The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON ASSOCIATION OF CHURCHES, as an organization and representative of its members; WASHINGTON ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), as an organization and representative of its members; ORGANIZATION OF CHINESE-AMERICANS – GREATER SEATTLE CHAPTER, as an organization and representative of its members; CHINESE INFORMATION & SERVICE CENTER, as an organization and representative of its clients; FILIPINO AMERICAN POLITICAL ACTION GROUP OF WASHINGTON, as an organization and representative of its members; KOREAN AMERICAN VOTERS ALLIANCE, as an organization and representative of its members; SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) – LOCAL 775, as an organization and representative of its members; and WASHINGTON CITIZEN ACTION, as an organization and representative of its members,

Plaintiffs,

vs.

SAM REED, in his official capacity as Secretary of State for the State of Washington,

Defendant.

NO. CV06-0726 RSM

**PLAINTIFFS' SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION**

**ORAL ARGUMENT: JULY 28, 2006, 1:00 p.m.**



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**PRELIMINARY STATEMENT**

Defendant finally concedes what plaintiffs have been arguing all along: the actual text of HAVA does not require matching as a precondition to voter registration. In his supplemental response, defendant has abandoned his position that un-matched applications "may not be accepted" under HAVA – because HAVA says no such thing – and has dropped the canard that the Justice Department compelled the State to make matching a requirement for registration – because DOJ did no such thing.

Defendant now modestly suggests that while HAVA is "not perfectly clear," the "spirit of HAVA" requires either matching or an alternative form of identification before eligible voters can be registered. (Def. Supp. Br. at 6-7.) Defendant has retreated so far from defending Washington's matching statute that he is now at war with it. That statute, RCW 29A.08.107, mandates that an application with a driver's license or Social Security number must be matched for the applicant to be registered. Yet defendant now argues that HAVA – unlike RCW 29A.08.107 – does not establish a strict matching requirement. (*Id.* at 7.) In other words, defendant has come to believe that matching is not a federally mandated requirement for registration.

That leaves only one issue to be decided: do HAVA, the Voting Rights Act, and the U.S. Constitution prohibit state laws, like Washington's matching statute, that make matching a requirement for registration? With regard to HAVA, defendant cannot escape the fact that Section 303(b) of HAVA is clear that a failed match cannot prevent an eligible voter from registering. With regard to the Voting Rights Act, defendant does not understand that the statute prohibits precisely the fatal effect of the sort of "nonmaterial" errors at issue here. And with regard to the Constitution, defendant offers no defense at all.

Indeed, now that defendant has tossed aside the DOJ and HAVA as justifications for the State's error-ridden, arbitrary and haphazard registration regime, there is no longer is any defense for Washington's matching statute. It should be enjoined.



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## ARGUMENT

### I. THE HARM CAUSED BY WASHINGTON'S MATCHING LAW HAS BEEN ESTABLISHED, AND DEFENDANT OFFERS NO CONSTITUTIONAL JUSTIFICATION FOR THE LAW

#### A. The Discovery Record Shows That the Harm to Eligible Voters Is Real

##### 1. Real People Are Being Harmed By Washington's Matching Law

Eligible citizens – lots of them - are being harmed by Washington's matching law.

The harm begins with the generation of tens of thousands of false negatives by the State. The evidence shows that 16% of all records across the State start off "fatally pended" when the State attempts to match them. (Pls. Supp. Mot. at 4.) The rejection rate in King County, the most populous county in the State, is nearly twice that – 30%. (*Id.*) No one contends that any of those "un-matched" applicants are ineligible to vote. On the contrary, the counties scramble to review these "fatally pended" records for typos and others errors because everyone knows that these "mis-matches" are largely the result of shortcomings in the technology. Sometimes the counties spot the errors, and sometimes they don't. Defendant disputes none of this.

