufficient information

to form a belief as to the truth thereof and puts Plaintiffs upon strict proof of same.

66.

In response to the allegations contained in Paragraph 66 of the Amended Complaint, Defendant states that Plaintiffs stated the date that Plaintiff Morales retrieved a certified letter from the post office but did not specifically identify the letter itself. Defendant avers that the letter referred to in this paragraph is the September 26, 2008 letter described in Paragraph 60 herein above. *See* Munda Decl., Exh. 1-C. [Doc. 21]. The content of the letter speaks for itself. Defendant denies any remaining allegations contained in Paragraph 66 of the Amended Complaint as pled.

67.

Defendant incorporates herein by reference her response to Paragraph 66 herein above.

68.

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

**CLAIM ONE**

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

69.

Defendant hereby incorporates by reference its answers to Paragraphs 1 through 68 of the Amended Complaint as if set forth fully herein.

70.

Defendant denies the allegations contained in Paragraph 70 of the Amended Complaint.

71.

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

**CLAIM TWO**

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

72.

Defendant hereby incorporates by reference its answers to Paragraphs 1 through 71 of the Amended Complaint as if set forth fully herein.

73.

Defendant denies the allegations contained in Paragraph 73 of the Amended Complaint.

74.

Defendant denies the allegations contained in Paragraph 74 of the Amended Complaint.

**CLAIM THREE**

**(Violation of Section 303 of the Help America Vote Act)**

75.

Defendant hereby incorporates by reference its answers to Paragraphs 1 through 74 of the Amended Complaint as if set forth fully herein.

76.

Defendant denies the allegations contained in Paragraph 76 of the Amended Complaint.

77.

Defendant denies the allegations contained in Paragraph 77 of the Amended Complaint as pled.

78.

Defendant denies the allegations contained in Paragraph 78 of the Amended Complaint.

79.

Defendant denies the allegations contained in Paragraph 79 of the Amended Complaint.

80.

Defendant denies the allegations contained in Paragraph 80 of the Amended Complaint.

81.

Defendant denies the allegations contained in Paragraph 81 of the Amended Complaint.

82.

Defendant denies the allegations contained in Paragraph 82 of the Amended Complaint.

83.

Defendant denies the allegations contained in Paragraph 83 of the Amended Complaint.

84.

Defendant denies the allegations contained in Paragraph 84 of the Amended Complaint.

85.

Defendant denies the allegations contained in Paragraph 85 of the Amended Complaint.

86.

Defendant denies the allegations contained in Paragraph 86 of the Amended Complaint.

87.

Defendant denies the allegations contained in Paragraph 87 of the Amended Complaint.

88.

Defendant denies the allegations contained in Paragraph 88 of the Amended Complaint.

**REQUEST FOR DECLARATORY RELIEF**

89.

Paragraph 89 of the Amended Complaint sets forth Plaintiffs' claims and request for declaratory relief, 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 state or federal law.

**BASIS FOR EQUITABLE RELIEF**

90.

Defendant denies the allegations contained in Paragraph 90 of the Amended Complaint.

91.

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

92.

Defendant denies that Plaintiffs are entitled to any of the relief requested in their prayer for relief.

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

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 TO PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** 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 24th day of March 2009.

/s/ Julia B. Anderson  
JULIA B. ANDERSON  
Senior Assistant Attorney General