

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

_____	x	
	)	
AMERICAN ASSOCIATION OF PEOPLE	)	
WITH DISABILITIES, FEDERATION OF	)	
WOMEN'S CLUBS OVERSEAS, INC., NEW	)	
MEXICO PUBLIC INTEREST RESEARCH	)	
GROUP EDUCATION FUND, and	)	
SOUTHWEST ORGANIZING PROJECT,	)	
	)	
Plaintiffs,	)	No. CV 08-702 JOB/WDS
	)	
	)	
v.	)	
	)	
MARY HERRERA, in her capacity as	)	
Secretary of State,	)	
	)	
Defendant	)	
	)	
_____	x	

**DECLARATION OF SCOTT FUQUA IN OPPOSITION TO PLAINTIFF'S  
AUGUST 2008 APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Scott Fuqua, hereby declare;

1. I am a member of the bar of the states of New Mexico and Texas and an Assistant Attorney General for the State of New Mexico, attorney for the Defendant. I submit this Declaration in opposition to Plaintiffs' August 2008 Application for a Preliminary Injunction. I make this Declaration based on personal, firsthand knowledge and if called and sworn as a witness could and would testify competently hereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Affidavit of Denise Lamb, Chief Deputy Clerk for the Bureau of Elections in the Santa Fe County Clerk's Office, dated August 13, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit of Maggie Toulouse Oliver, County Clerk of Bernalillo County, New Mexico, dated August 13, 2008.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of Larry Dominguez, Elections Manager for the Secretary of State of New Mexico, dated August 13, 2008.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Report of Matthew A. Barreto, Assistant Professor of Political Science at the University of Washington and acting director of the Washington Institute for the Study of Ethnicity and Race (WISER), dated August 14, 2008.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct:

Dated: Santa Fe, NM  
August 15, 2008

/s/ Scott Fuqua  
Scott Fuqua

---

# **Exhibit 1**

**AFFIDAVIT OF DENISE LAMB**

Denise Lamb, being duly sworn, hereby states as follows:

1. My name is Denise Lamb. I have personal knowledge of the facts set forth below and am otherwise competent to make this affidavit.

2. I am the Chief Deputy Clerk for the Bureau of Elections in the Santa Fe County Clerk's Office. I have held that position since January 2005. Before taking this job, I served as the Director of the Bureau of Elections at the New Mexico Secretary of State's Office from 1994 to December 2004. My duties now include processing voter registration forms.

***Problems with Third Party Voter Registration Agents***

3. I have had personal experience with third party voter registration efforts in working for the Secretary of State and for Santa Fe County. I have encountered such efforts both before and after the passage of NMSA 1978, § 1-4-49, the third party voter registration law. Based on that experience, I believe the law is an effort to ensure that the actions of third party voter registration groups do not disenfranchise of the people such groups profess to empower.

4. The efforts of third party voter registration groups have, in the past, sometimes been accompanied by serious problems. In 1999, for example, members of the Libertarian Party of New Mexico engaged in conduct that, if undetected, would have resulted in widespread disenfranchisement of already-registered voters. In their effort to qualify as a major party under New Mexico's election law, the Libertarian Party launched a statewide voter registration effort aimed at increasing the number of registered Libertarians in New Mexico.

5. I was informed that the Libertarian Party did not, however, describe their effort as a voter registration drive. Instead, members of the party approached individuals in public asking them to sign a petition aimed at establishing the Libertarian Party as a major party. The so-called

petition was, in fact, a voter registration form. Libertarian Party members told the people filling out the forms to leave blank the "Party Affiliation" line of the registration form and later wrote in "Libertarian." As a result of this conduct, approximately 800 already registered voters were unregistered from their party of choice and re-registered as members of the Libertarian Party. Fortunately, many County Clerks recognized the names of the re-registered voters and were able to reach nearly all of the people affected. Nonetheless, I received calls from voters who were unable to vote in their party's primary as a result of this fraud. I remember one call in particular from an elderly woman who did not understand why she had been turned away from the polls when she tried to vote in her party's primary.

