

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

CELIA VALDEZ, et al.

Plaintiffs,

v.

MARY HERRERA, in her official
capacity as New Mexico Secretary of
State, et al.

Defendants.

CIVIL ACTION NO. 1:09-cv-0668
JH/DJS

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR
REVISED LITIGATION SCHEDULE AND TO COMPEL DISCOVERY**

Plaintiffs respectfully submit the following Memorandum of Points and Authorities in support of their Motion for Revised Litigation Schedule and to Compel Discovery.

The grounds for Plaintiffs' motion are straightforward. Under the existing litigation schedule, discovery closes on June 1, 2010. Plaintiffs have been diligent in scheduling timely discovery in advance of the June 1 discovery deadline. However, actions and inactions of the Defendants have deprived Plaintiffs of a full and fair opportunity to complete discovery by June 1. As a result, discovery remains materially incomplete in several critical areas and cannot be completed within the existing schedule.

In sum, Defendants' conduct has included the following. First, the Defendant Secretary of State's Rule 30(b)(6) designee failed to appear for his deposition on May 6, 2010 – the third attempt to conduct that deposition. Second, on March 17, 2010, the Defendants filed a motion for a protective order against six depositions noticed for dates between March 24 and April 1. After Defendants' motion for a protective order was denied for lack of good cause on April 9, Defendants did not make the six subject witnesses available for depositions until dates ranging from April 26 through May 5. This, in turn, prevented Plaintiffs from sending out follow-up written discovery based upon the previously undisclosed information obtained from these witnesses in their depositions (the depositions were concluded less than 30 days prior to the discovery cut-off date). Finally, Defendants inexcusably withheld, and made highly prejudicial tardy disclosures of, critical information that had been requested and was readily available to them far in advance of the dates upon which the information ultimately was provided. All of this information is material to Plaintiffs' case in chief, and to their opposition to Defendant Hyde's pending summary judgment motion, which is due June 1.

Plaintiffs accordingly request a relatively brief extension of the time for conducting discovery. Specifically, Plaintiffs request an extension of fact discovery until six weeks after June 1 or after the order is entered in response to

this motion, whichever occurs later (this would be July 16, 2010 if the order is entered on or before June 1). Plaintiffs also request that a reasonable period of time be allowed for expert discovery after the close of fact discovery. To accommodate these changes, Plaintiffs request a new trial date be set for this case, changing the date from November 2010 to early 2011. Plaintiffs also request that the date for answering Defendant Hyde's pending summary judgment motion be re-set from June 1 until two weeks after the close of fact discovery.¹ Finally, Plaintiffs ask for an order compelling discovery from the Defendant Secretary of State.

Defendants other than Defendant Herrera are opposed to this motion. Counsel for Defendant Herrera has informed Plaintiffs that Defendant Herrera is not opposed.

For these reasons and as set forth in greater detail below, Plaintiffs respectfully submit that they have shown good cause for the Court to revise the litigation schedule, toll the deadline for their response to Defendants' Motion for Summary Judgment until two weeks following the close of fact discovery, and compel discovery from the Defendant Secretary of State.

In allow this case to proceed forward in an orderly manner, and to minimize the extent of any extensions granted pursuant to this motion, Plaintiffs request that

¹ Defendant Hyde is Secretary of the New Mexico Human Services Department and is sued in her official capacity.

this Court set an expedited briefing schedule for Plaintiffs' motion for a revised litigation schedule (i.e., the portion of this motion that is opposed). Plaintiffs' suggested schedule is detailed in the accompanying Motion.

