

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CELIA VALDEZ, GRACIELA
GRAJEDA, SHAWNA ALLERS, and
JESSE RODRIGUEZ

Plaintiffs,

v.

MARY HERRERA, in her official capacity
as New Mexico Secretary of State,
KATHRYN FALLS in her official capacity
as Secretary of New Mexico Human
Services Department, FRED SANDOVAL
in his official capacity as the Director of the
Income Support Division of the New
Mexico Human Services Department,
CAROLYN INGRAM in her capacity as
the Director of the Medical Assistance
Division of the New Mexico Human
Services Department, DOROTHY
RODRIGUEZ in her capacity as the
Secretary of the New Mexico Taxation and
Revenue Department, and MICHAEL
SANDOVAL, in his capacity as the
Director of the Motor Vehicle Division of
the New Mexico Taxation and Revenue
Department,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 JCH/DJS

AMENDED COMPLAINT

Plaintiffs CELIA VALDEZ (“Valdez”), GRACIELA GRAJEDA (“Grajeda”),
SHAWNA ALLERS (“Allers”), and JESSE RODRIGUEZ (“Rodriguez”) by and through
their undersigned counsel, for their Complaint against Defendants MARY HERRERA
(“Herrera”), in her official capacity as New Mexico Secretary of State, KATHRYN
FALLS (“Falls”), in her official capacity as Secretary of the New Mexico Human

Services Department (“HSD”), FRED SANDOVAL (“Fred Sandoval”), in his official capacity as the Director of the Income Support Division of the New Mexico HSD, CAROLYN INGRAM (“Ingram”), in her official capacity as the Director of the Medical Assistance Division of the New Mexico HSD, DOROTHY RODRIGUEZ (“Rodriguez”), in his official capacity as Secretary of the New Mexico Taxation and Revenue Department, and MICHAEL SANDOVAL (“Michael Sandoval”), in his official capacity as the Director of the Motor Vehicle Division of the New Mexico Taxation and Revenue Department (“MVD”), allege the following upon knowledge as to their own conduct and upon information and belief as to the conduct of others:

INTRODUCTION

1. This action seeks declaratory and injunctive relief to redress violations of New Mexico’s obligations under the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-3 (“Section 5”), requiring New Mexico to offer voter registration simultaneously with renewal or application for a New Mexico motor vehicle driver’s license or identification card, and 42 U.S.C. § 1973gg-5 (“Section 7”), requiring voter registration at public assistance agencies in New Mexico.

2. Section 5 of the NVRA mandates that each state motor vehicle driver’s license application (including any renewal application) serve as a voter registration application for voting in elections for federal office. The voter registration application portion of the application for a state motor vehicle driver’s license may not require any information that duplicates information in the driver’s license portion, with the exception of a signature or other information that confirms eligibility to vote. The term “motor

vehicle driver's license" includes any personal identification document issued by a state motor vehicle authority.

3. The law also requires that a change of address form submitted for a state motor vehicle driver's license or identification card shall also serve as notification of a change of address for voter registration with respect to elections for federal office unless the registrant states on the form that the change of address is not for voter registration purposes.

4. On July 1, 2010, the parties filed a Settlement Agreement resolving the merits of Plaintiffs' claims set forth in the original Complaint arising under Section 5 of the NVRA against Defendants Herrera, Rodriguez, and Michael Sandoval [Doc. 84-1]. The Settlement Agreement provides for a two-year period during which disputes as to compliance with the Agreement shall be heard by this Court. In addition, Plaintiffs have pending before this Court an application for attorneys' fees with respect to their Section 5 claim and a motion for sanctions against Secretary Herrera concerning, in part, the Section 5 claim. Accordingly, for purposes of this Court's retention and exercise of jurisdiction over the Settlement Agreement, as well current and/or other disputes arising from Plaintiffs' Section 5 claims, Plaintiffs re-allege herein their Section 5 claims against Defendants Herrera, Rodriguez and Michael Sandoval.

5. At the time this action was filed, and prior thereto and thereafter, and despite the clear obligations under Section 5 of the NVRA, New Mexico's motor vehicle authority offices routinely failed to provide any voter registration services at all, much less the integrated application process required by law. New Mexico did not offer simultaneous application for both voter registration and a motor vehicle driver's license

or identification card. New Mexico's motor vehicle authority offices also failed to permit the change of address form submitted for purposes of a driver's license or identification card to serve as notification of change of address for voter registration purposes.