6. Following the 2000 election, I received a call from the Democratic Party of New Mexico. According to the caller, in cleaning out their offices, somebody located approximately 200 completed voter registration forms in a desk drawer. Those forms were never submitted to the appropriate election official, and as a result at least 200 New Mexico citizens who believed they were registered to vote were unable to do so in what turned out to be the closest presidential election in New Mexico's history.

7. Two separate incidents occurred in 2004 that heavily underscore the need for a law like Section 1-4-49. First, a group called Rock the Vote attempted to register a large number of young voters for the presidential election. The group, however, failed to turn in several completed voter registration cards. As a result, approximately 60 or 70 young, enthusiastic voters were turned away at the polls after believing they had registered to vote.

8. Also in the 2004 election cycle, a group called the Association of Community Organizations for Reform Now ("ACORN") engaged in conduct that resulted in testimony from an ACORN member in a lawsuit between the New Mexico Republican Party and the New

Mexico Secretary of State. The New Mexico Republican Party alleged, based on media accounts, that an ACORN member had registered a 14-year old to vote in Bernalillo County. I received several calls in 2004 from voters who had been approached in public by a representative of a third party voter registration agent, had completed a voter registration form, but were denied the opportunity to vote because their names did not appear on the voter rolls. I received such calls every year I worked for the Secretary of State and have received them every year I have worked for the Santa Fe County Clerk.

***The 48-Hour Time Limit***

9. The election officials who process voter registration forms need adequate time to do so in order to ensure that everyone who has attempted to register to vote before the deadline for registration in advance of an upcoming election (called “book closing”) is, in fact, registered. If election officials do not receive voter registration forms with sufficient time before book closing to process those forms, many potential voters will not be registered. In my experience, not only is a 48-hour deadline for the return of a completed voter registration form important to ensure that voters are actually registered, but it is also feasible for third party voter registration groups to comply with that deadline.

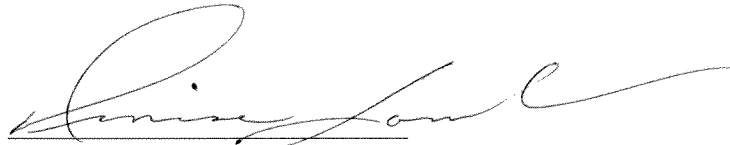
***The Fifty Form Limit***

10. It has been my experience that County Clerks generally, and the Santa Fe County Clerk in particular, are willing to accommodate third party registration groups that make a reasonable and legitimate request for more than fifty voter registration forms at one time. To my knowledge, the Santa Fe County Clerk’s Office has not refused a single request for additional voter registration forms.

***Training Requirements***


11. I have personally conducted training sessions for the certification of third party voter registration agents. The training sessions typically take between 15 and 20 minutes. The trainees receive a pamphlet they can use as a resource in their voter registration efforts and a list of phone numbers for County officials the registration agents can contact if they have questions or encounter unforeseen circumstances. The Santa Fe County Clerk's Office will provide training to any group that requests it at a mutually agreeable time and location, even if it results in a training session that occurs after business hours or on the weekend.

**The foregoing is true and correct to the best of my knowledge.**



Denise Lamb

Sworn to me this 13<sup>th</sup> day of August, 2008 in Santa Fe County, New Mexico.



Theresa Atencio

Notary Public

Expire : 01/13/09

---

# **Exhibit 2**

**AFFIDAVIT OF MAGGIE TOULOUSE OLIVER**

Maggie Toulouse Oliver, being duly sworn, hereby states as follows:

1. My name is Maggie Toulouse Oliver. I have personal knowledge of the facts set forth below and am otherwise competent to make this affidavit.

2. I am the County Clerk of Bernalillo County, New Mexico. I have held that position since January 2007. Before being appointed County Clerk, I ran the New Mexico office of the League of Conservation Voters ("LCV") from 2004 to 2007.

***Impact of Section 1-4-49 on the League of Conservation Voters***

3. In my experience, the passage of Section 1-4-49 did not significantly affect LCV's voter registration efforts. In 2004, the last election cycle before Section 1-4-49 went into effect, LCV registered approximately 1,000 voters. In 2005, an off election year, LCV registered approximately 200 voters. In 2006, LCV again registered approximately 1,000 voters.

