



U.S. Department of Justice

Civil Rights Division

CC:RSB:TCH:BFH:JP:par
DJ 166-012-3
2008-5243

*Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

December 15, 2008

Dennis R. Dunn, Esq.
Deputy Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

Dear Mr. Dunn:

This refers to the establishment of the verification program for voter registration application data, including citizenship status, for the State of Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on October 14, 2008; supplemental information was received through December 11, 2008.

With regard to the proposed voter registration verification process, our analysis indicates that the information sent is insufficient to enable us to determine that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under Section 5. The following information is necessary so that we may complete our review of your submission:

1. Describe the process leading to the adoption of the submitted changes. Please explain whether the State gave any consideration to the fact that the automated verification procedures rely on citizenship information maintained by the Department of Driver Services [DDS] that may, in some cases, be up to several years old, and whether the state gave any consideration to the possibility of cross-referencing the list of potential non-citizens generated by the automated verification process with a list of recently naturalized citizens. One such approach would be through the SAVE program, a system to which DDS has access, to reduce the impact of the changes on recently naturalized citizens.

2. Explain what consideration, if any, was given to the impact of the verification procedures on newly naturalized citizens and minority voters, whether the State gave any consideration to other steps, either additional or alternative, to mitigate the impact of these verification procedures.

3. Provide all documents generated in the process leading to the adoption of the submitted changes, including documents by and/or between any of the following: Secretary of State's Office, county elections and registration officials, or other state agencies.

4. Indicate whether state officials held any public hearings concerning the adoption of the verification system. If so, please provide the location, date, and duration of any such hearing as well as any notice that may have provided to interested persons or groups.

5. Provide the factual basis for the State's determination that implementation of the voter registration verification program with regard to citizenship would not result in the placement of an additional prerequisite to register and vote on a group that is primarily composed of native-born and naturalized minority citizens.

6. Provide a detailed explanation of the procedures that the State expects that counties follow for persons whom the automated verification procedures identify as: 1) a non-match on citizenship grounds, 2) a non-match on grounds other than citizenship. Please provide copies of all guidance memoranda, directives, training materials, or other materials provided by the State to the counties that explain these procedures.

7. Describe what procedures are in place to deal with the significant differences that apparently exist between various counties in the State in how they deal with the results of the automated voter verification process provided on the R1 and/or the R2 reports. Describe what efforts the state has made to ensure uniformity of procedures for handling voters flagged by the automated verification procedures, adequate training for county election officials, and adequate notice and time for affected individuals to respond.

8. Provide a detailed explanation of the State's formal and informal efforts to secure the views of the public, including the minority community, regarding the proposed changes. Describe the substance of any comments or suggestions received, and include the names and daytime phone numbers of those persons making comments, and provide the State's response, if any.

9. Identify all situations in which the information that a Georgia resident provides either to register to vote or to update their status as a registered voter is run through the automated verification procedures, and all possible scenarios that can produce the determination that the individual is a possible non-citizen. Describe the specific information gathered, the information to which it is compared in each instance, and detail the exact path that the information would take from the counties to the Secretary of State to the DDS or the Social Security Administration, if applicable, before appearing on the R2 report. A flowchart showing the various decision points and alternative paths resulting from those points would be helpful. In your description, please include those procedures, if any, that are in place to ensure that individual are not required to provide proof of their citizenship repeatedly after they have been determined to eligible to vote, such as when they move from one county to another. Please clarify whether some registered voters have had their citizenship status checked using the DDS

database when applying for an absentee ballot or applying for an address change, and, if so, please explain the reason(s) for that check.

10. Describe the criteria used to decide whether a particular registration record has been successfully or unsuccessfully matched with a record for the same individual contained in the DDS database. Describe whether there is a process for catching “false positives”, i.e. an individual whose name is flagged as a non-citizen, but who is, in fact, a citizen and one or more information repositories indicate that status. If such a process exists, state how many individuals have been wrongly flagged.

11. Describe the extent to which the voter registration verification program has been effective in identifying non-citizens who are attempting to register to vote, and attempting to vote. Please supplement this description with:

- a. the number of flagged registrants who have been independently verified as presently being non-citizens or who have admitted that they are presently non-citizens;
- b. the number of flagged registrants who attempted to vote in the November general election or the December run-off election using false documents; and
- c. the number of flagged registrants who did not attempt to prove their citizenship prior to the November general election or the December run-off election.

12. According to the information you have provided to date, some registered voters who are native-born United States citizens have been flagged as possible non-citizens by the state’s automated verification procedures. Please explain the reason(s) for such a designation to have occurred and supplement this description by providing the number of flagged registrants who have been later identified as native-born United States citizens.