I. Legal Background

This action concerns Plaintiffs' claims that Defendants and their predecessors in office have failed to offer voter registration to individuals who visit New Mexico Taxation and Revenue Department ("TRD") and Human Services Department ("HSD") offices, in violation of Sections 5 and 7 of the National Voter Registration Act ("NVRA"), 42 U.S.C. §§ 1973gg-3, 1973gg-5. The NVRA was enacted "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).²

At motor vehicle offices, the NVRA requires TRD to "include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license." 42 U.S.C. §§ 1973gg-3(c)(1). At public assistance offices, the NVRA requires HSD to "distribute" a voter registration application "with each application for . . . [public] assistance, and

² Although the NVRA applies only to voter registration for federal elections, the State of New Mexico (like all other covered states) has chosen to maintain a unitary voter registration system and, accordingly, has statutorily applied the NVRA's registration requirements to registration for all elections in the State. N.M. Stat. Ann. § 1-4-5.2. Congress limited the NVRA to federal elections consistent with its plenary authority under the Constitution to regulate the times, places, and manner of conducting federal elections. *See, e.g., ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995) (upholding the constitutionality of the NVRA).

with each recertification, renewal, or change of address form relating to such . . . assistance,” unless the individual “in writing, declines to register to vote.” 42 U.S.C. § 1973gg-5(a)(6)(A). HSD also is required to provide to public assistance clients who wish to register to vote “the same degree of assistance with regard to the completion of the registration application form as is provided . . . with regard to the completion of [the State’s public assistance] forms,” unless the client declines such assistance. 42 U.S.C. § 1973gg-5(a)(6)(C).

While the State has designated its motor vehicle and public assistance offices as voter registration sites, both TRD and HSD have failed in practice to carry out the registration procedures mandated by the NVRA. *See* Complaint, Pars. 44-47; 73-74; 76 (TRD); Pars. 60-61; 64-70; 75 (HSD) (Docket 1). As a result, thousands of New Mexico residents who are eligible to vote in the State have been unlawfully denied – and will continue to be unlawfully denied – the opportunity to register to vote. *Id.*, Par. 10.

II. Current Status of the Case

Discovery is currently set to close on June 1, 2010 (Docket 39).

There are several matters currently pending. On May 13, 2010, Defendant Pamela Hyde, the Secretary of the Human Services Department, filed a motion for summary judgment (Docket 57). Under Local Rule 7.4(a), Plaintiffs’ response is

due June 1, 2010. Plaintiffs requested that Defendant Hyde agree to an extension of time in which to respond to the motion, but Defendant Hyde has refused.

Defendant Hyde served interrogatories and requests for production on Plaintiffs on April 28, 2010; Plaintiffs' responses are due May 28, 2010.

A settlement conference is set for June 9, 2010, before Magistrate Judge Svet (Docket 52). The parties are required to submit confidential settlement letters to the Magistrate by June 2, 2010. *Id.*³

III. Discussion

Under Fed. R. Civ. P. 16(b)(4), the Court may amend a scheduling order for good cause. Regarding such amendments, “the Tenth Circuit instructs: ‘[R]igid adherence to pretrial conference agreements should not be exacted, especially where to do so will result in injustice to one party and relaxing of such agreement will not cause prejudice to the other party.’” *Walker v. THI of N.M. at Hobbs Ctr.*, 262 F.R.D. 599, 602 (D.N.M. 2009) (quoting *Smith Contracting. Corp. v. Trojan Const. Co., Inc.*, 192 F.2d 234, 236 (10th Cir. 1951)); *see also Sil-Flo, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1519 (10th Cir. 1990) (“[R]igid adherence to the pretrial scheduling order is not advisable.”). “The primary measure of Rule 16’s ‘good cause’ standard is the moving party’s diligence in attempting to meet the

³ On May 11, 2010, Magistrate Judge Svet denied the parties’ joint motion for an extension of time to conduct expert discovery on the ground that the extension would interfere with the date set for trial in this case.

case management order's requirements.” *Rowen v. New Mexico*, 210 F.R.D. 250, 252 (D.N.M. 2002) (quoting *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir. 2001)). “[T]he court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension.” *Walker*, 262 F.R.D. at 603 (quoting Advisory Committee Notes to 1983 Amendment to Fed. R. Civ. P. 16).

