

# EXHIBIT “A”

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

CELIA VALDEZ, GRACIELA  
GRAJEDA, SHAWNA ALLERS, JESSE  
RODRIGUEZ, and ASSOCIATION OF  
COMMUNITY ORGANIZATIONS FOR  
REFORM NOW, for themselves and all  
other persons similarly situated,

Plaintiffs,

v.

MARY HERRERA, in her official capacity  
as New Mexico Secretary of State,  
PAMELA S. HYDE 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, RICK HOMANS in  
his 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. CV-09-668 JCH/DJS

### AMENDED COMPLAINT – CLASS ACTION

Plaintiffs CELIA VALDEZ (“Valdez”), GRACIELA GRAJEDA (“Grajeda”),  
SHAWNA ALLERS (“Allers”), JESSE RODRIGUEZ (“Rodriguez”), and the

ASSOCIATION of COMMUNITY ORGANIZATIONS FOR REFORM NOW (“ACORN”), for themselves and all other persons similarly situated, by and through their undersigned counsel, for their Complaint against Defendants MARY HERRERA (“Herrera”), in her official capacity as New Mexico Secretary of State, PAMELA S. HYDE (“Hyde”), 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, RICK HOMANS (“Homans”), 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 based 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 on behalf of the named plaintiffs and a class of similarly situated persons to redress ongoing 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. Despite the clear obligations under Section 5 of the NVRA, New Mexico's motor vehicle authority offices routinely fail to provide any voter registration services at all, much less the integrated application process required by law. New Mexico does not offer simultaneous application for both voter registration and a motor vehicle driver's license or identification card. Change of address forms for a license or identification card also fail to serve as notification of a change of address for voter registration, in the manner required by Section 5.

5. 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.

6. 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.

7. Section 7 further requires that all public assistance offices provide a form that asks each client whether he or she is registered to vote 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.

8. 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).

9. 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.

10. As a result of these ongoing violations, thousands of citizens in New Mexico, including Plaintiffs Valdez, Grajeda, Allers, Rodriguez, and numerous ACORN members, 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.

11. As the nation's largest community organization of low- and moderate-income families, ACORN expends substantial resources registering voters in an effort to expand the electorate and increase voter participation by its members and those who support issues of interest to low-income and minority communities. ACORN's mission includes the goal of building community organizations that are committed to social and economic justice as well as winning victories on issues of concern to its membership

through direct action, negotiation, legislative advocacy and voter participation. As a result of Defendants' ongoing failure to offer voter registration as required by the NVRA, ACORN has been forced to expend substantial resources, including staff time and volunteer allocation, to assist citizens in registering to vote who should have been offered the opportunity to register to vote and update their registration at New Mexico HSD and MVD offices. Thousands of eligible low-income voters, including members of ACORN, remain unregistered and effectively disenfranchised as a result of Defendants' actions and inaction.

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

#### **NAMED 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 is not registered at her current address. She would like to register 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 is not registered to vote at her current

address. She would like to register 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 and Medicaid Programs for the first time in February 2002 at the HSD office located at 1711 Randolph Rd. SE, Albuquerque, New Mexico 87106. In the past seven years, Ms. Allers has recertified each time it was required. She has also changed her address at least four times at the HSD offices located at 1711 Randolph Rd. and 4330 Cutler Avenue, Albuquerque, New Mexico 87110. Ms. Allers was not offered a voter registration application when she initially applied for benefits, when she recertified, or changed her address. Although Plaintiff Allers is eligible to register to vote in New Mexico, she is not registered at her current address. She would like to register to vote and would have done so at the HSD office if she had been offered the opportunity.

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 is not registered at his current address. He would like to register to vote and would have done so at the MVD office if he had been offered the opportunity.

17. Plaintiff ACORN is a non-profit organization incorporated in Louisiana with New Mexico-based offices located in Albuquerque and Las Cruces. ACORN is the nation's largest community organization of low- and moderate-income families, working

together for social justice and stronger communities. Since 1970, ACORN has grown to more than 175,000 member families, organized in 850 member chapters in 75 cities across the United States and other countries, including over 3,000 members in its two New Mexico chapters. ACORN members participate in local meetings, actively work on public policy campaigns, and elect their own leaders from their neighborhoods.

