

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

THE AMERICAN CIVIL LIBERTIES  
UNION OF NEW MEXICO; THE  
LEAGUE OF WOMEN VOTERS OF ALBUQUERQUE/  
BERNALILLO COUNTY, INC.; SAGE COUNCIL;  
NEW MEXICO COALITION TO END HOMELESSNESS;  
ANNE KASS, ALEXANDRA KAZARAS  
and BARBARA GROTHUS,

Plaintiffs,

v.

No. CV 05-1136 MCA/WDS

MILLIE U. SANTILLANES, ALBUQUERQUE  
CITY CLERK,

Defendant.

**PLAINTIFFS' STATEMENT OF POSITION REGARDING  
THE COURT'S EQUITABLE JURISDICTION TO RESOLVE  
THE PARTIES' DISAGREEMENT CONCERNING  
APPLICATION OF THE NEW MEXICO STATE ELECTION  
AND MUNICIPAL ELECTION CODES**

COME NOW Plaintiffs, pursuant to the Court's February 12, 2007, Order requiring the parties to state "their respective positions as to whether it is within the Court's equitable jurisdiction to resolve any remaining dispute about how to apply the choice-of-law provisions in the absence of the October 2005 City Charter amendment." This statement will be brief.

Plaintiffs do not believe it is necessary for the Court to resolve this particular issue. It is not at all clear that the argument in Defendant's briefs is actually the policy position Defendant will apply in the next municipal election. Plaintiffs have asked counsel for Defendant whether the City Clerk actually intends to ignore New Mexico's

“unique identifier” voter security measures in the State Election Code, and has not received an answer. Counsel for Plaintiffs have also spoken with a member of the City Council and the Director of the New Mexico Bureau of Elections on this issue. The most that can be said at this point in time is that the City of Albuquerque has not officially decided how it will proceed in the next election. Plaintiffs respectfully state they believe that the City Clerk will ultimately not permit voting under a lesser security standard than that required by the New Mexico Election Code, or that the City Council will step in to ensure Albuquerque complies with the minimal voter identification measures of the State Election Code. It is also likely that the State will require compliance with its laws.

Just because counsel for Defendant in a response brief made an argument which has not been officially adopted or promulgated by the City of Albuquerque does not, in Plaintiffs’ estimation, create a justiciable case or controversy. Further, the Court has stated that resolution of this issue will not affect its opinion. The Court may accordingly proceed to enter its final order without resolving the arguments regarding the choice of law provisions in the New Mexico Election and Municipal Election Codes.

Respectfully submitted,

/s/ James R. Scarantino

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I HEREBY CERTIFY that on February 26, 2007, I filed the foregoing pleading electronically through the CM/ECF system and caused the following parties and/or counsel to be served as follows:

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Electronically Filed on February 26, 2007  
By George Bach