For the reasons discussed below, Defendants by their actions and inactions have unreasonably prevented timely and complete discovery notwithstanding Plaintiffs' diligent efforts to obtain discovery. Accordingly, Plaintiffs for good cause seek a modest modification of the discovery and pretrial schedule, a deferral of the deadline for responding to Defendants' Motion for Summary Judgment, and an order compelling certain discovery.

A. Noncooperation by Secretary of State

Plaintiffs have been diligent in seeking a deposition of the Secretary of State's office pursuant to Fed. R. Civ. P. 30(b)(6), but due to the actions of that office they have been prevented from doing so. Exhibit 1(Chapman Declaration). This deposition is crucial not only with regard to Plaintiffs' claim against the Defendant Secretary of State, but also is directly relevant to Plaintiffs' claims against the other Defendants because of the central role the Secretary of State is required by law to play with regard to voter registration at HSD's public assistance

offices and at TRD's motor vehicle offices.⁴ Indeed, Defendant Hyde acknowledges in her Memorandum in Support of her summary judgment motion the central role that the Secretary of State's office plays with regard to HSD's enforcement of the NVRA.⁵ Thus, it is important that Plaintiffs be able to depose the representative of the Secretary of State's office in order to fully explore the policy and procedure advice provided by the Secretary of State's office, and the nature and scope of the policy and procedure developed by that office.

Since February of this year, Plaintiffs have attempted three times to conduct this deposition.⁶ The Secretary of State's designated Rule 30(b)(6) witness has twice failed to appear for his noticed deposition, first on February 23, 2010, and most recently May 6, 2010. No other person was ever named by the Secretary of

⁴ The Secretary of State is a defendant in this lawsuit because of her role as "the chief election officer of the state." N.M. Stat. Ann. § 1-2-1(A). The NVRA requires each state to designate "a chief State election official" who is "responsible for coordination of State responsibilities under [the NVRA]." 42 U.S.C. § 1973gg-8. Thus, the Secretary of State is the state official who "is responsible for managing the [state's] multiple . . . responsibilities under the NVRA." *Harkless v. Brunner*, 545 F.3d 445, 454 (6th Cir. 2008).

⁵ In her statement of undisputed material facts, Defendant Hyde contends that HSD relies on the Secretary of State's office to provide HSD with "its policy and procedure for meeting its responsibility under the NVRA." *See* Memorandum in Support of Defendant Hyde's Motion for Summary Judgment, at 11 (Docket 58).

⁶ In a case of this type, a Rule 30(b)(6) deposition is the first step in obtaining orderly and full discovery from a state agency. Plaintiffs therefore originally noticed the 30(b)(6) deposition for a date (February 23, 2010) far in advance of the June 1 discovery deadline. If that deposition had occurred as originally scheduled, there would have been ample time for any follow up discovery needed from the Secretary of State.

State's office to act as a 30(b)(6) deponent. In addition, Plaintiffs were effectively forced to cancel another noticed date for conducting this deposition, on April 2, 2010, when Defendant Hyde cancelled the depositions that were to be taken in conjunction with the Secretary of State deposition, pending resolution of her motion for a protective order.⁷

Plaintiffs currently are making a fourth attempt to conduct a Rule 30(b)(6) deposition of the Secretary of State's office – on May 26, 2010 – however, Plaintiffs are uncertain whether the deposition will in fact occur on that date.

Even if the Secretary's 30(b)(6) witness appears between now and the current close of discovery, the remaining time will not be adequate to notice and

