

November 25, 2008

Christopher Coates
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
1800 G Street, N.W.
Room 7254 - NWB
Washington, DC 20006

RE: Comment under Section 5 of the Voting Rights Act, Submission No. 2008-5243

Dear Mr. Coates:

The Lawyers' Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the ACLU, and attorney Brian Spears submit this comment letter to urge the Department of Justice to either interpose an objection, or request additional information, in response to the State of Georgia's submission under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, of new procedures for checking the United States citizenship of voter registration applicants and certain existing voter registrants (submission no. 2008-5243). Commenters represent the plaintiff in the pending Section 5 enforcement action regarding the unprecleared procedures. *Morales v. Handel*, No. 1:08-CV3172 (N.D. Ga.).

Preclearance cannot be granted for two reasons. First and foremost, the new procedures discriminate against black, Hispanic, and Asian United States citizens who reside in Georgia, and thus an objection should be interposed. The evidence we submit with this letter strongly demonstrates that the new procedures are retrogressive. The State's barebones submission fails to acknowledge this evidence, let alone contradict or overcome it. Nor does the submission provide the information necessary for the State to meet its burden of showing that the procedures are free of discriminatory purpose.

Second, in light of the almost complete absence of supporting information contained in the State's submission, it would be fully consistent with the Justice Department's long-established practices to send a written request for additional information, so as to ensure that the merits determination is based on a complete factual record. In any event, the State's bare assertion in its submission that the new procedures are not discriminatory in purpose or effect cannot justify a grant of preclearance.

The heart of the problem with the State's new citizenship confirmation procedures is this: the State is using a criterion for identifying possible non-citizen voter registrants that is entirely, or almost entirely, wrong (i.e., the targeted registrants are citizens); approximately three-quarters of the wrongly flagged registrants are minority citizens protected under the Voting Rights Act; and the State is using its misconceived targeting system to burden the right to vote of this mostly-minority population by essentially requiring that these citizens register a second time in order to be considered registered to

vote. The flaw in the State's targeting approach is simple and obvious, and should have alerted the State at the outset that its new procedures are defective: the State is relying on static, outdated citizenship information that ignores the fact that thousands of Georgia residents, a substantial majority of whom are black, Hispanic, or Asian, become naturalized citizens each year. Furthermore, it appears that the State also may be mislabeling numerous registrants as possible non-citizens by relying on a flawed computer matching system that mistakenly identifies the registrants as other individuals who happen to be non-citizens (thus resulting in native-born citizens being flagged as possible non-citizens).

As implemented, the new procedures have resulted, in the past year and a half, in thousands of Georgia registrants being forced to go back to their county registrar to re-affirm their citizenship and thus their right to register to vote. The procedures apparently have not, however, resulted in the State identifying even one registrant who is not a U.S. citizen. The State's only justification for burdening minority voters in this manner is that the procedures allegedly were mandated by the Help America Vote Act ("HAVA"). But, as the district court in *Morales v. Handel* found, the State's new procedures actually are the result of a series of discretionary choices made by the State, which were not in any way compelled by HAVA. The Justice Department previously interposed an objection, in similar circumstances, to registration/citizenship procedures enacted by the State of Texas (objection interposed on January 16, 1996), and the Department should follow the reasoning of that objection and object here as well (a copy of the objection letter is appended as Attachment 1).

If the Justice Department is not prepared to interpose an objection at this time, then it must request additional information before it makes a merits determination. 28 C.F.R. § 51.37. In particular, the State has not provided any description of the process that led to the Secretary of State's decision to select and implement the new procedures, and has not provided any documents that may have been produced during that decisionmaking process. These documents should include any and all internal assessments of the efficacy and reliability of the proposed matching procedures. Without this information, and in light of the new procedures' apparent retrogressive effect, it is impossible for the Department to fully evaluate whether the procedures satisfy the Section 5 nondiscrimination standards, particularly with regard to discriminatory purpose. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-68 (1977).

The State's failure to prepare a complete submission is deeply troubling given the circumstances in which this matter has arisen. The State has been implementing the new procedures without preclearance for over a year, and finally made a submission only after the Justice Department sent a "please submit" letter and the *Morales* lawsuit was filed. The State then submitted the new procedures with just three weeks remaining before the November 4 election and requested expedited review to enable the State to continue to implement the new procedures in that election.

In addition, although the State represents in its October 14, 2008 submission letter (at page 7) that it is submitting “[t]he entire process” relating to the new citizen checks, the submission leaves unaddressed and unanswered some significant questions with regard to the manner in which the new citizenship confirmation system is being implemented. One question has to do with the procedures that have been used in the past – and would be used in the future – by county registrars in reviewing the citizenship status of those registrants flagged by the State as possible non-citizens. As the court in *Morales* found, the State has not established a uniform set of review procedures to be used statewide and, absent such state-mandated procedures, “the disparate methodologies employed by [county] registrars in attempting to evaluate, notify and qualify potential ineligible voters” is one of “at least two features of Georgia’s post-HAVA system that constitute changes that require preclearance.” Slip op. at 21. However, the State has not sought preclearance for or described any of these county-level procedures in its submission. Even if the individual county-level procedures are not required to be submitted in order to reach the merits of the instant submission, the State must explain why it has chosen to permit the use of varied and possibly inconsistent procedures among the several counties in reviewing the citizenship status of individuals flagged by the State as possible non-citizens.¹

Secondly, there are questions with regard to who is being flagged and why. In particular, as noted above, there appear to be numerous instances in which native-born citizens have been flagged as potential non-citizens by the new procedures.

Finally, our discussions with Georgia Deputy Attorney General Dennis Dunn have raised a question as to whether the State may be seeking to administer some form of a “no (database) match, no vote” rule in future elections. The State has not previously submitted this for preclearance, and while the current submission perhaps alludes to the State implementing such a rule, this change is not identified in an “unambiguous and recordable manner” in the current submission and therefore is not submitted for Section 5 review. *Allen v. State Board of Elections*, 393 U.S. 544, 571 (1969). See also 28 C.F.R. § 51.26(d). We recommend that the Justice Department write to the State to inquire as to whether such a change has been adopted, and to request that a submission be made if the change has been adopted.

DISCUSSION

Nature and Scope of the Submitted Changes

1. Section 5 Benchmark

For purposes of this Section 5 review, Georgia’s benchmark registration system includes the State’s voter qualification standards, the range of opportunities the State makes available to its residents to register to vote, and the State’s existing procedures for enforcing the citizenship qualification for voting.

¹ Of course, since these county-level procedures are subject to preclearance, they may not be implemented until preclearance is received.

Both the Georgia Constitution and state law specify that, in order to be qualified to vote in elections conducted by the State, an individual must be a citizen of the United States. Ga. Const., Art. II, Sec. I, Par. II; O.C.G.A. § 21-2-216(a)(2). In addition, all eligible citizens must register to vote in order to cast a ballot in an election. *Id.*

State law provides Georgia residents with a wide range of methods and locations by and at which a voter registration application may be submitted. Individuals may appear in person at the county registrar's office, at any satellite registration locations established by the county, and at driver's license offices and other state agency offices. Individuals also may register by mail using the state mail-in form or the federal form, and can use those forms when they are provided by groups conducting registration drives. O.C.G.A. §§ 21-2-215(d), 21-2-220.

Georgia's benchmark election system includes several specific measures aimed at ensuring that each person who applies for voter registration is aware of the citizenship requirement and acts in compliance with that requirement. State law provides that "whenever a person makes application to register ..., the person authorized to offer registration shall inquire as to whether the individual seeking registration is a citizen of the United States, and the person offering registration shall not be required to offer registration to an individual who answers such inquiry with a negative response." O.C.G.A. § 21-2-220(b). To that end, the State's voter registration application requires that applicants answer "yes" or "no" to the question "Are you a citizen of the United States of America?", and requires that the applicant swear or affirm that the answer given is accurate. In addition, the registration application includes the following warning, located immediately to the right of the citizenship query and enclosed in a text box whose boundary lines are in bold: "Any person who registers to vote knowing that such person does not possess the qualifications required by law, who registers under any name other than such person's own name, or who knowingly gives false information in registering shall be guilty of a felony. O.C.G.A. § 21-2-561." Georgia Voter Registration Application, *available at* [http://sos.georgia.gov/elections/voter_registration/GA%20VOTER%20REGISTRATION%20%20APP\(Fill_2007\).pdf](http://sos.georgia.gov/elections/voter_registration/GA%20VOTER%20REGISTRATION%20%20APP(Fill_2007).pdf).

Georgia law does not require, however, that an applicant for voter registration provide any document supporting his or her affirmative statement in the registration application that he or she is a United States citizen.²

The responsibility for determining the eligibility to vote of registration applicants lies with the county boards of registrars. County boards must notify each applicant by mail of the disposition of his or her registration application and, if the applicant is found to be ineligible, the applicant must be provided the reasons for that determination. O.C.G.A. §21-2-226. In addition, O.C.G.A. § 21-2-228 allows boards of registrars to

² The federal mail-in application prescribed by the Federal Election Commission. 42 U.S.C. § 1973gg-4(a)(1), similarly requires that the applicant swear or affirm that "I am a United States citizen," and does not require that applicants submit any documents in support of that statement. National Mail Registration Form, *available at* http://www.eac.gov/files/voter/nvra_update.pdf.

conduct individual hearings with regard to the eligibility of registration applicants or existing registrants at which testimony may be taken and documents admitted into evidence.

The State does not have any existing systematic procedure for re-evaluating the citizenship status of a registration applicant who swears or affirms on the registration application that he or she is a United States citizen, or for re-evaluating the citizenship status of existing registrants. Instead, it appears that to the extent any such re-evaluations were occurring prior to the institution of the new procedures, county boards conducted such reviews only very infrequently and on a case-by-case basis.

