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JAMES N. HATTEN, Clerk
By: Deputy Clerk

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 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF -- CLASS ACTION**

PRELIMINARY STATEMENT

1. This action challenges new voter registration list maintenance procedures involving citizen checks, which serve as triggers for other new procedures regarding absentee voting and voter challenge hearings in the State of Georgia, and it seeks declaratory relief and temporary and permanent injunctive relief pursuant to Fed. R. Civ. P. 65 to halt the continued use of these voting procedures in advance of the November 4, 2008 election, and to require that appropriate immediate remedial measures are taken to ensure that all qualified and eligible voters in the State of Georgia have access to the ballot on Election Day.

2. Plaintiff has no plain, speedy, or adequate remedy at law other than the relief requested in this Complaint. Unless enjoined by this Court, the new

voter registration list maintenance procedures involving citizen checks and the other related procedures regarding absentee voting and voter challenge hearings in the State of Georgia, will continue to impermissibly burden qualified and eligible citizens' rights to vote in Georgia.

REQUEST FOR THREE-JUDGE PANEL

3. Plaintiff requests that Count 1 of this Complaint, the Section 5 enforcement claim, be heard and determined by a court of three judges in accordance with 42 U.S.C. § 1973c and the provisions of 28 U.S.C. § 2284.

JURISDICTION

4. Jurisdiction is based upon 28 U.S.C. §§ 1343a (3) & (4) and upon 28 U.S.C. § 1331 for causes of action arising from 42 U.S.C. § 1973c and 42 U.S.C. § 1973gg-6. Jurisdiction for Plaintiff's claim for declaratory relief is based upon 28 U.S.C. §§ 2201 and 2202. Jurisdiction for Plaintiffs' claim for attorneys fees is based on 42 U.S.C. §§ 1973*l*(e) and 1988.

5. Venue is proper in this court under 28 U.S.C. § 1391(b).

PARTIES

6. Plaintiff Jose Julian Morales is a resident of Cherokee County, Georgia. Mr. Morales is a U.S. Citizen and a legally registered Georgia elector. Mr. Morales is Latino.

7. Defendant Karen Handel is Secretary of State of Georgia and is sued in her official capacity. The Secretary of State is the chief election officer of Georgia, and as such, is responsible for the administration of state laws affecting voting, and for assuring that elections in the State are conducted in accordance with law. The Secretary maintains the official list of registered voters for Georgia and is required to conduct the training of voter registrars and superintendents of election; O.C.G.A. § 21-2-50, specifically § 21-2-50(a)(11) and (14). The Secretary's principal office is in Atlanta, Georgia.

STATEMENT OF FACTS AND LAW

The Help America Vote Act of 2002

8. In 2002, Congress enacted the Help America Vote Act ("HAVA"), 42 U.S.C. § 15301 *et seq.*, to respond to the serious problems with the administration of elections in the United States revealed by the 2000 presidential election.

9. In order to improve the accuracy and reliability of voter registration lists, HAVA requires that all states that conduct voter registration, including the State of Georgia, implement a single, statewide, computerized database of registered voters. 42 U.S.C. § 15483(a)(1)(A).

10. HAVA specifies minimum standards that each state, including the State of Georgia, must adhere to when creating and maintaining its statewide,

computerized database of registered voters. These standards include: "the name of each registered voter [must] appear[] in the computerized list." 42 U.S.C. § 15483(a)(1)(B)(i); "only voters who are not registered or who are not eligible to vote [may be] removed from the computerized list." 42 U.S.C. § 5483(a)(1)(B)(ii); and each state must implement "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." 42 U.S.C. § 15483(a)(4)(B).

11. With regard to voter removal, HAVA further specifies that states subject to the National Voter Registration Act, including the State of Georgia, may remove individuals from the registration list only "in accordance with the provisions of the National Voter Registration Act." 42 U.S.C. § 15483(a)(2)(A)(i).

12. HAVA specifically recognizes that states, including the State of Georgia, retain substantial discretion in making "specific choices on the methods of complying with the requirements of this statute." 42 U.S.C. § 15485.

13. To facilitate state efforts to remove duplicate registration records for the same individual from the statewide registration database, HAVA requires that states, including the State of Georgia, implement a two-step procedure.

14. First, states are to assign "a unique identifier [in the database] . . . to each legally registered voter in the State." 42 U.S.C. § 15483(a)(1)(A)(iii). The

identifier is either: (a) the registrant's driver's license number; (b) the last four digits of the registrant's social security number for those applicants without a driver's license, or (c) another number generated by the state for those who lack both a driver's license and a social security number. 42 U.S.C. § 15483(a)(5)(A).