⁷ The specifics of Plaintiffs' efforts to take the Secretary of State 30(b)(6) deposition are as follows, and are set forth in the Chapman Declaration, Exhibit 1. As noted, Plaintiffs first reached agreement with the Secretary of State's counsel to take the deposition on February 23, 2010, and noticed the deposition for that date. However, on February 22, 2010, while Plaintiffs' counsel were flying to Albuquerque, the Secretary of State's counsel called to inform Plaintiffs that the deponent had been bitten by a spider and would not be able to appear. Plaintiffs then re-noticed the deposition for April 2. But when Defendant Hyde cancelled the HSD depositions that were to be taken at the same time, Plaintiffs postponed the Secretary of State deposition to avoid the cost of attorneys traveling to New Mexico for a single deposition. After Defendant Hyde's motion for a protective order was denied on April 9, 2010, Plaintiffs reached agreement with the Secretary of State's counsel to re-notice the 30(b)(6) deposition for May 6, 2010. Plaintiffs' counsel flew to New Mexico and appeared at the designated location on May 6, only to be informed by the Secretary of State's counsel that the designated deponent had called in sick to his office that day and would not be appearing. The Secretary of State's counsel attempted to reach the deponent to determine whether the deposition could be rescheduled for later than day or the next day, Friday, May 7, but was unable to reach him and so Plaintiffs' counsel flew home.

conduct any necessary follow-up depositions or to send out follow-up written discovery. In this regard, Plaintiffs note that the depositions of HSD managers in both San Juan and Bernalillo Counties revealed that county voter registration officials have placed strict quotas on the number of voter registration applications that HSD staff may obtain at any one time.⁸ Such limits clearly are directly relevant to HSD's compliance with the NVRA, and to the question of whether the Secretary of State and the persons under her direction and control are in fact actively impeding voter registration at HSD offices.⁹ Indeed, if HSD officials have passively accepted such limitations without protest, it is highly relevant to the question of their own liability. The Secretary of State's Rule 30(b)(6) deposition is a long-delayed, necessary first step in obtaining complete discovery.

For these reasons, the Court should extend the discovery schedule to provide an adequate opportunity to depose the Secretary of State's 30(b)(6) designee and conduct reasonable follow-up depositions and written discovery, and enter an order directing cooperation of the Secretary of State in conducting a 30(b)(6) deposition.

B. HSD' Unreasonable Delay of Essential Fact Depositions

⁸ See Exhibit 4 (excerpts from Espinosa Deposition, April 27, 2010, at 112-16); Exhibit 5 (excerpts from Burton Deposition, April 29, 2010, at 61-64).

⁹ Plaintiffs need to determine whether this policy originated with the Secretary of State's office, and the precise nature and scope of any such policy. The Secretary of State's office is responsible for providing registration forms to each county. N.M. Stat. Ann. § 1-2-3(A)(1). More generally, the Secretary of State is responsible for "obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the Election Code. *Id.* § 1-2-1(A)(1).

Plaintiffs deposed the HSD Rule 30(b)(6) designee, Deputy Director Ted Roth, on February 24, 2010. Following Mr. Roth's deposition, Plaintiffs conferred with Defendants' counsel to schedule the depositions of six HSD regional and county office managers. After the six depositions were noticed for mutually agreed dates and locations (between March 24 and April 1, 2010), Defendants filed a motion for protective order on March 17, 2010 (Docket 43). Plaintiffs responded to that motion the next day (Docket 44). On April 9, 2010, the Court denied the motion for protective order for lack of good cause (Docket 47).

Defendants thereafter did not make the six subject witnesses available for depositions until April 26 through May 5, 2010. Plaintiffs therefore were deprived of approximately one month of discovery time, a short time prior to the current deadline for discovery, as a result of Defendant Hyde's unwarranted Motion for a Protective Order. This delay in turn negated Plaintiffs' ability to propound written discovery more than thirty days in advance of the June 1 discovery deadline based on the information first learned in those depositions. Had Defendants not filed their dilatory motion for a protective order, Plaintiffs' follow-up discovery would have been easily accomplished within the current discovery period.¹⁰

¹⁰ For example, as noted above, one of the things Plaintiffs learned in these depositions is that at least some HSD county offices have been limited in the number of registration forms they may obtain from county clerks. Plaintiffs would seek in follow up discovery to ascertain whether other HSD offices have faced the

The deposition testimony from those witnesses in fact indicated substantial need for additional written discovery from Defendants. Plaintiffs should have a reasonable opportunity to send an additional round of written discovery based upon the information gained for the first time from those depositions.

