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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CV 06-0726

WASHINGTON ASSOCIATION OF CHURCHES,  
as an organization and representative of its  
members; WASHINGTON ASSOCIATION OF  
COMMUNITY ORGANIZATIONS FOR  
REFORM NOW (ACORN), as an organization and  
representative of its members; ORGANIZATION  
OF CHINESE-AMERICANS – GREATER  
SEATTLE CHAPTER, as an organization and  
representative of its members; CHINESE  
INFORMATION & SERVICE CENTER, as an  
organization and representative of its clients;  
FILIPINO AMERICAN POLITICAL ACTION  
GROUP OF WASHINGTON, as an organization  
and representative of its members; KOREAN  
AMERICAN VOTERS ALLIANCE, as an  
organization and representative of its members;  
SERVICE EMPLOYEES INTERNATIONAL  
UNION (SEIU) – LOCAL 775, as an organization  
and representative of its members; and  
WASHINGTON CITIZEN ACTION, as an  
organization and representative of its members,

Plaintiffs,

vs.

SAM REED, in his official capacity as Secretary of  
State for the State of Washington,

Defendant.

Civil No. \_\_\_\_\_

COMPLAINT

*Complaint*

COPY

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PETERSON, P.S.

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1 Plaintiffs, by their attorneys, Hillis Clark Martin & Peterson, P.S.; Paul, Weiss,  
2 Rifkind, Wharton & Garrison LLP; and the Brennan Center for Justice at New York University  
3 School of Law, as and for their Complaint against Defendant, allege as follows:

#### 4 INTRODUCTION

5 1. This action is brought to strike down a recently enacted provision of  
6 Washington election law that creates an illegal precondition to registering the State's voters and  
7 will unlawfully disenfranchise thousands.

8 2. This new provision, RCW 29A.08.107, went into effect on January 1,  
9 2006. It prohibits the Secretary of State from registering voters if he cannot "match" their names  
10 and other identifying information with records in other databases kept by the State Department of  
11 Licensing or the U.S. Social Security Administration.

12 3. This brand new bureaucratic obstacle to voter registration will illegally  
13 disenfranchise thousands of eligible Washingtonians. "Matching" personal information in  
14 different databases is an error-prone process that is notoriously unreliable in the elections  
15 context. Washington's "matching" process will exclude a high percentage of eligible voters  
16 from the registration rolls because of typographical and other data entry errors, meaningless  
17 differences, ministerial mistakes by State officials, computer glitches, technological limitations,  
18 and other factors unrelated to voters' eligibility and outside of voters' control.

19 4. For example, the records of voters who register in their married names  
20 will not exactly match records in the other databases if their driver's license or their Social  
21 Security records are in their maiden names. The records of voters with compound last names  
22 will not exactly match if one database uses a hyphen and the other does not. If an election  
23 official or a voter reverses two digits in a driver's license number, the voter's records will not  
24 exactly match. There are countless ways in which the records of legitimate registrants will fail to  
25 match through no fault of their own. An eligible citizen should not be denied the right to vote  
26 because of such meaningless matching errors.

27 5. An eligible prospective voter who has submitted a complete registration  
28 application, and sworn to its accuracy, can and should expect that the application will be

1 processed by the State and that he or she will be registered and entitled to vote a regular ballot.  
2 Instead, Washington's new election law wrests control of the registration process from eligible  
3 voters and, by giving it to fallible computers and bureaucrats, makes that process arbitrary,  
4 uncertain, and bound to deny residents the right to vote. Given the inherent difficulty in reliably  
5 "matching" data across multiple databases, each of which collects and maintains data in varied  
6 ways and each of which is statistically certain to contain its own errors, the rejection of voter  
7 registration applications where the State is unable to find a "match" will invariably result in the  
8 disenfranchisement of many eligible voters – including voters who complete their applications  
9 perfectly and comply with every administrative requirement.

10           6.       Washington reported that it processed more than one million registration  
11 forms from 2002 to 2004. Based on those numbers, even a one-percent error in the "matching"  
12 process would jeopardize the registration of more than 10,000 residents – and the "matching"  
13 processes contemplated by Washington are likely to yield error rates far higher than one percent.  
14 Other jurisdictions using similar "matching" processes have experienced error rates in the 20 to  
15 30 percent range – and in some cases even higher.

16           7.       This computerized disenfranchisement violates the very law that  
17 Washington claims to be implementing, the Help America Vote Act of 2002 ("HAVA").  
18 Congress passed HAVA in the wake of the tumultuous 2000 Presidential Election to eliminate  
19 barriers to voting and increase confidence in the electoral process. Among other things, HAVA  
20 mandates that each state create a "single, uniform, official, centralized, interactive computerized  
21 statewide voter registration list," 42 U.S.C. § 15483(a)(1)(A), to serve as the official voter  
22 registration list for all federal elections. Access to the "computerized list" effectively governs  
23 access to the franchise. But Washington's new election law illegally bars access to the list.

24           8.       Washington is in a small minority of states taking such an unlawful course  
25 in their implementation of HAVA's computerized list requirement. Only a handful of other  
26 states plan to similarly reject applicants whose information cannot be "matched."

27           9.       Plaintiffs are (1) organizations whose members include eligible but  
28 unregistered voters who will attempt to register to vote in the September 19, 2006 and

1 November 7, 2006 federal elections but will be omitted from the official list of registered voters  
2 and, therefore, will be unable to cast a ballot that will be counted; and (2) organizations that seek  
3 to register voters and to reduce barriers to fair and efficient voting, especially for low-income  
4 voters or voters from certain ethnic communities, whose resources will be diverted and whose  
5 missions will be frustrated by Washington's new election law.

6 10. That law, RCW 29A.08.107, which makes "matching" a precondition to  
7 registration and voting, violates and undermines HAVA, the very federal law under which the  
8 State purports to be acting, as well as voters' rights protected by the First and Fourteenth  
9 Amendments to the United States Constitution, the Voting Rights Act, and the National Voter  
10 Registration Act.

11 11. Plaintiffs therefore seek a declaratory judgment, a preliminary injunction,  
12 and a permanent injunction that will take effect at least 45 days prior to the September 19, 2006  
13 primary election or, in the alternative, 45 days prior to the November 7, 2006 general election,  
14 prohibiting the Secretary of State from implementing the statute and refusing to register voters  
15 whose identifying information cannot purportedly be "matched."

#### 16 JURISDICTION AND VENUE

17 12. This Court has subject matter jurisdiction over this action pursuant to  
18 28 U.S.C. § 1331, as a case arising under the laws of the United States; under 28 U.S.C.  
19 § 1343(a)(4), as a case seeking equitable and other relief pursuant to an act of Congress  
20 providing for the protection of the right to vote; and under 42 U.S.C. § 1983, as a case seeking to  
21 enforce rights and privileges secured by the laws of the United States.

22 13. Plaintiffs' action for declaratory and injunctive relief is authorized by  
23 28 U.S.C. §§ 2201(a) and 2202.

24 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a  
25 substantial part of the events or omissions giving rise to the claim have occurred or will occur in  
26 this district.  
27  
28

1 **PARTIES**

2 15. Washington Association of Churches (“WAC”) is an association of  
3 Christian denominations and ecumenical organizations that work together on issues of common  
4 concern, especially those addressing low-income and other traditionally underrepresented  
5 populations, in Washington State. WAC engages in public policy education and advocacy and  
6 encourages citizen participation by registering voters and encouraging voting. WAC represents  
7 the means by which the state ecumenical community communicates faith-based positions to the  
8 State legislature. It is critical to WAC’s advocacy efforts and to its ecumenical mission that  
9 members of its faith community be empowered to press for action consistent with its faith-based  
10 vision. Voter registration is a critical component of this process. WAC maintains an office at  
11 419 Occidental Avenue South, Seattle, WA 98104.

12 16. Plaintiff Washington Association of Community Organizations for  
13 Reform Now (“ACORN”), which maintains an office at 134 SW 153rd Street, Suite D, Burien,  
14 WA 98166, is a chapter of the national ACORN organization. ACORN is the nation’s largest  
15 community organization of low- and moderate-income families, with over 175,000 member  
16 families organized into more than 850 neighborhood chapters in 65 cities across the country. In  
17 Washington, ACORN has concentrated its grassroots organizing efforts in low-income  
18 communities on direct action, negotiation, legislation, and voter participation. ACORN has over  
19 2,100 member families in the State of Washington, and a larger constituency of non-dues-paying  
20 provisional members. The socioeconomic conditions of ACORN’s members often require them  
21 to make frequent changes of residence and result in their not having current and valid photo  
22 identification or documentary proof of residence. Because of Washington’s new law, ACORN’s  
23 members face a substantial risk of being omitted from the official list of registered voters even  
24 though they are eligible to vote and have properly submitted their registration materials. At least  
25 some members of ACORN will be unfairly disenfranchised because of this new law.  
26 Additionally, ACORN will suffer harm to its organizational purposes, which include increasing  
27 civic and political participation in low-income communities through voter registration drives.

