

Mismatches Between Voter-Registration Data and Other Government Data

Georgia Coalition for the Peoples' Agenda v. Kemp
(*Eleanor L. Ross, N.D. Ga. 1:18-cv-4727*)

A federal complaint challenged a statute that required the name on a voter-registration form to exactly match—character and space and hyphen for character and space and hyphen—how the name appeared in other government records. The complaint also challenged the flagging of voter-registration applications as potentially from noncitizens just because the applicants had not yet become citizens when they received their driver's licenses. One week after a motion for a preliminary injunction was filed and eleven days before a general election, the judge specified how voters could prove their citizenship and vote if their voter registrations had not become final because of citizenship questions.

Subject: Registration procedures. *Topics:* Registration procedures; citizenship; signature matching; laches; provisional ballots; Help America Vote Act (HAVA).

An October 11, 2018, federal complaint filed by six organizations in the Northern District of Georgia against Georgia's secretary of state challenged an exact-match protocol for approving voter registrations, according to which registrations were set aside as pending if the name on the voter-registration form did not exactly match, character for character, the name on driver's-license or social-security records.¹ The complaint alleged that the protocol disproportionately affected African American, Latino, and Asian American applicants.² The complaint also alleged that citizenship status was falsely questioned for voter applicants who became citizens after they received driver's licenses as noncitizens.³

The plaintiffs filed an amended complaint eight days later, which added two organizations as plaintiffs.⁴ With the amended complaint, the plaintiffs filed an emergency motion for a preliminary injunction protecting new voter registrations from “outdated, inaccurate [citizenship] information in the da-

1. Complaint, *Ga. Coal. for the Peoples' Agenda v. Kemp*, No. 1:18-cv-4727 (N.D. Ga. Oct. 11, 2018), D.E. 1 [hereinafter *Ga. Coal. for the Peoples' Agenda Complaint*]; see Mark Niese, *Lawsuit Challenges Ga.'s “Exact Match” Law*, Atlanta J.-Const., Oct. 12, 2018, at 1A.

2. *Ga. Coal. for the Peoples' Agenda Complaint*, *supra* note 1, at 2.

3. *Id.* at 3.

“[I]f a person receives a Georgia driver's license based on lawful status in the United States but is not yet a citizen, the [department of driver services] files will reflect that the person is not a citizen.” *Ga. Coal. for the Peoples' Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1260 (N.D. Ga. 2018).

4. Amended Complaint, *Ga. Coal. for the Peoples' Agenda*, No. 1:18-cv-4727 (N.D. Ga. Oct. 19, 2018), D.E. 15; *Ga. Coal. for the Peoples' Agenda*, 347 F. Supp. 3d at 1255; see Second Amended Complaint, *Ga. Coal. for the Peoples' Agenda*, No. 1:18-cv-4727 (N.D. Ga. Dec. 20, 2019), D.E. 57.

tabase used in the ‘exact match’ system.”⁵ That day, Judge Eleanor L. Ross set the case for hearing on October 29.⁶

Judge Ross ordered the secretary to respond, should he choose to, by October 24 at noon.⁷ Two days later, the secretary requested an extension of two days to accommodate his responsibilities related to a hearing in two other cases to be heard on October 23.⁸

The Court is . . . cognizant of the two other pending cases against Defendant with hearings scheduled this week. Nevertheless, the Court chose the particular briefing and hearing schedule for this case based on the Court’s own trial calendar and availability of judicial resources that will be necessary to issue an order on Plaintiffs’ Emergency Motion prior to [election day on] November 6, 2018. Therefore, the Court **DENIES** Defendant’s Motion for an Extension of Time.⁹

An Earlier Case

On September 14, 2016, three of the plaintiffs in the 2018 case filed a federal complaint in the Northern District against the secretary, challenging his exact match policy and alleging, “Insistence on digit-by-digit and character-by-character exactitude when comparing information from one database with information in a different database is a notoriously unreliable method of verification in the elections context.”¹⁰ That case was resolved by settlement in February 2017.¹¹ The legislature restored the policy by statute.¹²

5. Emergency Preliminary-Injunction Motion, *Ga. Coal. for the Peoples’ Agenda*, No. 1:18-cv-4727 (N.D. Ga. Oct. 19, 2018), D.E. 17; *Ga. Coal. for the People’s Agenda*, 347 F. Supp. 3d at 1255, 1258.