C. HSD's Tardy Document Production and Disclosures

The HSD Defendants made inexcusably tardy disclosures of at least three classes of highly material information – monthly counts of voter registration activity at each HSD office, management evaluations of specific offices, and HSD management e-mails. These tardy disclosures prejudiced Plaintiffs' ability to prepare for the HSD 30(b)(6) deposition of Mr. Roth and the six delayed depositions of regional and county HSD managers. Plaintiffs also were prejudiced in their ability to seek further written discovery from HSD about those documents. The Court should permit Plaintiffs additional discovery to compensate for the HSD Defendants' tardy disclosures, and – absent a compelling justification for those tardy disclosures – the Court should find that they were withheld solely for the tactical purpose of prejudicing Plaintiffs' discovery efforts.

1. Monthly Voter Registration Reports

The HSD Defendants' initial document production contained a set of tables providing monthly counts of voter registration activity at each HSD office in New

same problem. In addition, Plaintiffs would request information on what actions, if any, HSD has taken to address this problem.

Mexico.¹¹ The tables in that initial production ended with September 2009. Testimony from regional and county managers established that these tables are updated *monthly* and circulated to each HSD regional manager. For example, HSD managers testified in their depositions to having received updated versions of those tables. See Exhibit 2 (excerpts from Delgado Deposition, April 26, 2010, at 95-96); Exhibit 3 (excerpts from Radloff Deposition, April 26, 2010, at 82-83); Exhibit 4 (excerpts from Espinosa Deposition, April 27, 2010, at 163-64). Thus, updated versions of these tables came into in the possession of the HSD employees on a rolling basis since the Fall of 2009. These tables were in the exclusive control of the HSD and were not otherwise obtainable by Plaintiffs. HSD was under a duty to make timely supplements to its initial discovery responses when this crucial information was collected and circulated within the agency.¹²

¹¹ These were provided in response to the Plaintiffs' Request for Production of Documents, served on October 1, 2010. Request 1 sought: "All documents that concern, are relied upon, or are identified in Defendant's answers to Plaintiffs' First Set of Interrogatories to Defendant, and all documents that discuss, review, comment upon, or analyze such documents." Interrogatory 18 requested "the total number of completed voter registration applications transmitted by HSD . . . from January 1, 1995 . . . to the present."

¹² "A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e)(1)(A).

Yet, not a single one of those updated tables were being provided to Plaintiffs as a supplemental disclosure. In fact, it was not until April 26, 2010 (two months after Plaintiffs took the HSD 30(b)(6) deposition) that Plaintiffs obtained any of this data dating from October 2009 through March 2010. See Exhibit 3 (excerpts from Radloff Deposition, April 26, 2010, at 82-83); Exhibit 4 (excerpts from Espinosa Deposition, April 27, 2010, at 163-64). HSD Defendants could not possibly have underestimated or misunderstood the significance of this information to the issues in this case. In any event, HSD is estopped from arguing that this information was not material, inasmuch as it relies upon this same data in its motion for summary judgment.¹³

Plaintiffs have been substantially prejudiced by this unjustifiable withholding of critical information. Plaintiffs had an obvious need for this monthly information in selecting which regions and offices should be the subjects of depositions, developing lines of questions, identifying possible patterns within the data and deciding whether the data showed a need for expert testimony. Only

¹³ “In the first three months of 2010, ISD transmitted 2,277 completed voter registration to the county clerks.” Memorandum in Support of Defendant HSD’s Motion for Summary Judgment at 11 (Docket 58), *citing* Docket 58-20 through 58-22 (“Voter Registration Reports”). *See also*, HSD Motion for Summary Judgment at 16 (Docket 58) (referring to “the recent number of voter registration forms completed and transmitted to the County Clerks by HSD . . . in the first three months of 2010 [.]”).

the opportunity to conduct reasonable further discovery can compensate for the prejudice.

