

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

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

MARY HERRERA, *et al.*,

Defendants.

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

**PLAINTIFF'S CONTROVERTING AND SEPARATE STATEMENTS OF FACT IN  
SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT HSD'S MOTION FOR  
SUMMARY JUDGMENT**

**PLAINTIFF'S CONTROVERTING STATEMENT OF FACTS**

Plaintiff disputes the following from Defendant's stated material facts:

1. Plaintiff disputes paragraph 1 of Defendant's Statement of Uncontroverted Material Facts ("DSOF"), filed May 13, 2010 [Docket No. 58]. Defendant incorrectly states that it has utilized the New Mexico State Agency Voter Registration Agent Manual that was compiled by the Secretary of State's (SOS.) Office on December 1, 1994 as its policy and procedure for meeting its responsibility under the NVRA. (See Defendant's ("D's") Ex. 1-A.) As detailed more thoroughly in numbers 50 through 53 of Plaintiff's Separate Statement of Facts ("PSOF"), several offices did not use the manual and several employees were not aware that any instructive NVRA material had been issued before the January 22, 2008 ISD-GI. (See D's Ex. 1-B.)

2. Plaintiff does not dispute the factual statements in paragraph 2 of DSOF, but does qualify them. HSD had no agency voter registration policy in place until January 22, 2008 (see D's Ex. 1-B.), and no training manual until 2009 (see D's Ex. 1-A.), a full 13 and 14 years, respectively, following the NVRA's implementation. Before 2008, the agency provided its employees with no instruction on how to provide voter registration services in keeping with the law, resulting in numerous violations of the NVRA. (See PSOF ¶¶ 54-60.)

3. Plaintiff disputes paragraph 3 of DSOF. Defendant claims that, pursuant to HSD policy, ISD staff is directed to offer the opportunity to register to vote to each applicant at the time of their original application for services, at recertification, renewal, or change of address, and provide the applicant with a "declination" form and ask him/ her to complete it. Yet, as recently as 2008 and 2009, some of the agency's forms still lacked the "declination" (Exhibit 1: Roth Dep. Tr., pg 89:16-19.) And the agency did not require staff to attach declination forms to benefits applications lacking the "declination." (Exhibit 1: Roth Dep. Tr. 154:9-3.) As a result, and as detailed more thoroughly in PSOF ¶¶ 61-64, many clients never received the legally-required form. According to Ted Roth, the ISD NVRA Coordinator who is in charge of NVRA compliance at HSD, "[s]ometimes it happened, sometimes it didn't" (Exhibit 1: Roth Dep. Tr. 128:14-20; 22:12-14.)

4. Plaintiff disputes paragraph 4 of DSOF. Defendant claims ISD staff is directed to verbally ask if the applicant or client wishes to register to vote, in addition to providing a "declination" form; however, the agency did not issue this directive until September 5, 2008. (See D's Ex. 1-C.) Before that time, the agency had not published any requirement for staff to verbally ask clients whether they would like to register to vote.

5. Plaintiff does not dispute the factual statements in paragraph 5 of DSOF, but does qualify them. Although HSD's "ISD 100" benefits application did include a "declination"

provision as of 2008, several other benefits forms used by the agency did not. (See PSOF ¶¶ 61-64.) Further, HSD claims the “ISD 100” is its main application, but provides no information showing defendant’s usage of this document.

6. Plaintiff does not dispute the factual statements in paragraph 6 of DSOF, but does qualify them. HSD claims that, since 2006, other application forms used by the agency contained a “declination” provision but provides no information showing defendant’s usage of such documents.

7. Plaintiff disputes paragraph 7 of DSOF. Defendant claims that if an application does not contain a “declination” provision, ISD staff is directed to use the “declination” form prescribed by the Secretary of State’s office; however, such instruction was not given until January 22, 2008, and agency silence until that point resulted in many clients not receiving the legally-required “declination” form. (See D’s Ex. 1-B, ISD-GI 08-01.) (See also PSOF ¶¶ 61-64.)

8. Plaintiff does not dispute the factual statements in paragraph 8 of DSOF, but does qualify them. Plaintiffs have no reason to dispute that, as of January 1, 2010, a “declination” provision has been included in all applications for assistance, including recertification and renewal applications and the current change of address form utilized by ISD. Subsequent to the filing of this action and as a direct result, defendant’s forms and employee directives were amended in an attempt to bring these offices into compliance, but that there is no evidence of whether or how these new directives and forms are employed on a day-to-day basis.

9. Plaintiff disputes the factual statements in paragraph 9 of DSOF. HSD claims that the current “declination” provision included in all applications and in the form utilized for a change of address includes the language as seen in DSOF ¶ 9 (emphasis added.) Such language has not been included in all benefits forms ever used by the agency. (See PSOF ¶¶ 61-64.)

10. Plaintiff disputes paragraph 10 of DSOF. Defendant claims ISD staff is instructed that applicants should check the box on the “declination” form next to the appropriate answer to the question whether he or she wished to vote, yet the agency failed to give that instruction until January 22, 2008, many years after the NVRA first became effective. (See D’s Ex. 1-B.) No such instruction had been given before that time.

