

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

JOSE MORALES, on behalf of himself )  
and those similarly situated )

Plaintiff, )

v. )

KAREN HANDEL, in her official )  
Capacity as Georgia Secretary of State )

Defendant. )

CIVIL ACTION  
FILE NO. 1:08-CV-3172

**PLAINTIFF'S INITIAL DISCLOSURES**

**(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.**

**Classification**

This lawsuit is brought by plaintiff José Morales. Plaintiff Morales asserts claims against Karen Handel, Georgia Secretary of State, under Section 5 of the Voting Rights Act of 1965 ("VRA"), as amended, 42 U.S.C. § 1973c and Section 8(c) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-6. This lawsuit arises from the State of Georgia's implementation of a database matching system for registered voters and voter registrants. Plaintiff's Complaint contains class action

allegation. Plaintiff seeks declaratory and injunctive relief. The classification of this action is 441.

### **Factual Outline**

This action challenges the State of Georgia's implementation of a systematic attempt to check the citizenship status and other data of voter registrants and certain registered voters as part of its statewide voter registration database implemented under the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301, *et seq.* The implementation of this citizenship and other data verification scheme involves administrative record matching with the Department of Driver Services ("DDS") database, which is linked to the Social Security Administration ("SSA") database. Plaintiff contends that the State of Georgia failed to secure federal pre-clearance of this citizenship and other data verification scheme and the new procedures related to its implementation, in violation of Section 5 of the VRA.

This action also challenges the application of the citizenship and other data check procedures to registered voters and the removal of such registered voters within 90 days of a federal election, in contravention of Section 8(c) of the NVRA, 42 U.S.C. §1973gg-6. This provision of the NVRA prohibits states from executing, later than 90 days prior to the date of a primary or general election for Federal office, any systematic list maintenance

procedures resulting in the removal of voters from the official list of eligible voters. The only exceptions to the 90 day cutoff are removals done: (1) at the request of the registrant; (2) as provided by State law, by reason of criminal conviction or mental capacity; and (3) at the death of the registrant. 42 U.S.C. 1973gg-6 (c)(2)(B), 1973gg-6(a)(3)(A-B), 1973gg-6(a)(4)(A).

Plaintiff José Morales became a naturalized citizen in November 2007. He registered to vote early in September 2008. Several weeks later he received a letter from Cherokee County notifying him that he was unable to vote unless he provided evidence of his citizenship. A week later Plaintiff Morales received another letter indicating that he was required to provide Cherokee County with additional information, such as a passport or other document, to verify that he is a U.S. citizen. After he received the second letter, Mr. Morales drove to the Cherokee County Elections office and proceeded to show his passport to a clerk in the Elections office. A week later he received a copy of his voting card in the mail.

On October 7, 2008, Plaintiff Morales received another letter from the Cherokee County Elections and Registration office. The letter informed him that he may not be qualified to vote because he may not be U.S. citizen. The letter indicated that if he did not respond prior to an October 15, 2008

hearing date, and did not attend the hearing, his name “will be removed” from the list of registered voters.

Plaintiff’s Complaint for Declaratory and Injunctive relief was filed on October 9, 2008. On October 27, 2008, the three-judge panel, convened to hear Plaintiff’s Section 5 claim pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284, issued a preliminary injunction in the case. The panel concluded that the State of Georgia’s database matching system constituted a change in voting procedures for which preclearance was required by Section 5 of the Voting Rights Act, and that the State of Georgia had failed to pre-clear such change.<sup>1</sup> October 27, 2008 Order at 21. The Court also found that “this case . . . satisfies an exception to the mootness doctrine in that the injury complained of viz Section 5 constitutes a ‘wrong capable of repetition, yet evading review.’” *Id.* at 11-12 (quoting *Southern Pac. Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)).

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<sup>1</sup> On November 25, 2008, undersigned counsel for plaintiff filed a 20 page comment letter with the U.S. Justice Department (“DOJ”) urging the Department to refuse to grant approval under the Voting Rights Act to the State of Georgia’s unprecleared registration procedures related to the database matching/citizenship check system. The letter asserts that the procedures are discriminatory and are based on faulty data maintained by the Georgia DDS. A copy of this letter is attached as Exhibit 1.