ACORN's membership includes persons who have applied for a state motor vehicle driver's license, a state identification card, and/or public assistance and are either eligible to vote but unregistered, or who need to update their voter registration because they moved after registering to vote.

18. Plaintiff ACORN and its members expend substantial resources, including staff time and volunteer allocation, to offer voter registration assistance to low-income and minority New Mexico citizens. ACORN staff and volunteers specifically target their voter registration assistance efforts in high poverty areas including Las Cruces and Albuquerque. The United States Census Bureau reported that the median income of households in Las Cruces was \$35,625, with 23% of people in poverty from 2005-2007.<sup>1</sup> In Albuquerque, the median household income was \$44,113 with 15% of people of people in poverty from 2005-2007.<sup>2</sup> These figures reflect high poverty rates in

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<sup>1</sup> U.S. Census Bureau, *2005-2007 American Community Survey 3-Year Estimates, Las Cruces City, NM Data Profile Highlights*, available at [http://fastfacts.census.gov/servlet/ACSSAFFacts?\\_event=Search&geo\\_id=16000US3502000&\\_geoContext=01000US|04000US35|16000US3502000&\\_street=&\\_county=Las+Cruces&\\_cityTown=Las+Cruces&\\_state=04000US35&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=160&\\_submenuId=factsheet\\_1&ds\\_name=ACS\\_2007\\_3YR\\_SAFF&\\_ci\\_nbr=null&qr\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=](http://fastfacts.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=16000US3502000&_geoContext=01000US|04000US35|16000US3502000&_street=&_county=Las+Cruces&_cityTown=Las+Cruces&_state=04000US35&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=160&_submenuId=factsheet_1&ds_name=ACS_2007_3YR_SAFF&_ci_nbr=null&qr_name=null&reg=null%3Anull&_keyword=&_industry=) (last visited June 5, 2009).

<sup>2</sup> U.S. Census Bureau, *2005-2007 American Community Survey 3-Year Estimates, Albuquerque, NM Data Profile Highlights*, available at [http://fastfacts.census.gov/servlet/ACSSAFFacts?\\_event=Search&geo\\_id=16000US3539380&\\_geoContext=01000US|04000US35|16000US3539380&\\_street=&\\_county=Albuquerque&\\_cityTown=Albuquerque&\\_state=04000US35&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=1](http://fastfacts.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=16000US3539380&_geoContext=01000US|04000US35|16000US3539380&_street=&_county=Albuquerque&_cityTown=Albuquerque&_state=04000US35&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=1)



comparison with a national poverty rate of 12.5% and a real median household income of \$50,233 from 2005-2007.<sup>3</sup>

19. As a result of Defendants' continuing failure to follow the law, ACORN has been forced to expend resources to assist low-income New Mexicans with voter registration who should have been offered voter registration services at HSD offices and to provide voter registration assistance to New Mexicans who should have been offered voter registration services at MVD locations.

20. But for defendants' violations of the NVRA, ACORN would not have expended resources to assist persons with registering to vote, but instead would have used those resources to offer voter registration to other New Mexico citizens and to conduct other activities to build the organization and further its mission and goals. These injuries to ACORN and its members will continue into the future so long as Defendants fail to ensure compliance with their obligations under the NVRA.

21. 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

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<sup>3</sup> Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60-235, *Income, Poverty, and Health Insurance Coverage in the United States: 2007* (2008), available at <http://www.census.gov/prod/2008pubs/p60-235.pdf>.

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.

22. Defendant Homans is the Secretary of New Mexico’s Taxation and Revenue Department (“TRD”). As the Secretary, Defendant Homans “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 Homans is named in his official capacity as Secretary of the New Mexico TRD.

23. 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 a private entity, “MVD Express,” that allows MVD Express to offer motor vehicle licensing and identification card services to the public, for profit. MVD Express is an

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agent 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.

24. Defendant Hyde 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 Hyde is named as a defendant in her official capacity as Secretary of New Mexico's HSD.