6. Section 7 of the NVRA mandates that all state offices that provide public assistance distribute voter registration application forms for voting in federal elections, assist applicants in completing the forms, accept completed voter registration application forms, and transmit those applications to the appropriate state election official.

7. Section 7 requires all public assistance offices to distribute a voter registration application form with each application for assistance, and each recertification, renewal, or change of address relating to the receipt of public assistance.

8. Section 7 further requires that all public assistance offices provide a form that asks each client whether he or she is registered at their current address and if not, whether the applicant "would . . . like to apply to register to vote here today" (the "voter notice form"). The voter notice form must also advise the applicant that "[a]pplying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency" and offer boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote. The form must include the statement, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME" in close proximity to the boxes and in prominent type. The form must also advise the client that the office will provide assistance in filling out the voter registration form if the client would like such assistance, and that the client has the option to fill out the application in private. Finally, the form must include a statement, in language prescribed

by the statute, indicating how a client might file a complaint if that client believes that someone has interfered with his or her right to register or to decline to register to vote, or his or her right to privacy or political preference relating to the voter registration.

9. The requirements of Section 7 reflect Congress's intent to "increase the number of eligible citizens who register to vote in elections for Federal office," 42 U.S.C. § 1973gg(b)(1), including "the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principal place to register under this Act [motor vehicle agencies]." 42 U.S.C. § 1973gg(b)(1); H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.). The statute also reflects Congress's intent to combat the disproportionate harm to voter participation by racial minorities caused by discriminatory and unfair registration laws and procedures. 42 U.S.C. § 1973gg(a)(3).

10. Despite these clear obligations under Section 7 of the NVRA, New Mexico's HSD offices routinely fail to distribute voter registration applications and provide assistance to persons who apply for public assistance, or who submit a recertification, renewal, or change of address form relating to public assistance.

11. As a result of the past violations of Section 5 of the NVRA and the ongoing violations of Section 7 of the NVRA, thousands of citizens in New Mexico, including Plaintiffs Valdez, Grajeda, Allers, and Rodriguez have been denied the opportunity to register to vote or to update their voter address upon moving to a new residence address, as required by Sections 5 and 7 of the NVRA.

12. Defendants are the state officials responsible for ensuring New Mexico's compliance with Section 5 and Section 7 of the NVRA.

PARTIES

13. Plaintiff Celia Valdez is a New Mexico citizen who submitted a change of address form on March 19, 2009, at the MVD office located at 505 South Main Street, Las Cruces, New Mexico, 88001. Her change of address did not serve as a notification of a change of address for voter registration. Although Plaintiff Valdez is eligible to register to vote in New Mexico, she has not been registered at her current address. She wants to be registered to vote and would have done so at the MVD office if she had been offered the opportunity.

14. Plaintiff Graciela Grajeda is a New Mexico citizen who submitted an application for a state identification card on June 16, 2009, at the MVD office located at 505 South Main Street, Las Cruces, New Mexico, 88001. Her state identification card application did not serve as a voter registration application. Although Ms. Grajeda is eligible to register to vote in New Mexico, she has not been registered to vote at her current address. She wants to be registered to vote and would have done so at the MVD office if she had been offered the opportunity.

15. Plaintiff Shawna Allers is a New Mexico citizen who applied for the Food Stamp Program for the first time in or about February 2002 at the HSD office located at 1711 Randolph Rd. SE, Albuquerque, New Mexico 87106 and recertifies every six months. She was not offered a voter registration application when she initially applied in 2002, or thereafter when she recertified her benefits. Ms. Allers most recently completed and delivered her paperwork for recertification on March 23, 2010. The State's records indicate that she was offered the opportunity to register at that time, and that she is now registered to vote.

16. Plaintiff Jesse Rodriguez is a New Mexico citizen who applied for a New Mexico motor vehicle driver's license on April 14, 2009, at the MVD office located at 11500 Menaul Blvd NE, Albuquerque, New Mexico 87112. He did not receive a voter registration application with his application for a motor vehicle driver's license, nor did his application for a motor vehicle driver's license serve as an application for voter registration. Although Plaintiff Rodriguez is eligible to register to vote in New Mexico, he has not been registered at his current address. He wants to be registered to vote and would have done so at the MVD office if he had been offered the opportunity.