2. Citizenship Confirmation Procedures Submitted for Preclearance

The nature and scope of the submitted changes are primarily discussed by the State in its October 14, 2008 submission letter. The submission also includes a September 24, 2008 guidance memorandum, sent by the State Secretary of State's Office to all county registrars, which, according to the State, is the only documentation available that describes the changes. As discussed below, however, the State began implementation of the submitted changes sometime in 2007, but the submission does not include any documents that reflect the process leading to the adoption of the new procedures, the decision to implement the new procedures, or the Secretary of State's initial communications with county registrars explaining the new procedures.

The State's new citizenship confirmation system is based entirely on citizenship information obtained by the State Department of Driver Services ("DDS") when a state resident applies for a driver's license, permit, or a non-operator's identification card. Both United States citizens and non-citizens who are present in the country legally may obtain a Georgia driver's license, permit, or identification card. Non-citizens are required to present documentary evidence of their legal status, and are issued a "temporary license, permit, or special identification card [which is] valid only during the period of time of the applicant's authorized stay in the United States or three years, whichever occurs first." O.C.G.A. § 40-5-21.1.

Information on the citizenship status of all individuals who obtain a driver's license, permit, or identification card is entered into the computerized DDS database based on the information supplied by the individuals at the time the license, permit, or identification card was obtained. The information that is entered is a simple "Y" or "N," with no further explanation. Thus, for example, the DDS database does not indicate whether or not the individual has a naturalization application pending, or even whether such an application has been approved and the individual is awaiting the citizenship swearing-in ceremony.

There also is no procedure for updating the citizenship information in the DDS database if, during the time that the license, permit, or identification card is in effect, the individual becomes a naturalized citizen. Since licenses, permits, and identification cards

issued to non-citizen residents may be valid for up to three years, the citizenship information contained in the DDS database may be at least up to three years out of date.³

Whenever a Georgia resident registers to vote, the State attempts to match, by computer, the new registration record with a record for the same individual contained in the DDS database and/or in the Social Security Administration database. In those instances where the State concludes that it has matched an individual's voter registration record with the DDS record for the same individual, the Secretary of State's Office checks the DDS information as to the citizenship status of that individual, and sends lists of the new registrants who have been thus identified as possible non-citizens to the county registrars. It is then up to the county registrars to verify the citizenship of the flagged registrants before allowing them to cast a ballot that will be counted.

The State also reports in its submission letter that a DDS citizenship check is run for existing registrants in certain limited circumstances, i.e., when "an existing registrant changes what is deemed a 'critical' identifying field in his or her voter registration record. These critical fields include the voter's first name, last name, date of birth, driver's license number or last four digits of his or her social security number." Oct. 14, 2008, submission letter, at 8.

The origin of the submitted changes is only partially explained in the submission. The State indicates that the new citizenship confirmation procedures were put into operation some time in the Spring of 2007. This was when the State began matching registration records for new registrants with DDS and Social Administration records as required by HAVA, after the State lost its legal claim that it was exempt from this HAVA requirement.⁴ However, according to a January 14, 2008 memorandum from the Secretary of State's Office, which is not included in the submission, the new system submitted for preclearance was preceded by another citizenship confirmation process that began in January 2007. "Voter Registration System Updates," Jan. 14, 2008, at 4 (appended as Attachment 2 to this letter). Under that system, which was never submitted for preclearance, the State apparently used the DDS citizenship information to check the citizenship of those persons who registered to vote or updated their previous registration

³ It is unclear from our reading of State law and the DDS implementing regulations whether the DDS re-checks its citizenship information when an individual re-applies for a driver's license, permit, or identification card (the implementing regulations may be found at <http://www.dds.ga.gov/rules/index.aspx>). If not, the information in the DDS database may be more than three years out of date for some individuals. Similarly, if individuals allow their license, permit, or identification card to lapse by not re-applying, the DDS information for those individuals may be more than three years out of date.

⁴ HAVA generally requires that states attempt to match new registration records with pre-existing driver's license and Social Security records. 42 U.S.C. § 15483(a)(5)(B). An exception exists for any state "which is permitted to use [full nine-digit] social security numbers, and provides for the use of social security numbers, on applications for voter registration." 42 U.S.C. § 15483(a)(5)(D). Georgia initially asserted that it fell within this exception, but the Eleventh Circuit ruled that the Privacy Act of 1974 prohibits the State from using full social security numbers in its registration applications. *Schwier v. Cox*, 439 F.2d 1285 (2006). Accordingly, the State began implementation of the HAVA matching requirement. That requirement, however, does not specify that database matching should be used by states to verify voter eligibility, e.g., by attempting to verify, as Georgia does, whether new registrants are United States citizens. See *infra* at p. 14.

at a DDS office; all others, i.e., those who registered or updated their registration at other locations or by other means, apparently were not checked against the DDS citizenship information, and their citizenship status was listed as “unknown” in the registration database.

The submission does not explain why the Secretary of State’s Office decided it was appropriate, in implementing the submitted confirmation system (as well as in implementing the predecessor system), to rely on the outdated DDS citizenship information as a method for identifying potential non-citizen registrants. Nor does the submission explain what consideration was given to the impact that this would have on newly naturalized citizens or minority voters, or whether the Secretary of State’s Office obtained any input from minority leaders before implementing these changes.

It is unclear from the State’s submission what specific procedures county registrars have used in the past, and would use in the future if preclearance is granted, to review the citizenship status of individuals flagged by the State as possible non-citizens. The submission indicates that the State has not promulgated a uniform set of procedures to be used statewide and, as indicated by the *Morales* court, it thus appears that each county board of registrars is free to develop its own set of review procedures.⁵ The State’s submission does not, however, include any specification as to what these county-by-county procedures may be.

In considering what the review procedures may entail, one issue is whether counties will hold formal hearings, as provided by O.C.G.A. § 21-2-228, or instead will make their determinations in a more informal manner. The Secretary of State’s September 24, 2008 memorandum appears to indicate that counties have discretion in deciding which course to follow in this regard. Another question is whether flagged individuals will be required to demonstrate their citizenship by providing documentary proof and, if so, what types of documents will suffice. The September 24, 2008 memorandum indicates that county boards may require documentary proof, but does not explicitly say that documentary proof is required. The memorandum provides county boards with a list of documents that might be used, but does not promulgate a definitive list.

On October 29, 2008, the Secretary of State issued a new guidance memorandum to instruct county registrars as to the manner in which the unprecleared confirmation procedures were to be implemented in the November 4, 2008 election. The issuance of this document was required by the Order issued by the *Morales* court on October 27, 2008. Slip op. at 24. The October 29 memorandum specified that: 1) flagged individuals could confirm their U.S. citizenship prior to the November 4 election by

⁵ As was explained by the *Morales* court: “If a registrar receives . . . information [from the State that a particular registration applicant or registrant may not be a United States citizen], the Secretary [of State] has suggested, but cannot require, that the registrar treat the [registration] application in the manner prescribed under Sections 2-2-226 and 21-2-228 of the Georgia Election Code for challenging the vote. In the absence of clear guidance from the Secretary, registrars for the 159 counties in Georgia could conceivably adopt a range of disparate methodologies for resolving these [citizenship] discrepancies.” Slip op. at 20.

contacting their local county registrar; 2) flagged individuals who did not do this were required to cast a paper “challenged” ballot in the election; 3) in order for these challenged ballots to be counted, the individuals were required to confirm their U.S. citizenship by contacting their local registrar after the election; 4) registrars were to begin by conducting informal reviews for flagged individuals who contacted them, and then, on November 7, were to conduct formal hearings pursuant to O.C.G.A. § 21-2-228; and 5) flagged individuals could demonstrate their citizenship only by providing documentary proof, which had to be one of the documents listed in the memorandum.⁶

However, it is unclear whether, or to what extent, the October 29 memorandum clarifies how citizenship reviews would be carried out in the future by individual counties. By its terms, the document only applies to the November 4 election, and the State has not supplemented its submission to address this question.

Information Provided by the State in Support of Its Preclearance Request

With regard to the purposes underlying the new procedures, the State’s submission reports that the State decided to implement the new citizenship confirmation system because state officials believed that the new system was mandated by HAVA. Further, according to the submission letter, “[t]he understanding to include citizenship data [in the DDS matching process] was apparently made in November 2006 during the administration of the previous Secretary of State as a part of initial discussions on setting up the matching process.” Oct. 14, 2008 submission letter, at 5. The submission does not, however, provide any further explanation of what occurred or why the State decided to rely on citizenship information that may be up to three years out of date. The submission does not provide any description of the decisionmaking process, and does not provide any documents generated during the decisionmaking process or at the end of that process when county registrars were informed of the new system.

With regard to the anticipated effect of the submitted changes on minority voters, the submission merely says the following: “The proposed changes will not adversely affect members of racial or language minority groups in Georgia. The data matching requirement provided for under federal and state law is race neutral. The criteria used by the State, including citizenship, are race neutral as well.” Oct. 14, 2008 submission letter, at 13. The submission does not provide any analysis or data in support of this assertion. For example, the submission does not provide any information as to the racial and ethnic composition of the persons affected by the new procedures.

Supplemental Information

We have obtained the following information which we believe is relevant and probative with regard to the preclearance issue.

⁶ The same procedures will be implemented in the December 2, 2008 run-off election.

1. Racial and Ethnic Composition of the Affected Population

According to the most recent immigration statistics reported by the United States Department of Homeland Security, a total of 33,867 Georgia residents became naturalized citizens in fiscal years 2006 and 2007. Of these individuals, approximately 83 percent are black, Hispanic, or Asian American. DHS 2007 Yearbook of Immigration Statistics, Supp. Table 1, *available at* <http://www.dhs.gov/ximgtn/statistics/publications/YrBk07Na.shtm>; DHS 2006 Yearbook of Immigration Statistics, Supp. Table 1, *available at* <http://www.dhs.gov/ximgtn/statistics/publications/YrBk06Na.shtm>.⁷

The State of Georgia also has provided to us (and the Justice Department) a list of those registered voters who, on October 28, 2008, were sent a letter by the Secretary of State informing them that they had been flagged by the State as potential non-citizens, per the DDS database, and had not resolved their citizenship status with their local registrar. The list includes a total of 4,771 individuals, of whom 4,596 are identified by race or ethnicity (based on the registrants' self-identification provided when they registered). Of this latter number, 33 percent are black, 19 percent are Hispanic, 20 percent are Asian, and just 24 percent are white (a small number are identified as "Other" or as "Indian").

