

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

CELIA VALDEZ, GRACIELA GRAJEDA,
ROANNA BEGAY, JESSE RODRIGUEZ,
and ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW,

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. 1:09-cv-00668 LAM/DJS

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to FED. R. CIV. P. 26(f), a meeting was held on September 2, 2009, via
telephone and was attended by:

- David Urias, Mark Posner, Yolanda Sheffield, Nicole Kovite, and Allison Kierman for
Plaintiffs; and

- Scott Fuqua for Defendant Mary Herrera, Secretary of State; and Adrian Terry and Elaine Lujan for Defendants Pamela S. Hyde in her capacity as Secretary of the New Mexico Human Services Department, Fred Sandoval in his capacity as Director of the Income Support Division of the New Mexico Human Services Department, Carol 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.

NATURE OF THE CASE

Plaintiffs allege on-going violations of the National Voter Registration Act of 1993 (“NVRA”), including Section 5 of the Act, 42 U.S.C. § 1973gg-3, which requires New Mexico to offer voter registration simultaneously with an application for or renewal of a New Mexico motor vehicle driver’s license or identification card, and Section 7, 42 U.S.C. § 1973gg-5, which requires New Mexico to provide voter registration at public assistance agencies in the State.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiffs intend to file an amended complaint to add a class action allegation. Plaintiffs should be allowed until October 15, 2009, to amend the pleadings and until October 15, 2009, to join additional parties.

Defendants should be allowed until November 6, 2009 to amend the pleadings and November 6, 2009 to join additional parties.

STIPULATIONS

The parties stipulate and agree that venue is properly laid in this District, and that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties further stipulate and agree that the law governing this case is the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg et seq. The parties will confer regarding stipulations of fact following the close of discovery.

PLAINTIFFS’ CONTENTIONS

This litigation has arisen because Defendants are failing to implement Section 5 and Section 7 of the NVRA. New Mexico does not offer simultaneous application for both voter registration and a motor vehicle driver’s license or identification card. New Mexico’s Human Services Department offices also routinely fail to distribute voter registration applications and provide the other voter registration services required by Section 7 to persons who apply for public assistance, or who submit a recertification, renewal, or change of address form relating to public assistance.

DEFENDANTS’ CONTENTIONS

Defendant New Mexico Human Services Department (HSD) contends that it is in compliance with Section 7 of the NVRA. HSD contends that its application for services provides the opportunity for voter registration as required by the NVRA. HSD contends that Plaintiff Begay did not elect to register to vote on her application for assistance. HSD further contends that Plaintiff’s admit that HSD clients and customers are provided voter registration applications when “they independently asked for the application or checked ‘yes’ on the voter notice form” as required by the NVRA. See Complaint ¶ 68.

Defendant New Mexico Taxation and Revenue Department contends that it is in compliance with Section 5 of the NVRA. Defendant Secretary of State contends that it is compliance with all pertinent provisions of the NVRA.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan:

List all witnesses who, at this time, you think will either testify or be deposed, giving their name, title, address and a brief summary of their testimony. It is insufficient to list witnesses' addresses, save for clients, "in care of counsel."

List all documents which you believe, at this time, will be exhibits at the trial.

List all experts who you believe, at this time, will testify at the trial, giving their name, address, area of expertise, and a brief summary of the anticipated testimony.

Plaintiffs and Defendants expect at this time the following individuals will either testify or be deposed:

<u>Name</u>	<u>Address</u>	<u>Subject of Information</u>
Defendant Mary Herrera, New Mexico Secretary of State	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503,	Upon information and belief, Ms. Herrera has knowledge concerning New Mexico's compliance with the NVRA and the conduct by state officials that forms the basis of this action.
Don Francisco Trujillo II, New Mexico Deputy Secretary of State	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503,	Upon information and belief, Mr. Trujillo II has knowledge concerning New Mexico's compliance with the NVRA and the conduct by state officials that forms the basis of this action.
Pamela S. Hyde, Secretary of New Mexico Human Services Department	New Mexico Human Services Department P.O. Box 2348 Santa Fe, New Mexico 87504-2348	Upon information and belief, Ms. Hyde has knowledge concerning the Human Services Department's compliance with the NVRA.
Fred Sandoval,	Income Support Division	Upon information and belief, Mr. Sandoval

Director of the Income Support Division of New Mexico Human Services Department	P.O. Box 2348 Santa Fe, New Mexico 87504-2348	has knowledge concerning the Human Services Department's compliance with the NVRA.
Carolyn Ingram, Director of the Medical Assistance Division of the New Mexico Human Services Department	Medical Assistance Division P.O. Box 2348 Santa Fe, New Mexico 87504-2348	Upon information and belief, Ms. Ingram has knowledge concerning the Human Services Department's compliance with the NVRA.
Ted Roth, ISD Deputy Director, HSD	Income Support Division P.O. Box 2348 Santa Fe, New Mexico 87504-2348	Upon information and belief, Mr. Roth has knowledge concerning the Human Services Department's compliance with the NVRA.
Florence Gonzales, ISD Division Coordinator, HSD	Income Support Division P.O. Box 2348 Santa Fe, New Mexico 87504-2348	Upon information and belief, Ms. Gonzales has knowledge concerning the Human Services Department's compliance with the NVRA.
Vida Tapia-Sanchez, HSD	New Mexico Human Services Department P.O. Box 2348 Santa Fe, New Mexico 87504-2348	Upon information and belief, Ms. Tapia-Sanchez has knowledge concerning the Human Services Department's compliance with the NVRA.
Rick Homans, Secretary of the New Mexico Taxation and Revenue Department	Taxation and Revenue Department 1100 South Street Francis Drive P.O. Box 630 Santa Fe, New Mexico 87504-0630	Upon information and belief, Mr. Homans has knowledge concerning the Taxation and Revenue Department's compliance with the NVRA.
Michael Sandoval, Director of the Motor Vehicle Division of the New Mexico Taxation and Revenue Department	Taxation and Revenue Department Motor Vehicle Division 1100 South Street Francis Drive P.O. Box 630 Santa Fe, New Mexico 87504-0630	Upon information and belief, Mr. Sandoval has knowledge concerning the Taxation and Revenue Department's compliance with the NVRA.
Raul Alvarez, TRD	Taxation and Revenue Department 1100 South Street Francis Drive P.O. Box 630 Santa Fe, New Mexico 87504-0630	Upon information and belief, Mr. Alvarez has knowledge concerning the Taxation and Revenue Department's compliance with the NVRA.