17. Defendant Herrera is the New Mexico Secretary of State and is designated by state law as "the chief election officer of the state." N.M. Stat. Ann. § 1-2-1(A). In this capacity, Defendant Herrera is vested with the responsibility to adopt and publish "rules for the administration of a state-agency based voter registration program." N.M. Stat. Ann. § 1-4-48 9(A). These rules "shall provide for distribution of voter registration forms, provisions for the acceptance of voter registration forms and procedures for reporting voter registration activity in accordance with the federal National Voter Registration Act of 1993." *Id.* Defendant Herrera further is responsible for overseeing the elections process, preparing instructions for conducting election and registration matters in accordance with the state and federal law, exercising responsibility for the education and training of county clerks regarding elections, and assisting the county clerks in the education and training of registration officers. N.M. Stat. Ann. §§ 1-2-1, 1-2-2. Defendant Herrera is named as a defendant in her official capacity as the New Mexico Secretary of State.

18. Defendant Rodriguez is the Secretary of New Mexico's Taxation and Revenue Department ("TRD"). As the Secretary, Defendant Rodriguez "shall select certain employees of the motor vehicle division of the taxation and revenue department or employees of entities on contract to provide field services to the motor vehicle division of the taxation and revenue department to provide assistance to any applicant requesting voter registration assistance." N.M. Stat. Ann. § 1-4-47. TRD includes the Motor Vehicle Division. Defendant Rodriguez is named in her official capacity as Secretary of the New Mexico TRD.

19. Defendant Michael Sandoval is the Director of New Mexico's MVD and is responsible for providing "suitable forms . . . necessary to carry out the provisions of the Motor Vehicle Code, and any other laws, the enforcement and administration of which are vested in the division." N.M. Stat. Ann. § 66-2-5. MVD provides driver's license and identification card services directly, and also has entered into a contract with private entities, including (but not necessarily limited to) "MVD Express," that allows MVD Express (and other entities) to offer motor vehicle licensing and identification card services to the public, for profit. MVD Express and the other private entities are agents of MVD under state law. N.M. Stat. Ann. § 66-2-14. Defendant Michael Sandoval is named as a defendant in his official capacity as Director of New Mexico's MVD.

20. Defendant Falls is the Secretary of New Mexico's Human Services Department. HSD administers public assistance programs subject to the requirements of the NVRA, including but not limited to the Food Stamp Program, also known as the Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, and Temporary

Assistance for Needy Families (“TANF”). Defendant Falls is named as a defendant in her official capacity as Secretary of New Mexico’s Human Services Department.

21. Defendant Fred Sandoval is the Director of the Income Support Division (“ISD”) of the New Mexico Human Services Department. The ISD provides public assistance services to New Mexicans, including SNAP and TANF, among others. Defendant Fred Sandoval is named as a defendant in his official capacity as Director of the New Mexico ISD.

22. Defendant Ingram is the Director of the Medical Assistance Division (“MAD”) of the New Mexico Human Services Department. MAD provides public assistance services to New Mexicans, including Medicaid. Defendant Ingram is named as a defendant in her official capacity as Director of MAD.

JURISDICTION AND VENUE

23. This case arises under the NVRA, a law of the United States. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a).

24. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

25. This Court has personal jurisdiction over each of the Defendants because each is a citizen of the State of New Mexico.

26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district and because Defendants reside in this district.

FACTUAL ALLEGATIONS

National Voter Registration Act of 1993

27. The purpose of the NVRA is to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1).

28. In furtherance of that goal, Section 5 of the NVRA requires that all “motor vehicle driver’s license applications (including renewal applications) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.” 42 U.S.C. § 1973gg-3(a)(1). Under the NVRA, the term “motor vehicle driver’s license” includes any personal identification document issued by a State motor vehicle authority. 42 U.S.C. § 1973gg-1(3).

29. Section 5 further requires that the voter registration application be a part of the motor vehicle driver’s license application and identification card application, and the voter registration portion “may not require any information that duplicates information required in the driver’s license [or identification card] portion of the form,” with the exception of a signature. 42. U.S.C. § 1973gg-3(c)(2)(a). Section 5 requires that a change of address form submitted for a state motor vehicle driver’s license or identification card shall also serve as notification of a change of address for voter registration with respect to elections for federal office. 42 U.S.C. § 1973gg-3(d).

30. MVD, whether providing motor vehicle licensing and identification card services on its own or through its agent, MVD Express, is the New Mexico State motor vehicle authority and is subject to the requirements of Section 5.

31. Section 7 of the NVRA mandates that “each state shall designate as voter registration agencies -- (A) all offices in the state that provide public assistance.” 42 U.S.C. § 1973gg-5.

32. The HSD local offices are mandatory voter registration agencies under Section 7 of the NVRA.

33. The NVRA requires that “the following services shall be made available” at every voter registration agency:

- (a) “Distribution of mail voter registration application forms;”
- (b) “Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;” and
- (c) “Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.”