4. I was not aware of any difficulty encountered by LCV in complying with the law. We did not find the form limitation, the 48-hour return deadline, or the training requirements to be unduly cumbersome, and those provisions did not impact our ability to register voters. To my knowledge, none of LCV's third party voter registration agents were fined or prosecuted under Section 1-4-49.

***Training Requirements***

5. Training for third party registration agents is offered in the Bernalillo County Clerk's Office at 2:00 p.m. on Tuesdays and Thursdays. Thus, the office is always available for training at those times. The Clerk's Office also, however, regularly conducts training sessions at other times and in other locations upon request. The sessions are scheduled for mutually convenient times, including evenings and weekends, and are often held in a location of the

requestor's choosing. In addition, the Clerk's Office will provide training on a walk-in basis during business hours, provided that staff are available for such training. Since at least January 2007, the Clerk's Office has not turned down a single request either for training outside of the Tuesday and Thursday hours or training at a location other than the Clerk's Office.

6. The training itself is short and designed to give guidance to third party registration agents in their voter registration efforts. The sessions can take up to 45 minutes to an hour depending on the size of the group being trained and the number of questions asked of the person conducting the training. In my experience with LCV, training was neither arduous nor intimidating. It was, on the contrary, quite helpful.

### ***The Fifty Form Limit***

7. The Clerk's Office approaches exceptions to the fifty form limit with the same flexibility it approaches voter registration training. The Clerk's Office will accommodate reasonable requests for additional forms. As an example, the Clerk's Office has a standing agreement with the Association of Community Organizations for Reform Now ("ACORN") by which we provide ACORN agents with 100 rather than 50 forms at a time.

### ***Impact of Section 1-4-49 on Third Party Registration Agents***

8. ACORN is in the middle of a massive voter registration drive. On August 12, 2008, ACORN presented to the Clerk's Office the 65,000<sup>th</sup> voter registration card turned in by ACORN in the 2008 election cycle. To my knowledge, none of these forms were returned to the Clerk's Office more than 48 hours after completion. While the Clerk's Office does not have the manpower to review the voter registration forms submitted by third party registration agents, and typically cannot do so, if questions were raised to the Clerk's Office regarding compliance with Section 1-4-49, we would conduct an investigation and act accordingly.

9. It is important that the State of New Mexico be able to hold accountable those whose intentional conduct has resulted in voter registration fraud or disenfranchisement. Section 1-4-49 allows election officials to trace fraudulent or improperly handled voter registration forms to the responsible party.

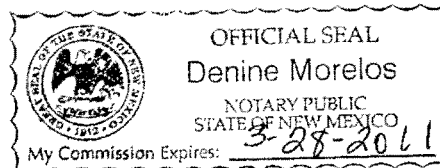
---

**The foregoing is true and correct to the best of my knowledge.**

Maggie Foulouse Oliver  
Maggie Foulouse Oliver

Sworn to me this 13<sup>th</sup> day of August, 2008 in Bernalillo County, New Mexico.

Denine Morelos  
Notary Public



---

# **Exhibit 3**

## AFFIDAVIT OF LARRY DOMINGUEZ

Larry Dominguez, being duly sworn, hereby states as follows:

1. My name is Larry Dominguez. I have personal knowledge of the facts set forth below and am otherwise competent to make this affidavit.

2. I am the Elections Manager for the Secretary of State of New Mexico. I have held that position since 1994. Since 1987, I have been employed in the Bureau of Elections at the Secretary of State's Office.

### ***Registration Requirements for Third Party Voter Registration Agents***

3. In order to become registered as a third party voter registration agent, an organization must complete a registration form that includes, among other information the organization's permanent address and the names and addresses of the organization's directors officers. Individuals who wish to register as third party voter registration agents must also complete a registration form providing similar information.