1 ACORN will attempt to register 2,000 to 10,000 people in Washington during this election cycle  
2 but, because of RCW 29A.08.107, will fall short of its voter registration goals in the State.

3 17. Plaintiff Organization of Chinese-Americans of Greater Seattle Chapter  
4 (“OCA-GS”) is a Seattle-based organization dedicated to advancing the social, political, and  
5 economic well-being of Chinese Americans and other Asian Pacific Americans in the Pacific  
6 Northwest. OCA-GS, which has approximately 200 dues-paying members in the Seattle area, is  
7 the local affiliate of the national Organization of Chinese Americans, a national non-profit  
8 organization with more than 3,000 members and affiliates. OCA-GS advocates on behalf of its  
9 members and the broader Asian Pacific American community, and is specifically involved in  
10 issues relating to voting rights – in particular, voting issues of concern to minority language  
11 communities, such as multilingual assistance available on touchscreen voting machines. OCA-  
12 GS is involved in advocacy and public policy development, and it is crucial to its mission that its  
13 members are recognized as active constituents of their elected officials. Voter registration is a  
14 critical component of this process, and OCA-GS will conduct voter registration drives,  
15 informational seminars, and educational outreach to the community. OCA-GS maintains an  
16 office at 606 Maynard Ave. South - Suite 104, Seattle, WA 98114.

17 18. Plaintiff Chinese Information & Service Center (“CISC”) is a Seattle-  
18 based organization devoted to creating opportunities to succeed for Chinese-American  
19 immigrants and their families. CISC conducts advocacy with elected officials and the general  
20 public, on behalf of its clients and the broader Chinese-American community. Among the issues  
21 in which CISC is involved is voting rights. In particular, CISC is active in supporting  
22 compliance with section 203 of the Voting Rights Act. Involvement in public policy formation  
23 and advocacy is central to CISC’s service to its clients and the broader Chinese-American  
24 community. It is critical to these efforts that members of the Chinese-American community are  
25 recognized as active constituents of their elected officials. These efforts cannot succeed without  
26 successful voter registration of CISC’s clients and the broader Chinese-American community.  
27 This year, as in the past, CISC will encourage clients and members of the Chinese-American  
28 community to register and vote; it will educate members of the community about the importance

1 of registration and voting; and will provide direct service to clients who need assistance in the  
2 registration process. CISC maintains an office at 409 Maynard Ave South, Suite 203, Seattle  
3 WA 98104.

4 19. Plaintiff Filipino American Political Action Group of Washington  
5 (“FAPAGOW”) is a nonpartisan organization with more than 1000 members that educates  
6 Filipino-American voters about pressing public concerns, advocates on behalf of issues of  
7 concern to Filipino Americans, and strives to increase voter turnout among Filipino Americans.  
8 Promoting voter education and voter turnout among Filipino Americans is central to  
9 FAPAGOW’s organizational mission. To accomplish these ends, FAPAGOW will conduct  
10 voter registration drives and conduct community education activities. FAPAGOW will be  
11 impeded in carrying out its mission to the extent that its members – and members of the Filipino-  
12 American community that make up its constituency – are prevented from successfully registering  
13 to vote. FAPAGOW maintains an office at 621 22nd Avenue, Seattle, WA 98112.

14 20. Plaintiff Korean American Voters Alliance (“KAVA”) is a nonpartisan  
15 political organization dedicated to politically empowering Korean Americans in Washington  
16 State, and represents more than 4,000 registered Korean American voters. KAVA sponsors  
17 events that foster voter education and civic participation among the Korean-American  
18 population, including several voter registration drives at community festivals and supermarkets.  
19 At their upcoming convention in September 2006, for example, KAVA expects between 1,000 to  
20 1,500 members and prospective members, and will make voter registration a top priority.  
21 KAVA maintains an office at 1611 116th Avenue, NE Suite 225, Bellevue, WA 98004.

22 21. Plaintiff Service Employees International Union Local 775 (“SEIU Local  
23 775”), a Washington affiliate of the national Service Employees International Union, is a union  
24 representing nearly 30,000 home care and nursing home workers in Washington. SEIU Local  
25 775 advocates on behalf of Washington’s most vulnerable elderly and disabled citizens. It is  
26 vital to the success of SEIU Local 775’s advocacy efforts that as many members as possible are  
27 registered to vote, and it actively engages in extensive voter registration efforts. Indeed, one-  
28 third of SEIU Local 775’s 43 full-time staff members devote substantial portions of their time to

1 these voter registration efforts, and SEIU Local 775 devotes substantial other organizational  
2 resources to voter registration. SEIU Local 775 maintains offices in Bremerton, Olympia, Pasco,  
3 Seattle, Spokane, Vancouver, and Wenatchee.

4           22. Plaintiff Washington Citizen Action (“Citizen Action”) is a statewide,  
5 grassroots lobbying organization with more than 28,000 dues-paying members. Citizen Action  
6 represents a coalition of labor, senior, faith, and community organizations throughout the State,  
7 and strives to achieve economic fairness in order to establish a democratic society characterized  
8 by racial and social justice. Because Citizen Action’s credibility, and its ability to advocate  
9 effectively, are strengthened when its members are registered to vote, it devotes considerable  
10 efforts to voter registration – both of members and the general public. Citizen Action conducts  
11 door-to-door voter registration and membership drives, it canvasses members by phone and  
12 encourages them to vote, and it sends out voter registration forms by mail and conducts voter  
13 registration at citizenship hearings. In 2004, Citizen Action registered nearly 55,000 voters –  
14 more than 10% of all registration forms processed in 2004 throughout Washington State. Citizen  
15 Action maintains an office at 3530 Bagley Avenue North, Seattle, WA 98103.

16           23. The rights this suit seeks to vindicate are germane to the purposes of  
17 Plaintiffs, and the claims alleged herein do not require the participation of their individual  
18 members or clients in the lawsuit. Indeed, without the relief requested herein, these  
19 organizations will be harmed by the substantial diversion of their resources and the frustration of  
20 their organizational purposes.

21           24. A significant number of individual members, clients, and constituents of  
22 Plaintiffs who are over 18 years of age, United States citizens, and residents of Washington who  
23 are eligible but not registered to vote at their current residence, will also be harmed. They will  
24 want to vote in the September 19, 2006 primary election for U.S. and State Senator and U.S. and  
25 State Representative, or the November 7, 2006 general election for U.S. and State Senator and  
26 U.S. and State Representative, and will attempt to register to vote. Because of Washington’s  
27 new matching requirement, however, they will be kept off the official list of registered voters  
28 and, therefore, will be unable to cast a valid vote.

1           25. Defendant Sam Reed is sued in his official capacity as the Secretary of  
2 State of Washington. His official residence is at the Legislative Building, Olympia, WA 98504.  
3 The Secretary of State is designated by law as the chief elections officer of the State and has  
4 supervisory control over local election officials. RCW 29A.04.230. He is responsible for  
5 administering all statewide elections, including for federal office, *id.*; for issuing instructions and  
6 promulgating rules, and facilitating their execution in a “uniform manner,” for the conduct of  
7 elections, *id.* 29A.04.610; for providing “voter guides” and updated compilations of election law  
8 to local and county election officers, *id.* 29A.04.245, 29A.04.235; for instructing county  
9 elections officials with respect to election administration and compelling observance with the  
10 laws, rules and guidelines related thereto, *id.* 29A.04.530; for prescribing training of polling  
11 place officials, *id.*; and for recording and certifying statewide election results, *id.* 29A.04.230,  
12 among other things. Defendant Reed is also responsible for coordinating the requirements of  
13 Washington election law and federal law, including HAVA. *Id.* In addition, effective January 1,  
14 2006, he is charged with establishing and maintaining a statewide qualified voter file, as well as  
15 a computer system that allows each county board of elections access to that file. *Id.* 29A.08.651.

## 16                                   THE FACTS

### 17                                   I.

#### 18                                   WASHINGTON’S NEW ELECTION LAW

19           26. In pertinent part, Washington’s laws relating to voter eligibility and  
20 registration are as follows:

21           27. An individual is eligible to vote if he or she is a citizen of the United  
22 States, at least 18 years old, and a resident of the State, county, and precinct in which he or she  
23 seeks to vote for the 30 days immediately prior to the election. Wash. Const. art. VI, § 1. The  
24 residency requirement is relaxed for presidential elections: individuals resident anywhere in the  
25 State for 60 days prior to the election are eligible to vote for President and Vice-President. *Id.* §  
26 1A. Aside from two other constitutional provisions not relevant for purposes of this complaint,  
27 *id.* §§ 3, 4, no other constitutional provisions, statutes, or administrative rules, including the  
28

1 provisions relating to the administration of elections, affect the eligibility of Washington  
2 residents to vote.

