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U.S. DISTRICT COURT  
DISTRICT OF NEW MEXICO  
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CLERK-ALBUQUERQUE

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

THE AMERICAN CIVIL LIBERTIES  
UNION OF NEW MEXICO; and  
BARBARA GROTHUS.

Plaintiffs,

v.

No.

JUDY CHAVEZ, ALBUQUERQUE  
CITY CLERK;

CIV - 05 - 1136

LFG WDS

Defendants.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

COME NOW Plaintiffs, by and through their undersigned counsel, and for their  
Complaint state:

THE PARTIES

1. Plaintiff the American Civil Liberties Union of New Mexico ("ACLUNM") is a non-profit membership organization with standing to vindicate the interests of its members whose rights, status or other legal relations are affected by the Defendants' actions. Among its other many interests, the ACLUNM and its members work to protect the constitutional rights of American citizens, including the fundamental right to vote.

2. The ACLUNM is an organization composed of members who would have standing to sue in their individual right for the allegations set forth in this Complaint. Further, the interests which each of the ACLUNM and its members seek to protect are

germane to the purpose of each of the organizational members, and neither the claim nor the relief sought requires participation by the individual members of the organizational plaintiffs.

3. Plaintiff Barbara Grothus is an individual and qualified registered voter residing in Albuquerque who chooses not to vote by absentee ballot in city and other elections so that she may make a decision informed by the full course of the election campaign, and who objects to being subject to increased burdens on the exercise of her right to vote because she chooses to vote in the traditional manner, by going personally to the polls.

4. Defendant Judy Chavez is the Clerk of the City of Albuquerque, New Mexico, and, pursuant to the New Mexico Municipal Election Code, NMSA § 3-8-7 (1978), is charged with administering municipal elections for the City of Albuquerque.

5. Defendant is sued in her official capacity for declaratory and injunctive relief. At all times material hereto, Defendant has acted or will act under color of state law.

#### JURISDICTION AND VENUE

6. This case arises under the Constitution and laws of the United States of America, as protected by 42 U.S.C. § 1983.

7. The Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. §§ 1971(d), 1973(f) and 1983 and also 28 U.S.C. §§ 1331, 1343(3) & (4) and 1367(a).

8. Pursuant to 28 U.S.C. §§ 2201 and 2102, this Court has jurisdiction to grant the requested declaratory and injunctive relief.

9. Venue lies in this district pursuant to 28 U.S.C. 1391(b) because the Defendants reside in this district and the matters complained of arose here.

ALLEGATIONS COMMON TO ALL COUNTS

10. On October 4, 2005, the voters of the City of Albuquerque approved an amendment to the Election Code of the Albuquerque City Charter that requires all voters who vote in person in any municipal election to present at the polling place one form from of a list of mandatory forms of photographic personal identification. A complete and correct copy of the amendment in its entirety is attached hereto as Exhibit A and incorporated herein by reference (hereinafter referred to as "Voter I.D. Amendment."). Upon information and belief, although it has been adopted as law by the City of Albuquerque, it has not yet been codified within the Election Code of the City Charter.

11. The Voter I.D. Amendment, while requiring the presentation of photographic *personal identification for voters voting in person in municipal elections*, does not impose similar burdens, procedures and qualifications upon the right to vote of those persons who vote by absentee ballot.

12. The Voter I.D. Amendment states, in pertinent part:

When a voter approaches the election polling place seeking to vote, the Voter must identify himself or herself audibly by name. The Municipal Election Clerk shall locate in the election rolls the name spoken and ask the individual seeking to vote for one current valid identification card containing the voter's name and photograph.

13. As to the meaning of a "current valid identification card," the Voter I.D Amendment, does not define "current" or "valid" but lists examples of documents that would be acceptable:

Such photo identification card may include any card issued by a government agency, driver's license, student identification card, commercial transaction card such as a credit or debit card, insurance card, union card, a professional association card or the voter identification card issued by the City Clerk.

14. The "voter identification card issued by the City Clerk" can be obtained without charge if the voter presents themselves to the City Clerk and produces "two of the following identification documents that show the name and address of the voter: a state issued identification card, social security card, student identification card, library card, insurance card, selective service card, union card, professional association card, utility bill, bank statement, government check or a paycheck." If the voter is unable to present the required documentation, the City Clerk is required to issue a "voter photo identification card upon confirmation with the County Clerk that such person is presently registered to vote."

15. In the event an individual appears at the election polling place without the required photo identification, they shall be allowed to vote on a provisional ballot,

but only if he or she swears or affirms under penalty of perjury in an affidavit provided by the City Clerk that he or she is registered voter listed on the voter registration rolls at the precinct at which he or she presented himself or herself to vote and provides his or her date of birth and the last four digits of his or her social security number."

The provisional ballot shall only be counted if, within the ten day canvassing period following the election the voter presents to the City Clerk one of the "photo identification cards" listed in the Voter I.D. Amendment, specifically one of those forms of photo identification listed above in paragraph 15.