4. The registration form is completed in triplicate, and the applicant retains one copy of the document. The forms are available at the Secretary of State's Office as well as the offices of every County Clerk in the State of New Mexico. An applicant can either return the completed form to the Secretary of State's Office or to any County Clerk, who will then forward the form to the Secretary of State. An applicant can return the form either in person or through the mail.

### ***Training Requirements***

5. The Secretary of State's Office provides training for third party registration agents. The Secretary of State will accommodate any reasonable request from an organization or an individual to provide such training. I am aware, for example, that two officials from the Secretary of State's Office trained in May of this year a group of approximately seventy people

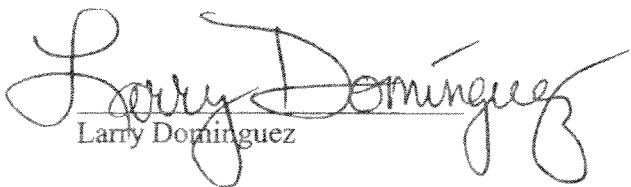
seeking to register as third party registration agents. The training occurred at approximately 7:00 p.m. and took place in a mutually agreeable location, specifically the Santa Fe public library. To my knowledge, the Secretary of State has not refused any group's request for such a training session.

6. Training sessions are typically short and are intended to provide helpful information to third party voter registration agents. Ultimately, the training is designed to ensure that third party voter registration agents are able to competently perform the task of helping others register to vote. If such competence is lacking, it can have an adverse impact on New Mexico voters.

***The Fifty Form Limit***

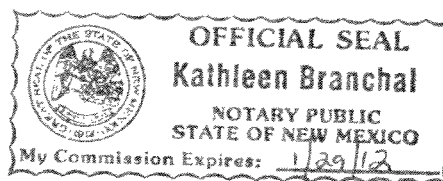
7. The Secretary of State's Office is willing to accommodate reasonable requests from groups for more than the fifty forms provided for in 1.10.25.8(C) NMAC. As with training requests, the Secretary of State's Office has not, to my knowledge, refused any such request from any third party voter registration agent.

**The foregoing is true and correct to the best of my knowledge.**

  
Larry Dominguez

Sworn to me this 13<sup>th</sup> day of August, 2008 in Santa Fe County, New Mexico.

  
Notary Public



---

# **Exhibit 4**

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

AMERICAN ASSOCIATION OF PEOPLE )  
WITH DISABILITIES, FEDERATION OF )  
WOMEN'S CLUBS OVERSEAS, INC., NEW )  
MEXICO PUBLIC INTEREST RESEARCH )  
GROUP EDUCATION FUND, and )  
SOUTHWEST ORGANIZING PROJECT, )

Plaintiffs, )

NO: 1:08-cv-702 JOB/WDS

v. )

**Expert Report of  
Matthew A. Barreto**

MARY HERRERA, in her capacity as )  
Secretary of State, )

Defendant. )

# Expert Report – Matt A. Barreto, Ph.D.

## I. Qualifications

I am currently an Assistant Professor of Political Science at the University of Washington and acting director of the Washington Institute for the Study of Ethnicity and Race (WISER). I am also an affiliated faculty member of the Center for Statistics in Social Sciences (CSSS) at the University of Washington. I received my doctorate in political science at the University of California, Irvine in 2005, and was hired by UW upon my completion of that degree. The courses I have taught at UW include *Elections and Voting in the U.S.*, *Introduction to American Politics*, *The 2008 Presidential Election*, *Racial and Ethnic Politics in the U.S.*, and *U.S. Latino Politics*, among others.

My primary area of research expertise is voting behavior, the Voting Rights Act, campaigns and elections, and minority group politics. I have conducted numerous scientific research studies on voting and voter registration and have published this research in the leading journals within political science including two articles on voter turnout in the *American Political Science Review*. I am the author of the forthcoming book, *Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation*, being published with the University of Michigan Press, one of the leading publishers of academic work on voting and elections. Among other things, my book and other research articles focus on the patterns of voter mobilization among Latinos and other subgroups of voters to understand what motivates and discourages citizens from participating in elections.