15. Second, in order to make sure that the identifying numbers are correctly entered into the registration database, states must "coordinate" their voter registration database with the state driver's license database and the Social Security Administration database by attempting to match each registration record with a record in one of the two other databases. 42 U.S.C. §§ 15483(a)(1)(A)(iv) & 15483(a)(5)(B).

16. However, HAVA generally does not require that states, including the State of Georgia, utilize the aforementioned database matching to test or otherwise evaluate the *eligibility* to vote of citizens who seek to register to vote in their state of residence. The only exception, according to HAVA, are first-time voters who register to vote by mail, who generally under HAVA must provide certain documentary identification in order to vote, but are excused from that requirement if the state is able to successfully match their registration record with a driver's license or social security record. 42 U.S.C. § 15483(b).

17. Instead, as determined by the Eleventh Circuit Court of Appeals in *Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153 (2008), Georgia and other states subject to HAVA have the discretion to decide, as a threshold matter, whether to use database matching to evaluate voter eligibility. Likewise, if a state does decide to use database matching for that purpose, the specific standards and procedures that will be implemented are left to the discretion of the state. As stated by the Eleventh Circuit, "[t]here is nothing at all in [HAVA] that discusses the requirements and procedures for establishing eligibility and identity of in-person registrants." *Id.* at 1155.

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

18. Following the enactment of HAVA, the State of Georgia initially declined to implement a procedure for matching registration records with driver's license or social security records, asserting that it was covered by an exception to that requirement included in HAVA. 42 U.S.C. § 15483(a)(5)(D). However, the Eleventh Circuit Court of Appeals subsequently held that this exception did not apply to Georgia. *Schwier v. Cox*, 439 F.3d 1285 (2006).

19. On April 23, 2007, the United States Department of Justice, which has enforcement authority under HAVA, wrote to the Georgia Secretary of State to

inquire about the state's apparent continuing failure to implement the database matching requirements of HAVA.

20. On May 23, 2007, the Office of the Georgia Attorney General responded by letter to the U.S. Department of Justice, advising that state was in compliance with a consent order entered in the *Schwier* litigation and that the state was in compliance with HAVA's database matching requirement.

21. Immediately prior to this exchange of correspondence, in March 2007, the Georgia Secretary of State and the Georgia Department of Driver Services (DDS) entered into an agreement to permit the Secretary of State to attempt to match individual records in the statewide registration database with driver's license records. Approximately a month later, on April 23, 2007, a user agreement was finalized between the Georgia Department of Driver Services and the Social Security Administration to allow state officials to also seek to match registration records with records included in the Social Security Administration database.

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

Class Action Allegations

22. This action is maintainable as a class action under Rule 23(a), (b)(1) and (b)(2), F.R.Civ.P.

23. The plaintiff class is defined as: Citizens of the United States and residents of the State of Georgia who have timely submitted a voter registration form and have been or will in the future be flagged as non-citizens during the citizenship status check performed using the databases maintained by both the Georgia Department of Driver Services and the federal Social Security Administration. On information and belief, the class is believed to consist of no less than 2,000 individuals.

24. Plaintiff is an adequate representative of the class. He presents typical claims of class members, has no conflicts with class members, and is represented by experienced counsel.

25. Adjudications with respect to the individual class members would create a risk that of an outcome that would substantially impair the ability of class members to protect their interests.

26. The defendant has acted and refused to act on grounds that apply generally to the class.

27. The questions of fact common to the class include, without limitation, the following:

(a) whether the Defendant obtained preclearance from either the United States Attorney General or the United States District Court for the District of Columbia

for its actions taken related to its voter registration database, including verifying voter information against databases maintained by both the Georgia Department of Driver Services and the federal Social Security Administration, and generating and distributing reports of the results of those checks to county registrars as the basis for voter challenges, hearings, correspondence or removal; and

(b) whether the Defendant is performing a list maintenance program by systematically checking the citizenship of at least some registered voters and directing counties to take action against those who are flagged within 90 days of the November 4, 2008 federal election;

28. Questions of law common to the class include, without limitation, the following:

(a) whether defendant's actions violate Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c; and

(b) whether defendant's actions violate the National Voter Registration Act, 42 U.S.C. § 1973gg, *et seq.*

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

29. The State of Georgia requires that, in order to vote in any election conducted in that state, an individual must be a citizen of the United States. O.C.G.A. § 21-2-216.