The minority percentages of recently naturalized citizens and the individuals flagged by the DDS database are substantially higher than the overall minority percentages in Georgia. According to estimates prepared by the Census Bureau of Georgia's citizen voting-age population at the time of the 2006 general election, 66 percent are non-Hispanic white alone, 29 percent are black, 3 percent are Hispanic, and 2 percent are Asian.⁸ U.S. Bureau of the Census, "Voting and Registration in the Election of 2006," Table 4b, *available at* www.census.gov/population/www/socdemo/voting/cps2006.html. According to voter registration data maintained by the State, as of November 1, 2008 63 percent of the registered voters are white, 30 percent are black, 1 percent are Hispanic, and 1 percent are Asian (about 5 percent are listed as "Other" and less than 1 percent are listed as Indian).

These data are summarized in the following table:

⁷ The DHS data report the country of birth of the Georgia residents who have become naturalized citizens but not their race or ethnicity. We calculated the approximate racial and ethnic percentages by counting as black, Hispanic, or Asian all naturalized citizens whose country of birth is located in sub-Saharan Africa, Asia, the Caribbean, Mexico and Central America, and South America. We assigned the countries to these regions using a geographical list prepared by the United Nations. <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

⁸ This set of Census data does not provide figures for the black and Asian populations that exclude those who also identified themselves as Hispanic. However, very few Hispanics in Georgia identify themselves as black or Asian, so the small double-count in the cited percentages is very small. U.S. Bureau of the Census, "American Community Survey Demographic and Housing Estimates: 2007 Data Set: 2007 American Community Survey 1-Year Estimates," *available at* http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US13&-qr_name=ACS_2007_1YR_G00_DP5&-context=adp&-ds_name=&-tree_id=307&-_lang=en&-redoLog=false&-format=.

	White	Total Minority (B, H, & A)	Black	Hispanic	Asian
Recent naturalized citizens, racial/ethnic estimates	--	83%	--	--	--
Flagged registrants	24%	72%	33%	19%	20%
Citizen VAP, 2006 estimates	66%	34%	29%	3%	2%
Registered voters, 2008	63%	32%	30%	1%	1%

2. Absence of Any Evidence of Non-Citizens Registering to Vote

It appears that very few, if any, of the registration applicants and existing registrants flagged as possible non-citizens by the State's new citizenship confirmation procedures are in fact non-citizens.

Although the State has been implementing its new procedures for well over a year, the State has not, either in its submission or in the pending Section 5 enforcement suit, come forward with any information indicating that any non-citizen registration applicants or non-citizen registrants have been affirmatively identified as a result of the new procedures. At most, it appears that the State could note that there are some flagged individuals who voted on November 4 but who did not then provide citizenship documentation to their local registrar, and there are some flagged registrants who neither voted nor contacted their local registrar in response to the Secretary of State's October 28 letter. However, it is unknown why these individuals did not contact the local registrar, i.e., it is unknown whether these individuals are citizens who decided not to respond for some reason, forgot to respond, or never received the letter, or perhaps are non-citizens.

According to an article in the Atlanta Journal-Constitution, large percentages of the flagged individuals who voted in the November 4 election subsequently confirmed their citizenship with their local registrar. In Cobb County, for example, 300 flagged registrants voted and 192 presented citizenship documentation, and in Gwinnett County 226 flagged registrants voted and 161 presented citizenship documentation. The newspaper's survey of Atlanta-area counties did not find any county in which election officials identified even one individual who is a non-citizen who registered to vote. "Nearly 5,000 challenge ballots cast; most accepted," The Atlanta Journal-Constitution, Nov. 8, 2008, *available at* http://www.ajc.com/search/content/metro/stories/2008/11/08/challenge_ballots_georgia.html. Similarly, an article in the Augusta Chronicle reported that Richmond County had confirmed the citizenship of numerous flagged individuals, and had not found any of these individuals to be non-citizens. "Voter checks reveal little, county elections chiefs say," The Augusta Chronicle, Oct. 11, 2008, *available at* http://augustachronicle.com/stories/101108/met_479085.shtml.⁹

⁹ According to this article, the Richmond County election official said that the misidentification of the flagged individuals as non-citizens resulted from the fact that individuals had become naturalized citizens after they obtained their driver's licenses. The official also said that individuals had been flagged because

The information we have obtained from election officials also indicates that their efforts to check the citizenship of registrants flagged by the State have not yielded any instances of non-citizens registering to vote. In the weeks immediately preceding the November 4 election, representatives of the nonpartisan Election Protection coalition (a group led by the Lawyers' Committee) were in contact with county election officials in Georgia to discuss their plans for conducting the election, and officials in several counties reported that their implementation of the State's citizenship confirmation system had not turned up any non-citizen registrants.

3. Confusion as to the Manner in Which the New Citizenship Confirmation Procedures Have Been Implemented

There appear to be significant questions as to whether the new citizenship confirmation procedures may, to some significant extent, be operating in a manner different from what the State has described.

In particular, it appears that numerous individuals who were born in the United States have been flagged by the State as possible non-citizens. According to the November 8, 2008 Atlanta Journal-Constitution article cited above, the DeKalb County Election Director discovered that several of the flagged registrants in her county were native-born citizens. We also have been contacted by several native-born citizens who were flagged by the State as possible non-citizens (see Attachment 3 to this letter).

In the November 8 newspaper article, the DeKalb County Election Director appears to attribute the flagging of native-born citizens to flaws in the State's computer matching system. That system apparently is producing numerous false positives when it attempts to match voter registration records with DDS records, mislabeling registrants who are native-born citizens as other individuals who were (and perhaps still are) non-citizens. The DeKalb County official specifically pointed to matching errors involving transposed driver's license numbers and common last names. In this regard, it is well known that programs that attempt to match the same individuals' records in two different databases are inherently error prone, and produce large numbers of false positives (matches that actually involve two different individuals) as well as false negatives (no-match results when matches should have been found). *See generally* Wendy Weiser, Justin Levitt, and Ana Munoz, *Making the List: Database Matching and Verification Processes for Voter Registration*, available at <http://tinyurl.com/66t6r8>.¹⁰

they "used an out-of-state driver's license on the voter registration application, which raised a red flag when the number was checked against Georgia driver's license records." Flagging individuals in the latter circumstances raises the question, noted earlier, as to whether the State is implementing, or intends to implement, a "no match, no vote" rule.

¹⁰ Georgia's difficulties in implementing its database matching system also led to the State submitting a grossly excessive number of database match requests to the Social Security Administration. This occurred both because of technical errors by the State and state election officials' mistaken belief that Social Security Administration records include citizenship information. Letter from Georgia Secretary of State Karen Handel to Christopher Coates, Oct. 17, 2008.

4. Notice Letters Sent to Flagged Individuals

The information we have obtained raises a concern about the notice letters that some counties have sent to flagged registrants pursuant to their responsibility under the State's new procedures to confirm the citizenship of these registered voters. The concern is that some county registrars may have sent letters that were uninformative, confusing, and/or intimidating. The sending of such letters is one indication of the problems that may result from the State's failure to promulgate uniform, statewide confirmation procedures.

A notice letter sent by the Whitfield County registrar is particularly troubling. The example we obtained, dated June 11, 2007, said the following (the body of the letter is quoted in its entirety):

TO WHOM IT MAY CONCERN:

According to the State DMV [sic] records your driver license number or social security number is showing that you are a non-citizen.

Anyone who knowingly gives false information in registering shall be guilty of a felony and could be fined or imprisonment [sic] or both. You must bring in your Citizenship [sic] to our office on or by June 16th to prove your citizenship.

Your timely assistance in this matter would be appreciated.

This letter was both uninformative and intimidating since it failed to explain that the DDS check was routine in nature and that the DDS citizenship information may be wrong, and placed heavy emphasis on the potential criminal penalty although there was no reasonable cause to believe that the registrant had engaged in any criminal conduct. The letter also gave the registrant almost no time in which to respond, since it was dated (and thus apparently mailed) five days before the alleged deadline, and two of the days between the mailing and the deadline were on a weekend when, presumably, the county registrar's office was closed.

5. Individual Experiences with the New Procedures

In preparing the *Morales* litigation and in conducting our Election Protection pre-election activities, we were contacted by several individuals who registered to vote in Georgia, are U.S. citizens (naturalized and native-born), but were flagged by the State as possible non-citizens and were required to demonstrate to their local county registrar that they are, indeed, U.S. citizens.

Our contacts with a couple of counties also raised a question as to whether some counties have triggered a DDS citizenship check as a result of individuals requesting an absentee ballot.

These individuals' personal experiences with the new registration procedures demonstrate the burdens the new procedures have imposed, the confusion they have created among both citizens and election officials, and the difficulties that flagged registrants have faced in seeking to preserve their right to register and vote. The experiences that some flagged registrants have endured may fairly be characterized as Kafkaesque. Attachment 3 to this letter contains detailed summaries of these individuals' experiences.