Likewise, defendant does not dispute any of the facts offered in plaintiffs' supplemental brief (at pp. 5-6) demonstrating that the number of applicants who have been "cancelled," "deleted," or otherwise rejected from registration is far greater than the 135 he continues to cite.[1] As plaintiffs established, defendant's records do not reveal applicants who have been "cancelled" or "deleted" by counties that have not told him (and, in some cases, will not tell him) what they have done. (*See id.* at 6; Ex. 24 (Sam) at 111:4-13; Ex. 25 (Clark) at 41:12-23).[2])

Defendant tries to depress the number of disenfranchised applicants by suggesting that the untold hundreds being held in "fatal pending" status in counties like King and Pierce

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[1] Defendant contends that the "official" number of "cancelled" applicants as of "late July" is 135. (Def. Supp. Br. at 4.) His own evidence shows the number to be at least 178 as of June 22. (Pls. Supp. Mot. at 6.)

[2] The citation format follows the format used in plaintiffs' supplemental motion. Unless otherwise noted, exhibits are attached to the Supplemental Reply Declaration of Evan Norris.



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are not yet "doomed to be cancelled." (Def. Supp. Br. at 3 n.3.) But once a letter is sent and 45 days have passed, such applicants *are* doomed. Just because some counties have not labeled all these applicants as "cancelled" or forwarded them to the State does not mean they can be registered. In fact, the matching law forbids the registration of these non-matched applicants who the counties have been unable to contact within 45 days. It says "the applicant will not be registered to vote" after the 45-day deadline. RCW 29A.08.107(2). (*See* Ex. 26 (Blinn) at 77:10-20.) A companion statute also says "the applicant shall not be placed on the official list of registered voters" after the 45-day deadline. RCW 29A.08.110(1). The law could not be clearer. That some counties are holding their rejected applicants in computer purgatory because they are uncomfortable with the State's matching law cannot be used by defendant to disguise the true magnitude of the matching problem.

Yet defendant still insists that the harm to all these voters – and the voters still to come – is wholly fictional. Indeed, just three days after his representatives attended a deposition that revealed the identity of a voter disenfranchised by a typo (Ex. 25 (Clark) at 82:10-85:8), defendant asserts that plaintiffs "have not identified a single [eligible] applicant . . . whose application has been 'cancelled' by a county solely because the identification number given by the applicant cannot be matched with the DOL or SSA database." (Def. Supp. Br. at 5.) That eligible voter is Marina Petrienko.

As set forth in her Declaration, Ms. Petrienko is a newly eligible U.S. citizen who tried to register to vote for the first time last winter, providing the last four digits of her Social Security number. (Petrienko Decl. ¶ 2.) When a county official input her information into the database, that person mis-typed the year of Ms. Petrienko's birth, writing 197***6*** instead of 197***5***. There is no question that Ms. Petrienko is eligible to vote. And there is no question that she provided accurate information. But since someone else mis-typed Ms. Petrienko's year of birth, the database search yielded a "no match." Since the Social Security search does not provide any explanation for the non-match, no one knew why her application was rejected. When Ms. Petrienko received a notice saying there was a



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problem, her husband called up the county to confirm that the information his wife had provided was correct. The fatal typo, however, was uncorrected. On May 2, 2006, Ms. Petrienko's registration was "cancelled," and she was not registered to vote.

Lisa Oldham is another eligible citizen whose un-matched registration was rejected. As set forth in her Declaration, Ms. Oldham registered to vote in February 2006, providing both her driver's license number and Social Security number on her form. (Oldham Decl. ¶ 2.) Her married name is "Graham" and her driver's license is in the name "Graham," but her Social Security card is in her maiden name, "Oldham" – the name she used to register. She was not successfully matched. On May 2, 2006, Ms. Oldham's registration was "cancelled" and she was unable to vote in the May 16, 2006 special election as she had been planning to do.

Ms. Petrienko and Ms. Oldham are not alone. Defendant's own list of "cancelled" registrants is full of eligible Washington residents who appear to have been rejected due to meaningless mismatches. Ashley Lutton of Whatcom County, for example, presented a driver's license number that appears to be issued in her maiden name, "Walker." Her application was cancelled on April 26. (Overstreet Supp. Ex. A at SOS 001306.) The same thing happened to Ericka Tadema and Jennifer Wright, also of Whatcom County. Both were cancelled on April 26. (*Id.* at SOS 001308.) And there are certainly others.

Plaintiffs have shown that despite everyone's best intentions, the matching precondition will unnecessarily disenfranchise real eligible voters. The individual voters highlighted here put specific human faces on the arbitrary harm already being done to plaintiffs and their members. Absent an injunction, that harm will not abate.