16. None of these requirements for a "current valid identification card containing the voter's name and photograph" apply to individuals who vote by absentee ballot. In order to cast their vote, an absentee voter need only request, in mail, in person or by telephone, an application for an absentee ballot, which they must complete providing no more personal identification information than a name, address and the last four digits of their social security number. They then are issued an absentee ballot that may be cast by mail or delivered in person. The absentee ballot itself does not require any additional personal identification information or the possession of any of the forms of documentation required of in-person voters by the Voter I.D. Amendment.

#### COUNT I

#### Undue, Discriminatory Burden on the Fundamental Right to Vote In Violation of the Right to Equal Protection of the Law

17. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 16 as though fully restated herein.

18. The Voter I.D. Amendment imposes undue burdens on the fundamental right to vote that are neither justified by, nor necessary to promote a substantial and compelling state interest that was not already being adequately protected by existing criminal laws and election procedures, or which cannot be accomplished by other, less restrictive means.

19. The Voter I.D. Amendment discriminates unconstitutionally against persons who choose to vote in person, is overbroad and is not narrowly tailored to the goal of preventing voter fraud, which was the stated purpose for the Voter I.D. Amendment.

20. The Voter I.D. Amendment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983, and thereby deprives the members of the ACLUNM and Plaintiff Grothus of their constitutional rights as United States citizens.

WHEREFORE Plaintiffs pray this Court to:

- a. Declare the Voter I.D. Amendment to be unconstitutional, illegal, null and void;
- b. Enjoin Defendant, or persons acting under her supervision and direction, from implementing, administering and enforcing the Voter I.D. Amendment;
- c. Award Plaintiffs their reasonable attorney fees under 42 U.S.C. §§ 1973(e) and 1988, and interest as allowed by law; and
- d. Grant Plaintiffs such other and further relief to which they may be entitled and which is necessary to give full effect to the Court's order.

#### COUNT II

Violation of the Civil Rights Act of 1964,  
42 U.S.C. §§ 1971(a)(2)(A) and 1971(a)(2)(B)

21. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 16 as though fully restated herein.

22. The Voter I.D. Amendment violates the Civil Rights Act of 1964, 42 U.S.C. §§ 1971(a)(2)(A), which provides:

No person acting under color of law shall –  
(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such

law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote....

23. The Voter I.D. Amendment violates 42 U.S.C. §§ 1971(a)(2)(A) because it applies different standards to qualified voters who vote in person than it does to qualified voters who vote by absentee ballot. In effect, the Voter I.D. Amendment imposes additional qualifications (e.g. passing a New Mexico driver's examination and paying for a valid current driver's license, having credit sufficient to receive a commercial transaction card, belonging to a professional organization or union, etc.) upon the right to vote for those voters who vote in person than required of voters who vote by absentee ballot.

24. The Voter I.D. Amendment also violates the Civil Rights Act of 1964, 42 U.S.C. § 1971 (a)(2)(B), which provides:

No person acting under color of state law shall –  
(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election....

25. The Voter I.D. requirement violates 42 U.S.C. § 1971 (a)(2)(B) because it denies individuals who are fully qualified and lawfully registered to vote in person the right to vote based solely on whether they possess with them when they go to the polls the required personal photo identification, particularly when their identity can be confirmed by other means, including but not limited to asking them for the last four digits of their social security number, which is all that is required of absentee voters.

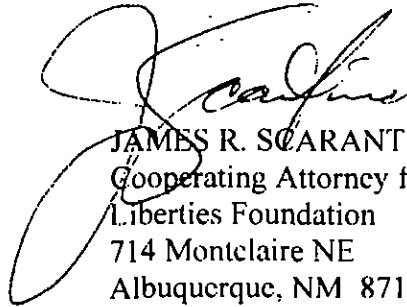
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- a. Declare the Voter I.D. Amendment to be unconstitutional, illegal, null and void;
- b. Enjoin Defendant, or persons acting under her supervision and direction, from implementing, administering and enforcing the Voter I.D. Amendment;
- c. Award Plaintiffs their reasonable attorney fees under the 42 U.S.C. §§ 1973l(e) and 1988, and interest as allowed by law; and
- d. Grant Plaintiffs such other and further relief to which they may be entitled and which is necessary to give full effect to the Court's order.

Respectfully submitted.

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COUNSEL FOR PLAINTIFFS

EXHIBIT A  
ALBUQUERQUE VOTER I.D. AMENDMENT



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1 4. Voter Registration cards were turned in to the County Clerk  
2 containing faulty or no addresses, no social security numbers and bogus  
3 signatures. The Bernalillo County Clerk estimated that the County had 3,000  
4 voter registration cards with problems that may have rendered them invalid;  
5 and

6 WHEREAS, requiring all voters to show photo identification eliminates the  
7 possibility of having a person's vote stolen by an impostor, as was the case  
8 with at least one Albuquerque citizen in the 2004 election; and

9 WHEREAS, voting is one of our most important rights and no one should  
10 lose that right through the fraudulent behavior of another.

