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 FILE NO. 1:08-CV-3172**
v.	)	
KAREN HANDEL, in her official Capacity as Georgia Secretary of State,	)	
Defendant.	)	

JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

1. **Description of the Case:**

(a) Describe briefly the nature of this action.

This lawsuit presents claims for declaratory and injunctive relief pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2201. This lawsuit arises from the State of Georgia's implementation of a database matching system for registered voters and voter registrants. Plaintiff José Morales brings this lawsuit alleging violations of both Section 5 of the Voting Rights Act of 1965 ("VRA"), as amended, 42 U.S.C. § 1973c, and Section 8(c) of the

National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg-6. Plaintiff's Complaint also contains class action allegations.

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

Plaintiff's Statement of Facts:

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

This action also challenges the application of the citizenship and other data check procedures to registered voters and the removal of such registered voters within 90 days of a federal election, in contravention of Section 8(c)

of the NVRA, 42 U.S.C. §1973gg-6. This provision of the NVRA prohibits states from executing, later than 90 days prior to the date of a primary or general election for Federal office, any systematic list maintenance procedures resulting in the removal of voters from the official list of eligible voters. The only exceptions to the 90 day cutoff are removals done: (1) at the request of the registrant; (2) as provided by State law, by reason of criminal conviction or mental capacity; and (3) at the death of the registrant. 42 U.S.C. 1973gg-6 (c)(2)(B), 1973gg-6(a)(3)(A-B), 1973gg-6(a)(4)(A).

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

On October 7, 2008, Plaintiff Morales received another letter from the Cherokee County Elections and Registration office. The letter informed him

that he may not be qualified to vote because he may not be U.S. citizen. The letter indicated that if he did not respond prior to an October 15, 2008 hearing date, and did not attend the hearing, his name "will be removed" from the list of registered voters.

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

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[1] On November 25, 2008, undersigned counsel for plaintiff filed a 20 page comment letter with the U.S. Justice Department ("DOJ") urging the Department to refuse to grant approval under the Voting Rights Act to the State of Georgia's unprecleared registration procedures related to the database matching/citizenship check system. The letter asserts that the procedures are discriminatory and are based on faulty data maintained by the Georgia DDS.

Defendant's Statement of Facts:

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 mandates that each state maintain a statewide computerized voter registration list and that the motor vehicle authority of each State enter into an agreement with the Social Security Administration ("SSA") for the purpose of verifying 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.

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 are inconsistencies in particular data fields relating to the person's name, birth date, social security number or citizenship, then that discrepancy is examined. The voter registration file is reviewed, first to ensure that the data was entered

correctly, and then for the registrar to determine whether there is any issue regarding eligibility. *See* Ga. Const. Art. II., Sec. I. Para. II; O.C.G.A. § 21-2-216 (a)(2).

José 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. Morales was not a naturalized citizen at the time he applied for his Georgia driver's license.

At the time Morales' voter registration 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 indicated 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 that he went into the office to verify his citizenship status. However, since that date, Morales has

been provided with confirmation of his eligibility to vote in both the general and run-off elections.

On October 9, 2008, Plaintiff filed a Complaint for Declaratory and Injunctive Relief, asserting claims under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6. After a hearing, the Court entered an Order granting Plaintiff's motion for preliminary injunction on October 27, 2008. [Doc. 36]. Defendant filed "Notice of Filing Documents and Report in Compliance with Court Order" on October 31, 2008. [Doc. 39]. Defendant asserts that some of Plaintiff's claims have been rendered moot based on the occurrence of the November 4, 2008 general election.

(c) The legal issues to be tried are as follows:

(1) Whether the actions challenged by Plaintiff were subject to pre-clearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

(2) Whether the actions challenged by Plaintiff constitute systemic list maintenance in violation of Section 8(c) of the NVRA, 42 U.S.C. § 1973gg-6.

Additional Legal Issues Submitted by Defendant

(3) Whether Plaintiff has standing to bring any of the claims he is asserting in the Complaint.

(4) Whether Plaintiff has standing to bring any of the claims asserted in the Complaint on behalf of the putative class of Plaintiffs.

(5) Whether the putative class of Plaintiffs can meet the requirements of Fed.R.Civ.P. 23(a).

(6) Whether Plaintiff is entitled to any attorney's fees.

(d) The cases cited below (include both style and action number) are:

(1) Pending Related Cases: None

(2) Previously Adjudicated Cases: None

2. This case is complex because it contains one (1) or more of the features listed below (please check):

_____ (1) Unusually large number of parties

_____ (2) Unusually large number of claims or defenses

_____ (3) Factual issues are exceptionally complex

_____ (4) Greater than normal volume of evidence

_____ (5) Extended discovery period is needed

_____ (6) Problems locating or preserving evidence

X___ (7) Pending parallel investigations or action by government

_____ 8) Multiple use of experts

_____ (9) Need for discovery outside United States boundaries

___ (10) Existence of highly technical issues and proof

3. **Counsel:**

The following individually-named attorneys are hereby designated as lead counsel for the parties:

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4. **Jurisdiction:**

Is there any question regarding this Court's jurisdiction?

