

ENDORSED
FILED IN MY OFFICE THIS

JUL 24 2008

CATHY
CAYEZ

Juanita M. Duran
CLERK DISTRICT COURT

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE 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,

v.

MARY HERRERA, in her capacity as
Secretary of State,

Defendant.

CV 2008 07673

CIVIL ACTION NO. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

I. INTRODUCTION

Plaintiffs bring this Complaint for declaratory and injunctive relief challenging the New Mexico law regulating voter-registration efforts, NMSA 1978, § 1-4-49, the administrative regulations implementing this legislation, 1.10.25.7-10 NMAC, and other de facto requirements that New Mexico officials have put in place with respect to voter registration (collectively "New Mexico's voter-registration law" or the "challenged law"). These unduly onerous laws, regulations, and policies have chilled and continue to chill core political speech and association, and have forced Plaintiffs to seriously curtail or halt their voter-registration activities. The challenged law imposes a number of severely burdensome restrictions on individuals and groups involved in voter registration.

The challenged law is not properly justified, nor is it appropriately tailored to serve any government interest. The challenged law is also inconsistent with and preempted by the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq. (“NVRA”). This Court should declare that the challenged law as written, interpreted, and enforced by Defendant violates the First and Fourteenth Amendments to the United States Constitution, the NVRA, and the New Mexico Constitution. This Court should also enjoin the enforcement of the challenged law.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and parties hereto. This case arises under the United States Constitution, the NVRA, and the New Mexico Constitution.

2. Venue is proper in this district under section 38-3-1 of the New Mexico Statutes Annotated, NMSA 1978, § 38-3-1, which provides that suits against state officers shall be brought in the county in which their offices are located or in the county where any one of a group of Plaintiffs resides. The Secretary of State has offices in Bernalillo County. Plaintiffs New Mexico Public Interest Research Group Education Fund and SouthWest Organizing Project are headquartered in Bernalillo County.

III. PARTIES

A. Plaintiffs

American Association of People With Disabilities

3. Plaintiff American Association of People With Disabilities (“AAPD”) is a nonpartisan organization incorporated under 26 U.S.C. § 501(c)(3) and based in

Washington, DC. AAPD, the largest national nonprofit cross-disability membership organization in the United States, is dedicated to ensuring economic self-sufficiency and political empowerment for the more than 56 million Americans with disabilities, including individuals in New Mexico. AAPD accomplishes this mission by encouraging voter registration and participation among the disabled. AAPD registers its own members to vote and also runs comprehensive, large-scale voter-registration programs by establishing coalitions of state-specific disability organizations and training those organizations to register voters.

Federation of Women's Clubs Overseas, Inc.

4. Plaintiff Federation of Women's Clubs Overseas, Inc. ("FAWCO"), a § 501(c)(3) nonpartisan nonprofit organization incorporated in New York, is an international confederation of independent American women's organizations located overseas. FAWCO currently has seventy-eight member organizations located in thirty-nine countries around the world; the over 16,000 constituent members of FAWCO's membership organizations are active in Africa, Asia, Asia-Pacific, the Caribbean, Europe, the Middle East, North America, and South America. FAWCO's mission is to serve as a resource and channel of information among its members; to provide a voice for American women abroad and support the rights of all Americans worldwide; and to contribute actively to the global community with a specific focus on education, the natural and human environment, multicultural understanding, and international goodwill. FAWCO, which is entirely volunteer-run, assists its member organizations in registering their own members to vote from abroad and in conducting voter-registration drives for

American citizens, including citizens of New Mexico, in the foreign countries in which they operate.

New Mexico Public Interest Research Group Education Fund

5. Plaintiff New Mexico Public Interest Research Group Education Fund (“NMPIRG Education Fund”) is a nonpartisan nonprofit § 501(c)(3) charitable organization incorporated in New Mexico and headquartered in Albuquerque. The NMPIRG Education Fund educates the public on important policy issues and seeks to offer New Mexicans opportunities for civic participation. Students for New Mexico Public Interest Research Group (“Students for NMPIRG”) is a student group at the University of New Mexico (“UNM”) that participates in certain issue-oriented campaigns conducted by both the NMPIRG Education Fund and New Mexico Public Interest Research Group (“NMPIRG”), which is a 26 U.S.C. § 501(c)(4) organization. One of the NMPIRG Education Fund campaigns in which Students for NMPIRG participates is the “New Voters Project” run by the Student PIRGS (a national federation of the Student PIRG organizations in various states), the goal of which is to register new voters.