3           28. RCW 29A.08.010, part of the new election law that went into effect on  
4 January 1, 2006, defines "Information required for voter registration" as "the minimum  
5 information provided on a voter registration application that is required by the county auditor in  
6 order to place a voter registration applicant on the voter registration rolls," and lists, among other  
7 things, "Washington state driver's license number or Washington state identification card  
8 number, or the last four digits of the applicant's Social Security number if the applicant does not  
9 have a Washington state driver's license or Washington state identification card." The statute  
10 further states that "[i]f the individual does not have a driver's license, state identification card, or  
11 Social Security number, the registrant must be issued a unique voter registration number in order  
12 to be placed on the voter registration rolls." *Id.* (For purposes of this complaint there is no  
13 difference between Washington's use of driver's license and State identification card numbers.  
14 Unless otherwise noted, all references to Washington driver's license numbers apply equally to  
15 identification card numbers as if fully set forth in each such reference.)

16           29. New voters must register at least 30 days prior to the election in which  
17 they seek to vote. RCW 29A.08.140. However, under the "special procedure" established by  
18 RCW 29A.04.145, voters who miss the 30-day deadline may still vote by absentee ballot if they  
19 register in person at certain locations at least 15 days prior to the election.

20           30. Washington's new "matching" law, RCW 29A.08.107, as amended by  
21 2005 Wash. Legis. Serv. Ch. 246 (S.S.B. 5743) (West), which went into effect on January 1,  
22 2006, provides as follows:

23           (1) The secretary of state must review the information provided by  
24 each voter registration applicant to ensure that the provided  
25 driver's license number, state identification card number, or last  
26 four digits of the Social Security number match the information  
27 maintained by the Washington department of licensing or the  
28 Social Security administration. If a match cannot be made, the  
secretary of state or county auditor must correspond with the  
applicant to resolve the discrepancy.

(2) If the applicant fails to respond to any correspondence required  
in this section to confirm information provided on a voter  
registration application within forty-five days, the applicant will

1 not be registered to vote. The secretary of state shall forward the  
2 application to the appropriate county auditor for document storage.

3 (3) Only after the secretary of state has confirmed that the  
4 provided driver's license number, state identification card number,  
5 or last four digits of the applicant's Social Security number match  
6 existing records with the Washington department of licensing or  
7 the Social Security administration, or determined that the applicant  
8 does not have a driver's license number, state identification card  
9 number, or Social Security number may the applicant be placed on  
10 the official list of registered voters.

11 (4) In order to prevent duplicate registration records, all complete  
12 voter registration applications must be screened against existing  
13 voter registration records in the official statewide voter registration  
14 list. If a match of an existing record is found in the official list, the  
15 record must be updated with the new information provided on the  
16 application. If the new information indicates that the voter has  
17 changed his or her county of residence, the application must be  
18 forwarded to the voter's new county of residence for processing.

19 31. Even if an applicant meets all eligibility and other registration  
20 requirements, Washington's new "matching" law still imposes an absolute precondition to voter  
21 registration: "Only after the secretary of state has . . . match[ed]" the applicant's driver's license  
22 or Social Security number, "or determined that the applicant does not have" one of these  
23 numbers, "may the applicant be placed on the official list of registered voters." RCW  
24 29A.08.107(3).

25 32. The Secretary of State or county auditor must "correspond" with  
26 applicants in the event "a match cannot be made." RCW 29A.08.107(1). Applicants have 45  
27 days to "confirm information provided" on their applications. If, for any reason, the applicant  
28 does not respond and resolve any errors within that time, "the applicant will not be registered to  
vote" and the application will be sent to "document storage." RCW 29A.08.107(2).

33. Even if the applicant does receive timely notice of the fact that a match  
cannot be made, this procedure will not address a substantial number of problems with the match  
process. Many errors leading the Secretary to conclude that "a match cannot be made," for  
example, will reside in the State and federal databases containing the applicant's information, or  
result from the "protocol" employed to "match" that information. Such errors may be beyond  
the applicant's control or understanding, especially given the limited information made available



1           36.     Nonetheless, many attempts to “match” information of eligible  
2 Washington voters in records of the Secretary of State’s voter database to information in records  
3 of other State and federal databases will fail for reasons unrelated to the eligibility of the voter.

4 **A.     The Voter Registration Process In Washington After January 1, 2006**

5           37.     On or after January 1, 2006, Washington residents who are eligible to vote  
6 will fill out voter registration application forms by hand and either submit them in person or by  
7 mail to an appropriate State or county office.

8           38.     Their applications will be transferred to the custody of the county auditor  
9 for the county in which they reside. The county auditor or his agents will then manually input  
10 the data contained on their voter registration applications into a county “election management  
11 system.” The information on each application will be entered into its own electronic “record”  
12 containing a number of “fields.”

13           39.     The county auditor will then electronically transfer this information to the  
14 Secretary of State for “matching.” WAC 434-324-040.

15           40.     On information and belief, the Secretary of State or his agents will attempt  
16 to match the information received from the county auditor (the “Registration Record”) with  
17 information maintained by the Department of Licensing (“DOL”), or information maintained by  
18 the SSA and made available for “matching” purposes through the DOL.

19           (a)     Driver’s Licensing Number “Matching.” The Secretary of State and the  
20 Director of the DOL have entered or will enter into an agreement to match  
21 information on registration applications with information in the DOL’s  
22 driver’s license database (“DOL Database”).

23           (b)     Social Security Number “Matching.” The DOL has entered or will enter  
24 into an agreement with the Commissioner of Social Security to “match”  
25 information on registration applications with information in the SSA’s  
26 database (“SSA Database”). *Id.* § 15483(a)(5)(B)(ii). On information and  
27 belief, the DOL has already signed one contract with the American  
28 Association of Motor Vehicle Administrators (“AAMVA”) to facilitate the  
process of “matching” Social Security numbers against the SSA Database  
for the purpose of providing driver’s licenses. The DOL has also signed a  
contract with the AAMVA to facilitate the process of “matching” Social  
Security number digits against the SSA Database for the purpose of  
registering voters. On information and belief, AAMVA’s “matching”  
process for the purpose of providing driver’s licenses is meaningfully  
different from – and less stringent than – its “matching” process for the  
purpose of voter registration.

1                   41. For registrants who provide Social Security digits on the application form,  
2 effective January 1, 2006, the Secretary of State – with the assistance of the DOL and AAMVA  
3 – will begin attempting to “match” applications with information collected by the SSA. On  
4 information and belief, a target Registration Record will be submitted electronically through the  
5 DOL for comparison against SSA data. SSA systems first will seek all records in the SSA  
6 Database for which the last four digits of the listed Social Security number exactly match the last  
7 four digits of the Social Security number of the target Registration Record. Given that  
8 approximately one in 10,000 Americans share the same last four digits of their Social Security  
9 numbers, there will be thousands of such “matches.” The systems will then attempt to match the  
10 first name, last name, month of birth, and year of birth of the target Registration Record to the  
11 first name, last name, month of birth, and year of birth of one or more of the records containing  
12 these matching Social Security number digits. A successful match will be reported only for  
13 records in which each character of each such field in a target Registration Record matches  
14 precisely each character of each corresponding field in the SSA Database.

15                   42. On information and belief, Washington has not published specific criteria  
16 by which it intends to “match” information on the voter registration applications of its residents  
17 who submit their driver’s license number. Washington has indicated that either Secretary of  
18 State or DOL systems will first seek all records in the DOL Database for which the driver’s  
19 license number exactly matches the driver’s license number of the target Registration Record.  
20 The systems will then automatically attempt to match the name and date of birth of the  
21 Registration Record to one or more of the records containing these matching driver’s license  
22 number digits.

23                   43. On information and belief, Washington has not published specific criteria  
24 to “determine” whether registrants who do not submit a Social Security or a driver’s license  
25 number on a voter registration form in fact have neither such number.

26                   44. On information and belief, beginning January 1, 2006, the date RCW  
27 29A.08.107 went into effect, a significant number of attempts to “match” information of eligible  
28 voters in Registration Records, including information of individual members, clients, and

1 constituents of Plaintiffs, to information within records of the SSA Database or DOL Database  
2 has resulted and will increasingly result in false negative results – *i.e.*, “matches” that “fail” even  
3 though records representing these voters are in fact within the SSA Database or DOL Database.

4 **B. Inputting, Maintaining and “Matching” Data in the Databases**

5 **1. Inputting the Data**

6 45. Data entry operators make mistakes when they input information initially  
7 written down by hand into a computer database. On information and belief, the large sources of  
8 data at issue here – the Registration Records, DOL Database, and SSA Database – all contain or  
9 will contain errors due to such mistakes.

10 46. Some of these mistakes are typographical errors, such as:

- 11 • misspellings (*e.g.*, “MAGNUSON” becomes “MAGNESON” or  
12 “REED” becomes “REID”);
- 13 • omitting characters (*e.g.*, “LOCKE” becomes “LOCK” or “CHOPP”  
14 becomes “CHOP”);
- 15 • adding characters (*e.g.*, “OWEN” becomes “OWENS”);
- 16 • transposing characters (*e.g.*, “KREIDLER” becomes “KRIEDLER”);  
17 and
- 18 • striking an adjacent key (*e.g.*, “SMITH” becomes “SMOTH”).