For example, Jose Morales, a Latino and the plaintiff in the pending Section 5 enforcement lawsuit, became a U.S. citizen in 2007 after residing in this country for over 25 years. He obtained his Georgia driver's license in 2006 and registered to vote in 2008. After registering, he was notified by the Cherokee County registrar that he had been identified as a possible non-citizen. He was forced to drive for half an hour to the registrar's office to provide his proof of citizenship. After doing so, the registrar assured him that he was now registered and about a week later he received his registration card in the mail. Nonetheless, he then received another letter from the registrar once again informing him that he had been identified as a possible non-citizen and that he was required to provide proof of his citizenship to the registrar. The list of flagged voters to whom the Secretary of State's October 28, 2008 letter was sent confirms that Mr. Morales was finally successful in having the non-citizen flag removed from his registration record.

Marvin Lim was born in the Philippines, and became a naturalized citizen in 2007. He was flagged by the State procedures, and was forced to spend over a week making repeated phone calls to Gwinnett County election officials, faxing them his naturalization papers on three different occasions, before he was able to get them to acknowledge his U.S. citizenship (after they did so, he still nonetheless received the Secretary of State's October 28 letter informing him he was flagged as a possible non-citizen). Mr. Lim originally applied for an absentee ballot on October 2, 2008, but as a result of the difficulties he encountered in demonstrating his U.S. citizenship, he did not receive his ballot until Saturday, November 1, three days before the election. He was forced to return it by express mail on the day before the election, November 3.

Mary Mullins Lee was born in Georgia in 1943 and has lived in Georgia all her life. She originally registered to vote in the 1960s, at the time that Dr. Martin Luther King was leading the Albany Movement. She then did not vote for many years but registered again in September 2008. After doing so, she learned from the county registrar's office that she was flagged as a possible non-citizen. She was able to obtain her voter registration card.

Discussion

1. Changes Subject to Preclearance

In *Morales v. Handel*, the district court defined the voting changes subject to preclearance as follows: "[T]here are at least two features of Georgia's post-HAVA

system that constitute changes that require preclearance. One is the comparison in the DDS and SSA databases that results in the identification of applicants whose eligibility could not be verified. The other is the disparate methodologies employed by registrars in attempting to evaluate, notify and qualify potential eligible voters.” Slip op. at 21.

2. The Need to Request Additional Information from the State

The State’s submission fails to provide necessary and indispensable information concerning the purposes underlying the submitted procedures. The State asserts that it is seeking to enforce its state constitutional and statutory requirement that voters must be United States citizens, and that HAVA, 42 U.S.C. § 15483, mandated the use of the new citizenship confirmation system. But, as the *Morales* court found, HAVA does not require that the DDS database matching process be used to verify voting eligibility. *Accord, Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1172 (11th Cir. 2008) (“There is nothing at all in [HAVA] that discusses the requirements and procedures for establishing eligibility and identity” of voter registrants, except as to first-time voters who registered by mail). There are a variety of ways in which the State may enforce its citizenship requirement, as indicated by the fact that prior to the institution of the submitted procedures, the State relied almost entirely on the oath or affirmation requirement contained in the State’s voter registration application. Accordingly, the State’s submission fails to adequately explain why it chose to implement the particular citizenship confirmation procedures it has submitted for preclearance.

The State’s submission also provides no information relevant to the effect of the submitted procedures. The submission only includes the bare, unsupported assertion that the procedures do not have a discriminatory effect.

In addition, as described above, the State’s submission does not include any specification of “the disparate methodologies employed by [county] registrars in attempting to evaluate, notify and qualify potential eligible voters.” *Morales*, slip op. at 20. Alternatively, if the State now has instituted a uniform (or more uniform) set of statewide citizenship review procedures, these procedures are not identified in the submission.

The specific additional information the Justice Department should request includes the following:

- The State should provide a detailed description of the process leading to the adoption of the submitted changes. This should include an explanation of the consideration given to the fact that the new procedures rely on outdated citizenship information, an explanation of why the State ultimately decided to proceed using outdated information, and an explanation of whether any consideration was given to alternative approaches.

- The State should provide all documents that were generated in connection with the process leading to the adoption of the submitted changes, and all documents that were transmitted by the Secretary of State's Office to county registrars, and by the registrars to the Secretary of State's Office, concerning the citizenship confirmation procedures.
- The State should explain what consideration was given to the impact of the confirmation procedures on newly naturalized citizens and/or minority voters, and should provide any documents that relate to any such evaluation.
- The State should indicate whether any registration applicants or registrants flagged by the new procedures have been affirmatively determined to be non-citizens, and should provide explanatory information about any such mistaken or fraudulent registration efforts that have been identified.
- The State should report the criteria it uses to decide whether or not a particular registration record has been successfully matched with a record for the same individual contained in the DDS database, and should provide all available information with regard to the extent to which its matching has produced "false positives" (registrants matched with DDS records which are records for other individuals).
- The State should explain why it is that some registered voters who are native-born citizens have been flagged by the new citizenship confirmation procedures as possible non-citizens. The State also should clarify whether some registered voters have had their citizenship status checked using the DDS database for reasons other than those given in the State's submission letter (e.g., as a result of voters applying for an absentee ballot).
- The State should provide data, by county and race/ethnicity (relying on the self-identifications included in the registration database), as to the number of flagged individuals sent the October 28, 2008 Secretary of State letter who: voted in the November 4, 2008 election and whose citizenship was confirmed by county election officials (either before the election, on election day, or after election day); voted in the November 4 election and did not provide the requisite citizenship documentation to county election officials; and did not vote in the November 4 election. The State also should provide the same data for the December 2, 2008 run-off election.
- The State should describe the specific procedures to be used by county registrars in conducting citizenship reviews of flagged registrants.
- The State should explain whether and to what extent it obtained minority input prior to adopting the submitted procedures, and, if minority input

was not obtained, the State should explain the reason why this was not done.

3. Discriminatory Purpose and Effect

a. Retrogressive effect.

The information submitted by the State, along with the supplemental information we have provided, establishes that the submitted procedures will “lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.” *Beer v. United States*, 425 U.S. 130, 141 (1976).

The Justice Department has interposed one prior Section 5 objection to the adoption of new citizenship verification procedures (see Attachment 1). That objection, interposed on January 16, 1996, concerned a law enacted by the State of Texas in 1995 to implement the National Voter Registration Act requirement that certain state agencies offer their clients the opportunity to register to vote. The Texas statute provided that before agency employees were allowed to do this, they were required to determine whether each individual was a United States citizen, based on citizenship information contained in the agency file which the individual had previously provided to the agency.

The Attorney General interposed the objection based on retrogressive effect. The objection letter began by noting that data compiled by the Immigration and Naturalization Service showed that “[t]wo thirds of those who became citizens [in Texas] in 1993 and 1994 were of Hispanic or Asian ancestry.” Jan. 16, 1996 letter, at 2. The letter then went on to explain:

We do not take the position that persons who are clearly not citizens should be registered to vote or even encouraged to register. However, with the rapid rate at which minority persons are becoming citizens, there is a strong likelihood that some of the citizenship information contained in agency files may be outdated or incorrect. We are concerned that persons who have become citizens since they last filled out forms at a particular agency will not be offered registration. There are no provisions or safeguards in the legislation to deal with situations in which the citizenship information in the file is outdated or wrong. Because the law makes no provisions for informing potential registrants that the reason they were not offered registration is that their file indicates non-citizen status, there is no opportunity for potential registrants to provide any relevant or updated information. Moreover, there are no mechanisms to explain to potential registrants who ask to register and are refused that the reason for the refusal is because of information in the file indicating non-citizen status.

Id.

In Georgia, as was the case in Texas, a substantial majority of newly naturalized citizens are individuals protected under the Voting Rights Act. Likewise, as was the case

in Texas, the citizenship data that Georgia election officials are relying upon “may be outdated or incorrect” since the data reflect citizenship information provided to the Department of Drivers Services at least up to three years prior to the date on which the affected applicants submitted their application to register to vote.

Georgia also has failed to institute adequate “safeguards . . . to deal with situations in which the citizenship information in the [DDS database] is outdated or wrong.” At the outset, the State has not identified the review procedures being implemented either statewide or on a county-by-county basis. Moreover, whatever the exact review procedures may be, the fact that the State’s flagging system is highly (if not completely) inaccurate, the fact that flagged voters essentially are required to register a second time to order to be considered registered to vote, and the apparent fact that flagged registrants will be provided only a very limited opportunity to correct the State’s citizenship identification errors, strongly argue in favor of an objection.

As noted, it appears that all, or nearly all, of the individuals flagged by the State’s citizenship confirmation procedures are, in fact, United States citizens. The grossly errant flagging results from the State’s use of outdated citizenship information and also, apparently to some extent, from computer matching errors that mistakenly identify native-born registrants as other individuals in the DDS database listed as non-citizens. Given the extent to which the DDS flagging is wrong, it is difficult if not impossible to justify the imposition of an additional registration requirement on flagged individuals which they must satisfy in order to gain (or maintain) their voter registration.

In this regard, it is important to differentiate the situation presented by the Georgia procedures from that presented by the Texas statute. In the Texas objection letter, the Attorney General indicated that the state’s faulty flagging system could be remedied by essentially integrating a series of safeguards into the flagging system itself, by having agency workers immediately query individuals listed as non-citizens in the agency records as to whether they had become naturalized citizens. In Georgia, on the other hand, correcting the errant flagging will necessarily require that the affected individuals undertake a second, and entirely new, registration transaction with local officials. Imposing this additional burden, in a racially disparate manner, is retrogressive.

It also appears that the opportunity to be provided to flagged individuals to re-establish their citizenship will be very limited, and will be much more limited than the registration opportunities otherwise provided by the State. Flagged individuals will likely need to transmit proof of citizenship to their local registrar, whereas state residents otherwise may register in Georgia at satellite locations, driver’s license offices, and state agency offices, and also may register by mail.

Finally, the affected individuals – apparently, mostly newly naturalized citizens – have limited knowledge and experience with the American political and legal system. Thus, it is likely that these individuals are more easily discouraged from asserting their

legal rights, and that creating an additional requirement for registering to vote will discourage them from completing the registration process.¹¹

For these reasons, the State of Georgia's new citizenship confirmation procedures will have a prohibited retrogressive effect on minority citizens.

b. Discriminatory purpose.

