

## Enjoining Signature Matching Not Provided by State Law

*Shernoff v. Andino*  
(Richard Mark Gergel, D.S.C. 2:20-cv-3654)

An emergency action seeking an injunction against disqualification of absentee ballots if the ballot signatures did not match signatures in other records without an opportunity to resolve mismatches turned out to be unnecessary because the district court provided the requested relief in another pending case.

*Subject:* Absentee and early voting. *Topics:* Signature matching; absentee ballots; Covid-19; intervention.

A federal complaint filed on October 18, 2020, in the District of South Carolina by a voter and the Democratic Party’s senatorial committee sought injunctive relief requiring South Carolina election officials to provide absentee voters with notices and opportunities to cure defects in their absentee ballots, including possible mismatches between ballot signatures and signatures in other records.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup>

On the following day, the plaintiffs moved to consolidate hearing of their motion with a pending preliminary-injunction hearing set for October 21 in a case filed on October 2.<sup>3</sup>

Judge Richard Mark Gergel issued a preliminary injunction in the other case on October 27, enjoining “the State and any of its affiliate county boards from utilizing signature matching procedures to disqualify otherwise validly submitted absentee ballots unless affected voters are provided timely notice of the disqualified ballot and a timely procedure to contest that determination before a neutral tribunal.”<sup>4</sup>

On the same day, Judge Gergel denied the October 18 plaintiffs immediate relief because it would be duplicative to the injunction already issued.<sup>5</sup>

Informing his decision was a survey of county boards of elections by the executive director of South Carolina’s election commission:

In response to that survey, nine county boards responded that they were using or planning to use signature matching to reject otherwise valid absentee ballots; five county boards declined to respond; one county board stated that it tried to use signature matching but could not keep pace with the number of ballots received; and one county board indicated only that it would [follow South Carolina law]. Thirty county boards responded that

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1. Complaint, *Shernoff v. Andino*, No. 2:20-cv-3654 (D.S.C. Oct. 18, 2020), D.E. 1; *see* Amended Complaint, *id.* (Oct. 20, 2020), D.E. 24.

2. Preliminary-Injunction Motion, *id.* (Oct. 18, 2020), D.E. 4.

3. Motion, *id.* (Oct. 19, 2020), D.E. 15; *see* Docket Sheet, *League of Women Voters of S.C. v. Andino*, No. 2:20-cv-3537 (Oct. 2, 2020), D.E. 1.

4. *League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 78 (D.S.C. 2020).

5. Order, *Shernoff*, No. 2:20-cv-3654 (D.S.C. Oct. 27, 2020), D.E. 31.

they did not use signature matching to disqualify absentee ballots. . . . [The executive director then] instructed county boards to cease signature matching because the practice was not permitted by South Carolina law.<sup>6</sup>

Pursuant to an agreement of the parties, the court of appeals issued a partial stay of Judge Gergel's injunction on October 29; it left in place the injunction against signature matching and stayed the possibility of signature matching with notice and an opportunity to resolve mismatches.<sup>7</sup> The appellate court remanded the case on March 11, 2021, for a determination of mootness.<sup>8</sup> It was dismissed voluntarily on April 23.<sup>9</sup>

The October 18 case was dismissed voluntarily on December 17, 2020.<sup>10</sup>

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6. *League of Women Voters of S.C. v. Andino*, 849 F. App'x 39, 42 (4th Cir. 2021); see *League of Women Voters of S.C.*, 497 F. Supp. 3d at 67–68.

7. Order, *League of Women Voters of S.C. v. Andino*, No. 20-2167 (4th Cir. Oct. 29, 2020), D.E. 24, 2020 WL 6395498; *League of Women Voters of S.C. v. Andino*, 849 F. App'x at 42.

8. *League of Women Voters of S.C. v. Andino*, 849 F. App'x 39.

9. Stipulation, *League of Women Voters of S.C. v. Andino*, No. 2:20-cv-3537 (D.S.C. Apr. 23, 2021), D.E. 97.

10. Notice, *Sherhoff*, No. 2:20-cv-3654 (D.S.C. Dec. 17, 2020), D.E. 37.