19 47. Other mistakes are caused by the data entry operator’s incorrect use of the  
20 database fields. For instance, the data entry operator can fail to enter information provided for a  
21 particular field. Or the data entry operator can enter information into the wrong field, as the  
22 following examples illustrate:

- 23 • transposing the surname and given name (*e.g.*, “BAO LU” becomes  
24 “LU BAO”);
- 25 • omitting fields (*e.g.*, “JAMES THOMAS” becomes “THOMAS”);
- 26 • adding fields (*e.g.*, “JAMES THOMAS” becomes “JAMES J  
27 THOMAS” or “MR JAMES THOMAS” or “CAPT JAMES  
28 THOMAS”);

- 1 • improperly separating fields, *e.g.*, a hyphenated last name is separated  
2 into a middle name and last name (“JEANNE” “KOHL-WELLES”  
3 becomes “JEANNE” “KOHL” “WELLES”); and
- 4 • improperly combining fields, such as the middle (or maiden) and last  
5 names (*e.g.*, “LINDA” “EVANS” “PARLETTE” becomes “LINDA”  
6 “EVANS-PARLETTE”).

7 48. Basic data entry errors such as these are common. One study by Abt  
8 Associates, a government and business research and consulting firm, found that as many as 26%  
9 of records listed in a Florida social service database included city names that were spelled  
10 differently from the same names on a master list. Among other errors, this Florida database  
11 reflected more than *40 spelling variations of Fort Lauderdale*, one of the largest cities in the  
12 state. Similarly, another study, published in the journal *Computers and Biomedical Research*,  
13 found that the names of 23-37% of the patients in several medical databases were misspelled in  
14 at least one database record.

15 49. On information and belief, there are or will be data entry errors involving  
16 information relevant to the identity of individuals within individual records of databases  
17 maintained by State agencies, including the DOL Database and the Registration Records  
18 collected by Defendant, and federal agencies, including the SSA Database. On information and  
19 belief, the attempt to match information of a significant number of eligible voters' Registration  
20 Records to information within records of the DOL Database or the SSA Database will fail due in  
21 part to these data entry errors.

## 22 2. Maintaining, Storing, Transferring, and Transforming the Data

23 50. Once a record is created for an individual registrant, the State must  
24 maintain, store, transfer, and, often, transform the data contained in that record. Federal and  
25 State officials must perform similar tasks with respect to data contained in the SSA and DOL  
26 Databases. On information and belief, no single algorithm or process has been designated the  
27 industry standard whereby all data is to be maintained, stored, transferred, or transformed;  
28 different entities often use different processes for these purposes.

51. On information and belief, human error or computer malfunction – such as  
file corruption caused by computer viruses – made or occurring during the process of

1 maintaining and storing these computerized records will also cause relevant errors within  
2 individual records of databases maintained by State agencies, including the DOL Database and  
3 the Registration Records collected by Defendant, and federal agencies, including the SSA  
4 Database.

5           52. On information and belief, federal and State officials have engaged in or  
6 will engage in multiple types of data transfer and transformation with respect to the data  
7 contained in the Registration Records and the SSA and DOL Databases. An example of such  
8 actions includes transferring data “electronically” from the 39 county election management  
9 systems to the Secretary of State, and then to an interface with the SSA or the DOL, WAC 434-  
10 324-040.

11           53. On information and belief, the attempt to match information of eligible  
12 voters within Registration Records to information within records of the DOL Database or the  
13 SSA Database will fail due in part to errors arising from the maintenance, storage, transfer, and  
14 transformation of this data.

15           **3.       “Matching” the Data**

16           54. The errors described in the foregoing sections can occur in isolation, or in  
17 combination with other errors in individual records. But whether or not such errors exist, when  
18 an attempt is made to “match” information within the records of two or more large databases,  
19 superficial and other nonmaterial differences between those records can result in “false negative”  
20 results. In statistics, a false negative, also known as a “miss” or “type II error,” exists when a  
21 test incorrectly reports a negative result – *e.g.*, when a medical test fails to indicate that a patient  
22 has a specific disease or condition, or when a radar fails to indicate the presence of an airplane  
23 within a scanned area. While the rate of “false negatives” increases when there are errors within  
24 individual records, as noted above, false negatives are intrinsic to the process of “matching,” and  
25 can occur even when the original data was inputted correctly into both databases and has been  
26 maintained and stored without incident.

1           55.    Examples of the many trivial differences in information about the same  
2 person maintained in multiple databases, which can cause false negative results, include entries  
3 in which:

- 4           • one record contains a nickname and the other contains the full given  
5 name (*e.g.*, “SAM” and “SAMUEL,” or “LIZ” and “ELIZABETH,”  
6 would not match);
- 7           • one record contains one spelling of a transliterated foreign name or  
8 name using a diacritical mark, the other record contains an alternative  
9 spelling, and the matching algorithm does not recognize equivalences  
10 (*e.g.*, “MUHAMMAD” and “MOHAMMED” or “WANG” and  
11 “WONG,” or “SCHRÖDER” and “SCHROEDER,” would not match);
- 12           • one record contains a first or middle initial and the other record  
13 contains the full name (*e.g.*, “F. SCOTT FITZGERALD” and  
14 “FRANCIS S. FITZGERALD” would not match);
- 15           • one record contains punctuation within a name and the other record  
16 omits the punctuation (*e.g.*, “O’BRIEN” and O BRIEN” would not  
17 match);
- 18           • one record contains a woman’s maiden name or her husband’s name  
19 and the other contains her own married name (*i.e.*, “MRS. REBECCA  
20 JONES” and “MRS. REBECCA SMITH,” or “MRS. JOHN SMITH”  
21 and “MRS. REBECCA SMITH,” would not match); and
- 22           • one record contains an “Americanized” name used for some purposes  
23 and the other record contains a different given name used for some  
24 purposes (*e.g.*, “GRACE KIM” and “HYUN KIM” would not match).

25           56.    On information and belief, the attempt to “match” information contained  
26 in individual Registration Records to information contained in individual records of the DOL  
27 Database or the SSA Database will produce a significant number of false negative results due to  
28 these and other apparent differences, and to errors in the protocol or systems for “matching”  
among the databases. Even where there are no errors in the matching process, a false negative  
result may be indicated where the SSA or DOL Database is temporarily “unavailable” at the time  
the “match” is attempted due to routine system maintenance or system error.

1           57. False negatives will arise more often when attempting to match the  
2 personal information of residents of certain racial and ethnic communities, including  
3 communities with substantial presence in Washington State.

4           58. Examples of errors more likely among these racial or ethnic communities  
5 include:

- 6           • transposition of the given name and surname of Asian-Americans,  
7           many of whom present their surname first and their given name  
8           second;
- 9           • inconsistent use of “Americanized” names and other given names of  
10          Asian-Americans, many of whom use different names for different  
11          purposes, but regard both names as their own;
- 12          • improper separation and combination of fields in names of Latinos and  
13          Hispanics, many of whom use both maternal and paternal last names;
- 14          • incorrect spellings of unique names or derivatives of common names  
15          with unfamiliar spellings, which are particularly prevalent within the  
16          African American community;
- 17          • mismatched transliterated names of citizens whose primary language  
18          does not use the Roman alphabet or uses diacritical marks not found in  
19          English; and
- 20          • transposed date and month of birth among recent immigrants, who  
21          may be used to presenting dates in the day-month-year configuration  
22          standard in many countries.

23 **C. Washington’s “Matching” Protocol**

24           59. Public institutions and private enterprises use many different methods to  
25 “match” information between databases. While any system of comparing records between  
26 databases is rife with chances for error (as alleged above), “deterministic matching” leads to the  
27 greatest likelihood of mistakes.

28           60. “Deterministic” matching involves the exact character-by-character  
matching of all characters within one field or multiple fields. In deterministic matching, one  
incorrectly entered character of one number or one name in a field targeted for matching will  
preclude a match between two otherwise identical records.

1           61.     Deterministic “matches” are therefore extremely sensitive to all of the  
2 errors described above – both those that occur within individual databases and those that arise  
3 when comparing records between databases. The U.S. Census Bureau has reported, for example,  
4 that more than 25% of the same individuals reflected in a pre- and post-census analysis would  
5 not have been found by an exact character-by-character, deterministic match.

6           62.     On information and belief, a deterministic protocol was recently used in  
7 New York City to match the driver’s license number on voter registration applications to driver’s  
8 license numbers on the state’s motor vehicles file. In September 2004, the City Board of  
9 Elections sent 15,000 registration applications with driver’s license numbers to the state  
10 Department of Motor Vehicles for matching. An audit revealed that of the total applications  
11 processed, 2,951 – 19.6% – did not “match” due solely to data entry errors. Moreover, in this  
12 “match” process, only the driver’s license number itself was “matched”; if the matching required  
13 comparison of additional information such as name or date of birth, the error rate would have  
14 increased.

15           63.     On information and belief, Virginia recently used a deterministic protocol  
16 before the 2004 federal election, in an attempt to match the Social Security number on 80,000  
17 voter registration applications against the state’s motor vehicles file. Of the 80,000 records  
18 processed, approximately 20% did not “match.” On information and belief, Virginia included all  
19 such registrants on its registration rolls, regardless of whether their information produced a  
20 “match.”