The failure of the State to explain the process that led to the adoption of the new procedures, combined with the procedures' discriminatory effect, preclude the Department from concluding that the State has met its burden of showing the absence of discriminatory purpose.

As set forth by the Supreme Court in *Arlington Heights*, the discriminatory effect of the new procedures is "an important starting point" in considering whether the procedures were motivated, at least in part, by a discriminatory purpose. 429 U.S. at 266. From there, the analysis must branch out to consider a number of factors, *id.* at 266-68, the most pertinent of which here is the "legislative history" of the changes. The failure of the State to provide any information about its decisionmaking process therefore prevents the Justice Department from properly analyzing the purposes underlying the State's new procedures, and thus precludes the Department from determining that the State has carried its burden of showing the absence of discriminatory purpose.

We recognize that the State's expressed purpose – compliance with HAVA – is a potential neutral justification, even though the State's legal analysis of HAVA was incorrect. But this bare assertion of a neutral purpose cannot carry the entire weight of demonstrating the absence of discriminatory purpose, just as a jurisdiction that has adopted a redistricting plan with a discriminatory effect cannot satisfy its purpose burden simply by averring that the plan was adopted to satisfy the one-person, one-vote constitutional requirement.

4. "No Match, No Vote"

Based on conversations we have had with Dennis Dunn of the State Attorney General's Office, it appears that the State may implement in future elections some version of a "no match, no vote" rule pursuant to which individuals whose registration record does not match up with a DDS record or a Social Security Administration record will be precluded from voting. The implementation of any such system is not mandated by HAVA, *Florida State Conference of the NAACP*, 522 F.3d at 1172, and as such,

¹¹ Past objections interposed by the Justice Department to re-registration procedures indicate a variety of factors that may be relevant in considering the new Georgia procedures. These include: the nature and extent of the opportunity to confirm one's registration; the notice provided to the affected citizens; and the ability of minority citizens to effectively participate in the political process and thus effectively respond to the re-registration requirement (in light of their socioeconomic background and past discrimination). See Perry County, Alabama objection, Sept. 21, 1981; Sumter County Alabama objection, Oct. 2, 1981; Wilcox County, Alabama objection, Oct. 26, 1981; Baldwin County, Alabama objection, Dec. 11, 1984; and Dallas County, Alabama objection, June 22, 1990.

would reflect a discretionary decision by the State that requires Section 5 preclearance. However, the State has not previously submitted this change, and this change is not included in the present submission. Accordingly, the Justice Department should write to the State to inquire as to whether it proposes to institute this change, and to inform the State that, if this change is proposed, it must be submitted for Section 5 review and may not be implemented unless and until preclearance is obtained.

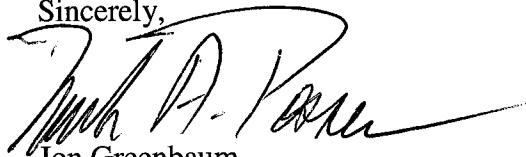
In particular, a “no match, no vote” rule is not included in the present submission, although the submission does, perhaps, allude to the possibility that such a rule will be implemented in future elections. The October 14, 2008 submission letter advises that the submission concerns “[t]he entire process of the comparison of voter registration with data contained on the DDS database,” and notes that “[i]t is the intention of the State to use this data verification system to both confirm identity and eligibility of persons to register and vote, including using the citizenship data contained within the system.” Oct. 14, 2008 letter at 5, 7. But the only specific voter eligibility concern that is discussed in detail is the citizenship issue, and nowhere in the submission letter does the State clearly and unambiguously aver that it will be implementing a “no match, no vote” rule. Furthermore, the submission does not provide any details as to how any such rule would be implemented.

The Supreme Court has repeatedly held that it is the obligation of the submitting authority to “identify with specificity each change that it wishes the Attorney General to consider.” *Clark v. Roemer*, 500 U.S. 646, 658 (1991). *Accord, McCain v. Lybrand*, 465 U.S. 236, 281-82 (1984); *Allen v. State Board of Elections*, *supra*. See also 28 C.F.R. § 51.26(d). That standard clearly is not met here with regard to any “no match, no vote” rule that the State may now be proposing to implement.

Conclusion

We urge the Department of Justice to promptly send the State of Georgia a written request for additional information or interpose a Section 5 objection. We appreciate the opportunity to provide comments to the Department of Justice and would be happy to discuss our views further with you or your staff should you so desire.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Greenbaum", with a stylized, flowing script.

Jon Greenbaum

Robert A. Kengle

Mark A. Posner

Lawyers' Committee for Civil Rights Under Law
(202) 662-8389

Elise Sandra Shore
Carla Casas
Mexican American Legal Defense and
Educational Fund
34 Peachtree St. NW
Suite #2500
Atlanta, GA 30303
(678) 559-1071

Laughlin McDonald
Neil Bradley
Meredith Bell-Platts
ACLU Voting Rights Project
230 Peachtree Street, NW
Suite 1440
Atlanta, GA 30303
(404) 523-2721

Brian Spears
1126 Ponce de Leon Ave., NE
Atlanta, Georgia 30306
(404) 872-7086

cc: Dennis R. Dunn
Deputy Attorney General
State of Georgia

List of Attachments

1. Department of Justice objection letter, January 16, 1996 (Texas Chapter 797 (1995), insofar as it authorized agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file) (submission number 95-2017).
2. Memorandum from the Office of the Georgia Secretary of State, January 14, 2008.
3. Summaries of Individual Experiences with the Submitted Citizenship Confirmation Procedures.

Submission No. 2008-5243

Comment under Section 5 of the Voting Rights Act

Submitted by the Lawyers' Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the ACLU, and attorney Brian Spears

Attachment 1

Section 5 Objection Letter, January 16, 1996



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 16, 1996

The Honorable Antonio Garza
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file; eliminates the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses; authorizes cancellation of registration immediately upon a voter's written indication of residence outside the county; authorizes cancellation of registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and relocates voter registration assistance requirements as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on November 14, 1995.

With regard to the authorization to cancel registration immediately upon a voter's written indication of residence outside the county; the authorization to cancel registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and the relocation of voter registration assistance requirements, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the these changes. See Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the provision which allows agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, we have reviewed the information provided by the State, as well as information from the 1990 Census and other sources, including the Immigration and Naturalization Service. According to the 1990 Census, minority persons represent 34 percent of the State's total population (14,229,191) and 30 percent of its voting-age population (9,923,085). Hispanic persons comprise the largest minority group (21 percent of the total population). Data from the INS indicate that nearly 70,000 applications for citizenship are currently pending in Texas and that between fiscal years 1993 and 1994, over 51,000 Texas residents became citizens. Two-thirds of those who became citizens in 1993 and 1994 were of Hispanic or Asian ancestry.

We do not take the position that persons who are clearly not citizens should be registered to vote or even encouraged to register. However, with the rapid rate at which minority persons are becoming citizens, there is a strong likelihood that some of the citizenship information contained in agency files may be outdated or incorrect. We are concerned that persons who have become citizens since they last filled out forms at a particular agency will not be offered registration. There are no provisions or safeguards in the legislation to deal with situations in which the citizenship information in the file is outdated or wrong. Because the law makes no provisions for informing potential registrants that the reason they were not offered registration is that their file indicates non-citizen status, there is no opportunity for potential registrants to provide any relevant or updated information. Moreover, there are no mechanisms to explain to potential registrants who ask to register and are refused that the reason for the refusal is because of information in the file indicating non-citizen status.

Because minority persons represent the majority of persons attaining citizenship in Texas and the information contained in agency files is unlikely to keep pace with their citizenship rate, allowing agency employees to make eligibility determinations based on citizenship information contained in those files is likely to have a retrogressive effect on minority persons. Beer v. United States, 425 U.S. 130, 141 (1976); 28 C.F.R. 51.54. As a result, I cannot conclude, as I must under the Voting Rights Act, that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 797 insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for

the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

With regard to the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses, we have been informed that the Secretary of State's Office will promulgate rules to implement the procedures that will be used to document offers of registration and record declinations and will provide a training program, including a detailed memorandum and a video tape, pertaining to these procedures. When these procedures and training program are finalized, they should be submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act. It is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Because the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses and the implementation procedures to be utilized by the Secretary of State are directly related, they must be reviewed simultaneously. Accordingly, it would be inappropriate for the Attorney General to make a preclearance determination on the instant change until the related changes have been submitted for Section 5 review. See 28 C.F.R. 51.22(b) and 51.35.

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, it should be made in accordance with Subparts B and C of the procedural guidelines. At that time we will review all changes simultaneously; however, any documentation previously provided need not be resubmitted.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen M. Kane (202-514-6336) of our staff. Refer to File Nos. 95-2017 and 96-0054 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", is written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Submission No. 2008-5243

Comment under Section 5 of the Voting Rights Act

Submitted by the Lawyers' Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the ACLU, and attorney Brian Spears

Attachment 2

Memorandum from the Office of the
Georgia Secretary of State, January 14, 2008

Ledford, Lynn

From: Brown, Rhonda [rbrown@sos.ga.gov]
Sent: Monday, January 14, 2008 9:28 AM
To: Brown, Rhonda
Subject: Voter Registration System Updates
Attachments: VR DDS System Changes 1-14-08.doc



OFFICIAL ELECTION INFORMATION

January 14, 2008

TO: County Registrars
FROM: Michael E. McCarthy, Elections Division Director
RE: Voter Registration System Updates

As provided in the Help America Vote Act (HAVA), the Georgia Secretary of State's Office entered into an agreement with the Department of Driver Services (DDS) to help verify the accuracy of certain information in voter registration applications. This verification includes whether the name, date of birth, and social security number of an individual match the information in the Social Security Administration's (SSA) database.