11. Plaintiff disputes paragraph 11 of DSOF. Defendant claims ISD staff is instructed to provide voter registration forms to all applicants who either check “yes” in the declination form or who indicate they would like to register to vote when asked by staff, yet the agency failed to give that instruction until January 22, 2008, many years after the NVRA first became effective. (See D’s Ex. 1-B.) No such instruction had been given before that time.

12. Plaintiff disputes paragraph 12 of DSOF. According to defendant, an individual can decline to register to vote by checking “no” on the declination form or by not checking any box on the “declination” form. Such statement is a legal conclusion not appropriate within a statement of facts. See Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment.

13. Plaintiff disputes paragraph 13 of DSOF. Defendant claims ISD staff is instructed that addressing the “declination” box with all applications and interim reports is mandatory and must be documented, yet the agency failed to give that instruction until March 12, 2010, well after plaintiffs filed the instant lawsuit. (See D’s Ex. 1-D.) No such instruction had been given before that time.

14. Plaintiff does not dispute the factual statements in paragraph 14 of DSOF, but considers them inapplicable. Plaintiffs note that Roanna Begay is no longer a plaintiff in this action and has since been substituted by plaintiff Shawna Allers. (See Exhibit 2.)

15. Plaintiff does not dispute the factual statements in paragraph 15 of DSOF, but considers them inapplicable. See above.

16. Plaintiff does not dispute the factual statements in paragraph 16 of DSOF, but considers them inapplicable. See above.

17. Plaintiff disputes paragraph 17 of DSOF.

18. Plaintiff does not dispute the factual statements in paragraph 18 of DSOF.

19. Plaintiff does not dispute the factual statements in paragraph 19 of DSOF, but does qualify them. Plaintiff Allers contends that New Mexico's HSD offices did not distribute the required voter registration forms with her benefits applications. (See Exhibit 2 at p. 5.)

20. Plaintiff does not dispute the factual statements in paragraph 20 of DSOF.

21. Plaintiff does not dispute the factual statements in paragraph 21 of DSOF.

22. Plaintiff disputes paragraph 22 of DSOF. According to Defendant, pursuant to current HSD policy and procedure, the signatory box within the "declination" form provides a written record showing the applicant was in fact offered the opportunity to register to vote. Defendant provides no authority for this being policy and procedure. Moreover, as shown above, there is no evidence that before January 1, 2010, when benefits forms were updated to include the "declination," clients were receiving the form alongside their benefits forms.

23. Plaintiff disputes paragraph 23 of DSOF. Defendant states that if an applicant refuses to sign the "declination," ISD staff is directed to make a notation on the form as to the refusal and then place the form in the client's file. Such instruction, though, was not given to staff until March 12, 2010, over a year after plaintiffs' filed the instant lawsuit. (See D's Ex. 1-D.)

24. Plaintiff disputes paragraph 24 of DSOF. HSD claims the "declination" must be retained in the clients' file for 22 months from the date of the signature, but does not state whether this is, in fact, agency practice. Also, such instruction was not given to staff until

January 22, 2008, and again on March 12, 2010. (See D's Exs. 1-B, 1-D.) Before these times, the agency provided no such instruction.

25. Plaintiff disputes paragraph 25 of DSOF. Defendant claims ISD staff is directed to provide the same degree of assistance in completion of voter registration forms as provided in completion of agency forms, including bilingual assistance, if necessary. Yet the agency did not instruct its staff to do so until January 22, 2008. (See D's Ex. 1-B.) Before this date, the agency provided no such instruction. Moreover, defendant's failure to provide "declination" forms to many clients over many years resulted in clients not receiving any kind of voter registration assistance at all. (See PSOF ¶¶ 61-64.)

26. Plaintiff does not dispute the factual statements in paragraph 26 of DSOF.

27. Plaintiff disputes paragraph 27 of DSOF. Defendant claims ISD staff is directed to review the completed voter registration forms to ensure they are completed in their entirety, and that the forms are signed by the applicants, but such instruction was not given to staff until January 22, 2008. (See D's Ex. 1-B.)

28. Plaintiff disputes the factual statements in paragraph 28 of DSOF. Defendant claims ISD staff are instructed to place completed voter registration forms in an area designated by the NVRA site coordinator, but such instruction was not given until January 22, 2008. (See D's Ex. 1-B.)

29. Plaintiff disputes paragraph 29 of DSOF. Defendant asserts that if an applicant drops off, faxes, mails, or e-mails a benefits form, the applicant need not have a face-to-face interview, and staff are instructed to mail voter registration applications to those applicants who checked "yes" on the "declination." What the agency does not acknowledge is that, before January 1, 2010, many forms did not include the "declination" provision (see PSOF ¶¶ 61-64.); thus many clients conducting remote transactions were not offered voter registration. The State

Coverage Insurance (SCI.), which provides health benefits (Medicaid and non-Medicaid related.), only began offering voter registration services in or around November of 2009 because, up until recently, the forms did not include the “declination” question and such benefit did not require a face-to-face interview. (See PSOF ¶ 98.)