25. 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.

26. 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**

27. 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 1343(a).

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

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

30. 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**

31. 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).

32. 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).

33. 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).

34. 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.

35. 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.

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

37. 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).

38. 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).

39. 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.

40. 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.*

41. 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**

42. 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).

43. 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, Rick Homans, 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.

44. The MVD has failed to comply, and currently is not complying, 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. The MVD is also failing to comply with its obligations under Section 5 of the NVRA which requires all change of address forms to serve as notification of change of address for voter registration.

45. Defendants Herrera, Homans, and Michael Sandoval, through their actions and inaction, are responsible for the failure of MVD to comply with their obligations under Section 5 of the NVRA.

46. New Mexico's reports to the United States Election Assistance Commission indicate that few voter registration applications are completed at the MVD. In 2008, New Mexico had approximately 415,000 unregistered citizens<sup>4</sup> but the state reported only 2,765 voter registration applications received from MVD in 2007 and 2008.<sup>5</sup> In 2006, New Mexico had approximately 400,000 unregistered citizens<sup>6</sup>, but the state reported only 3,665 applications were received from the MVD in 2005 and 2006.<sup>7</sup> The State failed to report any data from the MVD for the years 2003 and 2004.<sup>8</sup> The

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<sup>4</sup> 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>).

<sup>5</sup> 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>.

<sup>6</sup> Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*, *supra* note 4.

<sup>7</sup> 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>.

<sup>8</sup> 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-hm.pdf>.



State reported only 5,731 applications received from the MVD for the years 2001 and 2002.<sup>9</sup>

47. 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 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.

48. 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 on behalf of ACORN 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 Defendant Homans, Defendant Michael Sandoval, and Defendant Hyde. A copy of the March 23, 2009 letter is attached to Plaintiffs’ original Complaint as Exhibit A and is incorporated herein by reference.

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<sup>9</sup> 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%202001-02.pdf](http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%202001-02.pdf).

49. A follow up letter was sent on April 27, 2009, in which the organizations listed in paragraph 48 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 to the original Complaint as Exhibit B and is incorporated herein by reference.

50. 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.

51. 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.

52. 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.

53. 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 Secretary Homans 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."

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

55. As a result of Defendants' continued noncompliance with Section 5 of the NVRA, ACORN has expended resources offering voter registration assistance to New Mexicans who should have received voter registration services at MVD and MVD Express locations. Due to the large number of New Mexicans who use motor vehicle licensing and identification card services, the number of citizens who have been denied and continue to be denied their opportunity to register to vote through MVD is substantial.

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

56. 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.

57. 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, Pamela S. Hyde, 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.

58. 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.

59. Defendants Herrera, Hyde, 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.

60. 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.<sup>10</sup> Even by this conservative count, which

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<sup>10</sup> 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

includes all voter registration applications collected from all public assistance offices, and 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

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[http://www.eac.gov/files/clearinghouse/reports\\_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2095-96.pdf](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](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](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](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>.

reported by the EAC; given this discrepancy, Plaintiffs rely on the data officially submitted to the EAC in this Complaint<sup>11</sup>).

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 <sup>12</sup>
2005/2006	103,500	51 <sup>13</sup>
2007/2008	100,000 <sup>14</sup>	60 <sup>15</sup>

61. 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.<sup>16</sup> By contrast, only 9% of New Mexico's adult citizens in households making over \$100,000 were unregistered.<sup>17</sup>

<sup>11</sup> 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).

<sup>12</sup> 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.

<sup>13</sup> Sixteen jurisdictions in New Mexico responded to the 2005-2006 Election Assistance Commission survey and provided public assistance data.

<sup>14</sup> Source: U.S. Dep't. of Agriculture, *Characteristics of Food Stamp Households: Fiscal Year 2007* (2007), available at <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.

<sup>15</sup> Nine jurisdictions in New Mexico responded to the 2007-2008 Election Assistance Commission survey and provided public assistance data.

<sup>16</sup> 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,

62. On June 12, 2007, Project Vote and Demos sent a letter on behalf of ACORN 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 to the original Complaint as Exhibit C and is incorporated herein by reference.