SouthWest Organizing Project

6. Plaintiff SouthWest Organizing Project (“SWOP”) is a nonprofit nonpartisan organization incorporated in New Mexico and headquartered in Albuquerque. SWOP’s mission is to empower the New Mexico communities that it serves—including Latinos and other people of color, low-income individuals, and young people—to realize racial and gender equality and social and economic justice. SWOP accomplishes its mission by educating, organizing, developing leadership in these

communities, and registering community members to vote. SWOP has approximately 600 members, primarily low- to moderate-income people of color, across New Mexico. Since 1983, SWOP has registered over 30,000 people in New Mexico to vote. SWOP's voter-registration drives have been largely volunteer-driven.

B. Defendant

Secretary of State Mary Herrera

7. Defendant Mary Herrera is the duly elected Secretary of State of New Mexico. Under section 1-2-1 of the New Mexico Statutes, NMSA 1978, § 1-2-1, Defendant is the chief election officer of the state and is required to "obtain and maintain uniformity in the application and operation" of the Election Code of New Mexico, "make rules and regulations . . . necessary to carry out the purposes of the Election Code," and "bring such actions as deemed necessary and proper for the enforcement" of New Mexico's election laws. Under section 1-2-2 of the New Mexico Statutes, NMSA 1978, § 1-2-2, the Secretary of State is required to supervise all elections, to administer the Election Code, and to instruct County Clerks regarding the conduct of elections. Accordingly, the relief that Plaintiffs seek herein is appropriately sought from Defendant.

8. Defendant and the County Clerks of New Mexico have in place systems, separate and apart from the challenged law, that are designed to prevent (and have the effect of preventing) the registration process from becoming a mechanism for fraudulent voting. The County Clerks apply rigorous and thorough checks to verify that applications for registration entitle applicants to be registered. A statewide on-line database allows County Clerks' staff, as part of their entry of a registrant onto the voter rolls, to determine

what other county the registrant was previously registered in (if any) and verify the registrant's Social Security number, address, name, and date of birth. If any of these elements is incorrect or does not match, an error report is generated. Further, the state and each county are notified from the Vital Statistics Office of the deaths of registrants such that the names and Social Security numbers of people who have died are pulled from the voter rolls.

IV. FACTS

A. **Plaintiffs' Voter-Registration Activities Constitute Core Political Speech and Association**

9. Voter registration is a uniquely effective means for Plaintiffs to communicate political messages and to associate with fellow citizens to affect political change.

10. Plaintiffs conduct nonpartisan voter-registration activities not only to strengthen American democracy, expand the franchise, and promote civic participation generally, but also to increase the political power of certain communities and groups of New Mexicans, such as the disabled, the poor, racial minorities, students, and the disenfranchised. For instance, NMPIRG empowers young college students to become politically engaged by encouraging them to register to vote. Registering voters is similarly essential to SWOP's organizational mission of empowering minorities, the impoverished, and the young in New Mexico. AAPD, a recognized authority regarding the political participation of people with disabilities, would coordinate large-scale voter-registration drives to ensure the economic self-sufficiency and political empowerment of disabled New Mexico voters but for the challenged law. FAWCO's voter-registration

activity focuses on providing a voice for American women voters and other Americans living abroad, some of whom are citizens of New Mexico.

11. Plaintiffs also engage in voter-registration efforts to inform other citizens about their views on social and political issues and to engage citizens in discussions about those issues. For instance, SWOP frequently discusses local issues—such as traffic, youth issues, and the education system—while registering voters in New Mexico. NMPIRG likewise engages students on various political and social issues—including the environment, poverty, consumer rights, and democracy generally—while tabling and canvassing for voter registration. FAWCO frequently addresses issues of importance to the expatriate community—including federal, state, and local taxes levied on those living abroad—while conducting voter registration. AAPD often discusses issues relevant to the disabled community—such as accessible housing and audible traffic lights—while registering voters. The voter-registration volunteers and workers of all Plaintiffs communicate to prospective registrants the importance of voting, political participation, and community empowerment.

12. Plaintiffs also engage in voter-registration efforts to urge other citizens to associate with them and engage in meaningful collective action to advance shared political objectives. For instance, after SWOP registers new voters, the organization adds these new registrants to their database and later solicits these registrants to join SWOP and to get out the vote. NMPIRG asks prospective registrants if they would like to fill out a General Interest Card as a means of enlisting them to take part in subsequent issue campaigns and voter-registration drives. Some local AAPD coalitions use voter-

registration drives to increase their own membership as well as the membership of AAPD. FAWCO uses voter registration as a way to make the club known and solicit new members.

