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,	)	**CIVIL ACTION NO. 1:08-CV-3172**
v.	)	**Three-Judge Court) (SFB, JTC, WSD)**
KAREN HANDEL, in her official capacity as Georgia Secretary of State,	)	
Defendant.	)	

DEFENDANT'S INITIAL DISCLOSURES

COMES NOW Defendant KAREN HANDEL, Secretary of State for the State of Georgia, by and through her counsel of record, Thurbert E. Baker, the Attorney General of the State of Georgia, and pursuant to Local Rule 26.1 (N.D. Ga.) and Federal Rule of Civil Procedure 26(a)(1) submits her Initial Disclosures as follows:

DISCLOSURE NO. 1:

If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

RESPONSE TO DISCLOSURE NO. 1:

Defendant is properly identified.

DISCLOSURE NO. 2:

Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

RESPONSE TO DISCLOSURE NO. 2:

Defendant asserts that the various county election registrars are necessary parties to this action since the Secretary of State has no authority to order any of them to take action.

DISCLOSURE NO. 3:

Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading.

RESPONSE TO DISCLOSURE NO. 3:

Plaintiff has filed this lawsuit under Section 5 of the Voting Rights Act ("Section 5"), 42 U.S.C. § 1973c, and the National Voter Registration Act of 1993, ("NVRA"), 42 U.S.C. § 1973gg-6. The Help America Vote Act ("HAVA") of 2002, 42 U.S.C. § 15301 et seq., requires that any application for voter registration must include either a driver's license number, the last four digits of the social security number, or a unique identification number created for voter registration

purposes. 42 U.S.C. § 15483(a)(5)(A)(ii). HAVA further requires the motor vehicle authority of each State to enter into an agreement with the Social Security Administration ("SSA") for the purpose of verifying social security number information provided by voter registration applicants under HAVA. 42 U.S.C. § 15483 (a)(5)(B)(ii). The Georgia Department of Drivers' Services ("DDS") and SSA entered into an agreement in the spring of 2007.

Since that time, the State of Georgia has maintained a statewide voter registration database, which contains the names and other critical identifying information for all registered voters in the State of Georgia. One of the critical fields of information is citizenship status. O.C.G.A. § 21-2-216. When a person registers to vote, the information provided by that individual is electronically entered into the Georgia statewide voter registration database. Each weeknight that voter registration information is electronically transmitted to the DDS to conduct the HAVA verification process, pursuant to its agreement with SSA. If there is any inconsistency between the two databases, then the voter registration file is reviewed, first to ensure that the data was entered correctly, and then to determine whether there is any issue regarding eligibility.

Jose Morales is a naturalized citizen who is registered and was eligible to vote in the November 4, 2008 general election and is eligible to vote in the

December 2, 2008 run-off election. Morales completed his voter registration application on September 9, 2008. Morales became a naturalized U.S. citizen on November 7, 2007. However, Morales was not a naturalized citizen at the time he applied for his Georgia driver's license.

After Morales' application went through the computer data verification process, the printout indicated that he was not a U.S. citizen. On September 19, 2008, Janet Munda, the Director of Elections and Voter Registration in Cherokee County mailed a letter to Morales advising him that their records showed that he was not a U.S. citizen. Morales was asked to present evidence of his citizenship. Morales went to the Cherokee County registrar's office on approximately September 26, 2008, and presented evidence of his citizenship. His records were corrected and he was provided with verification of his eligibility to vote. A second letter was mailed to Morales on the same day he went into the office to verify his citizenship status. However, since that date, Morales has been provided with confirmation that he is eligible to vote in the upcoming elections.

DISCLOSURE NO. 4:

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

RESPONSE TO DISCLOSURE NO. 4:

I. Federal Statutes

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c

National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6

The Help America Vote Act ("HAVA") of 2002, 42 U.S.C. § 15301 *et seq*

II. Federal Regulations

28 C.F.R. app. § 51

III. Relevant Case Law

Florida State Conference of the N.A.A.C.P. v. Browning et al., 522 F.3d 1153, 1168 (11th Cir. 2008).