13. For each person identified on the state’s previously provided R3 list as having received a notice of potential non-citizenship prior to the November general election, please provide, in an electronic spreadsheet format, information indicating whether that person successfully established their citizenship and if so, the specific document used to establish their citizenship (e.g., affidavit, passport, birth certificate, naturalization papers), or whether they have admitted or otherwise been verified that they are not citizens, whether they have failed to respond to the challenge based on their citizenship, whether he/she sought to vote in the November general election or December general election runoff, whether the respective vote was challenged, the ground(s) for sustaining or denying the challenge, and whether the vote was counted.

14. Please provide a current list of all individuals who are flagged in Georgia’s statewide voter registration database:

a. as a potential non-match based on any criteria. Please provide this list in an electronic spreadsheet format, including the same information regarding each registrant as in the R3 list you earlier provided, such as full name, date of birth, registration date, county of registration, and race or ethnicity. Based on representations by the State to the federal court and news articles, we understand that this list includes approximately 50,000 registered voters; and

b. as potential non-citizens based on the state's automated voter verification process. Please provide this list in an electronic spreadsheet format, including the same information regarding each registrant as in the R3 list you earlier provided, such as full name, date of birth, registration date, county of registration, and race or ethnicity.

15. A list of all persons who, since the inception of the voter verification program, who

a. have had their citizenship status changed so as to resolve a question as regarding their eligibility to vote;

b. have been identified as potential non-match on any criteria; and

c. have been identified as a potential non-match as a possible non-citizen.

16. Please provide a copy of Georgia's current voter registration applications used to register to vote by mail, through county offices, and through state driver license offices and other state agencies, along with any instructions. Please provide a copy of Georgia's current applications for state driver licenses and personal identification cards, and renewals, along with any instructions. Please provide a copy of the final consent order in *Schwier v. Cox*, Civil Action No. 1:00-cv-02820-JEC (N.D. Ga.)

17. Indicate if state officials have provided formal or informal guidance to county elections registrars regarding the following issues and, if so, provide any related documentation:

a. whether or not registrars may challenge the registration status of individuals who are flagged on the R1 report, but not on the R2 report;

b. whether or not registrars may delete the voter registrations of individuals flagged as possible non-citizens before or after the December 2, 2008, runoff election; and

c. whether or not registrars may share registration information with other county departments and officials.

18. Explain whether or not any registrants who were flagged on the R1 report, but not on the R2 report, have had their registrations challenged. If this has occurred, provide how many individuals have been so challenged, broken down by race, and how the challenges were resolved.

Finally, we invite any response to the concerns raised by persons who have provided comments concerning this submission that the citizenship verification aspect of the automated verification procedures has had an adverse impact on minority citizens. Similarly, we invite any response to the concern that the State did not provide counties with any significant guidance regarding the verification process until September 2008, and a large number of county registrars have indicated that they did not generate R1 or R2 reports for the first time until that date.

In our previous discussions with state officials, the State has represented that it is in the process of gathering some of the information described in this letter, and to the extent that this information has already been provided to us as part of this submission, it need not be provided again. The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.37. Changes that affect voting are legally unenforceable unless and until the State has complied with the requirements of Section 5. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Also, we remind you that if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. 28 C.F.R. 51.40 and 51.52(a) and (c). Therefore, please inform us of the action the State of Georgia plans to take to comply with this request.

If you have any questions concerning this letter, you should call Robert S. Berman, a Deputy Chief in the Voting Section, at 202/514-8690 or the undersigned at 202/307-2932. Refer to File No. 2008-5243 in any response to this letter so that your correspondence will be channeled properly.

Because the Section 5 status of these changes are before the Court in *Morales v. Handel*, Civil Action No. 1:08-CV-3172-JTC (N.D. Ga.), we are providing a copy of this letter to the Court and counsel of record.

Sincerely,



Christopher Coates
Chief, Voting Section

cc: See Attached List

Attached List

Judge Stanley F. Birch
United States Circuit Judge
United States Court of Appeals for the Eleventh Circuit

Judge Jack T. Camp
United States District Judge
for the Northern District of Georgia

Judge William S. Duffy, Jr.
United States District Judge
for the Northern District of Georgia

Elise Sandra Shore, Esq.
Mexican American Legal Defense and
Educational Fund

Laughlin McDonald, Esq.
Neil Bradley, Esq.
Meredith Bell-Platts, Esq.
ACLU Voting Rights Project

Brian Spears, Esq.

Jon M. Greenbaum, Esq.
Robert A. Kengle, Esq.
Lawyers' Committee for Civil Rights Under Law