## **Legal Issues**

The legal issues to be tried include the following:

- a) Whether the actions challenged by Plaintiff were subject to pre-clearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c; and
- b) Whether the actions challenged by Plaintiff constitute systemic list maintenance in violation of Section 8(c) of the NVRA, 42 U.S.C. § 1973gg-6.

**(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which plaintiff contends are applicable to this action.**

### United States Statutes:

Help America Vote Act of 2002, 42 U.S.C. § 15301, *et seq.*

National Voter Registration Act, 42 U.S.C. § 1973gg, *et seq.*

Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c

42 U.S.C. § 1988

### United States Regulations:

28 C.F.R. § 51.26(d)

### Federal Case Law:

*Allen v. State Board of Elections*, 393 U.S. 544 (1969)

*Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11<sup>th</sup> Cir. 2008)

*Schwier v. Cox*, 439 F.2d 1285 (11<sup>th</sup> Cir. 2006)

Georgia Statutes:

Ga. Code § 21-2-215(d)

Ga. Code § 21-2-216(a)(2)

Ga. Code § 21-2-220

Ga. Code § 21-2-226

Ga. Code § 21-2-228

Ga. Code § 21-2-561

**(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subject of the information. (Attach witness list to Initial Disclosures as Attachment A.)**

**(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Responses to Initial Disclosures as Attachment B.)**

Plaintiff has not yet engaged or designated an expert witness in this matter and expects to supplement this disclosure, in accordance with Fed.R.Civ.Proc. 26(a)(2) and Local Rule 26.2(C).

**(5) Provide a copy of, or a description by category and location of, all documents, data, compilations, and tangible things in your possession, custody or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subject of the**

**information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)**

**(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or to her evidentiary material, not provided or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying as under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosure as Attachment D.)**

Plaintiff is seeking declaratory and injunctive relief and such other and further relief as the Court may deem just and proper.

**(7) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)**

Plaintiff has no such insurance agreements.

**(8) Disclose the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the case of action set forth in plaintiff's cause of action and state the basis and extent of such interest.**

Plaintiff knows of no such subrogation interest.

Respectfully Submitted,

/s/ Elise Sandra Shore

Elise Sandra Shore

Georgia State Bar no: 557131

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## ATTACHMENT "A" – WITNESSES

Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information.

Among those persons as to whom the Plaintiff has reasons to believe that they may have discoverable information which may be used to support his claims or defenses, unless solely for impeachment, are the following:

<b>Name</b>	<b>Contact Information</b>
José Morales	10423 Dunedin Trail Woodstock, GA
Donavan Allison	990 SmokeTree Dr. Tucker, GA 30084
Kyla Berry	350 Spelman Ln., SW Atlanta, GA 30314
Michael Custer	Black, Custer & Lynch LLC P.O Box 2023 Albany, GA 31702
Marvin Lim	6654 Wandering Way Norcross, GA 31702
Mary Mullins Lee	14 Juniper Dr. Albany, GA 31721
Gerri Valentin-Cruz	3532 Archgate Court Alpharetta, GA 30004
Karen Handel	Secretary of State
Wesley B. Tailor	Elections Division Director

Plaintiff necessarily reserves the right to supplement this listing of possible witnesses as discovery progresses.

## ATTACHMENT "C"

The Local Rules provide that the Parties are to: Provide a copy of, or a description by category and location of, all documents, data compilations, and tangible things in your possession, custody or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information.

On the basis of the information presently known, and the documents currently available, the Plaintiff herewith produces and provides to all of the parties to this action a list of each and every document thus far available to the Plaintiff which is responsive to the requirements of the Local Rules.