I have been awarded over \$1.6 million in research grants specifically to study voting and elections from the National Science Foundation, the Pew Charitable Trusts, the Ford Foundation, and a variety of other sources. I am currently a co-principal investigator of the American National Election Study (ANES), the oldest and most prestigious election study in political science.

---

I am being paid \$200 per hour for my work on this case, which is consistent with my rate as a consulting expert. I have worked as an expert in many cases, including preparation of the lead report for the Brennan Center for Justice at NYU which submitted the primary amicus brief in *Crawford v. Marion County Election Board*, the voter identification lawsuit recently decided by the U.S. Supreme Court. In addition, I have worked as a consulting expert in multiple Voting Rights Act cases and petitions in California including, among others, *Chicano Employees Association v. L.A. County*; *MALDEF v. Whittier*; *McAllister v. Sweetwater Union High*; *Armstrong Ranch v. North Monterrey County School District*.

I have been asked by the State of New Mexico to assess the impact that incomplete or delayed voter registration applications have on voter participation and voter confidence. Specifically, how do voters react when they believe they are registered and eligible to participate in an election, but denied the vote at the polling place because they are not found on the rolls? In my opinion, based on my own extensive research on voter participation and numerous academic research studies, there is no question that negative experiences at the polling place, especially being told they are not on the rolls, greatly decreases the likelihood that citizens will attempt to register or vote in future elections.

I declare under penalty of perjury that the comments in this document are true and correct.

## **II. Overview**

Following the 2000 presidential election voter confidence in electoral systems and administration in America plummeted. Of particular concern was whether or not eligible voters were properly added or improperly removed from voter rolls, causing them to be denied a chance to vote on election day. In Florida, it was estimated that thousands of people who believed they were registered voters were not found on the official rolls and turned away from voting. A direct result of the inconsistencies in the voter rolls was the passage of the Help America Vote Act (HAVA) by Congress in 2001. Among other requirements, HAVA mandated that state election agencies maintain consistent and up-to-date voter registration databases to be made publicly available for inspection. The goal was to eliminate discrepancies in voter registration rolls so that no citizen who was registered to vote would be turned away on election day.

Since studies of voting and non-voting have been conducted, it is known that confidence in election administration greatly affects the propensity to vote. When the public does not feel that their vote is counted, or makes a difference, they are extremely less likely to vote in any election, a finding that has been documented repeatedly in published political science research.<sup>1</sup>

Thus, it is very important that citizens have high levels of trust in their public institutions, especially in the administration of elections, in order to encourage political

---

<sup>1</sup> See for example, Abramson, Paul R. and John H. Aldrich. 1982. "The Decline of Electoral Participation in America." *The American Political Science Review*. 76 (Sept): 502-521 and Teixeira, Ruy A. 1987. *Why Americans Don't Vote: Turnout Decline in the United States 1960 - 1984*. Greenwood Press.

participation. One of the most damaging practices to trust, and by extension voter turnout, is being excluded from the voter rolls. If third party voter registration organizations conduct drives and register adult eligible citizens to vote, the new voter has the expectation that they will be listed on the voting rolls at the time of the next election. However, if the organization does not follow through and deliver the voter registration forms to the appropriate State or County office, the new registrant may not be “officially” registered to vote in time for the election. Encouraging third party organizations to file their completed voter registration applications regularly helps ensure that all new registrants will be successfully added to the rolls and be eligible to vote in the subsequent election. If a new voter attempts to vote after being recently registered, but is turned away at the polling place, this has potentially disastrous effects on both immediate and future voter participation. This is especially the case for first-time voters, and lower resource voters including low-income earners, the elderly, youth, and ethnic minorities. What’s more, it is known that the process of voting, or of not voting, is habit forming. Donald Green, expert for the plaintiffs, co-authored an article<sup>2</sup> on voting in which he stated that, “voting in one election substantially increases the likelihood of voting in future elections,” and further that the act of not voting (abstention) greatly discourages future voting. The point is that first impressions matter, and negative experiences at the polling place have been consistently found to diminish voter participation.