21           64.     On information and belief, California recently used a deterministic  
22 protocol in an attempt to match voter registration information against information in the state’s  
23 motor vehicles file or the Social Security Administration’s database. Of 64,673 records  
24 processed for Los Angeles County, approximately 18% were not “matched,” and another 7.5%  
25 were returned because of a system error, including a system “time out” or other system “down  
26 time.”

27           65.     On information and belief, the Washington DOL has already signed a  
28 contract with the AAMVA to attempt to “match” Social Security numbers and other identifying

1 information submitted by State residents who apply for a new or updated driver's license with  
2 information contained in the SSA Database. On information and belief, the DOL began this  
3 process in or about May 2004. The DOL has signed a second contract with the AAMVA, which  
4 went into effect in or about January 2006, to also attempt to "match" Social Security digits and  
5 other identifying information submitted by State residents who apply to register to vote with  
6 information contained in the SSA Database.

7           66. On information and belief, the AAMVA agreement with the SSA as it  
8 pertains to "matching" Social Security digits and other identifying information submitted with  
9 voter registration applications uses a more rigid match protocol than is used for verifying similar  
10 data submitted with driver's license applications. The deterministic protocol used for voter  
11 registration matching will not account for common typographical errors and other mistakes made  
12 when data entry operators input the data into Registration Records and into the SSA Database,  
13 errors arising from the maintenance and storage of that data in both instances, or the false  
14 negative results that will occur when an attempt is made to "match" information within the two  
15 sets of records.

16           67. The Social Security Administration recently reported that, of 143,000  
17 voter registration records submitted to the SSA through January 2006, 28.5% resulted in a failed  
18 match. The SSA's Director of Information Exchange admitted that "[i]f we had built in more  
19 tolerances, the 'no match' would likely be lower." On information and belief, the vast majority  
20 of the 28.5% failed matches represent false negatives – eligible voters whose Social Security  
21 records do exist in the SSA Database, but whose records could not accurately be matched.

22           68. On information and belief, Washington has not published specific criteria  
23 for matching the information in voter registration applications of its residents who submit their  
24 driver's license numbers. In the absence of specific direction to the contrary, it is likely that  
25 deterministic criteria substantially similar to the strict match protocol described in paragraph 41  
26 will be coded into the system used to verify the information of voters providing a driver's license  
27 number.

1 **D. Nonmaterial Errors or Omissions on Voter Registration Applications**

2 69. Nonmaterial errors and omissions on voter registration applications  
3 themselves will also contribute to some false negative results.

4 70. The audit of 15,000 New York City registration applications discussed in  
5 paragraph 62 consisted of a review of the scanned original of each of the 3,568 applications that  
6 did not produce a match. 82.9% of the failed matches were due to data entry errors made by  
7 election officials. The other failed matches were due to a handful of errors made by the  
8 Department of Motor Vehicles and approximately 600 errors or omissions made by voters, such  
9 as filling in a Social Security number on the line provided for the driver's license number (the  
10 same type of error made by election officials inputting the data), which should not have affected  
11 the city's ability to verify their eligibility.

12 71. Such errors or omissions are not material in determining whether the  
13 applicant is qualified to vote.

14 **III.**

15 **THE HELP AMERICA VOTE ACT OF 2002**

16 72. In the 2000 Presidential Election, thousands of registered voters in every  
17 state, including Washington, were turned away from the polls without casting a ballot due to  
18 bureaucratic errors in the election administration process: many were turned away simply  
19 because poll workers could not find their names on their lists of registered voters. In many  
20 cases, these rejected voters were eligible and properly registered. To revive confidence in the  
21 electoral system after widespread criticism of the administration of the 2000 election, Congress  
22 passed the Help America Vote Act ("HAVA"), which was signed into law by President Bush on  
23 October 29, 2002.

24 73. The language and legislative history of HAVA make clear that the statute  
25 was passed in large part to ensure that eligible and registered voters would not be left off the  
26 voting rolls or turned away from the polls. HAVA seeks to accomplish this goal primarily  
27 through two provisions: (1) requiring each state to adopt a computerized statewide voter  
28 registration list and to ensure that the list is complete and accurate, and (2) permitting provisional  
balloting so that no eligible voter is denied the right to cast a ballot. The National Commission

1 on Election Reform, chaired by former Presidents Ford and Carter, explained that these two  
2 policy goals were “connected” and that, “[i]n both we are motivated by a consistent goal: No  
3 American qualified to vote anywhere in her or his state should be turned away from a polling  
4 place in that state.” National Commission on Election Reform, *To Assure Pride and Confidence*  
5 *in the Electoral Process* 35 (2001).

6 74. HAVA thus ensures that voting and election administration systems will  
7 “be the most convenient, accessible, and easy to use for voters” and will “be nondiscriminatory  
8 and afford each registered and eligible voter an equal opportunity to vote and to have that vote  
9 counted.” 42 U.S.C. §§ 15381(a)(1) and (3).

10 **A. The Computerized Statewide Voter Registration List**

11 75. One of the primary purposes of HAVA is to reduce the burdens on voting  
12 caused by sloppy and incomplete voter registration lists. For decades, voters have been turned  
13 away from the polls or discouraged from voting due to shoddy, decentralized, and poorly  
14 maintained voter registration lists, most of which varied from county to county, all across the  
15 country.

16 76. To remove this bureaucratic barrier to voting, HAVA now requires the  
17 chief election official in each state to implement, in a uniform and nondiscriminatory manner, a  
18 “single, uniform, official, centralized, interactive computerized statewide voter registration list”  
19 that “contains the name and registration information of every legally registered voter in the State  
20 and assigns a unique identifier to each legally registered voter in the State . . . .” 42 U.S.C. §  
21 15483(a)(1)(A). This “computerized list” will be “the single system for storing and managing  
22 the official list of registered voters throughout the State.” *Id.* § 15483(a)(1)(A)(i).

23 77. HAVA further requires each State to ensure that “only voters who are not  
24 registered and who are not eligible to vote are removed from the computerized list” and adopt  
25 “[s]afeguards to ensure that eligible voters are not removed in error from the official list of  
26 eligible voters.” *Id.* §§ 15483(a)(2)(B)(ii) and (4)(B).

27 78. HAVA contains two provisions relating to a unique identifying number  
28 assigned to each applicant. *Id.* §§ 15483(a)(5) and (b). For most voters, this unique identifying

1 number will be either the applicant's driver's license number or the last four digits of her Social  
2 Security number. *Id.* § 15483(a)(5)(A). These two provisions serve different purposes. Section  
3 303(a)(5), 42 U.S.C. § 15483(a)(5), which concerns list maintenance, assigns a unique  
4 identifying number to each registrant, in order to ensure that each registrant is represented on the  
5 statewide registration list only once. Section 303(b), 42 U.S.C. § 15483(b), which concerns  
6 verification of the identity of first-time voters who register by mail, exempts voters whose  
7 identifying numbers are externally validated from a documentary identification requirement.

8 **B. Identifying Numbers for List Maintenance**

9           79. In Section 303(a) of HAVA ("Section 303(a)"), 42 U.S.C. § 15483(a),  
10 Congress provided a mechanism for states to assign a "unique identifying number" for each new  
11 registered voter to enable the state to engage in better list maintenance.

12           80. These unique identifiers were intended to ensure that each eligible voter is  
13 represented only once on the statewide voter registration list. The unique identifier would allow  
14 a state, for example, to reliably keep track of voters should they move and re-register in a new  
15 location, and to ensure that such voters are not doubly registered.

16           81. For these list maintenance purposes, Congress sought to use unique  
17 identifying numbers already assigned to voters and maintained by the state, where possible.  
18 Therefore, HAVA provides that a new application for voter registration must include either the  
19 applicant's driver's license number or the last four digits of the applicant's Social Security  
20 number. *Id.* §§ 15483(a)(5)(A)(i)(I) and (II). When an applicant does not have a driver's license  
21 or Social Security number, "the State shall assign the applicant a number which will serve to  
22 identify the applicant for voter registration purposes." *Id.* § 15483(a)(5)(A)(ii). Accordingly,  
23 registrants with no driver's license or Social Security number – for example, many new citizens,  
24 elderly residents, and teenage voters – will be given an "identifying number" and entered on the  
25 computerized voter list without any further effort or procedure.

26           82. For new registrants who *do* provide a driver's license number or Social  
27 Security number, HAVA directs the states to "determine whether the information provided is  
28 sufficient to meet the requirements" of the computerized list. *Id.* § 15483(a)(5)(A)(iii). To that

1 end, HAVA requires each state's chief election official to make an agreement with the state's  
2 motor vehicle authority "to match information in the database of the statewide voter registration  
3 system with information in the database of the motor vehicle authority," *id.* § 15483(a)(5)(B)(i),  
4 and a parallel agreement for the state's motor vehicle authority to make an agreement to match  
5 information with the Commissioner of Social Security, *id.* § 15483(a)(5)(B)(ii). In order to  
6 avoid conflicting entries in the state databases, to validate the unique identifiers provided, and to  
7 create a clean voter list, "matching" allows the states to "verify the accuracy of the information  
8 provided in applications for voter registration." *Id.* § 15483(a)(5)(B)(i).