63. 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.

64. 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.

65. 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.

66. 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

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

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.

67. 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.

68. 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.

69. 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.

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<sup>17</sup> Source: U.S. Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*, *supra* note 4.



- (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. 5<sup>th</sup> 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.

70. As described in paragraph 48, on March 23, 2009 a letter was sent on behalf of ACORN to Defendant Herrera, in her capacity as New Mexico Secretary of State, advising Defendant Herrera that New Mexico is 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 to the original Complaint as Exhibit A and is incorporated herein by reference.

71. As of the date of this filing, Defendant Herrera has provided no response to the March 23, 2009 letter insofar as the letter addresses the failure to comply with Section 7 of the NVRA.

72. Due to the noncompliance with Section 7 of the NVRA by Defendants Herrera, Hyde, Fred Sandoval, and Ingram, persons applying for or receiving public assistance in New Mexico, including individual Plaintiffs, members of ACORN, and

members of the class, 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**

73. Plaintiff Valdez is not 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.

74. Plaintiff Grajeda is not 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.

75. Plaintiff Allers is not registered to vote at her current address, which is 12913 Lomas Blvd. NE Apt. E, Albuquerque, NM 87108. Plaintiff Allers first applied for benefits under the Food Stamps and Medicaid program at the HSD office at 1711 Randolph Rd. SE in 2002 and at no time during the application process did anyone ask her if she would like to register to vote or provide her with a voter registration form. Since 2002, Plaintiff Allers has visited the HSD offices located at 1711 Randolph Rd. SE and 4330 Cutler Avenue four times to file a change of address and has visited both offices to be recertified for public assistance benefits as required. At no time during any

of these follow-up visits did anyone ask her if she would like to register to vote or provide her with a voter registration form.

76. Plaintiff Rodriguez is not 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.

77. As a result of Defendants' ongoing violations of the NVRA, Plaintiff ACORN's members who apply for, seek to renew, or submit a change of address for a motor vehicle driver's license or a state identification card, and who apply, recertify, renew, or submit a change of address for the purpose of receiving public assistance benefits, are not being offered the opportunity to register to vote, or update their voter registration. Consequently, Defendants are not providing ACORN members the opportunity to register to vote at their current address as required by Section 5 and Section 7 of the NVRA.

78. ACORN members who are registered to vote have a genuine interest in other members of their community being registered to vote. Although ACORN encourages its members to register to vote, not all of its members are registered. Many of

ACORN's members receive public assistance and would greatly benefit from being offered the opportunity to register to vote, or update their voter registration, during visits to HSD offices to apply, recertify, renew, and change their address for public assistance benefits. Many of ACORN's members also have driver's licenses and/or state identification cards. Due to Defendants' continued noncompliance with Section 5 and Section 7 of the NVRA, ACORN has borne the burden and continues to bear the burden of offering voter registration assistance to its members who should have received those services at HSD and MVD offices.

79. ACORN seeks to increase political participation in the communities it serves. As part of those efforts, ACORN conducts voter registration drives across the State of New Mexico.

80. ACORN's voter registration assistance efforts include, among other things, collecting completed voter registration applications outside of HSD offices from individuals who were not offered the opportunity to register to vote during visits to the offices. Between December 2007 and early October 2008, ACORN conducted voter registration drives six days a week in parts of Las Cruces and Albuquerque, New Mexico, including at locations outside HSD offices.

81. In addition, ACORN conducted "Get Out The Vote" activities to encourage registered voters to go to the polls and cast a ballot.

82. As a result of Defendants' ongoing violations of the NVRA, ACORN and its members have expended substantial resources, including staff time and volunteer allocation, to offer voter registration to individuals who were entitled by law to have been offered that same service by staff at HSD and MVD offices.

83. But for Defendants' violations, ACORN would have been able to spend increased time offering voter registration assistance to other New Mexico citizens who had not recently visited an HSD or MVD office. If Defendants' violations are not remedied, ACORN will be forced to continue to focus its voter registration efforts and expend significant resources offering voter registration assistance to those who should have been offered those very services by HSD and MVD.