30. Plaintiff disputes paragraph 30 of DSOF. Defendant states ISD staff is directed to ensure that blank registration forms are available in the lobby for clients (and non clients.) who may request them, but HSD did not issue this instruction until September 5, 2008. (See D’s Ex. 1-C.) No such instruction was given before then.

31. Plaintiff disputes paragraph 31 of DSOF. Defendant states every ISD field office is required to have voter registration posters displayed in the lobby. As of January 22, 2008, all offices may have been required to have posters on the walls, but the reality is quite different: Cindy Salazar, for example, does not remember seeing voter registration posters in any of the 11 offices for which she is responsible. (See D’s Ex. 1-B; see also Exhibit 3: Salazar Dep. Tr., pg 38:14-16.)

32. Plaintiff disputes paragraph 32 of DSOF. Defendant claims every ISD field office has an “Agency Site Coordinator,” yet the agency did not specify coordinators’ duties before January 22, 2008 (see D’s Ex. 1-B.) and, more importantly, did not require site coordinator appointments before March 12, 2010, when it specifically mandated these in the training manual (See D’s Ex. 1-D.) Additionally, the newly created training manual does not specify that site coordinators must be appointed for all HSD offices (See D’s Ex. 1-D.), and the monthly voter registration reports only date back to 2004, with the Portales office’s site coordinator listed as “Vacant” in 2006. During this year, the Portales office reported either “1” or “0” registration applications for nine of the twelve months. (See D’s Ex. 1-O.)

33. Plaintiff disputes paragraph 33 of DSOF. Defendant states that site coordinators are responsible for a number of voter registration activities within their offices, yet these responsibilities were not created until September 22, 2008 (see D's Ex. 1-B.), and elaborated on more recently in the 2010 training packet (see D's Ex. 1-D, pgs 6-7.), many years after the law had already been in effect. In practice, there is no way to know whether agency site coordinators and office managers are taking steps to ensure that staff comply with the NVRA, as required by the agency's 2008 policy and 2010 training packet. Defendant has submitted no evidence to support the claim that its expanded policies and procedures are being followed by its employees. And even though site coordinators are now required to train staff on their voter registration duties, there's no evidence to show this occurs. (See PSOF ¶ 95.)

34. Plaintiff disputes paragraph 34 of DSOF. Plaintiff disputes the claim that all new employees are trained on ISD's policies and procedures regarding the NVRA at their initial three-week basic training. First, defendant agency did not create a voter registration training program until March 12, 2010, 15 years after the NVRA went into effect. (See D's Ex. 1-D.) Before this time, many offices failed to train their employees on the NVRA's requirements. (See PSOF ¶¶ 66-67, 92-96.) Site coordinators at all offices are "expected" to train staff on voter registration, but Ted Roth, as of the date of his deposition on February 24, 2010, cannot confirm that they were doing so. (Exhibit 1: Roth Dep. Tr., pg 132:17-20.)

35. Plaintiff disputes paragraph 35 of DSOF. Plaintiff disputes defendant's claim that the agency's state trainers provide additional NVRA training. At the time of Mr. Roth's deposition, on February 24, 2010, only four offices that he knew of had been trained in voter registration by a state agency trainer. (Exhibit 1: Roth Dep. Tr., pg 127:7-14.) Roth does not know if agency trainers had ever provided voter registration training to staff before Rachel Reta became HSD's training coordinator in the past year. (Exhibit 1; Roth Dep. Tr., pgs 130:11-19.)

(See also PSOF ¶¶ 71, 74-75.) The new training materials, in any case, contain a confusing and legally incorrect statement: “It is vital that the applicant/ recipient is provided with a voter registration application or declination form” (emphasis added.)

36. Plaintiff disputes paragraph 36 of DSOF. Despite defendant’s claim that field offices are also required to conduct NVRA training, including reviews of the “GI”’s every six months at a monthly staff meeting, offices are failing to conduct such training. The Regional Operations Manager for Region 1, Mr. Delgado, does not know whether the county offices for which he is responsible have conducted a semi-annual voter registration training. (Exhibit 7: Delgado Dep. Tr., pg. 77:22-78:17..) Many offices are not conducting NVRA trainings. (See PSOF ¶¶ 66-67, 92-96.)

37. Plaintiff disputes paragraph 37 of DSOF. Although agency site coordinators are required, as of March 12, 2010, to compile monthly voter registration reports for their field offices, such instruction was not specifically given before this date. (See D’s Ex. 1-D.) In practice, coordinators were submitting reports as of 2006 (see D’s Ex. 1-O.), yet the ISD NVRA Coordinator never required them to take any actions with respect to these numbers. (See PSOF ¶¶ 64-66.)

38. Plaintiff does not dispute the factual statements in paragraph 38 of DSOF.

39. Plaintiff disputes paragraph 39 of DSOF. Again, Defendant has just recently – in the past few months – required agency site coordinators to maintain a log tracking the number of voter registration forms mailed to individuals. (See D’s Ex. 1-D at 7.) No such instruction was given before March 12, 2010.