9           83. The states' obligations to create and maintain the "computerized list," to  
10 assign a "unique identifying number" for each voter, and to attempt to match information so that  
11 those numbers may be verified, are not preconditions to registering eligible voters. Rather, like  
12 all of the "Computerized statewide voter registration list requirements" set forth in Section  
13 303(a), these are administrative obligations imposed on the states for the purpose of "storing and  
14 managing the official list of registered voters." 42 U.S.C. § 15483(a)(1)(A)(i). That is why  
15 HAVA provides that "a unique identifier is assigned to each legally registered voter in the State,"  
16 not that a unique identifier must be matched before a voter can be legally registered. *Id.*  
17 § 15483(a)(1)(A)(iii). New registrants with no current and valid driver's license or Social  
18 Security numbers – and voters in states collecting the full nine-digit Social Security number  
19 (which is what is truly "unique") – need not be matched. *Id.* § 15483(a)(5)(A)(ii) and (D). The  
20 unique identifying number, not the "match," is the requirement.

21           84. Senator Bond, one of the chief Senate sponsors of HAVA, explained that  
22 the purpose of these provisions was to create useful and dependable voter lists, not brand new  
23 obstacles to registering or voting:

24           The conferees agree that a unique identification number attributed  
25 to each registered voter will be an extremely useful tool for State  
26 and local election officials in managing and maintaining clean and  
27 accurate voter lists. It is the agreement of the conferees that  
28 election officials must have such a tool. The conferees want the  
number to be truly unique and something election officials can use  
to determine on a periodic basis if a voter is still eligible to vote in  
that jurisdiction.

1 148 Cong. Rec. S10488-02, \*S10490 (daily ed. Oct. 16, 2002). As voters are assigned these  
2 unique numbers, states will be able to identify with greater ease and certainty when a voter who  
3 has moved and applied to register in a new jurisdiction is still on the list in his or her old  
4 jurisdiction.

5 85. The House of Representatives, in its report on HAVA, confirms this  
6 legislative intent:

7 Creation of [a statewide voter registration database] will make the  
8 registration lists more accurate, and easier to update. It should  
9 reduce the incidence of voters appearing at a polling place only to  
10 discover that no record of their registration can be found. When  
11 voters move from one jurisdiction to another within that state, the  
12 statewide system will be able to track that movement. . . .

13 It is likely that states will find it necessary to create a unique  
14 identifier to distinguish registered voters who happen to have the  
15 same name and/or birth date. The unique identifier so created will  
16 be used to assure that list maintenance functions are attributable to  
17 the correct voter; so as to avoid removing registrants who happen  
18 to have the same name and birth date as a felon, for example.

19 H.R. Rep. 107-329(I), at 36 (2001).

20 86. Congress recognized that it would be helpful if the unique number  
21 assigned to a registered voter were externally validated. 42 U.S.C. § 15483(a)(5)(B)(i) and (ii).  
22 But in tacit acknowledgment of the limitations of the “matching” process, Congress did not  
23 require that each number be validated before it is assigned. Indeed, Congress did not require that  
24 states even *attempt* to validate each number before it is assigned. Rather, HAVA requires states  
25 to attempt to “match” unique numbers only for new registrants (that is, new voters or those who  
26 move and register in new jurisdictions). Everyone else already on the rolls – the tens of millions  
27 of people who have been living in the same county and voting for years – may simply be  
28 assigned a unique identifying number for database maintenance purposes. The clear intention of  
HAVA is to create complete and clean voter rolls by putting in place a national standard for  
uniform statewide voter registration databases that, *over time*, will come to include a unique,  
externally validated identifying number for every registrant. But given the limitations of  
“matching” technology and the fact that it will not even apply to current voters, it will take many  
years to meet this goal fully.

1           87. Each state has a responsibility to implement HAVA in a manner that  
2 preserves voters' access to registration and their ability to exercise the fundamental right to vote.  
3 In implementing the provisions that bear only on the maintenance by state bureaucracies of the  
4 voter registration list, Washington may not erect new barriers to voter registration.

5 **C. Identifying Numbers for First-Time Voters Who Register By Mail**

6           88. The companion provision of HAVA regarding "Requirements for voters  
7 who register by mail," 42 U.S.C. § 15483(b) ("Section 303(b)"), confirms that the "computerized  
8 list" and the "matching" provisions were intended by Congress to make voting easier, not harder.

9           89. In particular, HAVA uses the matching process to ease the burden on first-  
10 time voters who register by mail.

11           90. As a general rule, Section 303(b) requires that a first-time voter who  
12 registers by mail show some form of documentary identification either at registration or when  
13 that individual goes to the polls to vote a regular ballot. *Id.* § 15483(b)(2)(A). However, no  
14 documentary identification is required if the state or local election official "matches" the driver's  
15 license number or last four digits of the Social Security number of the registrant "with an  
16 existing State identification record bearing the same number, name and date of birth." *Id.*  
17 § 15483(b)(3).

18           91. In other words, a new mail-in registrant need *not* be "matched" in order to  
19 be registered and in order to vote. She is registered and can vote a regular ballot by showing  
20 identification at the polls or by submitting identification with her registration application.  
21 HAVA's "matching" provisions merely provide a way to save first-time voters who register by  
22 mail from having to show documentary proof of identity when registering or voting.

23           92. Indeed, and as additional proof that registration does not rise or fall on the  
24 success of the "matching" project, under HAVA, a first-time mail-in registrant who fails to  
25 submit or present identification, and has not been "matched," still must be allowed to vote.  
26 Under those circumstances, such a first-time voter has a right to cast a "provisional ballot." *Id.*  
27 § 15483(b)(2)(B). HAVA calls that provision "Fail-safe voting," confirming that the database  
28 matching process is not a precondition to registering or voting. Since provisional ballots can be

1 counted only if the voter was validly registered, it cannot be that the state's failure to find a  
2 "match" is a legitimate obstacle to registration. Otherwise, HAVA's "Fail-safe voting"  
3 mechanism for first-time voters without identification would be meaningless: none of these  
4 provisional ballots would ever be counted because the provisional voters are only those citizens  
5 whose information has *not* been matched.

6 93. In sum, "matching" is only one of several methods provided in HAVA to  
7 verify the identity of new registrants. Congress requires states to double check the identity of  
8 only certain new registrants: those who register for the first time in a jurisdiction, who choose to  
9 register by mail, and who have not previously voted in a federal election in that state. Such  
10 voters need not present identification documents if their identity can be confirmed by "matching"  
11 registration information. But "matching" is only an alternative to presenting other identification  
12 or voting by provisional ballot. Given the limitations of "matching" technology, Congress did  
13 not require that every such voter be "matched."

## 14 CLAIMS

### 15 COUNT I

#### 16 (VIOLATION OF THE HELP AMERICA VOTE ACT)

17 94. Plaintiffs repeat and reallege paragraphs 1 through 93, as if fully set forth  
18 herein.

19 95. To the extent RCW 29A.08.107 instructs the Secretary of State not to  
20 place an applicant on the official list of registered voters until he has matched the applicant's  
21 driver's license number or Social Security number with existing records of the DOL or SSA, or  
22 determined that the applicant has neither such number, the statute violates the identification  
23 provisions of Section 303(b) of HAVA and interferes with federal rights secured by HAVA.

24 96. By refusing to permit the registration of voters until a match is made or it  
25 is determined that the voter has no identifying number to be matched, as alleged above, RCW  
26 29A.09.107 violates HAVA, including the provision that permits a first-time voter who registers  
27 by mail to provide identification at the time of voting or registration to verify his or her identity.  
28 42 U.S.C. § 15483(b)(2)(A).

1            97.     The requirement that the Secretary of State match an applicant's driver's  
2 license number or Social Security number with existing records of the DOL or SSA, or  
3 determine that the applicant has neither such number, is not a condition of eligibility to vote  
4 under State law.

5            98.     A first-time voter who registered by mail, who is otherwise eligible to vote  
6 under State law, and who provides the identification required by HAVA, as set forth above, is  
7 entitled to cast a regular ballot.

8            99.     Therefore, RCW 29A.08.107 conflicts with HAVA, a federal statute, and  
9 is preempted.

10           100.    RCW 29A.08.107 creates a real and imminent threat that eligible  
11 Washington voters, including individual members of Plaintiffs, will be deprived of their federal  
12 rights to cast regular ballots and to have those ballots counted. RCW 29A.08.107 also creates a  
13 real and imminent threat that Plaintiffs' resources will be diverted by the attempt to remedy the  
14 fact that their members, clients, and constituents will be unable to cast regular ballots and to have  
15 those ballots counted. Plaintiffs and their members are being deprived of federal rights  
16 guaranteed under HAVA and 42 U.S.C. § 1983.