6. Order, *Ga. Coal. for the Peoples’ Agenda*, No. 1:18-cv-4727 (N.D. Ga. Oct. 19, 2018), D.E. 19.

7. *Id.*

8. Extension Motion, *id.* (Oct. 21, 2018), D.E. 20; see *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018) (October 24, 2018, injunction requiring election officials to regard mail ballots with apparently mismatched signatures as provisional and requiring them to provide voters with opportunities to resolve the discrepancies); Minutes, *Ga. Muslim Voter Project v. Kemp*, No. 1:18-cv-4789 (N.D. Ga. Oct. 23, 2018), D.E. 27; Minutes, *Martin v. Kemp*, No. 1:18-cv-4776 (N.D. Ga. Oct. 23, 2018), D.E. 22; see also Tyler Estep, *Judge Mulls Action on Ga. Absentee Ballots*, Atlanta J.-Const., Oct. 24, 2018, at 6A.

9. Order, *Ga. Coal. for the Peoples’ Agenda*, No. 1:18-cv-4727 (N.D. Ga. Oct. 22, 2018), D.E. 21.

10. Complaint at 2, *Ga. State Conference of the NAACP v. Kemp*, No. 2:16-cv-219 (N.D. Ga. Sept. 14, 2016), D.E. 1; see Kristina Torres, *Suit: Ga. Blocks Minority Voters*, Atlanta J.-Const., Sept. 15, 2016, at 1A; Vanessa Williams, *As Race in Georgia Narrows, Voting Rights Battles Heat Up*, Wash. Post, Oct. 25, 2016, at A4.

11. See Stipulation, *Ga. State Conference of the NAACP*, No. 2:16-cv-219 (N.D. Ga. Mar. 28, 2017), D.E. 60; see also Jim Galloway, *State’s Voter Security Fight Begins Anew Today*, Atlanta J.-Const., Nov. 7, 2018, at 1B.

“The state will no longer reject applications that don’t exactly match personal identification information in state and federal databases as part of the agreement, which was finalized late Thursday[, February 10, 2017].” Kristina Torres, *Georgia Settles Voter Registration Lawsuit*, Atlanta J.-Const., Feb. 11, 2017, at 1B.

12. See Galloway, *supra* note 11.

The 2018 Case

Four days after the October 29, 2018, hearing,¹³ Judge Ross ordered that a voter applicant whose registration status was pending because of uncertainty about citizenship be able to vote either by providing proof of citizenship at the polling place, by providing the county registrar with proof of citizenship in advance, or by casting a provisional ballot and providing proof of citizenship within three days following the election.¹⁴

Judge Ross denied a laches defense:

Plaintiffs . . . assert that they did not delay in bringing this action because this case is based on new facts that Plaintiffs have developed over time, including individual stories that were not necessarily indicative of a policy problem until Plaintiffs could gather sufficient data to identify a pattern. The Court finds this argument certainly plausible

Additionally, the Court does not find that granting Plaintiffs injunctive relief this close to Election Day will cause undue prejudice to Defendant or the public, particularly where the relief sought by Plaintiffs is very limited and targeted.¹⁵

On September 29, 2022, Judge Ross denied the defendants summary judgment against a July 24, 2020, third amended complaint.¹⁶ She administratively closed the case on March 28, 2023, on telephonic representations by the parties of an effort to settle it.¹⁷

Further Litigation

Judge Steve C. Jones conducted a bench trial from April 11 to June 23, 2022,¹⁸ in a November 27, 2018, action generally challenging Georgia's oversight of elections, including a challenge to the exact-match policy.¹⁹ He did

13. Transcript, *Ga. Coal. for the Peoples' Agenda*, No. 1:18-cv-4727 (N.D. Ga. Oct. 29, 2018, filed Jan. 17, 2019), D.E. 38; Minutes, *id.* (Oct. 29, 2018), D.E. 30; *Ga. Coal. for the People's Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1255 (N.D. Ga. 2018) (p.3 of opinion filed at N.D. Ga. No. 1:18-cv-4727, D.E. 33).