42 U.S.C. § 1973gg-5(a)(4)(A)(i)-(iii).

34. The NVRA requires that a voter registration agency that provides public assistance services distribute a voter registration application form with each application for service, recertification, renewal, or change of address form. Each such voter registration agency must also provide, and clients must complete, a voter notice form that includes:

- (a) the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today;”
- (b) the statement, “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency;”
- (c) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement, in close proximity to the boxes and in prominent type, “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE

CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME;”

- (d) the statement, “If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private;” and
- (e) the statement, “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____,” the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed.

42 U.S.C. § 1973gg-5(a)(6)(B).

35. The NVRA requires that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities” under the NVRA. 42 U.S.C. § 1973gg-8.

36. In order to ensure state compliance, the NVRA provides a private right of action to “a person aggrieved by a violation” of the NVRA. 42 U.S.C. § 1973gg-9(b). Generally, at least ninety days prior to bringing an action to enforce the NVRA, an aggrieved person or organization must provide written notice to the state-designated “chief election official” in order to provide the state an opportunity to cure the violation prior to the commencement of litigation. *Id.*

37. New Mexico has designated the Secretary of State as “the chief election officer of the state.” N.M. Stat. Ann. § 1-2-1(A). As the chief election officer, the Secretary of State is “responsible for coordination of State responsibilities under [the NVRA].” 42 U.S.C. § 1973gg-8.

New Mexico's Failure to Offer Voter Registration to Motor Vehicle Division Clients

38. Under New Mexico law, “[e]very person applying for a driver's license, to renew a driver's license or for an identification card shall, if otherwise qualified to register to vote, with the consent of the applicant be simultaneously registered to vote.” N.M. Stat. Ann. § 1-4-47(A). To that end, “[e]very motor vehicle division office, field office or contract field office of the division shall display within the offices clearly visible signs stating ‘voter registration assistance available.’ Personnel in each office shall advise any applicant for licensure, renewal or for an identification card that initial voter registration or a change of address for voter registration may be made simultaneously with the motor vehicle application.” N.M. Stat. Ann. § 1-4-47(C).

39. The rules issued by the Secretary of State for conducting voter registration at designated state agencies are specifically applicable to the MVD. N.M. Code R. § 1.10.8.2. The MVD provides motor vehicle driver's licensing services in New Mexico. The Secretary of TRD, Dorothy Rodriguez, is accountable for the administration of MVD as a division of TRD. The Director of MVD, Michael Sandoval, is accountable due to his direct responsibility over the administration of MVD.

40. At the time this action was filed, and prior thereto and thereafter, the MVD failed to comply with its obligation under Section 5 of the NVRA to provide clients with voter registration applications as a part of their driver's license or identification card application or renewal.

41. Defendants Herrera, Rodriguez, and Michael Sandoval, through their actions and inaction, are responsible for the failure of MVD to comply with its

obligations under Section 5 of the NVRA at the time this action was filed, and prior thereto and thereafter.

42. New Mexico's reports to the United States Election Assistance Commission indicate that, at the time this action was filed and prior thereto, few voter registration applications were completed at the MVD. In 2008, New Mexico had approximately 415,000 unregistered citizens¹ but the state reported only 2,765 voter registration applications received from MVD in 2007 and 2008.² In 2006, New Mexico had approximately 400,000 unregistered citizens³, but the state reported only 3,665 applications were received from the MVD in 2005 and 2006.⁴ The State failed to report any data from the MVD for the years 2003 and 2004.⁵ The State reported only 5,731 applications received from the MVD for the years 2001 and 2002.⁶

43. During March of 2009, Project Vote conducted an investigation of MVD and MVD Express locations and found that a substantial percentage of these offices are not in compliance with the NVRA. A survey of 74 MVD and MVD Express offices throughout New Mexico revealed that at least approximately 60 of these offices – 80% of

¹ Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement* (2009) (forthcoming) (raw data currently available at <http://www.thedataweb.org/datasets.html#cps>).

² U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2007-2008* (2009), available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/the-impact-of-the-national-voter-registration-act-on-federal-elections-2007-2008>.

³ Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*, *supra* note 4.

⁴ U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2005-2006* (2007), available at <http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006>.

⁵ U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2003-2004* (2005), available at <http://www.eac.gov/clearinghouse/docs/reports-and-surveys-nvra-2004-survey-htm.pdf>.