17           101.    Moreover, RCW 29A.08.107 threatens Plaintiffs' interests in ensuring that  
18 their members' rights to cast regular ballots in the September 19, 2006 primary elections and the  
19 November 7, 2006 general election, and to have their votes counted, are fully realized.

20           102.    Absent this Court's intervention, Plaintiffs and their members will suffer  
21 irreparable injury through the interference of RCW 29A.08.107 with their federal rights.

22           103.    Plaintiffs and their members have no adequate remedy at law for such  
23 deprivation of their rights.

24           104.    Defendant's conduct must be preliminarily and permanently enjoined to  
25 prevent enforcement of RCW 29A.08.107 from interfering with federal rights and thereby  
26 causing irreparable injury to Plaintiffs and their members.

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**COUNT II**  
**(VIOLATION OF THE HELP AMERICA VOTE ACT)**

105. Plaintiffs repeat and reallege paragraphs 1 through 104, as if fully set forth herein.

106. To the extent RCW 29A.08.107 instructs the Secretary of State not to place an applicant on the official list of registered voters until he has matched the applicant's driver's license number or Social Security number with existing records of the DOL or SSA, or determined that the applicant has neither such number, the statute violates the provisional ballot provisions of Section 303(b)(2)(B) of HAVA and interferes with federal rights secured by HAVA.

107. Specifically, by refusing to register voters until a match is made or it is determined that the voter has no identifying number to be matched, as described above, RCW 29A.08.107 violates HAVA's mandate that any first-time voter who registers by mail but has not been matched by the state is entitled to cast a provisional ballot under Section 303(a) if that individual does not provide one of the forms of identification described in Section 303(b)(2)(A). *Id.* § 15483(b)(2)(B).

108. HAVA provides that a provisional ballot "shall be counted" where "the appropriate State or local election official . . . determines that the individual is eligible under State law to vote." *Id.* § 15482(a)(4).

109. The requirement that the State match an applicant's driver's license number or Social Security number with existing records of the DOL or SSA, or determine that the applicant has neither such number, is not a condition of eligibility to vote under State law.

110. A voter otherwise eligible to vote under State law but who has not been matched and does not provide one of the forms of identification set forth in section 303(b)(2)(A) is entitled to cast a provisional ballot under HAVA, but will not have his or her provisional ballot counted if the voter is not already registered. RCW 29A.08.107 thereby renders HAVA's provisional ballot "Fail-safe" a nullity.

1 111. Therefore, RCW 29A.08.107 conflicts with HAVA, a federal statute, and  
2 is preempted.

3 112. RCW 29A.08.107 creates a real and imminent threat that eligible  
4 Washington voters, including individual members of Plaintiffs, will be deprived of their federal  
5 rights to cast provisional ballots and to have those ballots counted. RCW 29A.08.107 also  
6 creates a real and imminent threat that Plaintiffs' resources will be diverted by the attempt to  
7 remedy the fact that their members, clients, and constituents will be unable to cast provisional  
8 ballots and to have those ballots counted. Plaintiffs and their members are being deprived of  
9 federal rights guaranteed under HAVA and 42 U.S.C. § 1983.

10 113. Moreover, RCW 29A.08.107 threatens Plaintiffs' interests in ensuring that  
11 their members' rights to cast provisional ballots in the September 19, 2006 primary elections and  
12 the November 7, 2006 general election, and to have their votes counted, are fully realized.

13 114. Absent this Court's intervention, Plaintiffs and their members will suffer  
14 irreparable injury through the interference of RCW 29A.08.107 with their federal rights.

15 115. Plaintiffs and their members have no adequate remedy at law for such  
16 deprivation of their rights.

17 116. Defendant's conduct must be preliminarily and permanently enjoined to  
18 prevent his enforcement of RCW 29A.08.107 from interfering with federal rights and thereby  
19 causing irreparable injury to Plaintiffs and their members.

20 **COUNT III**  
21 **(VIOLATION OF THE HELP AMERICA VOTE ACT)**

22 117. Plaintiffs repeat and reallege paragraphs 1 through 116, as if fully set forth  
23 herein.

24 118. To the extent RCW 29A.08.107 instructs the Secretary of State not to  
25 place an applicant on the official list of registered voters until he has matched the applicant's  
26 driver's license number or Social Security number with existing records of the DOL or SSA, or  
27 determined that the applicant has neither such number, the statute violates Section 303(a) of  
28 HAVA and interferes with federal rights secured by HAVA.

1           119. Specifically, by refusing to register voters until a match is made or it is  
2 determined that the voter has no identifying number to be matched, as described above, RCW  
3 29A.08.107 violates the purpose and meaning of HAVA's "Computerized statewide voter  
4 registration list requirements," 42 U.S.C. § 15483(a), which make clear that the "matching"  
5 provision, *id.* § 15483(a)(5), was meant to be a means for state bureaucracies to carry out their  
6 responsibilities to create and maintain the computerized list, not impose a new, absolute  
7 precondition to registration.

8           120. Therefore, RCW 29A.08.107 conflicts with HAVA, a federal statute, and  
9 is preempted.

10           121. RCW 29A.08.107 creates a real and imminent threat that eligible  
11 Washington voters, including individual members of Plaintiffs, will be deprived of their federal  
12 rights to be placed on the registration lists, to cast valid ballots, and to have those ballots  
13 counted. RCW 29A.08.107 also creates a real and imminent threat that Plaintiffs' resources will  
14 be diverted by the attempt to remedy the fact that their members, clients, and constituents will be  
15 unable to be placed on the registration lists, to cast valid ballots, and to have those ballots  
16 counted. Plaintiffs and their members are being deprived of federal rights guaranteed under  
17 HAVA and 42 U.S.C. § 1983.

18           122. Moreover, RCW 29A.08.107 threatens Plaintiffs' interests in ensuring that  
19 their members' rights to be placed on the registration lists, to cast valid ballots in the September  
20 19, 2006 primary elections and the November 7, 2006 general election, and to have their votes  
21 counted, are fully realized.

22           123. Absent this Court's intervention, Plaintiffs and their members will suffer  
23 irreparable injury through the interference of RCW 29A.08.107 with their federal rights.

24           124. Plaintiffs and their members have no adequate remedy at law for such  
25 deprivation of their rights.

26           125. Defendant's conduct must be preliminarily and permanently enjoined to  
27 prevent his enforcement of RCW 29A.08.107 from interfering with federal rights and thereby  
28 causing irreparable injury to Plaintiffs and their members.

**COUNT IV**  
**(VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS)**

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3           126. Plaintiffs repeat and reallege paragraphs 1 through 125, as if fully set forth  
4 herein.

5           127. The First and Fourteenth Amendments of the United States Constitution  
6 protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom  
7 of speech and association protect the right to vote and to participate in the political process.  
8 Moreover, the right to vote is a fundamental constitutional right incorporated into the Due  
9 Process Clause of the Fourteenth Amendment.

10           128. As detailed above, by directing election officials not to register otherwise  
11 eligible voters until a match is made or it is determined that the voter has no identifying number  
12 to be matched, RCW 29A.08.107 will impose a severe burden on the fundamental right to vote  
13 of Plaintiffs' members by depriving thousands of voters of that right altogether. If enforcement  
14 of the statute is not enjoined, the Secretary of State's refusal to register voters based on an  
15 unlawful matching requirement will continue indefinitely to impose such severe burdens on the  
16 voters' right to vote, requiring Plaintiffs to divert resources in an attempt to remedy the  
17 deprivation. By reason of the foregoing, the Secretary of State, acting under color of state law,  
18 will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to  
19 them by the First and Fourteenth Amendments to the United States Constitution and protected  
20 under 42 U.S.C. § 1983.

21           129. Plaintiffs and their members have no adequate remedy at law for such  
22 deprivation of their rights, privileges, and immunities.

23           130. No compelling or important state interest justifies this severe and unequal  
24 burden upon Plaintiffs' and their members' fundamental right to vote and to participate in the  
25 political process.  
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1 identifying number to be matched must be preliminarily and permanently enjoined to protect  
2 Plaintiffs and their members from this real and imminent threat.

3 139. Plaintiffs and their members have no adequate remedy at law for such  
4 deprivation of their rights, privileges, and immunities.

5 **COUNT VI**  
6 **(VIOLATION OF THE DUE PROCESS CLAUSE)**

7 140. Plaintiffs repeat and reallege paragraphs 1 through 139, as if fully set forth  
8 herein.

9 141. As detailed above, by prohibiting the Secretary of State from registering  
10 voters until a match is made or it is determined that the voter has no identifying number to be  
11 matched, Washington has sanctioned a flawed voting process that will arbitrarily deny otherwise  
12 eligible voters the right to vote.

13 142. The process contemplated by RCW 29A.08.107 will fail to provide  
14 sufficient and meaningful notice of actions and decisions affecting registration to many  
15 Washington residents and will fail to provide adequate or timely process for many Washington  
16 residents to challenge such actions and decisions. This failure creates an unreasonably high risk  
17 that Plaintiffs, their members, and others will be erroneously denied the right to vote.