40. Plaintiff disputes paragraph 40 of DSOF. The 2008 voter registration policy provides that “ISD field offices are requested to provide ISD central office ... on the first business day of each month, monthly data for the previous month of registration forms

completed and submitted to the county clerk's office." (See D's Ex. 1-B at 4.)(emphasis added.) First, no instruction is specifically given to the agency site coordinator on submitting the reports. Second, the offices were not required by the policy to submit the reports, but instead are "requested" to do so.

41. Plaintiff disputes paragraph 41 of DSOF. Defendant claims the ISD Division Coordinator is responsible for compiling all reports into one comprehensive report and forwarding the compiled report to HSD's NVRA Coordinator, Ted Roth, and all regional managers. This is accurate only for the period beginning in July of 2007, when Mr. Roth became the Coordinator; before this time, Mr. Roth, and no one else in the agency, could attest to what the agency did with these reports. (See PSOF ¶ 84.)

42. Plaintiff disputes paragraph 42 of DSOF. The NVRA Coordinator, Ted Roth, usually reviews the reports on a monthly basis, but not always. (Exhibit 1: Roth Dep. Tr. 18:17-25.) Again, it is not clear whether anyone at the agency reviewed these reports before Mr. Roth became the Coordinator, as he could not attest to what the agency did regarding review before July of 2007. (Exhibit 1: Roth Dep. Tr., pg 201:14-25.)

43. Plaintiff disputes paragraph 43 of DSOF. Defendant claims the data is reviewed to identify trends, including offices exhibiting unusually low voter registration numbers as compared to an office's numbers, during previous reporting periods. It is clear, however, from deposition transcripts that even when Mr. Roth reviews reports he does not require follow-up action by offices in response to trends of low numbers. (See PSOF ¶¶ 85-86, 88-89.)

44. Plaintiff disputes paragraph 44 of DSOF. Although, as of July of 2007, Mr. Roth has begun reviewing the number of voter registration applications received by offices on a monthly basis, he does not require regional managers to take any corrective action with their staff, even if an office's numbers are in the single digits or zero. (See PSOF ¶ 88.) Indeed,

because of this failure to take corrective action, numbers of voter registration applications received by HSD offices has remained abysmally low. (See PSOF ¶¶ 68-74, 76-80, 83.)

45. Plaintiff does not dispute the factual statements in paragraph 45 of DSOF.

46. Plaintiff does not dispute the factual statements in paragraph 46 of DSOF.

47. Plaintiff does not dispute the factual statements in paragraph 47 of DSOF, but does qualify them. Defendant claims that the Quality Assessment Bureau of ISD conducts periodic reviews of field offices and creates management evaluation reports based on their review. Although the review includes checking to ensure that offices have voter registration posters displayed in the lobby, it does not include checking to see how offices provide voter registration services. (See PSOF ¶104.)

48. Plaintiff does not have enough information to confirm or dispute the factual statements in paragraph 48 of DSOF.

### **PLAINTIFF'S SEPARATE STATEMENT OF FACTS**

Plaintiff submits the following statement of facts ("PSOF".) in support of its Opposition to Defendant's Motion for Summary Judgment.

#### **HSD's Voter Registration Policy and Practices Before 2008**

49. Deputy Director of Field Operations, Ted Roth, testified as Defendant Hyde's 30(b).(6.) designee that he had no information regarding voter registration activity performed by his predecessor at HSD. (Exhibit 1: Roth Dep. Tr. 168:24-25.)

50. State Agency Voter Registration Agent Manual. (See D's Ex. 1-A.) Ted Roth, the ISD NVRA Coordinator, claimed that he used the SOS' manual to train his staff about once a year when he was an office manager, but both Rochelle Radloff, the County Director for the Southwest Bernalillo Field Office, and Cindy Salazar, the Regional Operations Manager for Region 5, stated that they received no written voter registration guidance of any kind prior to

January 22, 2008, indicating that Mr. Roth's practice was not uniform. (Exhibit 1: Roth Dep. Tr. 12:8-10; 14:9-16.); (Exhibit 3: Salazar Dep. Tr. 61:5-7.); (Exhibit 4: Radloff Dep. Tr. 29:23-30:19.).

51. Cindy Salazar, Regional Operations Manager for Region 5, testified (1.) that she did not know if the 11 offices under her supervision received the SOS's manual, and (2.) that she never reissued it to her staff during her tenure. (Exhibit 3: Salazar depo., pgs 72:22-73:2.)

52. Rita Espinosa, the Regional Operations Manager for Region 3, remembers receiving a handout when the NVRA was passed, but she does not remember what it was, indicating that her offices did not widely use the manual. (Exhibit 5: Espinosa depo., pg 21:13-15.)

53. From 1995 until 2008, the SOS' manual, which was not even distributed to all employees, was the only policy that HSD had regarding voter registration. (Exhibit 1: Roth Dep. Tr. 150:16-20.)

54. Even though the NVRA became effective in 1995, Defendant failed to issue its own internal voter registration policies (ISD-GI 08-01, dated January 22, 2008, and ISD-GI 08-37, dated September 5, 2008.) until 2008. (See D's Exs. 1-B and 1-C, respectively.)