### **Class Action Allegations**

84. Plaintiffs bring their claims under the NVRA as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and all other individuals similarly situated, as more specifically described below.

85. Plaintiffs Allers and ACORN seek to represent the class of all residents of the State of New Mexico, past, present, and future, who are eligible to register to vote in New Mexico, are not registered to vote at their current residence address, have applied for public assistance through an HSD office or have requested recertification or renewal or submitted a change of address relating to public assistance through an HSD office, and in that transaction were not provided by the HSD office with a voter registration application, were not offered assistance in completing a voter registration application by the HSD to the same degree that the HSD provides assistance in completing public assistance forms, were not provided such assistance (unless refused by the applicant or recipient) by the HSD, and/or were not provided with a voter notice form by the HSD.

86. Plaintiffs Valdez, Rodriguez, and ACORN seek to represent the class of all residents of the State of New Mexico, past, present, and future, who are eligible to register to vote in New Mexico, are not registered to vote at their current residential

address, have applied for a motor vehicle driver's license or state identification card or the renewal of a license or identification card, or submitted a change of address form for purposes of a license or identification card, and whose application for a license or identification card did not also serve as a simultaneous application for voter registration, or whose change of address did not also serve as notification of a change of address for voter registration (unless stated otherwise by the individual).

87. The named Plaintiffs as class representatives, and the classes as defined above, meet each of the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure for certification of this case as a class action, for the reasons stated below.

88. *Rule 23(a)(1) – numerosity.* The plaintiff class harmed by HSD is so numerous that joinder of all members is impracticable. On information and belief, the class is believed to include tens of thousands of New Mexico residents, although the exact size of the class is currently unknown. For example, as set forth above, the New Mexico Food Stamp program, which is just one of the public assistance programs subject to Section 7 of the NVRA, had 100,000 adult citizen participants per month, on average, during fiscal year 2008 (the last year for which such data are available). If only a small percentage of these individuals were not registered to vote at their current address, this would still mean that thousands of public assistance recipients are not registered to vote; in fact, as set forth above, in 2008 38% of adult citizens in New Mexico households making less than \$25,000 a year were not registered to vote.

89. Similarly, the plaintiff class harmed by MVD is so numerous that joinder of all members is impracticable. On information and belief, the class is believed to

include tens of thousands of New Mexico residents. As explained previously, New Mexico had over 400,000 unregistered citizens in 2008; however, the state only reported receiving 2,765 voter registration applications from the MVD in 2007 and 2008.

90. *Rule 23(a)(2) – commonality.* There are numerous common questions of law and fact in this action that relate to and affect the claims of relief sought by each class. The common legal issue for both classes is whether Defendants have complied with their responsibilities under the NVRA.

91. The common factual questions include, for the Section 7 claim, (a) whether HSD distributes a voter registration application with each application for public assistance, and with each recertification, renewal, and change of address relating to public assistance; (b) whether HSD distributes a voter notice form with each application for public assistance, and with each recertification, renewal, and change of address relating to public assistance; (c) whether HSD provides assistance in completing voter registration forms to the same degree it provides assistance in completing HSD public assistance forms, unless the public assistance applicant or recipient refuses such assistance; and (d) whether the Secretary of State takes all actions necessary to ensure that HSD is complying with the requirements of Section 7 of the NVRA.

92. The common factual questions for the Section 5 claim are whether (a) all applications for motor vehicle driver's licenses and state identification cards (including any renewal applications) serve as voter registration applications; (b) whether the voter registration application portion of the driver's license application and personal identification card application require any information that duplicates information in the driver's license or identification card portion, with the exception of a signature or other

information that confirms eligibility to vote; and (c) whether the change of address form submitted for a state motor vehicle driver's license or identification card serves as notification of change of address for voter registration with respect to elections for federal office unless the registrant states that the change of address is not for voter registration; and (d) whether the Secretary of State takes all actions necessary to ensure that MVD is complying with the requirements of Section 5 of the NVRA.