2. Management Evaluations

In Plaintiffs' Opposition to Defendant's Motion for Protective Order (Docket 44 at 6-7), Plaintiffs noted that a set of HSD "management evaluations" relating to NVRA compliance, and referred to in HSD's initial discovery responses, still had not been produced. Even after that date, none of these documents was produced to Plaintiffs until several hours *after* Defendant Hyde filed her Motion for Summary Judgment, on May 13, 2010.¹⁴ The tardy disclosure of these documents prevented Plaintiffs from obtaining testimony about them during the HSD depositions (either during the Rule 30(b)(6) deposition or during the regional and county manager depositions), and from making written discovery requests with respect to them. The information in these documents is material to Plaintiffs' case; as with the monthly reports described previously, HSD specifically refers to them in its Motion for Summary Judgment.¹⁵

3. HSD Management E-Mails

¹⁴ On May 13, 2010, at about 6:30 p.m. Eastern time, counsel for Defendant Hyde sent Plaintiffs' counsel a series of emails transmitting "HSD's Third Set of Supplemental Discovery Document Responses," which included 25 management evaluations, dated from January 2008 to August 2009.

¹⁵ See Memorandum in Support of Defendant HSD's Motion for Summary Judgment at 16 (Docket 58), ("[] HSD is actively working to incorporate further NVRA review into its manager evaluations.").

As a result of HSD's delay in producing documents requested by Plaintiffs in their First Request of Defendant Hyde for Production of Documents, Plaintiffs also were prejudiced in their taking of the HSD Rule 30(b)(6) deposition on February 24, 2010.¹⁶ Months after the Request for Production of Documents was served and months after the deposition was taken, Defendants produced emails from the 30(b)(6) deponent dating from before his deposition and which directly relate to the HSD's actions with respect to offering voter registration to public assistance clients.¹⁷ Defendants did not obtain permission from this Court to delay production beyond the time permitted by the Federal Rules of Civil Procedure, and have not offered to rectify the prejudice they have caused to Plaintiffs' discovery rights by their tardy production of the emails.

¹⁶ At the same time that Plaintiffs served the production request on Defendant Hyde, Plaintiffs served identical production requests on Defendants Sandoval and Ingram, the Directors of HSD's Income Support Division ("ISD") and Medical Assistance Division ("MAD").

¹⁷ The Requests for Production of Documents were served on October 1, 2009. Request 4 asked for all email communications within and between HSD, ISD, and MAD "concerning the voter registration requirements of the NVRA." Nearly five months later, on February 24, 2010, Plaintiffs deposed HSD's 30(b)(6) designee, Ted Roth, who is Deputy Director of HSD's Income Support Division. Two months after that, on April 24, 2010, HSD supplemented its document production to provide Plaintiffs with emails sent by Mr. Roth on January 23, 2008, September 11, 2009, and February 22, 2010 (the last email was sent two days prior to the deposition). His September 11, 2009 email, for example, asked regional managers to report, by email, as to the status of NVRA compliance in their regions (Defendants have not produced any of the regional manager responsive emails). Defendants also produced, months after the Mr. Roth's deposition, new public assistance forms which include revised language relating to voter registration and which were put into use prior to the deposition.

Accordingly, Plaintiffs will seek to recall Mr. Roth for a continuation of his deposition during the discovery extension period. The continuation would allow Plaintiffs to question Mr. Roth about the NVRA-related documents that Defendants tardily produced after his first deposition was taken.

D. Modification of Expert, Pretrial and Trial Dates

The revised litigation schedule sought by Plaintiffs will permit the discovery phase of this litigation to conclude in an orderly, logical manner. The proposed schedule would allow Plaintiffs a reasonable opportunity to complete the discovery they diligently pursued in contemplation of the June 1 discovery deadline, and a full and fair opportunity to respond to Defendant Hyde's motion for summary judgment without prejudicing her position in this case. During the proposed six-week extension of fact discovery, Plaintiffs will send written discovery to Defendants and complete the depositions of fact witnesses (including the deposition of the Secretary of State's Rule 30(b)(6) deponent). After the close of fact discovery, Plaintiffs and Defendants would exchange any expert reports and conduct depositions of any designated experts. Since any expert witness is likely to require the opportunity to review all deposition transcripts and document

production, it is logical to schedule expert witness discovery after the completion of fact discovery.¹⁸