30. The State of Georgia assigns to its county boards of registrars the responsibility for determining the eligibility to vote of each person who applies to register to vote in the state. O.C.G.A. § 21-2-226(a). However, Georgia statutes do not specify any standards that shall be used by county boards of registrars to identify any particular class of registration applicants whose eligibility to vote should receive special scrutiny. Likewise, Georgia statutes do not specify the procedures that should be followed by county boards of registrars if and when it is decided that the eligibility to vote of a particular class of registrants should be specially scrutinized. O.C.G.A. §§ 21-2-226(a), 21-228.

31. When individuals in the State of Georgia apply for a driver's license, they are required by state law to advise the Georgia Department of Driver Services whether they have United States citizenship at that time. This information is included in the driver's license database maintained by the Department of Driver Services.

32. Individuals who become naturalized United States citizens after obtaining a Georgia driver's license are neither required nor requested to advise the

Georgia Department of Driver Services of their changed citizenship status until they apply for a driver's license renewal when, at that time, the citizenship information in the Department's database is updated. Accordingly, the driver's license database maintained by the Department includes inaccurate citizenship information on a portion of those state residents who are naturalized United States citizens.

33. Beginning on a date in or after March 2007, state officials have implemented database matching between the state registration database and the driver' license database so as to identify those individuals whose records are matched in the two databases and who are displayed as being a non-citizen in the driver's license database. The matching process yields computer printouts that identify individuals who meet these criteria.

34. On a date in or after March 2007, the Georgia Secretary of State directed all county election officials to begin to utilize the aforementioned computer printouts as a means for targeting individuals whose eligibility to vote should be reviewed. Further, the Secretary of State directed all county election officials that, if such a review is not undertaken prior to the time that a putative non-citizen registrant applies to vote absentee or appears at the polls to vote on election day, the registrant shall not be permitted to cast a regular ballot unless the

county registrar confirms that the individual is a United States citizen. If the registrar does not confirm citizenship, the voter then is required to cast a "challenged" ballot.

35. The Georgia Secretary of State has not instituted uniform state procedures which are to be utilized by county boards of registrars in evaluating whether individuals whose names appear on the aforementioned computer printouts are United States citizens. The Secretary of State also has not specified the documentation that may be produced by such an individual in order to prove citizenship (instead, the Secretary has simply advised the boards, as a point of information, of the different documents that the United States Citizen and Immigration Services, and the United States Department of Health and Human Services, view as acceptable proof of United States Citizenship).

Guidance from the Georgia Secretary of State

36. A Memorandum issued on September 12, 2008 from the Elections Division Director in the Office of the Secretary of the State to all County Elections Officials explained that each new voter registrant's information will be entered into the Defendant's statewide voter registration system. The Memorandum further stated that no newly registered voter would be considered as "registered" to vote until the statewide system has performed a citizenship status check on the voter

registrant. The status check consists of matching the registrant's information with the "DDS" database for verification of each applicant's citizenship status through the Social Security Administration.

37. A Memorandum issued on September 24, 2008 from the Elections Division Director to all County Elections Officials further elaborated on the administrative record matching procedures between the statewide voter registration database system and DDS. Pursuant to these procedures, the DDS database is routinely queried to identify all new registration applicants or existing registrants who make significant changes to their registration (such as a change of name) who allegedly have previously informed DDS that they were not United States citizens. The individuals identified by these matching procedures are listed in county-level reports provided by Defendant.

38. The Memorandum issued on September 24, 2008 from the Elections Division Director also provides detailed instructions governing the procedures to be used during in-person absentee voting for individuals who are flagged as "non-citizen" in the database. It states, "[I]f DDS records show that the person is not a United State citizen, the voter maintenance screen (2) and absentee ballot maintenance screen (16) show a flashing red warning indication of the individual's non-citizen status." The Memorandum also explains that poll officers should not

"allow an individual to cast a regular ballot . . . without confirming through the registrar that such individual is a United States citizen."

County Responses to Secretary of State Guidance

39. Several counties in the State have begun using the State-generated report as the basis for a mailing to demand that the recipients provide proof of their citizenship.

40. Other county election officials, including election officials in Cherokee County, have set hearings for registrants or electors who are "flagged" as "non-citizens" in the database.