55. Defendant HSD also failed to create a training manual until 2009 on how employees must carry out their voter registration duties. (See D's Ex. 1-D.) (Exhibit 1: Roth Dep. Tr. 192:15-193:1.)

56. Agency silence from 1995 through 2008 on how employees must carry out their voter registration duties resulted in an agency-wide neglect of the law: the ISD NVRA Coordinator, Ted Roth, does not know how voter registration activities were monitored before the first ISD-GI was issued in September of 2008, because no memos had been issued before that

date and no trainings had been mandated (of which he was aware.) (Exhibit 1: Roth Dep. Tr., pg 167:20-168:9.)

57. Regional Operations Managers in the agency confirm that voter registration was not a priority: Ms. Espinosa does not recall what her Region 3 offices did regarding voter registration before the January 2008 ISD-GI was issued (Exhibit 5: Espinosa Dep. Tr., pgs 76:8-20.)

58. Dorothy Fisher, the County Director for the West Dona Ana County Field Office, does not recall if she or any of the five or six employees in her unit offered voter registration services to clients while she was a unit supervisor at the Las Cruces office between approximately 1994 and August of 2003. (Exhibit 6: Fisher Dep. Tr. 7:24-8:19.)

59. Mr. Delgado, the Regional Operations Manager for Region 1, did not recall much happening with voter registration at all: he does not recall voter registration being brought up by his managers prior to January 2008 or being discussed during conversations with directors and deputy directors (Exhibit 7: Delgado Dep. Tr. 45:8-12; 54:25-55:8.). Mr. Delgado does not recall any specific occasion when he brought up voter registration with a county manager prior to January 2008. (Exhibit 7: Delgado Dep. Tr. 45:13-46:2.)

60. When Cindy Salazar, Regional Operations Manager for Region 5, was a caseworker she visited hospitals to assist patients in applying for Medicaid, but did not bring voter registration forms with her. (Exhibit 3: Salazar Dep. Tr., 19:19-20:2; 25:22-26:7.)

61. In addition to agency-wide failures to provide voter registration services, defendant HSD also failed to provide many clients with the legally-required "declination" form. As recently as 2008 and 2009, some of the agency's forms still lacked the "declination" form. (Exhibit 1: Roth Dep. Tr., pg 89:16-19.) Moreover, the agency did not require staff to attach "declination" forms to benefits applications lacking same. (Exhibit 1: Roth Dep. Tr. 154:9-23.)

62. Such failure to include the “declination” in all materials resulted in widespread violations of the NVRA. The ISD NVRA Coordinator, Ted Roth, admitted that, while he was the office manager in Ruidoso from 1990 to 2000, not every client received a “declination” form (Exhibit 1: Roth Dep. Tr., 12:8-10, 20:13-15, 21:2-5.) “Sometimes it happened, sometimes it didn’t.” (Id. at 22:12-14.)

63. Cindy Salazar, Regional Operations Manager for Region 5, testified that she does not know whether staff in the 11 offices she supervises used “declination” forms before January 2010, when they were incorporated into benefits forms. (Exhibit 3: Salazar Dep. Tr. 85:4-12.) “The truth is,” she said, “if [caseworkers] didn’t have the [declination] form attached to the application, they would have just gone with, you know, those little signs they put by their desk, ‘You can ask me to register to vote,’ or ‘Register to vote here.’” (Id. at 63:17-21.) In other words, the client – not the caseworker – would need to be proactive about voter registration. (Id. at 64:20-65:3.) Ms. Espinosa’s offices had also been reluctant to use “declination” forms. (Exhibit 5: Espinosa Dep. Tr. 36:25-37:1.)

64. The agency’s change of address forms also did not include the “declination” form. (Exhibit 1: Roth depo., 122:25-123:14.)

65. In addition to failing to provide all clients with declination forms, some offices did not have enough voter registration forms on hand. The San Juan County clerk, for example, only provided 50 voter registration forms at a time to the local HSD office, which was an hour to an hour-and-a-half round trip from the clerk’s office. (Exhibit 8: Burton Dep. Tr., pg 64:3-5, 68:8-13.) It was not until a year ago that the San Juan County clerk’s office began providing forms in blocks of 100 and, up until that time, the office would occasionally run out of forms, which could not be replenished until the next day. (Id. at 64:15-17, 65:25-66:3.) The HSD offices in Bernalillo County have also had problems obtaining voter registration forms from the

county clerk's office; they too could only receive 100 (50 English, 50 Spanish.) forms at a time and would have to send two workers to get more forms so that one can drive around the block because there is no parking at the county clerk's office. (Exhibit 5: Espinosa Dep. Tr., pg 113:3-15.)

66. In addition to the above failures, before 2008, HSD did not provide training to all of its employees regarding providing voter registration services. (Exhibit 7: Delgado Dep. Tr. 79:1-8.) (testifying that he is not aware of voter registration being discussed at any HSD training session at any level prior to January 2008.); (Exhibit 3: Salazar Dep. Tr. 100:10-13.) (testifying that she has never received or conducted a training that included information regarding voter registration services.)