Purcell v. Gonzalez, 549 U.S. 1, 5 (2006).

IV. State Statutes

Ga. Const. Art. II, Sec. I, Para II

O.C.G.A. §§ 21-2-216(a)(2)

O.C.G.A. § 21-2-220(b)

O.C.C.A. § 21-2-228

O.C.G.A. § 21-2-238(i)

Defendant reserves the right to amend its response to this Disclosure.

DISCLOSURE NO. 5:

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

RESPONSE TO DISCLOSURE NO. 5:

The individuals presently known to Defendant who have discoverable information are listed on Attachment A. Defendant reserves the right to amend this response.

DISCLOSURE NO. 6:

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

RESPONSE TO DISCLOSURE NO. 6:

At this time, Defendant has not retained any expert witnesses. Defendant will identify any experts who may be retained as required under Federal Rule of Civil Procedure 26.

DISCLOSURE NO. 7:

Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely

for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

RESPONSE TO DISCLOSURE NO. 7:

The documents that Defendant is currently aware of are listed on Attachment C. Defendant reserves the right to amend this response.

DISCLOSURE NO. 8:

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

RESPONSE TO DISCLOSURE NO. 8:

Not applicable.

DISCLOSURE NO. 9:

If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.

RESPONSE TO DISCLOSURE NO. 9:

In the prayer for relief in his complaint, Plaintiff requests that the Court order Defendant to direct all county board of elections to "cease using the citizenship check feature of the voter registration database." However, the

Secretary of State has no authority to direct any county election official to take any action. Therefore, Defendant asserts that the county elections officials are necessary parties. At the present time, the only Plaintiff is a resident of Cherokee County. Therefore, the only necessary additional Defendant is the Cherokee County Board of Elections, 400 E. Main Street, Suite A, Canton, GA 30114. Defendant reserves the right to amend this disclosure.

DISCLOSURE NO. 10:

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

RESPONSE TO DISCLOSURE 10:

Not applicable.

Respectfully submitted, this 26th day of November 2008.

THURBERT E. BAKER 033887
Attorney General

DENNIS R. DUNN 234098
Deputy Attorney General

STEFAN RITTER 606950
Senior Assistant Attorney General

*s/ Julia B. Anderson*_____

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ATTACHMENT A
WITNESSES

1. Jose Morales
   Plaintiff

   Mr. Morales has discoverable information regarding the dates he filed his voter registration application, when he received notification that he might not be qualified to vote, when he went to the registrar's office to provide evidence of his citizenship, and when and how he was notified that his status had been updated.

2. Wesley B. Tailor
   Director of Elections Division
   Office of the Secretary of State
   1104 West Tower
   Atlanta, GA 30334

   Mr. Tailor has discoverable information regarding the statewide voter registration database that was established in 2007 and the procedures followed during the 2008 general and run-off elections.

3. Janet Munda
   Director of Elections and Registration
   Cherokee County Board of Elections
   400 E. Main Street, Suite A
   Canton, GA 30114

   Ms. Munda has discoverable information regarding voter registration, how information obtained in voter registration applications is entered into the statewide voter registration database, and the procedures followed in the event that a voter is identified as ineligible once that voter's information is entered into the database. Ms. Munda is also familiar with Plaintiff's individual application file in this case.

4. Any witnesses identified by Plaintiff in their Initial Disclosures and in discovery.

Defendant reserves the right to amend its Witness List.

ATTACHMENT C
DOCUMENTS

1. Any and all documents attached to Plaintiff's Complaint and Motion for Preliminary Injunction [Docs. 1 and 2].

2. Any and all documents attached to Defendant's Notice of Filing by Karen Handel Regarding Witnesses and Documents for October 22, 2008 Hearing. [Doc. 21].

Defendant reserves the right to amend its Document list.

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Plaintiff,	)	**CIVIL ACTION NO. 1:08-CV-3172**
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KAREN HANDEL, in her official capacity as Georgia Secretary of State,	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2008 I caused to be electronically filed the foregoing **DEFENDANT'S INITIAL DISLCOSURES** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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*s/ Julia B. Anderson*____
Attorney for Defendant