⁶ U.S. Fed. Election Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Elections, 2001-2002* (2003), available at http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2001-02.pdf.

surveyed offices – are not in compliance with the law. Common compliance problems included the failure to provide any registration services at all (including not having any voter registration materials onsite), recommending that applicants travel to other (non-MVD) locations for voter registration services (such as the county clerk’s office), requiring driver’s license applicants to fill out duplicative forms, and office staff with no knowledge of their responsibilities under the NVRA.

44. On March 23, 2009, Project Vote, Demos, DLA Piper US LLP, the Lawyer’s Committee for Civil Rights Under Law, and Freedman Boyd Hollander Goldberg & Ives PA sent a letter to Defendant Herrera in order to provide “written notice of the [Section 5] violation to the chief election official of the state,” as required by the NVRA. 42 U.S.C. § 1973gg-9(b). This letter also was copied to the then Secretary of the Taxation and Revenue Department, Rick Homans, Defendant Michael Sandoval, and the then Secretary of the Human Services Department, Pamela Hyde. A copy of the March 23, 2009 letter is attached hereto as Exhibit A.

45. A follow up letter was sent on April 27, 2009, by the organizations which sent the March 23, 2009 letter, in which they noted their receipt of information indicating that MVD intended to purchase a new computer system, and advised that any new system must include voter registration capabilities consistent with the NVRA. A copy of the April 27, 2009 letter is attached hereto as Exhibit B.

46. In early May 2009, Deputy Secretary of State Don Francisco Trujillo II contacted a representative of Project Vote and informed her that the Secretary of State’s office was aware of the notice letter and follow-up letter, and that a meeting among appropriate state officials was planned to address the issues identified in the letters.

47. Several weeks later, the Project Vote representative followed up with Deputy Trujillo and was told that the state's information technology department was looking into the MVD NVRA compliance issues and that Deputy Trujillo would contact Project Vote with an update within a few weeks.

48. On June 9, 2009, the Project Vote representative contacted Deputy Trujillo and was told that he was waiting on a status report but no additional information was available.

49. On June 19, 2009, two days before the ninety-day notice period under the NVRA was to expire, Deputy Trujillo sent an email to the Project Vote representative stating that he would be unavailable for a couple of weeks and that the Secretary of the Taxation and Revenue Department would follow up. The next day, June 20, 2009, the Project Vote representative received an email from Carolyn Wolf, Chief Counsel of the Legal Services Bureau of the Taxation and Revenue Department, explaining that the state "would respond in more detail after we complete a full review of the Division's activities and system capabilities."

50. The ninety-day notice period expired under the NVRA on or about June 21, 2009, however, New Mexico failed to correct the violations of Section 5 or provide a plan as to how it intended to correct the violations by that date.

51. As a result of Defendants' noncompliance with Section 5 of the NVRA, and due to the large number of New Mexicans who use motor vehicle licensing and identification card services, the number of citizens who were denied their opportunity to register to vote through MVD is substantial.

New Mexico's Failure to Offer Voter Registration to Public Assistance Clients

52. Under New Mexico law, a qualified elector “may register to vote in any state agency that provides public assistance,” N.M. Stat. Ann. § 1-4-5.2(C), and “[v]oter registration shall be made available at all state agencies providing public assistance.” N.M. Stat. Ann. § 1-4-48(B). Likewise, under rules issued by the Secretary of State, “[e]ach designated state agency shall advise any applicant for services that voter registration may be made simultaneously with an application for services.” N.M. Code R. § 1.10.8.8. The rules provide that “designated state agencies” include “all offices in the state that provide public assistance.” N.M. Code R. § 1.10.8.7.

53. The rules issued by the Secretary of State for conducting voter registration at designated state agencies are specifically applicable to HSD. N.M. Code R. § 1.10.8.2. Accordingly, HSD is a public assistance agency that is required to make voter registration available to all clients as required under the NVRA. HSD, through ISD and MAD, administers public assistance programs in New Mexico, including the Food Stamp Program (SNAP), TANF, and Medicaid, among others. The Secretary of HSD, Kathryn Falls, is accountable for the administration of these programs. Within HSD, the Director of ISD, Fred Sandoval, and the Director of MAD, Carolyn Ingram, are responsible for the administration of their respective divisions.

54. HSD, along with ISD and MAD, have failed to comply, and currently are not complying, with their obligations under Section 7 of the NVRA to provide clients with voter registration applications and voter notice forms with every application for public assistance benefits, and every renewal, recertification, and change of address relating to the receipt of public assistance benefits.

55. Defendants Herrera, Falls, Fred Sandoval, and Ingram, through their actions and inaction, are responsible for the failure of HSD, along with ISD and MAD, to comply with their obligations under Section 7 of the NVRA.