Document	Location/Source
Declaration of José Julian Morales	Exhibit A, Plaintiff's Complaint
Copy of Plaintiff Morales's voter registration card	Exhibit A-1, Plaintiff's Complaint
September 26, 2008 letter from the Cherokee Elections and Registration Office to Plaintiff José Morales	Exhibit A-2, Plaintiff's Complaint
Declaration of Gerri Valentin-Cruz	Exhibit A, Plaintiff's Reply Brief in Support of Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order
Copy of Gerri Valentin-Cruz's voter registration card	Exhibit A-1, Plaintiff's Reply Brief in Support of Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order
Declaration of Mary Mullins Lee	Court Docket No. 23
Declaration of Jon Greenbaum ("Greenbaum Dec.").	Exhibit B, Plaintiff's Reply Brief in Support of Plaintiff's Motion for Preliminary Injunction and

	Temporary Restraining Order
October 8, 2008 correspondence from Mr. Chris Coates, Chief of the Voting Section of the Civil Rights Division, United States Department of Justice, to Thurbert Baker, Attorney General of Georgia.	Greenbaum Dec., Exhibit 1
October 8, 2008 memo from Annie Bright on behalf of the Clayton County Board of Elections to Dawn Jones.	Greenbaum Dec., Exhibit 2
January 15, 1996 letter from Deval Patrick, then-Assistant Attorney General of the Civil Rights Division in the United States Department of Justice, to the Attorney General for the State of Texas.	Greenbaum Dec., Exhibit 3.
April 23, 2007 letter from John Tanner, then-Chief of the Voting Rights Section of the United States Department of Justice, to the Secretary of State.	Greenbaum Dec., Exhibit 4
September 24, 2008 memo from the Secretary of State's Elections Chief, Wes Tailor, to County Elections Officials.	Greenbaum Dec., Exhibit 4
List of voters (with personal identifying information redacted) from Cobb County who were flagged and sent letters using this process.	Greenbaum Dec., Exhibit 4
May 23, 2007 letter from Stefan Ritter, Senior Assistant Attorney of Georgia to John Tanner, Chief, Voting Section.	Greenbaum Dec., Exhibit 4
October 8, 2008 e-mail, received from Beth Kish on behalf of the Cobb County Board of Elections by Brian Spears.	Greenbaum Dec., Exhibit 5
September 12, 2008 memo from Wes Tailor to county election officials.	Greenbaum Dec., Exhibit 6
January 8, 2008 memo from the State Elections Division Director to county elections officials of information provided in voter registration applications.	Greenbaum Dec., Exhibit 6
January 14, 2008 memo from the Secretary	Greenbaum Dec., Exhibit 6

of State, Election Division Director Michael McCarthy, to county registrars.	
October 3, 2008 response of Hall County to an Open Records Act request by Mr. Brian Spears.	Greenbaum Dec., Exhibit 7
October 7, 2008 demand letter sent by Coalition Members (Lawyers' Committee for Civil Rights Under Law, Mexican-American Legal Defense Fund, and the American Civil Liberties Union) to Dennis Dunn.	Greenbaum Dec., Exhibit 8
August 28, 2008 letter from Linda Latimore, Dekalb County Board of Elections, to voter Nelson Tyler, Sr.	Greenbaum Dec., Exhibit 9
August 20, 2008 memorandum from Wes Tailor on behalf of the Secretary of State to county elections officials.	Greenbaum Dec., Exhibit 10
September 25, 2008 form letter from Beth Kish, Registration Manager of Cobb County, to an unidentified addressee.	Greenbaum Dec., Exhibit 10
Declaration of Brian Spears ("Spears Dec.") and attached documents obtained by Mr. Spears in response to his Open Records Act request.	Court Docket No. 12
Open Records Act request from Brian Spears to Mrs. Kay Staten, Registrar, Whitfield County Elections Supervisor.	Spears Dec., Exhibit A
October 9, 2008 response from Mrs. Kay Staten, Registrar, Whitfield County Elections Supervisor to Brian Spears.	Spears Dec., Exhibit B
November 25, 2007 letter from Counsel for Plaintiff to the U.S. Department of Justice.	Plaintiff's Initial Disclosures, Exhibit 1

**CERTIFICATE OF COMPLIANCE**

This is to certify that the foregoing document was prepared using 14  
pt Times New Roman font.

This 26<sup>th</sup> day of November, 2008.

/s/ Elise Sandra Shore  
ELISE SANDRA SHORE

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have this the 26th day of November, 2008, electronically filed the foregoing **PLAINTIFF'S INITIAL DISCLOSURES** 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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/s/ Elise Sandra Shore  
ELISE SANDRA SHORE