14. *Ga. Coal. for the People's Agenda*, 347 F. Supp. 3d at 1269–70; see Amy Gardner, *Fears for Ballot Integrity and Access Are Growing*, Wash. Post, Nov. 5, 2018, at A1; Mark Niese, *Ruling Eases Voting for New Citizens*, Atlanta J.-Const., Nov. 3, 2018, at 1A.

15. *Ga. Coal. for the People's Agenda*, 347 F. Supp. 3d at 1259.

16. Opinion, *Ga. Coal. for the Peoples' Agenda*, No. 1:18-cv-4727 (N.D. Ga. Sept. 29, 2022), D.E. 160; see Third Amended Complaint, *id.* (July 24, 2020), D.E. 88.

17. Order, *id.* (Mar. 28, 2023), D.E. 176; see Order, *id.* (Aug. 17, 2023), D.E. 183 (giving the parties until October 17 to decide whether to settle or pursue the case).

18. Minutes, *Fair Fight Action v. Crittenden*, No. 1:18-cv-5391 (N.D. Ga. June 23, 2022), D.E. 852; Minutes, *id.* (Apr. 11, 2022), D.E. 789; *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1148 (N.D. Ga. 2022) (“[a]fter a delay in the start of trial due to the Omicron variant of COVID-19”); *id.* at 1143 (“what is believed to have been the longest voting rights bench trial in the history of the Northern District of Georgia”).

19. Docket Sheet, *Fair Fight Action*, No. 1:18-cv-5391 (N.D. Ga. Nov. 27, 2018); Second Amended Complaint, *id.* (Dec. 3, 2020), D.E. 582; Amended Complaint, *id.* (Feb. 19, 2019), D.E. 41; Complaint at 39–41, *id.* (Nov. 27, 2018), D.E. 1; see *Fair Fight Action v. Raffensperger*, 413 F. Supp. 3d 1251 (N.D. Ga. 2019) (denying a motion to dismiss the amended complaint on standing, mootness, and other grounds, but dismissing the state election board

not find any flaws in the way that Georgia conducted elections requiring a judicial remedy.²⁰

from some claims for sovereign immunity); Opinion, *Fair Fight Action*, No. 1:18-cv-5391 (N.D. Ga. Nov. 15, 2021), D.E. 636 (denying the state summary judgment on whether requiring an exact match between names in voter registrations and other databases is racially discriminatory); Opinion, *id.* (Mar. 31, 2021), D.E. 617 (narrowing claims); Opinion, *id.* (Feb. 16, 2021), D.E. 612 (narrowing claims, some as moot); Opinion, *id.* (Dec. 27, 2019), D.E. 188 (denying a preliminary injunction to restore voter registrations that were canceled for inactivity); see also Valerie Bauerlein, *Suit Alleges Georgia Curbed Black Voters*, Wall St. J., Nov. 28, 2018, at A4; Richard Fausset, *Supporters of Candidate Who Lost Georgia Race Take the State to Court*, N.Y. Times, Nov. 28, 2018, at A19; Vanessa Williams, *Lawsuit by Abrams's PAC Alleges Voter Suppression in Georgia*, Wash. Post, Nov. 30, 2018, at A4.

20. *Fair Fight Action, Inc.*, 634 F. Supp. 3d 1128; see Matthew Brown, *Judge Upholds Ga. Law in Challenge Brought by Abrams After 2018 Loss*, Wash. Post, Oct. 2, 2022, at A8.