67. Cindy Salazar has never given a specific instruction to her County Directors about voter registration services. (Exhibit 3: Salazar Dep. Tr. 119:23-120:7.) Prior to 2008, Ms. Salazar discussed voter registration services with her County Directors "maybe twice in a year." (Exhibit 3: Salazar. 42:4-18.)

#### **HSD Reports Very Low Numbers Of Completed Voter Registration Applications Received By Its Offices**

68. By Defendants' own count, in 2005, twenty-six HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row. (Exhibit 9.)

69. By Defendants' own count, in 2006, twenty-one HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row. (Exhibit 9.)

70. By Defendants' own count, in 2007, twenty-one HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

(Exhibit 9.)

71. By Defendants' own count, in 2008, two HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

(Exhibit 9.)

72. By Defendants' own count, in 2009, fourteen HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row.

(Exhibit 9.)

73. By Defendants' own count, nine HSD offices failed to turn in any completed voter registration applications to the county clerk for at least three months in a row for four out of the five years from 2005 through 2009. (Exhibit 9.)

74. Investigations conducted of HSD offices in 2008 and 2009 confirm what the data suggest: staff are not providing voter registration to all clients who apply for, recertify, or change an address in connection with benefits. (Plaintiffs' Complaint ¶¶ 64-69.) Also, in January of 2009, Project Vote interviewed 42 individuals exiting HSD offices who had conducted transactions triggering the NVRA's voter registration obligations. Only one individual received a voter registration application. (Plaintiffs' Complaint ¶ 67.)<sup>1</sup>

75. Ms. Salazar testified that, as Regional Operations Manager for Region 5, she monitors the number of applications for public benefits processed at her office and, if the number

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<sup>1</sup> These findings prompted Project Vote and Demos to send a letter, dated June 12, 2007, to the Secretary of State in her capacity as Chief State Election Official responsible for coordinating NVRA matters in New Mexico; a copy was sent to Defendant HSD, notifying them of widespread Section 7 violations and our intent to sue if the problems were not resolved. (Exhibit 10.)

of applications dropped, she would contact the office and find out why the numbers were low. (Exhibit 3: Salazar Dep. Tr. 115:8-24.)

76. Ms. Salazar also testified that, for the entire year of 2006, her office did not transmit a single voter registration form to the county clerk and she never talked to anyone in her office about that issue. (Exhibit 3: Salazar Dep. Tr. 116:17-25, 117:6.) In her deposition, Ms. Salazar revealed that she “didn’t even know [they] had zero [voter registrations.]” (Exhibit 3: Salazar Dep. Tr. 117:20.)

77. When asked to explain the numbers, Ms. Salazar testified that those numbers were the result of “very poor counting” (Exhibit 3: Salazar Dep. Tr. 116:17-117:3.), and that, on the occasions when the offices in her region reported zero voter registrations,<sup>2</sup> she simply “trust[ed]” that “no one wanted to register to vote.” (Exhibit 3: Salazar Dep. Tr. 114:2-15.)

78. Mr. Delgado, the Regional Operations Manager for Region 1, testified that as far as voter registration applications are concerned, “anything other than zero is good.” (Exhibit 7: Delgado Dep. Tr. 38:18-22.) He also testified that he does “nothing in particular” with the monthly voter registration report, even though three offices in his region posted zeros for at least four months in a row in 2009. (Exhibit 7:Delgado Dep. Tr. 23:23-25.)

79. Ms. Fisher, the County Director for the West Dona Ana County Field Office, testified that zero voter registration forms completed and returned to the county clerk in a month would not indicate a problem, and that she has “no idea” why her office returned zero voter registration forms for two full months. (Exhibit 6: Fisher Dep. Tr. 88:12-14; 91:4-8.)

80. Although her office had zeros for five straight months in 2007, Rochelle Radloff, the former County Director of the Southeast Albuquerque office, never determined that the office

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<sup>2</sup> (Ms. Salazar’s region reported zero voter registrations in the Lincoln office for eleven months in 2009. The Torrance office reported zero voter registrations for seven months in 2009.)

was deficient with regards to voter registration in any way, and does not recall taking any action in response to those numbers. (Exhibit 4: Radloff Dep. Tr. 61:1-6; 88:11-21.)

81. Roger Burton, the County Director for the San Juan County Field Office, agreed that any number of voter registrations higher than zero may not lead to any action on his part. (Exhibit 8: Burton Dep. Tr. 110:8-11.)

82. Ms. Espinosa, who insisted that she would “ask[] what’s going on” if there were zero voter registrations returned by an office in her region (Bernalillo County.) for even one month, and who agreed that zero voter registrations returned for five months in a row would be a “red flag,” did not recall any instance in which an office in her region was identified as having a problem because of zero registrations prior to January 2008. (Exhibit 5: Espinosa Dep. Tr. 99:6-15; 100:13-20.)

83. Moreover, the Northeast Bernalillo office reported zero voter registrations returned for eight months in a row in 2005, and again reported zeros for six months in a row in 2006. The Southeast Bernalillo office reported zeros for eleven months in a row from 2005 through 2006, and another five months in a row in 2007. (Exhibit 9.)