### **III. The Polling Place Experience and Voter Turnout**

It is very important that when citizens participate in a voter registration drive by a third party organization their registration applications are turned in and processed before

---

<sup>2</sup> Gerber, Alan S., Donald P. Green, and Ron Shachar. 2003. “Voting May be Habit-Forming: Evidence from a Randomized Field Experiment.” *The American Journal of Political Science*. 47 (July): 540-550.

the close of registration date for the next election. In research I have conducted specifically about the polling place experience of voters, the data conclusively show that negative experiences at the polling place reduce voter participation. This research article,<sup>3</sup> “Are All Precincts Created Equal?”, documents how voter experiences such as trouble with voting machines, receipt of improper instructions, the lack of a voter bill of rights at the polling location, and the reluctance to provide provisional ballots discourages voter participation. Given that most election outcomes are not decided by one vote, an individual who has a negative experience at the polling place is very unlikely to attempt to register or vote again.

Donald Green notes in his report that because “registration campaigns are dependent on the enthusiasm of their participants, transaction costs that sap recruitment and retention threaten to pitch a registration campaign into a downward spiral.” However, a far bigger risk to the enthusiasm of participants is being turned away from the precinct on election day because a third party organization did not properly file their applications for registration.

In addition to my own research on polling place experiences in Los Angeles, California, other scholars have corroborated the findings in other cities and counties across the nation. At the Western Political Science Association’s annual conference in 2005, two full panels were devoted to the topic of polling place experiences and voter participation. A recurring finding of the research presented was that when voters have a

---

<sup>3</sup> Barreto, Matt A., Mara Marks, and Nathan D. Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low-Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. Vol. 62

negative experience at their polling place, voter participation plummets.<sup>4</sup> Thus, it is essential that the citizen, especially a first-time voter, is put at ease on election day and feels that his or her vote counts in the democratic process.

A similar process was found in the state of Indiana where polling place workers are now required to ask potential voters to prove their identity with various forms of identification such as a driver's license or state ID card. In a research study I conducted last year,<sup>5</sup> I found that existing registered voters who did not have the proper credentials to vote under the Indiana law were not only turned away in one election, but had far lower rates of voting in the subsequent election. Those individuals could have applied for and received the proper ID credentials in time to vote in the next election a year or two years later. Nonetheless, those who were turned away without proper ID remained inactive voters in subsequent elections.

Donald Green agrees in his report that "policy-makers must also strive to ensure the integrity of the electoral process." It goes without saying that this is a top priority from both a practical and also a research perspective. Political scientists have consistently found evidence that public confidence in the integrity of election administration is a crucial determinant of voter participation. With respect to the New Mexico law, the extent to which third party organizations submit voter registration

---

<sup>4</sup> See for example, Espino Rodolfo. 2005. "Polling Place Quality in Phoenix." Abosch, Yishaiya. 2005. "Precinct Experience and Voter Turnout in Fresno, CA." Nicholson, Stephen and Rich Engstrom. 2005. "Low-quality precincts and turnout in Atlanta." Creek, Heather and Valerie Martinez-Ebers. 2005. "Polling Place Quality and Voting Rates in Fort Worth." Bretting, John. 2005. "Voter Suppression in El Paso, Texas." Perez-Monforti, Jessica and Robert Wrinkle. 2005. "Precinct Quality on the Border: McAllen, TX." Manzano, Sylvia. 2005. "Polling Place Experience and Voting in San Antonio." Sampaio, Anna and Eric Juenke. 2005. "Precinct Quality in Denver." Moreno, Dario. 2005. "Polling Places, Turnout, and Problems in Miami." Papers presented at the 2005 Western Political Science Association annual conference, Oakland, CA. Panels 22.08 and 22.09.

<sup>5</sup> Barreto, Matt A., Stephen Nuño, and Gabriel Sanchez. 2007. "The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate." Working Paper. (Nov 8) Washington Institute for the Study of Ethnicity and Race. University of Washington.

applications to the proper election official in a timely and efficient manner can only serve to increase the integrity of the electoral process and help ensure that all citizens who register to vote will have their applications processed and, assuming they are otherwise eligible to vote, be listed on the official voter rolls when election day comes.

---

Signed Matt A. Barab Dated 08 / 14 / 2008