With regard to Defendant Hyde's motion for summary judgment, while Plaintiffs currently possess substantial information on which to base their opposition to the motion, a complete response by Plaintiffs requires that Plaintiffs be permitted to respond following the end of fact discovery. This will give Plaintiffs a full and fair opportunity to present their arguments against summary judgment, and also will enable Defendant Hyde to obtain a timely and final ruling on her motion, dispensing with any issue under Fed. R. Civ. P. 56(f) that the motion should be denied or continued. Plaintiffs propose that they be allowed two weeks after the close of fact discovery to respond. This still would allow Defendant ample time to potentially obtain summary judgment prior to trial.

The revised schedule would necessitate a brief postponement of the trial, from November 2010 to early 2011, but that change also does not involve any prejudice to Defendants. The trial already is scheduled to occur after this November's general election, and a trial early next year would still allow the

¹⁸ Although all Defendants except Defendant Herrera now oppose Plaintiffs' motion to revise the litigation schedule, Defendants agree in principle that expert discovery in this case should follow the completion of fact discovery, as evidenced by their joining Plaintiffs in the Joint Stipulated Motion to Extend Expert Discovery Deadlines (Docket 55).

parties ample time to obtain a final ruling in this case prior to the next regularly scheduled elections in New Mexico.

Finally, the requested order to compel attendance at the Secretary of State Rule 30(b)(6) deposition will ensure that this important deposition is finally completed.

IV. Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Revised Litigation Schedule and to Compel Discovery, upon expedited review.

Respectfully submitted this 18th day of May, 2010.

s/Mark A. Posner
Lawyers' Committee for Civil Rights Under Law
Jon M. Greenbaum
Robert A. Kengle
Mark A. Posner
Brian Maloney
1401 New York Avenue, N.W., Suite 400
Washington, DC 20005
Telephone: (202) 662-8389
Facsimile: (202) 628-2858
Email: jgreenbaum@lawyerscommittee.org
Email: bkengle@lawyerscommittee.org
Email: mposner@lawyerscommittee.org
Email: bmaloney@lawyerscommittee.org

Brenda Wright
Susan Gershon
DEMOS: A Network of Ideas and Action
358 Chestnut Hill Avenue, Suite 303
Brighton, MA 02135
Telephone: (617) 232-5885 Ext. 13

Facsimile: (617) 232-7251
Email: bwright@demos.org
Email: sgershon@demos.org

Allegra Chapman
220 Fifth Avenue, 5th Floor
New York, NY 10001
Telephone: 212 419-8772
Facsimile: 212 633-2015
Email: achapman@demos.org

Yolanda Sheffield
Nicole Kovite
Project Vote
739 8th Street SE, Suite 202
Washington, DC 20003
Telephone: (202) 543-4173 Ext. 302
Facsimile: (202) 543-3675
Email: ysheffield@projectvote.org
Email: nkovite@projectvote.org

John W. Boyd
David Urias
Freedman Boyd Hollander Goldberg & Ives,
P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
Telephone: (505) 842-9960
Facsimile: (505) 842-0761
Email: jwb@fbdlaw.com
Email: skb@fbdlaw.com

Cynthia A. Ricketts
Allison Kierman
DLA Piper LLP (US)
2525 East Camelback Road, Suite 1000
Phoenix, AZ 85016
Telephone: (480) 606-5106
Facsimile: (480) 606-5512
Email: cindy.ricketts@dlapiper.com
Email: allison.kierman@dlapiper.com

Arthur Z. Schwartz
Advocates for Justice and Reform Now, PC
Schwartz, Lichten and Bright, Of Counsel
275 Seventh Avenue, Suite 1760
New York, NY 10001
Telephone: (212) 228-6320
Facsimile: (212) 358-1353
Email: generalcounsel@acornmail.net