13. Historically, to advance these important First Amendment objectives, Plaintiffs and other similar organizations have persuaded thousands of New Mexico citizens to vote. They have done so almost exclusively by talking to potential voters face-to-face, in diverse communities across the state. These conversations have taken place at schools and universities, community events, religious services, workplaces, malls, community events, disability conferences, and other public gatherings. They also have occurred on citizens' front porches and in living rooms across the state when members of these organizations, volunteers, and employees have traveled door-to-door to register voters in residential communities.

14. Plaintiffs' success in registering new voters depends not only on their ability to persuade others to vote, but also on their ability to assist others to properly fill out voter-registration applications, to collect those applications, to review the applications for errors or omissions, to assist applicants to correct those errors or omissions, to deliver those applications to the appropriate state offices, and, periodically, to follow-up and ensure that the state properly adds new voters to the rolls.

B. Plaintiffs' Voter-Registration Activities and Procedures

American Association of People With Disabilities

15. AAPD has been registering Americans with disabilities to vote nationwide since 1995. AAPD research indicates that people with disabilities represent a very large

segment of those Americans who are not registered to vote. For example, according to United States Census data, there are over 300,000 voting-age people with disabilities residing in New Mexico, but only 37.9% of those individuals voted in 2000. Although state agencies have a legal responsibility to offer voter registration, AAPD's analysis shows that agencies are not properly implementing the law. Voter registration is therefore a crucial component of AAPD's work.

16. AAPD registers voters in two ways: First, AAPD registers its own members by communicating with them directly and providing them registration forms through the mail and at various disability events, meetings, and conferences. Second, AAPD runs comprehensive, large-scale voter-registration programs by establishing coalitions of state-specific disability organizations, many of whose members are also AAPD members, and training those organizations to register voters. AAPD dedicates considerable resources to establishing these voter-registration coalitions, training coalition members in voter registration, and undertaking other voter-registration activities.

17. The specific approach to each local AAPD-coalition-based voter-registration program is based on the resources and needs of the organizations involved. Some coalition members use voter-registration drives to increase their own membership or the membership of AAPD. This depends on the particular coalition.

18. Often, coalition organizations mail voter-registration forms to nonregistered members or clients, calling before and after the mailing to explain the voter-registration process and answer questions, provide assistance, and make sure the

form is returned. Each coalition decides independently whether registration forms are sent back to the organization or directly to the state. This is a question of resources (e.g., whether the organization can afford to pay for postage).

19. Coalition members also engage in voter registration through disability conferences, meetings, events, and routine contact with their clients. AAPD trains coalition members to incorporate voter registration into all of their activities.

20. AAPD and coalition members provide a range of assistance with completion of forms. AAPD often needs to provide more assistance than would organizations registering nondisabled voters. For example, some blind and physically handicapped voters cannot fill out voter-registration forms by themselves; in such cases, volunteers physically complete the forms for the registrants. Sometimes volunteers will travel to a member or client's home to assist with completion of the form. Other times, they provide assistance by answering questions over the telephone.

21. AAPD also engages in nonpartisan voter-education programs. For example, AAPD operates a voter-project list-serve that provides voting-related information, including voter-registration and election information, to members who have requested such information. AAPD currently provides voting information to its members in New Mexico via e-mail updates and in its quarterly newsletter.

22. AAPD's newsletter, which is distributed nationwide to approximately 86,500 individual AAPD members (including members in New Mexico), almost always discusses the importance of voter registration, voter turnout, and how to make voting accessible to disabled citizens. Past newsletters have contained, for example, information

about polling-place access (and how to report polling-place inaccessibility to state election officials), updates regarding AAPD's Disability Vote Project (which aims to increase voter registration and participation among people with disabilities), and AAPD political-action alerts for members. Each newsletter also contains an AAPD membership form.

23. AAPD also generates e-mail communications, such as e-mail alerts about particular disability issues, to individuals (including both AAPD members and nonmembers) on various e-mail lists. AAPD also receives calls, including from individuals in New Mexico, regarding state election legislation, voter registration, and how to make voting accessible to disabled citizens.