#### 2. Defendant's Speculation About Alternative Explanations for the Large Number of Unmatched Applicants Has No Basis in Fact

In the face of all uncontested matching errors and false negatives, defendant tries to explain away all the "cancelled" voters as either ineligible, transient, or fake. Blaming the victim is not only unseemly when it comes to the right to vote, it is baseless.



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1 Defendant guesses that his list of cancelled voters "could include," for example,
2 ineligible voters. (Def. Supp. Br. at 4-5.) For this, he offers no proof. The would-be voters
3 on this list were rejected because of a purported "mismatch" between the identifying
4 information in one database and the identifying information in another database. The
5 evidence is overwhelming that such mismatches are driven by typos and others errors and
6 inconsistencies. Not a single witness has testified that any of those people was ineligible.

7 Defendant's other guess, that some of the cancelled applicants "could have" moved
8 away doesn't even make sense. He cites "outmigration" statistics, but provides not a shred
9 of evidence that there is any correlation between failed matches and moving. The idea that
10 someone who has decided to move out of Washington would first stop to register is dubious.
11 It is no wonder that no election official under oath gave this explanation. Quite the opposite.
12 Defendant's own exhibit (Overstreet Supp. Ex. A at SOS 001662-1665) includes "comment
13 codes" that indicate why an applicant was canceled. Defendant's Voter Registration
14 Database Project Manager, Samreth Sam, testified that those codes denote network errors or
15 mismatches for identity verification (Ex. 24 (Sam) at 123:18-126:5); he said nothing about
16 people who moved away. With respect to the 178 "cancelled" applicants in the data that Mr.
17 Sam produced, he testified that the vast majority were cancelled for failed identity
18 verification (*id.* at 132:20-134:7), with the *only* exception he noted being the "very few" that
19 were actually deceased or felon cancellations but were incorrectly labeled (*id.* at 126:9-21).

20 Finally, defendant again raises the specter of "fictitious" people. This too is a wild
21 guess with no basis in fact. Defendant's own Assistant Director of Elections conceded that
22 the State has no history of such a problem. (Pls. Supp. Mot. at 7.) The idea that there are
23 hundreds of "fictitious" voters is also disproven by Washington's experience in the 2004
24 gubernatorial election. In this most closely-examined of elections, absolutely "[n]o
25 testimony [was] placed before the Court to suggest fraud or intentional misconduct."
26 *Borders* v. *King County*, No. 05-2-00027-3, at 14-15 (Wash. Super. Ct. Chelan Cty. June 6,
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2005), reprinted at 4 Election L.J. 418, 422 (2005) (attached as Exhibit 23 to the Supplemental Declaration of Sarah A. Dunne).[3]

### B. Defendant Offers No Constitutional Justification

#### 1. The Constitution Permits No *De Minimus* "Safe Harbor" for Unjustified Laws

Laws impairing fundamental rights demand substantial justification. In evaluating laws that restrict access to voting, courts must balance the burdens imposed on eligible voters against the "*precise* interests" of the state and "the extent to which those interests make it *necessary* to burden the plaintiffs' rights." *Burdick* v. *Takushi*, 504 U.S. 428, 434 (1992) (emphasis added). The Ninth Circuit has thus held that "'if a challenged statute grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.'" *Charfauros* v. *Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001) (citation omitted). Even where a burden imposed "is not insurmountable," a law will still fail constitutional scrutiny when the precise interests "put forth by the [state] do not adequately justify the restriction imposed." *New Alliance Party* v. *Hand*, 933 F.2d 1568, 1576 (11th Cir. 1991).

Accordingly, while a law that is necessary to accomplish a state interest of the most compelling nature may be constitutional even though it might result in the foreseeable disenfranchisement of voters, where the state's interest is less weighty, or, as here, virtually nonexistent, a law that foreseeably denies the vote to even a "handful" (Def. Br. 19) runs afoul of the First and Fourteenth Amendments. Simply put, if a state disenfranchises voters and its reasons for doing so are insufficient, the law is unconstitutional.