The National Voter Registration Act of 1993

41. Congress has established a comprehensive registration system for federal elections through, among other statutes, the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, *et seq* ("NVRA").

42. Section 8(c) of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6 ("NVRA") prohibits states from executing, later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters, except at the request of the registrant, or by reason of disfranchising criminal conviction, mental incapacity, or death of the

registrant. 42 U.S.C. § 1973gg-6(c)(2)(A). 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).

43. The State of Georgia is subject to the NVRA.

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

44. Defendant Secretary of State is systemically checking the citizenship of at least some registered voters and directing counties to take action against those who are flagged within 90 days of the November 4, 2008 federal election.

The Voting Rights Act and Section 5 Pre-clearance

45. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, is a temporary provision that freezes changes in election practices or procedures in states with a documented history of discriminatory voting practices until the new procedures have been determined, either by the United States District Court for the District of Columbia or the United States Attorney General, not to have the purpose or effect of denying or abridging the right to vote on account of race, color

or membership in a language minority group. This process is referred to as "pre-clearance."

46. Georgia is currently one of the states covered by Section 5 and required to obtain pre-clearance prior to implementing any changes to election practices or procedures.

47. The actions the State of Georgia has taken relating to its voter registration database, including verifying voter information against databases maintained by both the Georgia Department of Driver Services and the federal Social Security Administration (SSA), and generating and distributing reports of the results of those checks to county registrars as the basis for voter challenges, hearings, correspondence or removal, constitute voting changes which require federal pre-clearance.

48. All of these voting changes were implemented without seeking federal pre-clearance.

Plaintiff Jose Morales' Voting Rights Have Been Violated

49. Plaintiff Jose Morales is a resident of Cherokee County, Georgia and has been a resident of Georgia since 2000. Attached hereto as Exhibit A is the declaration of Plaintiff José Julia Morales attesting to the facts set forth in this Complaint.

50. Mr. Morales has been a Legal Permanent Resident of the United States since he was approximately 2 or 3 years old. He became a United States Citizen in November 2007. He obtained his Georgia driver's license in April 2006.

51. Mr. Morales is currently studying International Affairs at Kennesaw State University in Kennesaw, Georgia. He will be graduating in December 2008 with a B.A. in International Affairs.

52. On or around the beginning of September 2008, Mr. Morales filled out a voter registration form on campus through a student organization.

53. Approximately two weeks after filling out his voter registration form, he received a letter from Cherokee County. The letter indicated that he would not be able to vote unless he provided evidence of his citizenship in court. The letter also indicated that he would be eliminated from the voter list if he did not prove his citizenship.

54. Approximately a week later, Mr. Morales received another letter. The letter indicated he had to provide additional information such as a copy of his driver's license, passport or other document, that verifies he is a U.S. citizen.

55. Approximately two weeks later, Mr. Morales received a second letter indicating that he needed to provide documentary evidence of his citizenship.

56. Accordingly, Mr. Morales drove to Cherokee County Elections and Registration office located at 400 E. Main Street, in Canton, Georgia, in order to prove his citizenship. The office is located about 30 minutes from Mr. Morales' home.

57. Mr. Morales indicated to the Clerk that he had been asked to prove his citizenship in order to vote and proceeded to show the clerk his passport.

58. Mr. Morales then asked the Clerk in the Cherokee County Elections and Registration office if his passport was sufficient evidence to enable him to vote.

59. The Clerk indicated that his passport was sufficient to prove his citizenship, and that he would be receiving a voter registration card in the mail. Mr. Morales received his voting card approximately a week later.

60. On or around October 3, 2008, Mr. Morales received a notification in the mail to pick up certified mail addressed to him at his local post office.

61. On or around October 7, 2008, Mr. Morales retrieved the certified mail from the post office. The certified mail was a letter from the Cherokee County Elections and Registration office which indicated that he may not be qualified to vote in Cherokee County because he may not be a U.S. citizen.

62. The letter also stated that if Mr. Morales did not contact the Cherokee County Elections and Registration office before October 15, 2008, or appear at a hearing on the same date, his name would be removed from the list of registered voters.

63. Despite all the steps he has gone through, Mr. Morales' right to vote is still being threatened. Mr. Morales wants to vote, particularly in the upcoming election, and wants to make sure his vote is counted.