24. AAPD also works to educate organizations that serve the disabled community. AAPD has undertaken this initiative for organizations in New Mexico. For example, in 2003 and 2004, AAPD helped prepare voter-registration and election information for The Arc of New Mexico, American Council of the Blind of New Mexico, United Cerebral Palsy, and Independent Living Centers in New Mexico.

25. Finally, AAPD engages in training sessions regarding voter registration, turnout, and accessibility. AAPD representatives generally advise representatives from disability-rights organizations to tie their voter-registration and get-out-the-vote efforts to the issues that are specific to the disability contingency that they serve. AAPD training sessions frequently involve discussion of important issues for the group and how to link those issues to the act of registering to vote and to voting itself. Individual organizations develop their own approaches depending on the issues that are important to their

constituencies. In addition, AAPD voter-registration drives often spark conversations regarding issues that are important to registrants.

26. New Mexico's voter-registration law severely burdens AAPD's ability to run a state-wide voter-registration program through a coalition in New Mexico. As a result, AAPD has suspended efforts to establish a coalition in New Mexico and has decided not to establish a voter-registration program in the state in 2008, despite the organization's desire to do so. If the challenged law remains in place, AAPD voter-registration efforts in New Mexico will continue to be frustrated.

Federation of Women's Clubs Overseas

27. FAWCO has been involved in registering overseas citizens to vote since 1975, and in greater volume since the passage of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") in 1986, which requires the Department of Defense to administer a program for helping Americans overseas to vote. FAWCO facilitates voter-registration activities through an annual conference, regular voting-related updates to its member organizations, and the activities of FAWCO-trained women. FAWCO has helped to register voters from all fifty states, including New Mexico, and frequently addresses issues of importance to the expatriate community while conducting voter-registration drives at locations abroad that American citizens are known to frequent.

28. FAWCO helps United States citizens living abroad to register to vote by training the members of its constituent organizations how to register voters. This training generally occurs during a four-day conference that FAWCO holds in each federal election year. In addition, FAWCO provides information to volunteers who have

expressed an interest in voting issues (primarily through e-mail correspondence throughout the year) and organizes voter-registration sessions at regional meetings and annual conferences. The individual members of FAWCO's constituent organizations, many of whom have been trained by FAWCO, conduct voter-registration drives around the world in locations such as American embassies and schools. Voter registration often prompts conversations with potential voters regarding, for example, civic engagement for overseas citizens or contemporary political issues.

29. FAWCO principally trains its member organizations to assist Americans living abroad to vote using the Federal Post Card Application ("FPCA"), which states must accept pursuant to the UOCAVA. The FPCA is printed and distributed by the Federal Voting Assistance Program for use by American citizens living abroad who are eligible to vote under the UOCAVA, and it is used by American citizens both to register to vote in their home states in the United States and also to obtain absentee ballots from those states to allow them to vote from abroad.

30. The FPCA is difficult to fill out; each state has different requirements for registration. As part of FAWCO volunteers' voter-registration activities, FAWCO volunteers help voters to navigate the complicated FPCA-registration process. Although some FAWCO volunteers systematically collect and mail all FPCAs that they help registrants complete to ensure that they are returned properly, other FAWCO volunteers leave it to the individual registrant to mail his or her FPCA to the correct entity.

31. FAWCO has assisted thousands of American citizens in registering to vote, and has provided information to thousands more. FAWCO has historically assisted

in the registration of American overseas from all fifty states. In advance of the 2004 presidential election, at least some of the overseas voters that FAWCO registered to vote were citizens of New Mexico.

32. Upon learning of the challenged law, the Chair of FAWCO's Voting from Overseas Committee advised all of FAWCO's volunteers who register voters overseas to not assist any New Mexico residents to register to vote because of potential civil and criminal liability under New Mexico law. Many of the members of FAWCO's member organizations have thus declined to register any New Mexico voters and will not do so unless the law is changed. The principal problem for FAWCO's members is that it is impossible for FAWCO members living abroad to travel to New Mexico to be trained and certified to register New Mexico voters. In addition, the challenged law is vague and fails to specify when one has "assisted" voter registration sufficient to cause the law to apply. FAWCO is unwilling to subject its volunteers and itself to potential civil and criminal penalties for helping to register New Mexico voters.