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[3] In fact, the substantial investigation into Washington's 2004 election ultimately produced only six *possible* cases – all of double voting – that would even theoretically be addressed by a matching requirement. *See Borders*, 4 Election L.J. at 423. The court did not indicate whether these voters were doubly registered at two addresses or whether they were registered once but voted once in person and once by absentee ballot. But even if all six cases involved people registered at two separate addresses, and even if defendant's other tools would not suffice to catch the duplication (*see* Ex. 27 (Excell) at 96:23-101:22), justifying RCW 29A.08.107 as a tool to stop, at most, six fraudulent ballots out of 2.8 million total ballots cast cannot conceivably constitute a well-tailored response to this purported problem.



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### 2. It Is Now Beyond Dispute That the Matching Requirement Is Not Necessary to Satisfy HAVA or the Justice Department

Plaintiffs have demonstrated that both of defendant's original justifications for RCW 29A.08.107 – that HAVA and the Justice Department mandated that matching be made a precondition to registration – were meritless. (Pls. Supp. Mot. at 14-19.) Defendant has now abandoned these arguments. (*See infra* Argument II.) Nor is defendant's claimed interest in preventing "fictitious" people from voting sufficiently tailored to the matching precondition. Accordingly, these arguments cannot serve to meet defendant's burden to demonstrate a compelling state interest for the matching law.[4]

## II. WASHINGTON'S MATCHING LAW CONFLICTS WITH HAVA

Washington's matching precondition (RCW 29A.08.107 and RCW 29A.08.110) violates and is therefore preempted by HAVA because (1) "it is impossible to comply with both state and federal requirements," and because (2) the "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Williamson* v. *Gen. Dynamics Corp.*, 208 F.3d 1144, 1152 (9th Cir. 2000). The second of these two types of conflict preemption – what is called "obstruction preemption" – "focuses on both the objective of the federal law and the method chosen by Congress to effectuate that objective, taking into account the law's text, application, history, and interpretation." *Ting* v. *AT&T*, 319 F.3d 1126, 1137 (9th Cir. 2003). In evaluating the purposes and objectives of federal law, courts should consider "the language, structure, and underlying goals of the federal statute at issue." *Bibbo* v. *Dean Witter Reynolds, Inc.*, 151 F.3d 559, 563 (6th Cir. 1998).

The objective of HAVA generally, and the Congressional intent behind matching in particular, are revealed clearly by Section 303(b). "Matching" is meant not as a hurdle, but as a benefit – to the State in administering its lists (303(a)), and to the individual voter

[4] Defendant has also put forth absolutely no legitimate justification for the fact that under the State's matching requirement, applicants submitting a Social Security number are substantially less likely than applicants submitting a driver's license number to be able to become registered. (*See* Pls. Supp. Mot. at 11.)



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(303(b)). In Section 303(b), matching functions as an *exception* to a general ID requirement for first-time voters who register by mail. These registrants need not show ID when they vote if the match was successful. But these registrants *are* eligible to vote even if their application did *not* match, and even if they did not provide ID when they registered.

Defendant simply ignored Section 303(b) in his first brief. Now, the only way he tries to reconcile Section 303(b) with the State's burdensome matching requirement is by severing Section 303(b) from the matching provisions in Section 303(a), as if those two HAVA sections were somehow unrelated. Defendant interprets the "spirit" of Section 303(a) as requiring matching or identification as a precondition to registration, but does so only by disregarding the text and purpose of Section 303(b). (*See* Def. Supp. Br. at 7-8.) That violates the most basic principles of statutory construction, which dictate that Section 303(a) cannot be read apart from Section 303(b). "[T]he 'plain meaning' of a particular statutory provision is not determined by considering the language of that provision in isolation; rather, determining the plain meaning of a statutory provision requires considering the provision at issue in the context of the statute as a whole." *Patenaude* v. *Equitable Life Assurance Soc. of the United States*, 290 F.3d 1020, 1025 (9th Cir. 2002); *see also Exxon Mobil Corp.* v. *E.P.A.*, 217 F.3d 1246, 1255 (9th Cir. 2000) ("In discerning congressional intent in preemption analysis, the Supreme Court has made clear that the objectives and purpose of a statute, as well as the text, are critical to preemption analysis. The 'statutory framework' surrounding a provision as well as the 'structure and purpose of the statute as a whole' are relevant to analyzing the scope of preemption.") (citations omitted).