To facilitate this process, and to provide feedback from the match, Georgia's voter registration system has been updated. Details are provided in the attached "Voter Registration System Updates".

If you have any questions, please contact the Elections Helpdesk at 404-657-5359/5368, by email at electionshelpdesk@sos.state.ga.us, or by the mainframe GO mail at Helpdesk.sos.

Attachment

Rhonda M. Brown
Admin. Asst. to the Director
SOS Elections Division
2 MLK Jr. Drive
Suite 1104 West Tower
Atlanta, GA 30334
404-657-5372

10/3/2008



The Office of Secretary of State

Karen C. Handel
SECRETARY OF STATE

Michael E. McCarthy
DIRECTOR OF ELECTIONS

Voter Registration System Updates

January 14, 2008

Part I: SSA/DDS Verification Process

Adding a New Voter

- 1) When adding a new record to the Voter Registration system, *the driver's license number (DL#) is the required identification number if the voter has DL#*. The following conditions should be considered when processing voter registration applications.
 - If the voter does not have a DL#, the last four digits of the social security number (SSN) must be entered in the voter registration system.
 - If the voter is providing the DL# only, you must enter zeros in the SSN field.
 - If the voter is providing the SSN only, you must enter a zero in the DL# field.
 - If the voter has checked the box on the voter registration application to indicate that he has neither, you must note that in the appropriate field on the system.
- 2) The system allows you to enter both the DL# and the SSN (the last four digits or the full 9 digits of the SSN).
- 3) If the voter does not provide a DL#, a SSN, and the verification box has not been checked, the application should be treated as a pending application. A letter should be sent to the voter to obtain the missing information. If the voter does not respond within 30 days, the application should be rejected.
- 4) If a voter does not provide a DL# or a SSN, and the verification box is checked, the voter should be added to the system in an active status.
- 5) If a voter does not provide a DL#, but a SSN (full or last four digits) is provided, the voter should be added to the system in an active status.

Note: The DPS application numbers are the same as a DL#. The overall goal is always to determine whether the voter has a DL#. If it is unclear, write to the voter for confirmation.

Changing an Existing Voter's Record Within County

- 1) The system requires you to enter the DL#. If the DL# is not given, enter a zero in the DL# field.
- 2) The system allows you to enter both the DL# and the SSN (the last four digits or the full 9 digits).
- 3) If the voter's record does not have a SSN already entered, and a voter registration application is received without a DL#, a SSN, or a check in the verification box, a letter should be sent to obtain the DL#.
- 4) If the voter's record has a SSN already entered, and a voter registration application is received without a DL#, send a letter to obtain the DL#.
- 5) If a voter does not have a DL# or a SSN, and the verification box is not checked, write a letter to the voter to determine the correct information. The application should be added to the system in an active status until verification of the correct information is received.
- 6) If the voter has a 9-digit SSN on the voter registration system, but later provides the last four digits, retain the 9-digit SSN.

Note that the voter may make a separate written request to have the SSN removed or changed to the last four digits.

Transferring an Existing Voter's Record

- 1) The system requires you to enter the DL#. If the DL# is not provided, enter a zero in the DL# field.
- 2) The system allows you to enter both the DL# and the SSN (the last four digits or the full 9 digits).
- 3) If the voter's record does not have a SSN already entered, and a voter registration application is received without a DL# or an SSN, and no check in the verification box, the application should be treated as a pending application. A letter should be sent to the voter to obtain this information. If the voter does not respond within 30 days, notify the voter in writing that the application has been rejected. Enter your county code into the 'Att Reg' field. The other county will receive a report showing that the voter attempted to register in another county.
- 4) If the voter's record has a SSN already entered, and a voter registration application is received without a DL# or an SSN, and does not have a check in the verification box, the application should be treated as a pending application. The missing information letter should be sent to the voter to obtain this information. If the voter does not respond within 30 days, notify the voter in writing that the application has been rejected. Enter your county code into the 'Att Reg' field. The other county will receive a report showing that the voter attempted to register in another county.

- 5) If a voter does not have a DL# or a SSN, and the verification box is checked, the application should be added to the system in an active status. Because this is uncommon, it is strongly recommended that you write the voter to verify the information.
- 6) If the voter has a 9-digit SSN on the voter registration system, but later provides the last four digits, retain the 9-digit SSN.

Please note that the voter may make a separate written request to have the SSN removed or changed to the last four digits.

Part II: Other System Features

Auto DL - Adding a new voter with a driver's license number

When a DL# is entered and the electronic record is available, the voter registration system will automatically update Screen 2 with the information from the electronic records, and then prompt you with the AUTO DL Y or N feature.

To retain the information on the screen, type a Y for the AUTO DL field and the information will stay on the screen. If you select Y, you will not be able to alter the name, date of birth, DL#, or SSN. However, the system will allow you to change the race or gender if necessary.

If you type an N in the AUTO DL field, the system will retain the DL#, but the voter information will be cleared and you will be able to manually enter the voter registration information.

Auto DL - Changing/Transferring an existing voter with the driver's license number

When a DL# is entered and the electronic record is available, the voter registration system will automatically update Screen 2 with the information from the electronic records and then prompt you with the AUTO DL Y or N option.

To retain the information on the screen, type a Y for the AUTO DL field and the information will stay on the screen. If you select Y, you will not be able to update the name, date of birth, DL#, and SSN. The system will allow you to change the race or gender if necessary.

If you type an N for the AUTO DL field, the voter information will revert to the original record. You will be able to enter the voter information manually.

SSA Verification Field

The SSA field indicates that the voter information on the screen has been verified with the information on the Department of Driver Services' (DDS) database. The verification process includes a match on the critical fields (the last name, first name, date of birth, DL#, SSN and U. S. citizenship). If all of the critical fields have been verified through DDS via the Social Security Administration (SSA), a Y will appear in the SSA field. If there is a difference in one of the critical fields, the SSA field is left blank. A Document Direct report (SSVRZ791) will be generated for the counties to show which of the critical fields were not verified.

Verifying Records with and without the driver's license number

A verification process will be performed using two different procedures:

- **The first procedure is used to verify all records that were submitted with a DL#, but were not added using the DDS electronic record.** These records will be checked at night against the DDS database. If a match is found, the SSA will be updated to a Y. If the information from the DDS database shows a difference in the name, date of birth, DL#, SSN, or if not a U. S. citizen, the SSA field is left blank. A Document Direct (SSVRZ791) report and form letter will be generated to show which critical fields did not match.
- **The second procedure is used to verify all the records that have not been submitted with a DL#.** If there was a change in the name, date of birth, or SSN, the record will be checked at night against the SSA database. All matches will be updated to a Y in the SSA field. A Document Direct (SSVRZ791) report will be provided if the record did not match and form letters will be generated for the registrar to send to the voter.

Non-Citizen Feature

Until a voters' record is updated, the citizenship field will remain blank.

When a voter applies for voter registration (or updates their voter record) at DDS after January 15, 2007, DDS will report one of two codes from the SSA reflecting citizenship status (Y – U.S. citizen, N – non-citizen) during the verification process.

If an attempt is made to add or update a record that has been returned from DDS with a non-citizen code, the error message "NON-CITIZEN" will flash on the screen.

When a voter applies for voter registration (or updates their voter record) at any location except DDS, their citizenship status will be U for "unknown". An attempt to add or update a record with a citizenship flag of U will cause the error message "UNKNOWN CZ" to appear. At this time, this will include voters who registered at DDS before January 15, 2007, and all voters who registered anywhere other than DDS.

Document Direct report SSVRZ791 (Voter Results from DDS Matching) now includes citizenship status. All voters with an N or U status will be included in the report. Supporting form letters that can be generated from the report will be developed in 2008.

Submission No. 2008-5243

Comment under Section 5 of the Voting Rights Act

Submitted by the Lawyers' Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the ACLU, and attorney Brian Spears

Attachment 3

Experiences of Individual Voters with Georgia's
Citizenship Confirmation Procedures: Declarations of
Jose Julian Morales, Mary Mullins Lee, and Gerri
Valentin-Cruz; Summaries of Other Voters' Experiences

DECLARATION OF JOSE JULIAN MORALES

I, José Julian Morales, hereby declare the following:

1. I am competent to testify to the matters herein. Unless otherwise indicated, I make this declaration based upon personal knowledge.
2. I was born on May 26, 1979. I became a United States Citizen in November 2007. I am currently 29 years old.
3. I consider myself Latino and identify myself as Latino.
4. I have been a resident of Georgia since 2000.
5. I currently reside in Cherokee County.
6. My current Georgia driver's license was issued in April 2006.
7. I have been a legal permanent resident of the United States since I was about 2 or 3 years old.
8. I am currently studying International Affairs at Kennesaw State University in Kennesaw, Georgia. I will be graduating in December 2008 with a B.A. in International Affairs.
9. On or around the beginning of September 2008, I filled out a voter registration form on campus through a student organization.
10. Approximately two weeks after filling out my voter registration form, I received a letter from Cherokee County. The letter indicated that I would not be able to vote unless I provided evidence of my citizenship in court. I understood from the letter that I would have to go to court and prove my citizenship. The letter also indicated that I would be eliminated from the voter list if I did not prove my citizenship.
11. Upon receiving this letter, I was initially very concerned. After more time passed, I began to feel upset about the letter and the fact that I was being asked to prove my citizenship even though I am already a citizen.
12. The next week, I received another letter. The letter indicated I had to provide additional information such as a copy of my driver's license, passport or other document, that verifies I am a U.S. citizen.
13. Approximately two weeks after I received the second letter, I drove to the Cherokee County Elections and Registration office located at 400 E. Main Street, in Canton, Georgia, in order to prove my citizenship. This office is located about

30 minutes from my home. I indicated to the Clerk that I had been asked to prove my citizenship in order to vote. I proceeded to show her my passport.