93. *Rule 23(a)(3) – typicality.* The claims of the named Plaintiffs, as class representatives for claims against the HSD and MVD, are typical of the claims of the class. The named Plaintiffs have been affected by the same practices that Plaintiffs allege in this Complaint have harmed each class as a whole and the class members individually.

94. *Rule 23(a)(4) – adequacy.* The named Plaintiffs for both classes will fairly and adequately represent the interests of each class. There is no conflict between any named Plaintiff and member of the class with respect to this action or the claims for relief set forth in this Complaint. In addition, Plaintiffs' counsel will fairly and adequately represent the interests of each plaintiff class, considering: a) the work counsel has done in identifying and investigating Defendants' compliance with Sections 5 and 7 of the NVRA; b) counsel's knowledge of the NVRA and experience in handling litigation asserting violations of the NVRA; c) counsel's experience in handling complex litigation, including complex voting rights litigation and class actions; and d) the resources counsel will commit to representing each class.

95. *Rule 23(b)(2) – case maintainable under this rule.* This action is properly maintained as a class action pursuant to subsection (b)(2) of Rule 23 in that the challenged conduct is generally applicable to each class such that final injunctive or



declaratory relief will necessarily be classwide in scope and appropriate with respect to each class as a whole.

**CLAIM FOR RELIEF**

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

96. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 95 as if fully set forth herein.

97. 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 have violated and continue to violate the NVRA.

98. 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, Plaintiff respectfully requests that the Court enter an Order:

- (i) Certifying a class under Rule 23(b)(2) defined as: all residents of the State of New Mexico, past, present, and future, who are eligible to register to vote in New Mexico, are not registered to vote at their current residence address, have applied for public assistance through an HSD office or have requested recertification or renewal or submitted a change of address relating to public assistance through an HSD office, and in that transaction were not provided by the HSD office with a voter registration application,

were not offered assistance in completing a voter registration application by the HSD to the same degree that the HSD provides assistance in completing public assistance forms, were not provided such assistance (unless refused by the applicant or recipient) by the HSD, and/or were not provided with a voter notice form by the HSD.

- (ii) Certifying a class under Rule 23(b)(2) defined as: all residents of the State of New Mexico, past, present, and future, who are eligible to register to vote in New Mexico, are not registered to vote at their current residential address, have applied for a motor vehicle driver's license or state identification card or the renewal of a license or identification card, or submitted a change of address form for purposes of a license or identification card, and whose application for a license or identification card did not also serve as a simultaneous application for voter registration, or whose change of address did not also serve as notification of a change of address for voter registration (unless stated otherwise by the individual).
- (iii) Declaring, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1973gg-9(B)(2), that the Defendants have violated Sections 5 and 7 of the NVRA, 42 U.S.C. §§ 1973gg-3, 1973gg-5, by failing to provide voter registration services required by Sections 5 and 7 of the NVRA at designated agencies that provide public assistance, including the HSD, and by failing to provide simultaneous voter registration at MVD locations;

- (iv) 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 Sections 5 and 7 of the NVRA, 42 U.S.C. §§ 1973gg-3, 1973gg-5;
- (v) 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 Sections 5 and 7 of the NVRA, including, without limitation, ensuring that individuals affected by Defendants' non-compliance with Sections 5 and 7 of the NVRA are provided immediate opportunities to register to vote or change their voter registration addresses;
- (vi) 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 5 of the NVRA, 42 U.S.C. § 1973gg-3, including, without limitation, training and monitoring personnel to ensure that MVD is offering simultaneous voter registration with every motor vehicle driver's license or State identification card application and renewal without requiring any information that duplicates information in the driver's license or identification card portion of the application, with the exception of a signature or other information that confirms eligibility to vote, as well as ensuring that every change of address form submitted for a state motor vehicle driver's license or identification card serves as notification of

- change of address for voter registration with respect to elections for federal office;
- (vii) 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;
  - (viii) 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);
  - (ix) retaining jurisdiction over this action to ensure that the Defendants are complying with their obligations under the NVRA; and
  - (x) awarding such other equitable and further relief as the Court deems just and proper.

DATED: October \_\_\_\_, 2009

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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/s/ David H. Urias