84. The NVRA Coordinator, Ted Roth, usually reviews the reports on a monthly basis. (Exhibit 1: Roth Dep. Tr. 43:1-12.) It is not clear whether anyone at the agency reviewed these reports before Roth became the Coordinator, as he could not attest to what the agency did regarding registration number reviews before July of 2007. (Exhibit 1: Roth Dep. Tr. 168:24-25; 201:14-25.)

**HSD Fails To Take Corrective Action Against Offices For Failures To Provide Voter Registration Services**

85. HSD does not monitor its staff to determine whether they are providing voter registration services, as required by law. Whereas the agency ensures county offices are

providing benefits in a timely way, it takes no such measures to ensure that staff are properly providing voter registration. (Exhibit 1: Roth Dep. Tr. 140:5-10; 141:2-16; 165:12-25.)

86. Corrective Action Responses, for example, are issued when offices fail to process benefits applications in a timely manner; whereas no such remediation plans are issued when voter registration problems arise. (Exhibit 1: Roth Dep. Tr. 136:17-137:7; 141:2-16; 165:12-25.) (stating that no corrective action response for voter registration has ever been required). (Exhibit 7: Delgado Dep. Tr. 28:6-30:3; 30:6-10; 32:23-33:5.) (stating that none of the county offices in his region has ever done a corrective action plan for voter registration). (Exhibit 8: Burton Dep. Tr. 101:17-21.) (stating that he does not recall his office ever being marked as deficient for voter registration on a ME review); (Exhibit 5: Espinosa Dep. Tr 69: 4-24.) (stating that no interim corrective action plan in Region 3 has ever dealt with voter registration.)

87. Indeed, there is no evidence that any HSD employee has ever been disciplined for failure to conduct voter registration activities as required. (Exhibit 7: Delgado Dep. Tr. 102:1-4; 102:9-18.) (stating that, to his knowledge, no HSD employee has ever been disciplined for failure to conduct voter registration activities as required.)

88. Although Ted Roth began reviewing the number of voter registration applications received by offices on a monthly basis in late 2007, he has not required regional managers to take any corrective action with their staff, even if an office's numbers range in the single digits or zero. (Exhibit 1: Roth Dep, Tr. 72:16-73:7.)

89. In 2007, for example, Ted Roth took no action in response to low numbers. (Exhibit 1: Roth Dep. Tr. 200:15-16.) He did not start addressing voter registration problems until November or December of 2007. (Id. at 201:1-13.) Even then, he would only "remind[] offices and the regional managers ... to become attentive to this [voter registration] requirement." (Id. at 202:1-5.) Despite having conversations with managers, during which he

“reminded” them of their duties, Roth never discovered any information about how offices were providing voter registration. (Id. at 202:6-18.) Mr. Roth has visited over 20 offices since February 2008, but has never checked to see whether caseworkers were providing voter registration. (Id. at 94:16-18.)

90. For example, despite Farmington’s high population that office had low numbers for months on end that did not improve, but Mr. Roth never told Mr. Delgado, the Regional Operations Manager for that office, that he should take any corrective actions to comply with the law. (Id. at 207:1-24.) Roth also failed to ask the regional managers or county directors whose offices reported zeros why that was the case. (Id. at 208:11-14.)

#### **HSD’s Voter Registration Policy And Practices After 2008**

91. Since 2008, HSD has implemented two voter registration policies (see D’s Exs. 1-B and 1-C.), and since the filing of the instant lawsuit it has issued a training manual (see D’s Ex. 1-D.)

92. Still, not all HSD employees have been trained in their voter registration duties since 2008: Ms. Salazar does not know if voter registration is covered in employee job training. (Exhibit 3: Salazar Dep. Tr. 98:16-21.) If it is covered, then it was likely included just in the last year, but she has not seen it. (Id. at 100:20-24.) In any case, she has not required her county directors to review this training. (Id. at 101:4-6.)

93. Mr. Delgado had not seen the HSD training as of the date of his deposition on April 26, 2010. (Exhibit 7: Delgado Dep. Tr. 82:12-19.) He does not know whether the county offices for which he is responsible have conducted a semi-annual voter registration training. (Exhibit 7: Delgado depo., 77:22-78:17.)

94. Ms. Fisher was not even sure if the initial training packet for staff members, or the program regulations given to new staff members, included voter registration. (Exhibit 6: Fisher Dep. Tr. 72:16-19.)

95. Site coordinators at all offices are “expected” to train staff on voter registration, but Mr. Roth cannot confirm that they have been doing so. (Exhibit 1: Roth Dep. Tr. 132:17-20.) Cindy Salazar, on the other hand, says there is no specific training for site coordinators, who are supposed to be the point persons for NVRA compliance at each HSD office. (Exhibit 3: Salazar Dep. Tr. 94:14-19.)

96. At the time of Mr. Roth’s deposition, on February 24, 2010, only four offices had been trained in voter registration by a state agency trainer. (Exhibit 1: Roth Dep. Tr. 127:7-14.) He does not know if agency trainers had ever provided voter registration training to staff before Rachel Reta became HSD’s training coordinator in the past year. (Exhibit 1: Roth Dep. Tr. 130:11-19.)