14. I then asked the Clerk in the Cherokee County Elections and Registration office if my passport was sufficient evidence to enable me to vote. She indicated that my passport was sufficient to prove my citizenship, and that I would be receiving a voter registration card in the mail.

15. A week later I received my voting card in the mail. A true and correct copy of that card is attached to this Declaration as Exhibit 1.

16. On October 3, 2008 I received a notification in the mail to pick up certified mail addressed to me at my local post office.

17. On October 7, 2008, I retrieved the certified mail from the post office. The certified mail was a letter from the Cherokee County Elections and Registration office. The letter states that I may not be qualified to vote in Cherokee County because I may not be a U.S. citizen. The letter also states that if I did not contact the Cherokee County Elections and Registration office before October 15, 2008, or appear at a hearing on the same date, my name will be removed from the list of registered voters. A true and correct copy of this letter and the envelope it was sent in is attached to this Declaration as Exhibit 2.

18. I am upset that after going through all the steps I had to go through my right to vote is still being threatened.

19. I am very excited about the possibility of voting, particularly in the upcoming election. I think this will be a close election and I am concerned about this country.

20. I want to make sure my vote is counted.

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing statements are true and correct.

This the 08 day of October, 2008.



JOSE JULIAN MORALES

VOTER REGISTRATION OFFICE
400 EAST MAIN STREET, SUITE A
CANTON GA 30114-2802
770-479-0407

FIRST-CLASS MAIL
U.S. POSTAGE PAID
Atlanta, GA
PERMIT No. 5462

RETURN SERVICE REQUESTED

REG. DATE 09/09/2008
ISSUE DATE 09/18/2008
REG.NO. 07714698

CHEROKEE COUNTY PRECINCT CARD
SIGN CARD AND KEEP FOR YOUR RECORDS

PRECINCT NAME: DUPREE
POLLING PLACE: First Baptist Ch Of Woodstock1
11905 Highway 92 , Woodstock Ga 30188
CITY PRECINCT NAME: WOODSTOCK
POLLING PLACE: Woodstock City Hall
103 Arnold Mill Road , Woodstock Ga 30188

VOTING DISTRICTS:

006 021 022 W LRG LRG
CONG SENATE HOUSE COMM SCHOOL WARD

JOSE J. MORALES

WOODSTOCK GA 30188-3654



Elections & Registration
CHEROKEE COUNTY
400 East Main Street
Canton, Georgia 30114

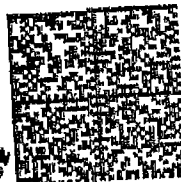
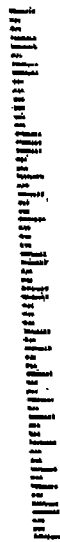


7004 0750 0002 7161 2271

Handwritten signature

Jose Morales
[Redacted]
Woodstock, GA 30188

3014433664 R032



US POSTAGE
\$ 05.32

Mailed From 30114
09/26/2008
031A 0002308996

1ST NOTICE
SEP 27 08
2ND NOTICE
OCT 12 08
10-2-08
RETURN



**Cherokee County
Elections & Registration**

Janet R. Munda
Supervisor
Elections & Registration

400 E. Main Street, Suite A
Canton, Georgia 30114
Phone: 770-479-0407
Fax: 770-479-9791

September 26, 2008

Jose Morales
[REDACTED]

Woodstock, GA 30188
[REDACTED]

Dear Jose:

We received notification that you may **NOT BE QUALIFIED TO VOTE** in Cherokee County, Georgia because you may not be a U.S. citizen.

Before your name can be removed from the Electors List, a hearing must be held to determine that you are no longer qualified. Therefore, pursuant to O. C. G. A. 21-2-228, a hearing has been set for Wednesday, October 15, 2008, at 9:00 a.m. This hearing is set before the Cherokee County Board of Elections and Registration who will meet on this date in the Conference Room at Albert L. Stone Elections Building, 400 East Main St, Canton, Georgia.

If our information is incorrect please contact us at 770-479-0407. Our office hours are Monday through Friday, 8:30 AM to 5 PM. If we do not hear from you prior to the hearing, and you do not attend the hearing, **YOUR NAME WILL BE REMOVED** from the list of registered voters.

Sincerely,

Janet R. Munda
Director of Elections and Registration

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

JOSE MORALES, on behalf of him self
and those similarly situated,

Plaintiff,

CIVIL CASE NO.

1:08-CV-3172

v.

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

Defendant

DECLARATION OF MARY MULLINS LEE

Pursuant to 28 U.S.C. 1746, I, MARY MULLINS LEE, hereby declare as
follows:

1. My name is MARY MULLINS LEE. I am over 18 years of age and have personal knowledge of the facts stated in this Declaration.
2. I am a citizen of the United States and a citizen and resident of the State of Georgia. I currently reside in Albany, Georgia. I was born Sasser, Georgia, and have lived in Georgia all of my life. I was born in 1943. I originally registered to vote in the 1960's in the time of the Albany Movement which involved the Rev. Dr. Martin Luther King, Jr.. In recent years I have not voted.
3. On September 26, 2008, I registered to vote.

4. On October 17, 2008, I called by telephone to the county voter registration office to find out why I had not received my voter registration card. I was told by a county elections staff member that I was not in the system and was not registered. I was told that in order to get an explanation I needed to contact the people who had registered me. I had not received any notice from the county registration office prior to this time of any question as to my qualifications to register.

6. After contacting the people who had taken my registration I spoke again with the voter registration office by telephone. I spoke to the same staff member; their first name was Billy. At first she told me that I still was not registered. She told me that I had been flagged as a non-citizen. Then she "checked again" and told me that I actually was registered to vote but that I was required to have proof of citizenship and that I must get my birth certificate and bring it to the voter registration office. She said that I could also bring a passport or bring another identification item, the name of which I cannot recall at this time.

7. I have a Georgia Drivers License. I used the information from my drivers license on my registration form. My Georgia Drivers License reflects my name as Mary Mullins Lee. I have never been outside of the United States.

8. As of the signing of this declaration I have not voted. As of the signing of this declaration I have not received any written notice from the county voter registration office that I am not eligible to register. As of Saturday, October 18, 2008, I finally received my registration card. However, I still have not received any written notice that the county registration office has any reason to question my citizenship status and my right to cast a ballot. I intend to cast a ballot for the November 4, 2008, federal and state elections.

I declare that the statements I make in this declaration are made under penalty of perjury. So stated:

Mary Mullins Lee
Mary Mullins Lee

DECLARATION OF GERRI VALENTIN-CRUZ

I, Gerri Valentin-Cruz, hereby declare the following:

1. I am competent to testify to the matters herein. Unless otherwise indicated, I make this declaration based upon personal knowledge.
2. I was born on February 25, 1954 in Pine Bluff, Arkansas. I am a natural-born United States citizen.
3. I consider myself Afro-Latino and identify myself as Afro-Puerto Rican.
4. I have been a resident of Georgia since approximately 1993 or 1994.
5. I currently reside in Fulton County.
6. I registered to vote in Fulton County in March 2008.
7. I received my voting card on or about March 18, 2008. A true and correct copy of that card is attached to this Declaration as Exhibit 1.
8. My husband and I were planning to cast our ballot during Fulton County's early voting period, because we will be in the process of moving on Election Day, November 4, 2008.
9. On Saturday, October 11, 2008, I received a letter dated October 2, 2008, via regular U.S. mail, from the Fulton County Department of Registration and Elections indicating that that office had received notification from the State of Georgia, that I am not a U.S. citizen and I am ineligible to vote.
10. The letter stated that if I did not provide proof of my U.S. citizenship within one week from the date of the letter, I would be removed from the list of registered voters.

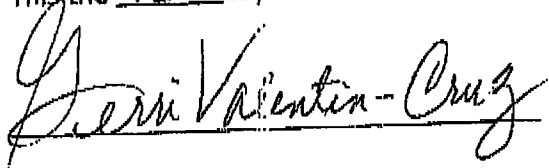
11. I was very concerned when I received this letter, because I am a U.S. citizen, and I have always been a U.S. citizen.
12. I was also concerned because I did not receive this letter until October 11, 2008, which is more than one week from the date of the letter, and according to the letter, I would have already been removed from the list of registered voters.
13. On October 13, 2008, I called Fulton County Department of Registration and Elections, and left a voicemail from Ms. Brenda Williams regarding this matter.
14. Ms. Williams returned my call the same day, and explained that the Secretary of State's office had provided Fulton County with information indicating that I was as a non-citizen.
15. Ms. Williams asked me for the proper spelling of my name, and was able to locate me on a certain database, although she did not indicate which database.
16. Ms. Williams proceeded to tell me that I had been deleted from the list, although she did not provide any further details regarding which list. She also indicated that I should not have a problem voting early, but explained that I would need to show my Georgia driver's license in order to do so.
17. I asked Ms. Williams to provide me with something in writing indicating that I would be allowed to cast my ballot during the early voting period.
18. Ms. Williams sent me an email indicating that I would have to follow up with the Secretary of State for this type of confirmation.
19. I am upset that although I am a U.S. citizen, and I have always been a U.S. citizen, my right to vote is being threatened.

20. I am also confused as to whether I will be able to vote early as I would like to do, or at all.

21. I want to make sure I can exercise my right to vote and that my vote is counted.

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing statements are true and correct.

This the 13 day of October, 2008.

A handwritten signature in cursive script that reads "Gerri Valentin-Cruz". The signature is written in dark ink and is positioned above a horizontal line.