56. The number of voter registration applications received from HSD offices has declined sharply despite steady participation in the Food Stamp Program, one of the most widely used public assistance programs covered by Section 7 of the NVRA. The following table shows the United States Department of Agriculture's average monthly number of adult citizen Food Stamp Program participants in New Mexico and the average monthly number of voter registration applications collected by public assistance offices in New Mexico, from 1995 to 2008.⁷ Even by this conservative count, which includes all voter registration applications collected from all public assistance offices, and

⁷ Sources: U.S. Dep't. of Agriculture, *Characteristics of Food Stamp Households* (FY1999 through FY2007), available at <http://www.fns.usda.gov/ora/menu/Published/SNAP/SNAPPartHH.htm>; U.S. Fed. Election Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Elections, 1995-1996*, (1997), available at http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2095-96.pdf; U.S. Fed. Election Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Elections, 1997-1998*, (1999) available at http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2097-98.pdf; U.S. Fed. Election Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Elections, 1999-2000*, (2001) available at http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2099-00.pdf; U.S. Fed. Election Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Elections, 2001-2002*, (2003) available at http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2001-02.pdf; U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2003-2004* (2005), available at <http://www.eac.gov/clearinghouse/docs/reports-and-surveys-nvra-2004-survey-htm.pdf>; U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2005-2006* (2007), available at <http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006>; U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act on Federal Elections 2007-2008*, (2009), available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/the-impact-of-the-national-voter-registration-act-on-federal-elections-2007-2008>.

not just applications collected from those persons participating in the Food Stamp Program, the registration application numbers are dismal and have declined rapidly. Voter registration applications originating in public assistance agencies in New Mexico declined by an astonishing 91% from 1995-1996 to 2007-2008. Each month, tens of thousands of adult citizens participate in the Food Stamp Program in New Mexico. However, according to recent data collected by the Election Assistance Commission (“EAC”), an average of only 60 individuals applied to register to vote each month through public assistance agencies for all of 2007 and 2008. (HSD furnished Project Vote with data on its voter registration activities which directly contradict the data reported by the EAC; given this discrepancy, Plaintiffs rely on the data officially submitted to the EAC in this Complaint⁸).

Year	Average Monthly Adult Citizen Food Stamp Participation	Average Monthly Public Assistance Agency Voter Registration Applications
1995/1996	Data not available	695
1997/1998	Data not available	367
1999/2000	76,000	212
2001/2002	80,000	155
2003/2004	90,500	Data not available ⁹
2005/2006	103,500	51 ¹⁰
2007/2008	100,000 ¹¹	60 ¹²

⁸ The Election Assistance Commission is required by the NVRA to submit a report to Congress every two years on the impact of the NVRA, 42 U.S.C. § 1973gg-7(a)(3), and, in order to accomplish this, the EAC requires states to submit to the agency biannual data on the number of voter registration applications submitted through public assistance agencies. 11 CFR § 8.7(c)(6)(iii).

⁹ New Mexico failed to report to the Election Assistance Commission the number of voter registration applications submitted through public assistance offices in the state for 2003-2004.

¹⁰ Sixteen jurisdictions in New Mexico responded to the 2005-2006 Election Assistance Commission survey and provided public assistance data.

¹¹ Source: U.S. Dep’t. of Agriculture, *Characteristics of Food Stamp Households: Fiscal Year 2007* (2007), available at

57. This decline in registration applications has occurred notwithstanding the fact that large numbers of low-income New Mexico citizens remain unregistered. In 2008, 38% of New Mexico's low-income adult citizens were not registered, amounting to approximately 127,000 citizens of voting age.¹³ By contrast, only 9% of New Mexico's adult citizens in households making over \$100,000 were unregistered.¹⁴

58. On June 12, 2007, Project Vote and Demos sent a letter to Defendant Herrera in order to provide "written notice of the [Section 7] violation to the chief election official of the State," as required by the NVRA. 42 U.S.C. § 1973gg-9(b). A copy of the June 12, 2007 letter is attached hereto as Exhibit C.

59. Project Vote and Demos then attempted to work cooperatively with New Mexico public assistance agencies to secure proper implementation of their NVRA responsibilities. Project Vote and Demos met with HSD officials and later submitted documents with recommendations on how to comply with the NVRA. Despite those efforts, HSD declined to implement the reforms needed to ensure that all HSD offices provide the voter registration services required by Section 7 of the NVRA.