Thus, the "spirit" of Section 303(a) cannot be detached from the actual words of Section 303(b). Section 303(b) provides that first-time voters who register by mail must provide some form of identification when they vote (in-person or by mail). 42 U.S.C. § 15483(b)(1)-(2)(A). Voters who fail to provide identification when they go to vote can still vote under Section 303(b)'s "Fail-safe voting" provision by casting a provisional ballot, which will be counted if their signatures match. *Id.* § 15483(b)(2)(B). In addition, Congress



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1 provided that these voters do not need to show ID when they go to vote if, at the time they
2 registered, they showed ID or were "matched" by the state or county. *Id.* § 15483(b)(3). In
3 other words, for these voters, matching and identification at the time of registration serve as
4 alternatives to identification at the time of voting. And by the same token, for these voters,
5 identification at the time of voting and the provisional ballot serve as *alternatives* to
6 matching or identification at the time of registration. In a system consistent with HAVA,
7 matching simply cannot be the prerequisite for getting registered in the first place.

8 If, as defendant contends, Congress intended for matching (or, without any textual
9 basis at all, identification) to be the threshold requirement for registration under Section
10 303(a), then Section 303(b) would be meaningless surplusage. Congress would have had no
11 need to require certain voters under Section 303(b) to show ID at election time if every voter
12 was already required to show ID or be matched at registration time. Defendant thus reads all
13 the meaning out of Section 303(b). The Court cannot do that. It is bedrock law that courts
14 should not "adopt an interpretation of a congressional enactment which renders superfluous
15 another portion of the same law." *Johnson* v. *C.I.R.*, 441 F.3d 845, 850 (9th Cir. 2006)
16 (quotation marks and citation omitted); *see also Planned Parenthood of Idaho, Inc.* v.
17 *Wasden*, 376 F.3d 908, 928 (9th Cir. 2004) ("[I]t is a cardinal principle of statutory
18 construction that a statute ought, upon the whole, to be so construed that, if it can be
19 prevented, no clause, sentence, or word shall be superfluous, void or insignificant.")
20 (quotation marks and citation omitted); *Cuevas-Gaspar* v. *Gonzales*, 430 F.3d 1013, 1024
21 (9th Cir. 2005) ("In analyzing [a] statutory provision in the context of the governing statute
22 as a whole, [courts] presume congressional intent to create a coherent regulatory scheme. In
23 this regard, [courts] must mak[e] every effort not to interpret [the] provision [at issue] in a
24 manner that renders other provisions of the same statute inconsistent, meaningless, or
25 superfluous.") (quotation marks and citations omitted).

26 Defendant's current response to Section 303(b) makes no sense. He asserts that
27 Section 303(b) does not apply to "applicants who never completed the registration process"
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1 – *i.e.* applicants who did not match or provide identification at the time of registration.
2 (Def. Supp. Br. at 9.) That is directly at odds with Section 303(b). First-time voters who
3 register by mail must be allowed to vote on election day by showing ID or casting a
4 provisional ballot – *without* ever matching and *without* showing ID at registration. If they
5 can vote under those conditions, they can surely register under those conditions.

6 Thus, Washington's reading of Section 303(a) as requiring matching (or
7 identification) before registration is not only unsupported by HAVA, it is in direct conflict
8 with HAVA. The Legislature's decision to prevent unmatched voters from registering and
9 voting, even if they bring ID to the polls, makes it impossible for the State to comply with
10 Section 303(b) of HAVA – including the "Fail-safe voting" mechanism mandated by
11 Congress – and is thus an obstacle to the accomplishment of the purpose and objectives of
12 Congress. (Ex. 26 (Blinn) at 130:24-131:15.) Washington's matching statute is a direct
13 violation of HAVA, contrary to 42 U.S.C. § 1983, and is, by the same token, preempted.

14 In the end, defendant is reduced to asking the rhetorical question, "Why must the
15 State try to match the numbers" if applicants must be registered anyway? (Def. Supp. Br. at
16 8.) The answer is everywhere. His Assistant Secretary of State answered the question at his
17 deposition: to "manag[e] multiple records to make sure that we don't have multiple records
18 for the same person . . . so we don't have, you know, duplicative voter registrations." (Ex.
19 27 (Excell) at 108:11-23.) Senator Bond, one of the chief Senate sponsors of HAVA,
20 answered the question when HAVA was being debated:

21 > "The conferees agree that a unique identification number attributed to
22 > each registered voter will be an extremely useful tool for State and
> local election officials in managing and maintaining clean and
23 > accurate voter lists. It is the agreement of the conferees that election
> officials must have such a tool. The conferees want the number to be
24 > truly unique and something election officials can use to determine on
> a periodic basis if a voter is still eligible to vote in that jurisdiction."