CLAIM ONE
(Section 5 of the Voting Rights Act of 1965)

64. Plaintiff hereby incorporates by reference all foregoing paragraphs as if set forth fully herein.

65. Because Defendant has failed to secure federal pre-clearance of the new voter registration list maintenance procedures based on citizenship which affect voting, these new procedures are legally unenforceable under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c. Any removal of voters from the voter registration list based on these list maintenance procedures is void and violate the rights of Plaintiff as secured by Section 5 of the VRA. Unless enjoined, Defendant will proceed with the voter removals in violation of Section 5.

66. Accordingly, Plaintiff is entitled to a declaration that Defendants' implementation of the new voter registration list maintenance procedures based on

citizenship violates his rights under Section 5 of the Voting Rights Act and to an order temporarily and permanently enjoining use of citizenship information collected via the unprecleared procedures.

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

67. Plaintiff hereby incorporates by reference all foregoing paragraphs as if set forth fully herein.

68. Defendant's application of citizenship check procedures to registered voters and removal of such registered voters within 90 days of a federal election violates Section 8(c) of the NVRA, 42 U.S.C. § 1973gg-6, which prohibits states from executing, later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters, except at the request of the registrant, or by reason of disfranchising criminal conviction, mental incapacity, or death of the registrant. 42 U.S.C. § 1973gg-6(c)(2)(A).

69. Accordingly, Plaintiff is entitled to a declaration that Defendant's application of citizenship check procedures to registered voters and removal of such registered voters based on the citizenship check procedures violates his rights under the NVRA and to an order temporarily and permanently enjoining application of the citizenship check procedures.

REQUEST FOR DECLARATORY RELIEF

70. Pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2201, Plaintiff seeks a declaration that Defendant's implementation of the database matching for registered voters and voter registrants violates the right of Plaintiff as secured by the Voting Rights Act and the National Voter Registration Act.

BASIS FOR EQUITABLE RELIEF

71. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is his only means of securing adequate redress from Defendant's unlawful practices. Plaintiff will continue to suffer irreparable injury from Defendant's acts, polices and practices set forth herein unless Defendants are enjoined by this Court.

PRAYER

WHEREFORE, Plaintiff respectfully prays that this Court enter Judgment granting Plaintiff:

A. A declaratory judgment that Defendant's actions violate the rights of Plaintiff as secured by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c and Section 8 (c) of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6(c)(2)(A).

B. Preliminary and permanent injunctive relief enjoining Defendant, her successors in office, agents, employees, attorneys and those persons acting in concert with her or at her direction from using citizenship information collected through implementation of the database matching system for registered voters and voter registrants; ordering Defendant to employ her full authority to direct all County Boards of Elections to cease using the citizenship check feature of the voter registration database as the basis for voter challenges, hearings, correspondence or removal unless and until the new procedures have received Section 5 preclearance and to rescind pending notices of hearings and/or removal of registered voters and registrants requiring proof of citizenship;

C. Engage in affirmative, corrective measures, including but not limited to sending letters rescinding its previous correspondence to county registrars relating to the citizenship checking feature and to report immediately to the Court any county that refuses to comply;

D. An order of this Court retaining jurisdiction over this matter until the Defendant has complied with all the orders and mandates of the Court;

E. The costs of this suit, including reasonable attorneys' fees;

and

F. Such other and further relief as the Court may deem just and proper.

Respectfully submitted this 9th day of October, 2008.

Elise Sandra Shore
Georgia State Bar No. 557131
Mexican American Legal Defense and
Educational Fund
34 Peachtree St. NW Suite #2500
Atlanta, GA 30303
Phone: 678-559-1071
eshore@MALDEF.org

Laughlin McDonald
Georgia Bar No. 489550
Neil Bradley
Georgia Bar No. 075125
Meredith Bell-Platts
Georgia Bar No 048948
ACLU VOTING RIGHTS PROJECT
230 Peachtree Street, NW
Suite 1440
Atlanta, GA 30303
(404) 523-2721 (phone)
(404) 653-0331 (fax)
lmcdonald@aclu.org
mbell@aclu.org
nbradley@aclu.org

Brian Spears
Georgia Bar No. 670112
1126 Ponce de Leon Ave., NE
Atlanta, Georgia 30306
(404) 872-7086 (phone)
(404) 892-1186 (fax)
bspears@mindspring.com

Jon Greenbaum
Robert A. Kengle
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8600 (phone)
(202) 783-0857 (fax)
jgreenbaum@lawyerscommittee.org
bkengle@lawyerscommittee.org
PRO HAC VICE APPLICATIONS PENDING

ATTORNEYS FOR PLAINTIFF