<http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/Participation/2007Characteristics.pdf>. Data on Food Stamp Program participation for FY 2008 is not yet available, so the Average Monthly Adult Citizen Food Stamp participation for 2007 is used for comparison purposes.

¹² Nine jurisdictions in New Mexico responded to the 2007-2008 Election Assistance Commission survey and provided public assistance data.

¹³ Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*, *supra* note 4. "Low income," for the purpose of this statistic, is defined as individuals from households with a total income below \$25,000. Douglas R. Hess, Project Vote & Scott Novakowski, Demos: A Network for Ideas & Action, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007* (2008), available at

http://www.projectvote.org/images/publications/Policy%20Reports%20and%20Guides/Unequal_Access_Final.pdf.

¹⁴ Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*, *supra* note 4.

60. Project Vote interviewed clients leaving HSD offices in August 2008. These interviews confirm that Defendants are not providing voter registration applications at each statutorily covered transaction.

61. Project Vote conducted interviews of 24 individuals exiting Bernalillo County public assistance agencies who had conducted transactions triggering the NVRA's voter registration obligations. Only one person received a registration form.

62. Project Vote also investigated four HSD offices in Bernalillo County in August 2008. None of the offices provided registration forms to their clients with their public assistance benefits applications. The investigations revealed that violations were occurring throughout Bernalillo County. For example, at a Bernalillo County HSD office located at 4330 Cutler Avenue in Albuquerque, a staff person told the Project Vote investigator that the office only gives a client a voter registration application when he or she is changing his or her name or address.

63. Additional interviews of clients leaving HSD offices in 2009 confirm that Defendants are not providing voter registration applications in connection with each transaction statutorily covered by the NVRA. In January 2009, Project Vote interviewed 42 individuals exiting New Mexico public assistance agencies who had conducted transactions triggering the NVRA's voter registration obligations. Again, only one individual received a voter registration application.

64. Project Vote also investigated six HSD offices in January 2009. None of the offices provided voter registration application forms to their clients as part of the public assistance benefits application. Clients were not provided voter registration applications unless they independently asked for the application or checked "yes" on the

voter notice form. Individuals who failed to see the voter notice form were not provided with an application and in several cases were unaware that voter registration services could have been made available in connection with their public assistance transaction.

65. New Mexico's failure to comply with the Section 7 requirements is widespread. Project Vote's January 2009 investigation revealed the following problems:

- (a) At a McKinley County office located at 2907 E. Highway 66 in Gallup, a staff person told the Project Vote investigator that voter registration applications were only made available upon request from the clients.
- (b) At a Cibola County office located at 900 Mt. Taylor Avenue in Grants, a staff person told the Project Vote investigator that a voter registration application is not distributed with each application for assistance, "but they're here and ready for anyone who asks for them."
- (c) At a Sandoval County office located at 4363 Jager Drive in Rio Rancho, a staff person told the Project Vote investigator that clients are not given a voter registration application form with each application, recertification, renewal, and address change.
- (e) At a Valencia County office located at 100 N. 5th Street in Belen, an HSD staff person responded to the Project Vote investigator's request for a voter registration application form by saying "we must have one here, because they won't let us take that voting poster down." After searching for a while, she eventually found an application.

66. As described above, on March 23, 2009 a letter was sent to Defendant Herrera, in her capacity as New Mexico Secretary of State, advising Defendant Herrera that New Mexico was failing to provide voter registration services at the MVD, as required by Section 5 of the NVRA. 42 U.S.C. § 1973 gg-3. That letter also reiterated that New Mexico is continuing to fail to provide voter registration services at the required public assistance agencies, as required by Section 7 of the NVRA. 42 U.S.C. § 1973 gg-5. A copy of the March 23, 2009 letter is attached hereto as Exhibit A.

67. Defendant Herrera provided no response to the March 23, 2009 letter insofar as the letter addresses the failure to comply with Section 7 of the NVRA.

68. Due to the noncompliance with Section 7 of the NVRA by Defendants Herrera, Falls, Fred Sandoval, and Ingram, persons applying for or receiving public assistance in New Mexico, including the individual Plaintiffs, are not being offered the opportunity to register to vote or update their voter registration information, in accordance with federal law.

Plaintiffs' Injuries Resulting from New Mexico's Failure to Comply with the NVRA

69. Plaintiff Valdez has not been registered to vote at her current address which is 2910 Huntington Drive, Las Cruces, New Mexico, 88011. Plaintiff Valdez visited the MVD office located at 505 South Main, Las Cruces, New Mexico on March 19, 2009 to update her address. The change of address form she submitted did not serve as a notification of change of address for voter registration.