25 148 Cong. Rec. S10488-02, *S10490 (daily ed. Oct. 16, 2002); *see also* H.R. Rep. 107-
26 329(I), at 36 (2001) (noting that the unique identifier "will be used to assure that list
27 maintenance functions are attributed to the correct voter"). And the Washington legislature
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itself answered the question in the fourth paragraph of RCW 29A.08.107, which requires screening of "all complete voter registration applications" to "prevent duplicate registration records." If "a match . . . is found," the "record must be updated."

Washington's matching requirement stands as an obstacle to achieving the purposes and objectives of Section 303 and makes it impossible for the State to comply with the identification and provisional ballot provisions of Section 303(b). It also violates the rights of eligible but unmatched citizens to be placed on the list of registered voters and to cast regular or provisional ballots under both Sections 303(a) and (b). Accordingly, Washington's matching law violates and is preempted by HAVA.

## III. WASHINGTON'S MATCHING LAW CONFLICTS WITH SECTION 1971 OF THE VOTING RIGHTS ACT

Because RCW 29A.08.107 prevents voters from registering in the event of immaterial errors, the statute is in direct conflict with the materiality provision of the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(B).

Section 1971 provides that no person shall be denied the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote." 42 U.S.C. § 1971(a)(2)(B). Plaintiffs have demonstrated that eligible Washington voters are being denied registration because defendant has been unable to match the information they submit with information in other government databases. Defendant's ability to match the information on an application to information in the Department of Licensing or Social Security Administration databases is not material to determining whether applicants are qualified under State law to vote – *e.g.*, whether they are 18 years old, citizens of the U.S., and residents of the State.

Defendant contends that information submitted on an application is material, and, if it is not, it will not serve the basis for a rejection. (Def. Supp. Br. at 10.) But the State may not simply pronounce any meaningless error to be "material" by using it to deny registration.



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Whether a piece of information is "material" depends on the State's ability to determine eligibility if the information is missing or erroneous. An address is material to determining the applicant's residence in the State; a birthdate to determining that the applicant is older than 18. But given the undisputed problems with matching, the fact that the information in a government database does not exactly match the information entered from a registration form does not provide any meaningful information about the applicant's eligibility.

Defendant also claims that the Voting Rights Act only applies where racial discrimination has occurred. (*Id.* at 10 n.10.) Not true. Section 1971 makes no reference to race, and courts have found it applicable to situations in which race was not relevant. *See Schwier* v. *Cox*, 340 F.3d 1284, 1294-97 (11th Cir. 2003). Defendant similarly suggests that the errors plaintiffs have identified cannot be material because they impact few voters. (Def. Supp. Br. at 10 n.11.) Section 1971 does not speak in terms of numbers. It says that the voting rights of "*any* individual" shall not be denied because of immaterial errors.

**CONCLUSION**

Defendant contends that plaintiffs are trying to "interfere" with an election, citing a case which sought to enjoin the use of certain ballots *after* the election was underway. (*See* Def. Supp. Br. at 22.) Plaintiffs here seek something very different: a preliminary injunction enjoining defendant from enforcing the matching requirement of RCW 29A.08.107 so that no eligible citizen is disenfranchised *before* the election season begins. Defendant can continue to match; he just can't make it a precondition to registration. Defendant is simply wrong to insist that "effective or meaningful relief" is impossible without the participation of the counties. The matching precondition was set up by the State. Once the State is precluded from making matching a precondition, the counties can go back to doing what they were doing before January 1.

For the foregoing reasons, plaintiffs respectfully request that this Court grant their motion for a preliminary injunction.



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DATED this 25th day of July, 2006.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of July, 2006, I electronically filed this PLAINTIFFS' SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 25th day of July, 2006 at New York, New York.

*/S/ J. Adam Skaggs*
J. Adam Skaggs (admitted Pro Hac Vice)

# - 7/25/06