97. Moreover, these new training materials, which are to be used by all state offices for training (see pg. 1 of Ex. D.), contain a confusing statement: “It is vital that the applicant/recipient is provided with a voter registration application or declination form” (emphasis added.) To be sure, other parts of the training do require employees to review the declination form with all clients. But this statement, inserted at the top of the training packet, indicates that a caseworker may either provide a voter registration application or a declination form. Such statement contradicts the language of the NVRA and the guidelines issues by the Department of Justice, available to the public at [http://www.justice.gov/crt/voting/nvra/nvra\\_faq.php](http://www.justice.gov/crt/voting/nvra/nvra_faq.php).

98. Also, because many benefits forms still did not include the “declination” form until January 1, 2010, clients continued to miss out on voter registration opportunities: the State Coverage Insurance (SCI), which provides health benefits (Medicaid and non-Medicaid

related.), only began offering voter registration services in December of 2009 because, up until recently, the forms did not include the “declination” question, and such benefit did not require a face-to-face interview. (Exhibit 3: Salazar Dep. Tr. 33:16-36:16.)

99. With regard to the higher levels of management within HSD, Deputy Director Roth claims to have repeatedly contacted the Regional Operations Managers regarding voter registration since 2008. His claims are contradicted by the testimony of those Regional Operations Managers, however. Specifically, Mr. Roth claims to have spoken with Mr. Delgado between six and ten times each year regarding low voter registration numbers. (Exhibit 1: Roth Dep. Tr. 45:8-14.) Mr. Delgado, however, testified that he doesn’t recall any specific occasion when Mr. Roth brought up voter registration with him since January 2008. (Exhibit 7: Delgado Dep. Tr. 48:20-49:2.)

100. Similarly, according to Mr. Roth, he spoke with Cindy Salazar, Regional Operations Manager for Region 5, about eight times each year regarding low voter registration numbers in her county offices. (Exhibit 1: Roth Dep. Tr. 44:22-24; 47:3-5.) Ms. Salazar, on the other hand, does not remember Mr. Roth ever calling her to mention that voter registration numbers were low at the offices in her region. (Exhibit 3: Salazar Dep. Tr. 58:18-22.)

101. At Ms. Fisher’s office in Dona Ana West, the office ran low on voter registration forms because the office from which they obtain them ran out of voter registration forms. (Exhibit 6: Fisher Dep. Tr. 48:9-23.)

102. Moreover, to this day, HSD does not require employees to provide clients with voter registration applications unless the client checks “yes” on the declination form. (Exhibit 1: Roth Dep. Tr. 180:18-181:1.) Accordingly, HSD caseworkers, then, do not provide voter registration forms alongside benefits forms. (Id.)

103. As of 2008, all offices may be required to have posters on the walls, but the reality is quite different: Cindy Salazar, for example, does not remember seeing voter registration posters in any of the 11 offices for which she is responsible. (Exhibit 3: Salazar Dep. Tr. 38:14-16.)

104. Problems such as those described above likely still occur because voter registration is not included in the agency's quality control review. (Exhibit 8: Burton Dep. Tr. 116:15-117:6.) (stating that he does not recall that voter registration is included in the quality control review.); (Exhibit 5: Espinosa Dep. Tr. 118:23-119:5.) (stating that she does not believe that voter registration is one of the elements of the quality control review.) Voter registration is also not included in employee performance reviews. (Exhibit 4: Radloff depo. p 50:22-51:2.) (stating that neither her own performance review nor her review of the supervisors below her include voter registration.); (Exhibit 8: Burton Dep. Tr. 106:19-21.) (stating that his own performance review does not include voter registration.); (Exhibit 7: Delgado Dep. Tr. 16:4-9.) (stating that neither his own performance review, nor the performance reviews of the county directors below him include voter registration.) The Management Evaluation Reports (MER.) review only whether or not the office has a voter registration poster visible. Although the MER reviews the timeliness of benefits processing and the accuracy of application screening, approval, denial, and payment as well as the "courteous[ness]" and responsiveness of the receptionists, the MER contains no other information relating to voter registration procedures and staff compliance with the law. (Exhibit 7: Delgado Dep. Tr. 102:1-4.); (Exhibit 11.)Indee Indeed, no HSD employee has ever been disciplined for failure to perform their duty with regard to voter registration activities. (Exhibit 7: Delgado Dep. Tr. 102:1-4; 102:9-18.)

105. Further, the agency still does not track voter registration along with benefits. The computer system used by HSD tracks whether benefits are paid in a timely manner, which

clients are due to file semi-annual reports, and the number of new applications and re-certifications done by each caseworker, among other things. (Exhibit 8: Burton Dep. Tr. 71:25-72:24; 33:14-20; 34:21-24.) No tracking regarding voter registration takes place on the computer system at all, however. (Exhibit 1: Roth Dep. Tr. 178:5-179:1.)

106. This lawsuit, and the resulting attention paid to voter registration issues, has affected an increase in the number of completed voter registration forms the Farmington office now receives. (Exhibit 8: Burton depo., 129:13-130:11.)

RESPECTFULLY SUBMITTED this 9th day of July, 2010.

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