70. Plaintiff Grajeda has not been registered to vote at her current address which is 1009 Moonriver, Las Cruces, New Mexico, 88007. Plaintiff Grajeda visited the MVD office located at 505 South Main, in Las Cruces, New Mexico 88001 on June 16, 2009 to submit an application for a state identification card. The identification card application form did not serve as a voter registration application form.

71. Although Plaintiff Allers recently was registered to vote, she was not offered voter registration when she applied for the Food Stamp Program for the first time in or about February 2002 at the HSD office located at 1711 Randolph Rd. SE, Albuquerque, New Mexico 87106, or when she visited HSD offices repeatedly thereafter to recertify her public assistance benefits.

72. Plaintiff Rodriguez has not been registered to vote at his current address at 316 Charleston NE # 4, Albuquerque, NM 87108. Plaintiff Rodriguez visited the MVD office located at 11500 Menaul Blvd, Albuquerque 87112, New Mexico on April 14, 2009 to apply for a motor vehicle driver's license. His application for a motor vehicle driver's license did not serve as an application for voter registration, and a voter registration application form was not included as part of his application. Plaintiff Rodriguez would have registered to vote during the motor vehicle driver's license application process had his application for a driver's license served as an application for voter registration as required by the NVRA, or had an application for voter registration been included with his application for a motor vehicle driver's license as required by the NVRA.

CLAIM FOR RELIEF

(Violations of Sections 5 and 7 of the National Voter Registration Act of 1993)

73. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 72 as if fully set forth herein.

74. Because of their failure to provide the voter registration services required by Sections 5 and 7 of the NVRA, 42 U.S.C. §§ 1973gg-3, 1973gg-5, Defendants violated Section 5 of the NVRA, and have violated and continue to violate Section 7 of the NVRA.

75. Plaintiffs have been aggrieved by this violation of the NVRA and have no adequate remedy at law for the Defendants' violation of their rights. Declaratory and injunctive relief are required to remedy the Defendants' violation of the NVRA and to secure ongoing compliance with the NVRA.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court enter the following Order and Relief. As stated above, Plaintiffs' claims under Section 5 of the NVRA, 42 U.S.C. § 1973gg-3, have been resolved pursuant to the July 1, 2010 Settlement Agreement between the parties [Doc. 84-1]. The further relief requested as to Plaintiffs' Section 5 claims includes the pending application for attorneys' fees, the pending motion for sanctions against Secretary Herrera (which concerns, in part, the Section 5 claims), and any relief which arises out of this Court's retention and exercise of jurisdiction over the Settlement Agreement. Therefore, Plaintiffs respectfully request entry of an Order:

- (i) Declaring, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1973gg-9(B)(2), that the Defendants have violated Section 7 of the NVRA, 42 U.S.C. § 1973gg-5, by failing to provide voter registration services required by Section 7 of the NVRA at designated agencies that provide public assistance, including the HSD;
- (ii) permanently enjoining the Defendants, their agents and successors in office, and all persons working in concert with them, from implementing practices and procedures that violate Section 7 of the NVRA, 42 U.S.C. §,1973gg-5;
- (iii) directing the Defendants, under a court-approved plan with appropriate reporting and monitoring requirements, to take all appropriate measures necessary to remedy the harm caused by their non-compliance with Section 7 of the NVRA, including, without limitation, ensuring that individuals affected by Defendants' non-compliance with Section 7 of the

NVRA are provided immediate opportunities to register to vote or change their voter registration addresses;

- (iv) directing the Defendants, under a court-approved plan with appropriate reporting and monitoring requirements, to take all steps necessary to ensure ongoing compliance with the requirements of Section 7 of the NVRA, 42 U.S.C. § 1973gg-5, including, without limitation, training and monitoring personnel to ensure that designated public assistance agencies are making voter registration applications available, assisting applicants in completing the voter registration applications, inquiring of all applicants, in writing, whether they would like to register to vote or change their voter registration address, and providing other voter registration services and assistance as required by the NVRA;
- (v) awarding the Plaintiffs the cost and disbursements incurred in connection with this action, including, without limitation, reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1973gg-9(c);
- (vi) retaining jurisdiction over this action to ensure that the Defendants are complying with their obligations under the NVRA; and
- (vii) awarding such other equitable and further relief as the Court deems just and proper.

DATED: August 27, 2010

Respectfully submitted,

Mark A. Posner

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Certificate of Service

I certify that on the 27th day of August, 2010, I served the foregoing by electronic means on:

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