18 143. Defendant will administer an election process that deprives eligible  
19 Washington residents, including Plaintiffs and their members here, of their liberty interest in  
20 voting and does so without adequate pre- or post-deprivation process.

21 144. By reason of the foregoing, Defendant, acting under color of state law,  
22 will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to  
23 them by the Due Process Clause of the Fourteenth Amendment to the United States Constitution  
24 and protected under 42 U.S.C. § 1983.

25 145. Defendants have no compelling or important interest that justifies this  
26 severe and unequal burden upon Plaintiffs' and their members' fundamental right to vote and to  
27 participate in the political process.

1 146. Plaintiffs and their members have no adequate remedy at law for such  
2 deprivation of their rights, privileges, and immunities.

3 **COUNT VII**  
4 **(VIOLATION OF THE VOTING RIGHTS ACT)**

5 147. Plaintiffs repeat and reallege paragraphs 1 through 146, as if fully set forth  
6 herein.

7 148. To the extent RCW 29A.08.107 instructs the Secretary of State not to  
8 place an applicant on the official list of registered voters until he has matched the applicant's  
9 driver's license number or Social Security number with existing records of the DOL or SSA, or  
10 determined that the applicant has neither such number, the statute violates the Voting Rights Act  
11 of 1870, as amended ("Voting Rights Act"), and interferes with federal rights secured by that  
12 law.

13 149. By refusing to register voters until a match is made or it is determined that  
14 the voter has no identifying number to be matched, as described above, RCW 29A.08.107  
15 violates the Voting Rights Act, including the mandate that "No person acting under color of law  
16 shall . . . deny the right of any individual to vote in any election because of an error or omission  
17 on any record or paper relating to any application, registration, or other act requisite to voting, if  
18 such error or omission is not material in determining whether such individual is qualified under  
19 State law to vote in such election." 42 U.S.C. § 1971(a)(2)(B).

20 150. As detailed above, an error or omission on any paper or record relating to  
21 voter registration, whether caused by the applicant or anyone else, including but not limited to  
22 State and local employees and volunteers of voter registration groups, impacting the State's  
23 ability to match that applicant's driver's license number or Social Security number, or determine  
24 that no such number exists, may not be material to determining whether the applicant is qualified  
25 to vote under Washington law.

26 151. Many nonmaterial mistakes beyond the control of the applicant – such as  
27 data entry errors by election officials, difficulties in retrieving information outside of the State's  
28 voter registration system, or technical malfunctions in the matching algorithms, all of which may

1 render election officials temporarily or permanently unable to verify the submitted information  
2 of an eligible voter – are likely to occur. Other nonmaterial mistakes made by the applicants  
3 themselves in filling out their voter registration applications are also likely to occur.

4 152. Such nonmaterial errors or omissions, and others not set forth herein,  
5 present a real and imminent threat that Plaintiffs’ members will not be registered to vote and that  
6 Plaintiffs and their members will thereby be irreparably injured.

7 153. Therefore, RCW 29A.08.107 conflicts with the Voting Rights Act, a  
8 federal statute, and is preempted.

9 154. RCW 29A.08.107 creates a real and imminent threat that eligible  
10 Washington voters, including Plaintiffs’ individual members, will be deprived of their federal  
11 rights to vote because of nonmaterial errors or omissions. RCW 29A.08.107 also creates a real  
12 and imminent threat that Plaintiffs’ resources will be diverted by the attempt to remedy the fact  
13 that their members, clients, and constituents will be unable to cast valid ballots and to have those  
14 ballots counted. Plaintiffs and their members are therefore being deprived of federal rights  
15 guaranteed under the Voting Rights Act and 42 U.S.C. § 1983.

16 155. Moreover, RCW 29A.08.107 threatens Plaintiffs’ interests in ensuring that  
17 their members’ rights to cast ballots in the September 19, 2006 primary elections and the  
18 November 7, 2006 general election, and to have their votes counted, are fully realized.

19 156. Absent this Court’s intervention, Plaintiffs and their members will suffer  
20 irreparable injury through the interference of RCW 29A.08.107 with their federal rights.

21 157. Plaintiffs and their members have no adequate remedy at law for such  
22 deprivation of their rights.

23 158. Defendant’s conduct must be preliminarily and permanently enjoined to  
24 prevent enforcement of RCW 29A.08.107 from interfering with federal rights and thereby  
25 causing irreparable injury to Plaintiffs and their members.

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**COUNT VIII**  
**(VIOLATION OF THE VOTING RIGHTS ACT)**

159. Plaintiffs repeat and reallege paragraphs 1 through 158, as if fully set forth herein.

160. To the extent RCW 29A.08.107 instructs the Secretary of State not to place an applicant on the official list of registered voters until he has matched the applicant's driver's license number or Social Security number with existing records of the DOL or SSA, or determined that the applicant has neither such number, the statute violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and interferes with federal rights secured by that law.

161. Section 2 of the Voting Rights Act, as amended, prohibits the use of a "voting qualification or prerequisite to voting or standard, practice or procedure" that results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973.

162. Racial and ethnic minorities, including individuals with foreign-language surnames, Asian Americans with "Westernized" given names, and African Americans with unique names and spellings, are likely to suffer a disparate impact as a direct result of RCW 29A.08.107, resulting in denial or abridgement of the right to vote on account of race in violation of Section 2 of the Voting Rights Act.

163. Defendant's policy and practice of refusing to register to vote applicants whose applications cannot be matched will disproportionately impact Asian-American, African-American, and Hispanic applicants, as well as applicants who are members of other racial and ethnic groups, and will do so on account of their race or ethnicity.

164. Absent this Court's intervention, Plaintiffs, their members, and similarly situated voters will suffer irreparable injury through the deprivation of their right to vote on account of race.

165. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges and immunities.

1 166. Defendant's conduct must be preliminarily and permanently enjoined to  
2 prevent enforcement of RCW 29A.08.107 from interfering with federal rights and thereby  
3 causing irreparable injury to Plaintiffs and their members.

4 **COUNT IX**  
5 **(VIOLATION OF THE NATIONAL VOTER REGISTRATION ACT)**

6 167. Plaintiffs repeat and reallege paragraphs 1 through 165, as if fully set forth  
7 herein.

8 168. To the extent that RCW 29A.08.107 instructs the Secretary of State not to  
9 place an applicant on the official list of registered voters until he has matched the applicant's  
10 driver's license a number or Social Security number with existing records of the DOL or SSA, or  
11 determined that the applicant has neither such number, the statute violates the National Voter  
12 Registration Act, or "Motor Voter Law," and interferes with federal rights secured by that law.

13 169. By refusing to register voters until a match is made or until it is  
14 determined that the voter has no identifying number to be matched, as described above, RCW  
15 29A.08.107 violates the Motor Voter Law, including the mandate that "each State shall . . .  
16 ensure that any eligible applicant is registered to vote in an election . . . if the valid voter  
17 registration form of the applicant" is submitted, mailed or otherwise received within the state  
18 voter registration deadline. 42 U.S.C. § 1973gg-6(a)(1)(A)-(D).

19 170. The Motor Voter Law's mandate that states accept and process valid voter  
20 registration forms remains in effect after the passage of HAVA. 42 U.S.C. § 15545(a).

21 171. RCW 29A.08.107 creates a real and imminent threat that eligible  
22 Washington voters, including individual members of Plaintiffs, will submit valid voter  
23 registration forms by the voter registration deadline, but will not be registered to vote. RCW  
24 29A.08.107 also creates a real and imminent threat that Plaintiffs' resources will be diverted by  
25 the attempt to remedy the fact that their members, clients, and constituents will submit valid  
26 voter registration forms but will not be registered to vote.

27 172. Therefore, RCW 29A.08.107 conflicts with the Motor Voter Law, a  
28 federal statute, and is preempted.

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173. Absent this Court’s intervention, Plaintiffs and their members will suffer irreparable injury through the inference of RCW 29A.08.107 with their federal rights.

174. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights.

175. Defendant’s conduct must be preliminarily and permanently enjoined to prevent enforcement of RCW 29A.08.107 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court to enter an Order:

- (1) Declaring that the provisions of RCW 29A.08.107 prohibiting election officials from registering eligible voters solely because the Secretary of State has not matched the registrants' identifying numbers and other information with records in existing government databases violate rights granted to Plaintiffs and their members by the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*, the First and Fourteenth Amendments to the United States Constitution, the Voting Rights Act of 1870, 42 U.S.C. §§ 1971(a)(2)(B) and 1973, and the National Voter Registration Act, 42 U.S.C. § 1973gg;
- (2) Preliminarily and permanently enjoining Defendant, his employees, agents, representatives, and successors in office, at least 45 days before the September 19, 2006 primary elections or, in the alternative, at least 45 days before the November 7, 2006 general election, from refusing to register voters whose information cannot be "matched,"
- (3) Awarding Plaintiffs their attorney fees and costs in accordance with 42 U.S.C. § 1988; and
- (4) Granting Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

1 Dated: May 24, 2006

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#330251 99732-002 72tn011 doc 5/24/2006