Representative of ACORN	C/o David Urias Freedman Boyd Hollander Goldberg & Ives P.A. 20 First Plaza, Suite 700 Albuquerque, N.M. 87102	The representative has knowledge regarding ACORN's voter registration activities during the relevant time period.
Celia Valdez	C/o David Urias Freedman Boyd Hollander Goldberg & Ives P.A. 20 First Plaza, Suite 700 Albuquerque, N.M. 87102	Ms. Valdez has knowledge regarding New Mexico's failure to provide voter registration services at MVD and/or MVD Express.
Graciela Grajeda	C/o David Urias Freedman Boyd Hollander Goldberg & Ives P.A. 20 First Plaza, Suite 700 Albuquerque, N.M. 87102	Ms. Grajeda has knowledge regarding New Mexico's failure to provide voter registration services at MVD and/or MVD Express.
Jesse Rodriguez	C/o David Urias Freedman Boyd Hollander Goldberg & Ives P.A. 20 First Plaza, Suite 700 Albuquerque, N.M. 87102	Mr. Rodriguez has knowledge regarding New Mexico's failure to provide voter registration services at MVD and/or MVD Express.
Roanna Begay	C/o David Urias Freedman Boyd Hollander Goldberg & Ives P.A. 20 First Plaza, Suite 700 Albuquerque, N.M. 87102	Ms. Begay has knowledge regarding New Mexico's failure to provide voter registration services at Human Services Department's offices.
Various Human Services Divisions Employees	TBD	Upon information and belief, these individuals have knowledge concerning the New Mexico voter registration practices and compliance issues pursuant to the NVRA.
Various MVD and MVD Express employees	TBD	Upon information and belief, these individuals have knowledge concerning the New Mexico voter registration practices and compliance issues pursuant to the NVRA.

At this time, neither Plaintiffs nor Defendants can identify specific documents they believe would be exhibits at trial. At this time, neither Plaintiffs nor Defendants can provide the name of an expert they might use at trial.

Discovery will be needed on the following subjects:

Plaintiffs: The policies, practices, processes, procedures, and forms being used by Defendants for implementing and complying with Section 5 and Section 7 of the NVRA in New Mexico, the number of persons applying to register to vote in New Mexico pursuant to Section 5 and Section 7, and the number of persons eligible to be offered voter registration in New Mexico pursuant to Section 5 and Section 7.

By providing this list of subjects, Plaintiffs do not foreclose the possibility that discovery on additional subjects may be necessary.

Defendants: Any and all investigations conducted by Project Vote of MVD and MVD Express locations and HSD offices for compliance with the NVRA and any and all interviews conducted by Project Vote of persons leaving HSD offices. Any and all investigations conducted or participated in by ACORN. Any and all contact and communications by and between Plaintiffs and HSD and TRD as related to this action.

By providing this list of subjects, Defendants do not foreclose the possibility that discovery on additional subjects may be necessary.

Interrogatories: Plaintiffs may serve a maximum of 25 interrogatories on each individual named Defendant. Defendants may serve a maximum of 25 interrogatories on each individual named Plaintiff. The responding party must serve the answers and any objections within 30 days of being served with the interrogatories.

Requests for Admission: Plaintiffs may serve a maximum of 40 requests for admission on each named Defendant, excluding requests the purpose of which is to authenticate documents or to lay an evidentiary foundation for admissibility. Defendants may serve a maximum of 40 requests for admission on each named Plaintiff, excluding requests for admissions the purpose of which is to authenticate documents or to lay an evidentiary foundation for admissibility. The responding party must serve the answers and any objections within 30 days of being served with the requests to admit.

Number of Depositions: Plaintiffs and Defendants each may take a maximum of 30 depositions, excluding experts and third parties. Depositions should be limited to eight hours for each party and for each individual deposed in a Rule 30(b)(6) deposition. All other depositions should be limited to five hours.

Expert Reports Under Rule 26(a)(2): Reports from retained experts will be due from Plaintiffs by March 5, 2010, and from Defendants by April 5, 2010. Plaintiffs will be entitled to supplement their report by April 30, 2010.

Supplementation under Rule 26(e) is due the first of each month, as necessary.

All discovery should commence in time to be completed by April 1, 2010, except for expert discovery which can be taken until April 30, 2010.

PRETRIAL MOTIONS

Plaintiffs intend to file a Motion for Preliminary Injunction and may file a Motion for Summary Judgment.

Defendants intend to file a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and may file a Motion for Summary Judgment.

ESTIMATED TRIAL TIME

The parties cannot estimate at this time how long trial will last in this case.

 X This is a non-jury case.

 This is a jury case.

PRE-TRIAL CONFERENCE

The parties request a pre-trial conference prior to trial.

SETTLEMENT

The possibility of settlement in this case is uncertain at this time. The parties will request a settlement conference when they believe such a conference may be productive.

EXCEPTIONS

(Where counsel cannot agree to any recitation herein, exceptions shall be listed.)

/s/ _____

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