

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

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

DIANNA J. DURAN, *et al.*,

Defendants.

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

JOINT MOTION FOR ENTRY OF CONSENT ORDER

Plaintiff Shawna Allers and Defendants HSD and Secretary of State Duran respectfully move this Court to sign and enter the parties' proposed consent order attached hereto as Exhibit 1. The consent order would resolve Plaintiff's claims alleging violations of Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, regarding distribution of voter registration applications by HSD's public assistance offices.

The proposed order establishes specific procedures that HSD will follow for distributing voter registration applications, and for providing assistance to clients in completing these forms. The proposed order also requires that HSD employees who interact with public assistance clients receive voter registration training, that HSD and the Secretary of State collect and maintain voter registration data to track their implementation of the order, and that HSD and the Secretary of State undertake a variety of measures to monitor compliance with the terms of the order. The Court would retain jurisdiction for three years. After that, unless otherwise ordered by the Court, the parties would jointly move for dismissal of the Section 7 claims and, after dismissal, the order would become an out-of-court agreement between the parties lasting an additional year, enforceable in New Mexico state court. The proposed consent order specifies that Plaintiff is

entitled to reasonable attorneys' and expenses related to the Section 7 claims, and establishes a procedure for resolving the amount of the fees and expenses.

In addition, the proposed consent order fully resolves the violation of the NVRA found by this Court in its December 21, 2010 grant of partial summary judgment to Plaintiff. Specifically, in accord with the Court's ruling, the order will require HSD to distribute registration applications to public assistance clients in all transactions covered by the NVRA, unless a client affirmatively requests, in writing, to "opt out." In consideration for adoption of these procedures, the order provides that HSD will retain the right to appeal the Court's final judgment insofar as it is based upon the partial summary judgment ruling. The proposed order further specifies that, if an appellate court in this case reverses this Court's partial summary judgment ruling and holds that Section 7 only requires that registration applications be distributed to clients who "opt in" for voter registration, HSD may implement certain specified alternative procedures for distributing voter registration applications. The proposed order provides that no other provisions of the order will be affected by such an appeal. Thus, even in the event of a successful appeal by HSD, there should be no need for further proceedings before the Court to resolve Plaintiff's Section 7 claims.

The proposed consent order is fair, reasonable and adequate. No hearing on the order is required, but counsel will provide any additional information upon the Court's request. Accordingly, for the foregoing reasons, the parties respectfully move this Court to sign and enter the proposed consent order at the Court's earliest convenience.

Respectfully submitted this 17th day of February, 2011.

On behalf of Plaintiff Shawna Allers:

s/ Mark A. Posner

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