_ Yes **_X_ No**

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

5. **Parties To This Action:**

(a) The following persons are necessary parties who have not been joined:

Plaintiff's Response

None known at this time. If Plaintiff encounters difficulty in obtaining critical information from counties, it may be necessary to add county defendants.

Defendant's Response

The country registrar is a necessary party to this action because the Secretary of State has no legal authority over county registrars and cannot direct a county registrar or other election official to take any action. Defendant notes that in his prayer for relief, Plaintiff has asked this Court to order the Secretary of State to direct all county board of elections to "cease using the citizenship check feature of the voter registration database." To the extent that Plaintiff is continuing to ask this Court to order Defendant to direct any county election office to take any action, such an order would be contrary to law, since the Defendant has no such legal authority.

(b) The following persons are improperly joined as parties:

None at this time.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

Complaint paragraph 49, line 3, should read: "Plaintiff José 'Julian' Morales."

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments To The Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Rule 15, Federal Rules of Civil Procedure. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary:

Pursuant to Section 5 of the Voting Rights Act, DOJ is currently in the process of reviewing Defendant's submission related to the challenged verification scheme and other unprecleared voting changes flowing from that scheme. Amendments to the pleadings may therefore be necessary based on DOJ's pre-clearance decision.

(b)Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the preliminary planning report is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

As stated above, amendments to the pleadings may be necessary based on DOJ's pre-clearance decision.

7. **Filing Times For Motions:**

All motions should be filed as soon as possible. The Local Rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY (30) DAYS after the beginning of discovery unless the filing party has obtained prior permission of the Court to file later. Local Rule 7.1A(2).

(a) Motions to Compel: before the close of discovery or within the extension period allowed in some instances. Local Rules 37.1.

(b) Summary Judgment Motions: within twenty (20) days after the close of discovery, unless otherwise permitted by Court order. Local Rule 56.1.

(c) Other Limited Motions: refer to Local Rules 7.2, 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions and motions for reconsideration.

(d) Motions Objecting to Expert Testimony: Daubert motions with regard to expert testimony no later than date that the proposed pretrial order is submitted.

8. **Initial Disclosures:**

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and the basis for the party's objection.

None known at this time.

9. **Request for Scheduling Conference:**

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

The parties do not request a scheduling conference at this time.

10. Discovery Period:

The discovery period commences thirty (30) days after the appearance of the first Defendant by answer to the complaint. As stated in Local Rule 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this Court are assigned to one of the following three (3) discovery tracks: (a) zero (0)-months discovery period; (b) four (4)-months discovery period; and (c) eight (8)-months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

(1) Plaintiff's claims; and
(2) Defendants' defenses.

Discovery is needed on all issues related to the State of Georgia's implementation of the unprecleared database verification scheme and all voting changes related to that scheme.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery, please state those reasons in detail below:

Plaintiff's Response

As noted above, DOJ is reviewing Defendant's submission related to the challenged verification scheme and other unprecleared voting changes flowing from that scheme. Modification of discovery deadlines may therefore be necessary based on DOJ's pre-clearance decision.

Defendant's Response

At the present time, the Defendant does not see any reason why discovery cannot be completed within the four (4) month period. However, the DOJ is currently in the process of conducting its preclearance review under Section 5 of the Voting Rights Act. The DOJ's review may affect the timing of discovery, in which case, the parties may want to seek a brief extension of the discovery period.

11. Discovery Limitation:

What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed.

None at this time.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

None at this time.

13. Settlement Potential:

(a) **Lead counsel for the parties certify by their signatures below that they met in person at an early planning conference that was held on** November 14, 2008 **and that they participated in settlement discussions, as required by LR 16.1. Other persons who participated in the settlement discussions are listed according to party.**

For Plaintiff: **Lead Counsel (signature):**

/s/ Elise Sandra Shore
Elise Sandra Shore

For Defendant: **Lead Counsel (signature):**

/s/ Julia B. Anderson
Julia B. Anderson

(b) **All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:**

____ **A possibility of settlement before discovery;**

_X_ **A possibility of settlement after discovery;**

____ **A possibility of settlement, but a conference with the Judge is needed.**

____ **No possibility of settlement.**

(c) **Counsel (_X_) do or (____) do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is unknown at this time.**

(c) **The following specific problems have created a hindrance to settlement of this case:** None

14. Trial By Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties (____) do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the Clerk of Court this _____ day of **_____**, 2008.

(b) The parties (_X_) do not consent to having this case tried before a magistrate judge of this Court.

Respectfully submitted this 26 day of November, 2008.

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SCHEDULING ORDER

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

_____

_____

_____

_____

_____

IT IS SO ORDERED, this ____ day of _____, 2008.

_____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF COMPLIANCE

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

This 26th day of November, 2008.

/s/ Elise Sandra Shore
ELISE SANDRA SHORE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this the 26th day of November, 2008, electronically filed the foregoing **JOINT PRELIMINARY REPORT AND DISCOVERY PLAN** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification or otherwise:

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