Gerri Valentin-Cruz

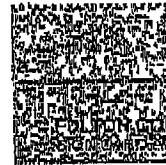
10/14/2008 08:17 4048921128
10/13/2008 22:21 770-992-2531

PAGE 02/12
PAGE 10

FEDEX KINKO'S 1550
VOTER REGISTRATION OFFICE
141 PHYOR STREET, SUITE 4085
ATLANTA GA 30303
404-730-7072

RETURN SERVICE REQUESTED

REG. DATE 02/29/2008
ISSUE DATE 04/14/2008
REG. NO. 07485765



Postage

01012070000
\$00.26
04/12/2008
FULTON COUNTY PRECINCT CARD 0302
DO NOT DESTROY AND KEEP FOR YOUR RECORDS
OR POSTAGE

PRECINCT NAME: AP01A
POLLING PLACE: New Prospect Elementary School
3055 Kimball Bridge Rd, Alpharetta Ga 30022
CITY PRECINCT NAME: AP01A
POLLING PLACE: New Prospect Elementary School
3055 Kimball Bridge Rd, Alpharetta Ga 30022

VOTING DISTRICTS:
006 048 047 3 2 LRG
CONG SENATE HOUSE COMM SCHOOL OCCUR

GERRI VALENTIN-CRUZ

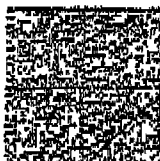
ALPHARETTA GA 30022-3061



22008 10000000

01012070000
\$00.26
04/12/2008
FULTON COUNTY PRECINCT CARD 0302
DO NOT DESTROY AND KEEP FOR YOUR RECORDS
OR POSTAGE

Postage



REGISTERED
FIRST CLASS

FULTON COUNTY DEPARTMENT OF REGISTRATION AND ELECTIONS
VOTER REGISTRATION DIVISION
141 PHYOR STREET, S.W., SUITE 4085
ATLANTA, GEORGIA 30303-3450

Submission No. 2008-5243

Comment under Section 5 of the Voting Rights Act

Submitted by the Lawyers' Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the ACLU, and attorney Brian Spears

Summaries of Other Voters' Experiences with Georgia's New Citizenship Confirmation Procedures

1. Marvin Lim
6654 Wandering Way
Norcross, GA 30093
(770) 496-0016

Marvin Lim is 24 years old and is Asian American. He was born in the Philippines. He renewed his Georgia driver's license in April 2007, and then, two months later, became a United States citizen, in June 2007. He registered to vote in Georgia in August 2007 and received his precinct card in September 2007. He did not vote in Georgia in 2007 or in the State's 2008 primary election.

On October 2, 2008, Mr. Lim faxed his application for an absentee ballot to the Gwinnett County Elections Department. He then called the Department the next day to confirm receipt of the application. An Elections Department official informed him that she could not confirm receipt of the application due to the large number of absentee ballot applications that had been received. The official further informed Mr. Lim that he would be able to confirm receipt of the absentee ballot application on the Georgia Secretary of State's poll locator within two weeks and that he also would be able to use the poll locator to confirm that his absent ballot request had been processed.

Over two weeks later, when his absentee ballot had not arrived and the Secretary of State's website still did not show that he had submitted an absentee ballot application, Mr. Lim again called the Gwinnett County Elections Department, on October 20, 2008. Mr. Lim was transferred to an employee named "Lee" in the absentee ballot office. Lee informed Mr. Lim that he had been flagged as a non-citizen and asked him to send the Elections Department his certificate of naturalization or some other proof of citizenship. She added that if Mr. Lim was going to fax the document, it must be a color fax. That evening, Mr. Lim faxed his certificate of naturalization to the Elections Department and also faxed a second request for an absentee ballot.

Three days later, on October 23, 2008, Mr. Lim called the Gwinnett County Elections Department to confirm that his registration was in order and that his absentee ballot request was being processed. The employee (not Lee) told him that the Department could not confirm receipt of his proof of citizenship, that his absentee ballot request had not been processed, and that he still was flagged as a non-citizen. The employee further told him that now he needed to appear in person at the Department offices to submit his citizenship documents. Upon hearing this, Mr. Lim became angry. He called the Elections Department back and specifically requested to speak to Lee. He was told that he could not be transferred to Lee's telephone line (or to anyone else in the absentee ballot office). He then, on that same day, faxed the Department a third absentee ballot request and, for the second time, faxed them his naturalization papers.

Four days later, on October 27, Mr. Lim once more called the Elections Department to check on the status of his absentee ballot request (at least his fifth call to the Department on this matter). An employee named Rosemary informed him that she did not know the status of his application because the County was receiving so many absentee applications

The next day, October 28, Mr. Lim yet again called the Gwinnett County Elections Department. The employee noted his phone number and an employee named Erica called him back at 7 p.m. that evening. She informed him that she was not able to do anything and asked Mr. Lim to re-fax his citizenship papers to three different fax numbers, and she would call him back before 9 p.m. to confirm receipt. He complied, this being the third time that he faxed the naturalization papers to the Department. However, when Erica called him back, she told him that the faxes for the evening had already been collected and that she was unable to confirm receipt of his information.

On October 29, 2008, Mr. Lim checked the Secretary of State's poll locator and saw that his application for an absentee ballot had, at long last, been processed.

But, the next day, October 30, he received in the mail the October 28, 2008 letter sent by the Secretary of State's office informing individuals that they had been flagged as possible non-citizens and instructing them to contact their local county registrar to provide proof of citizenship. The same day, he called the Gwinnett County Elections Department and was informed that although his absentee ballot application had been processed and his ballot had been sent out, he was still flagged as a non-citizen on the registration list. The employee informed Mr. Lim that he should send his proof of citizenship to the Secretary of State's Office (although the letter specifically said that the document should be sent to the local registrar, i.e., the Gwinnett County Elections Department).

Mr. Lim received his absentee ballot on Saturday, November 1, 2008, and mailed it back by express mail on Monday, November 3, 2008.

2. Donovan Allison
(678) 464-7372 or (678) 595-3993

Donovan Allison was born in Jamaica, is black, and is a naturalized citizen. He registered to vote in Gwinnett County in about September 2008.

Mr. Allison works as a long-haul truck driver, and typically is away from home all week, returning on Friday mornings. On Friday, October 24, 2008, he went to an early voting site in Gwinnett County and stood in line for 2 hours and 45 minutes. When he finally arrived at the check-in table, he showed his driver's license and voter registration card. However, the poll worker informed him that he also needed to show proof of citizenship. Mr. Allison left the polling place because he didn't have his naturalization papers with him.

Mr. Allison called his wife, April. They both were upset about him being turned away from voting. Mrs. Allison called the Gwinnett County elections office, and an employee there said that her husband was registered to vote and that he should return to the voting site and vote. The employee also telephoned Mr. Allison and said the same thing. He was on his way back to the polling place when he received another call from the same elections employee who said that in fact he did need to have his citizenship papers.

Since it was getting late in day, Mr. Allison concluded that it would be impossible for him to return home, get his naturalization papers, and then make it back in time to the early voting site before it closed. He and his wife agreed that she would fax his citizenship papers to the elections office. However, in order to do so, she had to leave work early. When Mrs. Allison arrived home, she faxed his passport and naturalization papers, but soon received a phone call from a Gwinnett County election worker who told her that the fax was too dark and Mr. Allison's face could not be seen on the fax. Mr. Allison then went to an Office Depot and faxed the documents from there. In addition, Mr. or Mrs. Allison faxed the documents a third time from their home fax machine. However, the election officials refused to accept any of the faxes as proof of citizenship, saying that they could not see Mr. Allison's face in the documents. Since Mr. Allison is dark-skinned, his face did not show up on the fax. As a result, Mr. Allison was unable to vote that day.

Mr. and Mrs. Allison were extremely upset about what occurred. They were concerned that Mr. Allison would not be able to make it back home on the following Friday, October 31, 2008, which was the last Friday before the November 4 election, and so would be prevented from voting. Furthermore, given what had occurred, they were unsure whether he would be allowed to vote even if he did make it home on that Friday.

That same day, Mrs. Allison contacted an individual working with the Election Protection coalition in Georgia. Election Protection representatives, in turn, contacted Gwinnett County election officials in an attempt to resolve the problem. Mr. Allison was able to return to the County on Friday, October 31. On that day, as a result of the Election Protection efforts, Mr. Allison was able to immediately move to the front of the voting line at an early voting site and vote, after showing election officials his citizenship papers.

3. Michael Custer
Black, Custer & Lynch LLC
P.O. Box 2023
Albany, GA 31702
(229) 869-2646
MCuster@bcandl-law.com

Michael Custer is a white U.S. citizen born in Columbus, Ohio on August 31, 1970. She is an attorney and lives with her husband in Albany, Georgia. She registered to vote in Dougherty County approximately ten years ago and has been an active voter ever since.

Custer early voted on a DRE on Monday, October 27, 2008. Then, on Friday, October 31, she received in the mail the October 28, 2008 letter sent by the Secretary of State's office informing individuals that they had been flagged as possible non-citizens and instructing them to contact their local county registrar to provide proof of citizenship.

In an effort to find out why she had been flagged, she made several calls, to her state representative, to Deputy Attorney General Dennis Dunn, and to a lawyer who represents DDS. No one gave her a clear answer as to why she had been flagged. The DDS lawyer said "it was an accident."

After the election, and on November 13, 2008, she went to the Dougherty County voter registration office and provided a copy of her passport. Her record was corrected to reflect her citizenship, and she was told that since she had voted on a machine her vote had been counted.

4. Kyla Berry

Kyla Berry is an African-American U.S. citizen born in Boston, Massachusetts. She is 21 years old and has been a resident of Georgia since 2005. She currently resides in Fulton County and attends Spelman College.

This year, she submitted by mail a voter registration form to Fulton County and the County sent her a voter registration card dated May 9, 2008. Her voter registration number is 07523126.

Nonetheless, on October 10, 2008, she received a letter from the Fulton County Department of Registration and Elections, dated October 2, 2008 and postmarked October 9, 2008, stating that she had been identified as possibly not being a citizen of the United States. Her reaction was that this was an attempt to intimidate her from voting in the November 4, 2008 election. She tried calling the Fulton County elections department but was not able to get through to them. She was able to vote a regular ballot in the November 4 election.