11 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
12 ALBUQUERQUE:

13 Section 1. The City Clerk is instructed to place the following proposal on  
14 the next municipal election ballot, October 4, 2005, and the qualified voters of  
15 the City of Albuquerque shall be permitted to vote "for" or "against" the  
16 following proposal:

17 PROPOSITION

18 Amending the Election Code of the Albuquerque City Charter creating a new  
19 Section to provide the following: When a voter approaches the election  
20 polling place seeking to vote, the voter must identify himself or herself audibly  
21 by name. The Municipal Election Clerk shall locate in the election rolls the  
22 name spoken and ask the individual seeking to vote for one current valid  
23 identification card containing the voter's name and photograph. Such photo  
24 identification card may include any card issued by a government agency,  
25 driver's license, student identification card, commercial transaction card such  
26 as a credit or debit card, insurance card, union card, a professional  
27 association card or the voter identification card issued by the City Clerk. If the  
28 individual is unable to provide a photo identification card, he or she shall be  
29 allowed to vote on a provisional ballot, but only if he or she swears or affirms  
30 under penalty of perjury in an affidavit provided by the City Clerk that he or  
31 she is the registered voter listed on the voter registration rolls at the precinct  
32 at which he or she presented himself or herself to vote and provides his or her  
33 date of birth and the last four digits of his or her social security number.

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1 Provisional ballots shall be issued for no other reason than the failure to  
2 present photo identification. Provisional ballots shall be counted only by the  
3 Municipal Canvassing Board and only upon the voter's presentation to the  
4 City Clerk within the ten day canvassing period one of the photo identification  
5 cards described in this section. The Municipal Canvassing Board shall also  
6 verify that the voter who cast the provisional ballot was registered to vote for  
7 the election and did not vote elsewhere in the same election. If a voter who  
8 cast a provisional ballot under this section swears or affirms under penalty of  
9 perjury in an affidavit provided by the City Clerk within the ten day canvassing  
10 period that he or she has a religious objection to being photographed, such  
11 voter shall not be required to submit photo identification. The Municipal  
12 Canvassing Board shall otherwise verify that the provisional ballot was valid.  
13 The City Clerk shall develop and provide instructions for elections judges  
14 concerning the requirements of this Section and a method of complaint and  
15 resolution for individuals who feel they have been discriminated against by  
16 election officials' or the City Clerk's administration of this Section, in  
17 accordance with federal intimidation guidelines. Knowingly executing a false  
18 statement constitutes perjury as provided in Section 30-25-1 NMSA 1978 and  
19 voting on the basis of a falsely executed statement constitutes false voting as  
20 provided in Section 1-20-8 NMSA 1978. Voter photo identification cards shall  
21 be issued by the City Clerk without charge to any voter who presents any two  
22 of the following identification documents that show the name and address of  
23 the voter: a state issued identification card, social security card, student  
24 identification card, library card, insurance card, selective service card, union  
25 card, professional association card, utility bill, bank statement, government  
26 check or a paycheck. If the individual is unable to present any two of these  
27 documents to the City Clerk, then the voter shall swear or affirm in writing  
28 under penalty of perjury that he or she is the registered voter and shall be  
29 issued a voter photo identification card upon confirmation with the County  
30 Clerk that such person is presently registered to vote. The City Clerk issued  
31 voter photo identification card shall state on its face that it shall not be valid  
32 for identification other than for the purpose of voting in City Elections and  
33 shall not be valid if the voter is subsequently purged from the voter rolls.

1 The Municipal Canvassing Board shall certify the results of the Municipal  
2 Election by the end of the tenth day after the day on which the election is held.  
3 Pursuant to Article II, Section 2 (b) of the City Charter, this Section shall take  
4 precedence over the State Municipal Election Code. The provisions of this  
5 Section shall apply only to City of Albuquerque Municipal Elections.

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1 PASSED AND ADOPTED THIS 20th DAY OF June 2005  
2 BY A VOTE OF: 5 FOR 2 AGAINST.

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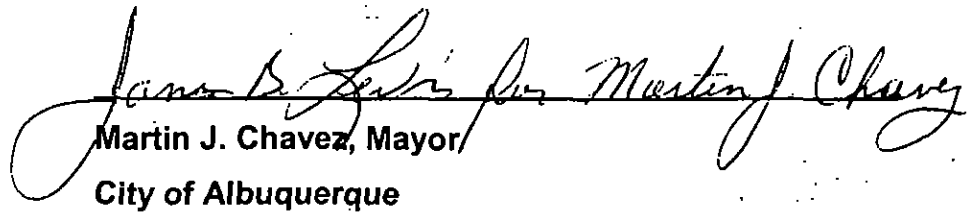
Yes: 5  
No: Griego, Heinrich  
Excused: Gomez, O'Malley



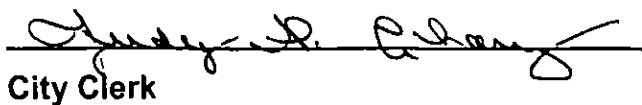
Brad Winter, President  
City Council

APPROVED THIS 23<sup>rd</sup> DAY OF June, 2005

Bill No. R-05-295

  
Martin J. Chavez, Mayor  
City of Albuquerque

ATTEST:

  
City Clerk

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