New Mexico Public Interest Research Group Education Fund

33. The NMPIRG Education Fund engages in voter registration through its participation in the New Voters Project, which is run by the Student PIRGS, a national federation of the Student PIRG organizations in various states. As part of its participation in this national nonpartisan effort, the NMPIRG Education Fund provides funding and guidance to Students for NMPIRG, a student group on the UNM campus in Albuquerque, to conduct voter registration on its behalf. Since 2004, Students for

NMPIRG is the only group that has conducted voter-registration drives on behalf of the NMPIRG Education Fund.

34. Students for NMPIRG presently has approximately 1,500 student members in its mailing database and a core group of twenty to thirty members. The mission of Students for NMPIRG is to engage and empower students regarding issues of their concern, including the environment, poverty, consumer rights, and democracy, with an emphasis on voter registration. Each semester, through a series of campaigns, student volunteers recruit additional members, educate students about issues important to the organization, and register people to vote.

35. Students for NMPIRG, with the help of a paid organizer funded by the NMPIRG Education Fund, conducts voter-registration activities principally by tabling and canvassing on the UNM campus. Tabling involves setting up tables in a public places, such as the UNM Student Union, and engaging students passing by in an effort to get them to vote. Canvassing consists of sending out individual canvassers with clipboards into public places, such as the UNM campus walkways, to communicate with passersby (primarily fellow students). Certain events, such as freshman orientation each year, are particularly conducive to voter-registration efforts.

36. In addition to tabling and canvassing, Students for NMPIRG also registers voters for the NMPIRG Education Fund in classes, particularly large freshman classes. If the professor agrees to allow voter registration in class, students talk to the class about civic responsibility and why it is important to register to vote, then try to register as many students as possible. After the class has been addressed, students who would like to

register to vote or fill out Students for NMPIRG General Interest Cards raise their hands, at which point voter-registration forms and General Interest Cards are collected.

37. To conduct its tabling, canvassing, and classroom voter-registration activities, Students for NMPIRG relies on the recruitment of casual volunteers to assist its core organizers. Although student volunteers cannot always devote large blocks of their time to voter-registration activities, many students are amenable to contributing hours sporadically to Students for NMPIRG's campaigns, sometimes on weekends.

38. Since New Mexico's voter-registration law was enacted, Students for NMPIRG has reduced its voter-registration activities on behalf of the NMPIRG Education Fund, primarily because the law's certification and training requirements and strict civil penalties make it very difficult to recruit casual volunteers, who are essential to the organization's work. As a result, the number of voters that Students for NMPIRG has been able to register for the NMPIRG Education Fund has fallen since enactment of the challenged law. For instance, in 2006, Students for NMPIRG registered approximately 1,000 students, but failed to meet their modest goal of registering 1,400 students—despite the fact that the student body of the Albuquerque UNM campus totals approximately 26,000. By contrast, Students for NMPIRG's campus organizer in 2006 had previously helped a student group to register 800 students in 2004 at the University of Minnesota in Duluth, which has a student body of only 10,000 students. The organization expects similarly disappointing results in 2008 as a direct result of the challenged law.

SouthWest Organizing Project

39. SWOP began conducting voter-registration drives in New Mexico in 1983 and 1984 (in advance of the 1984 presidential election). Prior to enactment of the challenged law, SWOP's voter-registration drives tended to comprise approximately 20% of SWOP's staff's working hours during election years.

40. SWOP currently has nine full-time employees, four permanent part-time employees, and other paid part-time workers who assist SWOP periodically throughout the year. SWOP staff consists primarily of people of color, predominately Latinos. Approximately 100 of SWOP's members volunteer their time to SWOP throughout the year. Volunteer work is crucial to SWOP's success, and volunteers represent a valuable asset for SWOP in that they increase the organization's capacity to provide services to the communities that SWOP serves. Volunteers are critical to SWOP's ability to undertake organized voter-registration drives.

41. Since 1983, SWOP has registered over 30,000 people in New Mexico to vote. In 2000, SWOP registered approximately 1,000 voters in New Mexico. In 2003, SWOP began to register voters on a larger scale. In 2004, SWOP registered approximately 5,000 people to vote and engaged in voter mobilization as well, all in New Mexico. Of the roughly 5,000 voters registered by SWOP in 2004, approximately 80% were in Bernalillo County, approximately 10% were in Santa Fe County, and approximately 10% were in Eddy County.

42. Registering voters is central to achieving SWOP's organizational mission of empowering communities because the communities that SWOP serves—which include

minority, impoverished, and young New Mexico residents—have low voter-registration and voter-participation levels.

43. In 2004, apart from SWOP's regular employees, SWOP relied on approximately 100 unpaid volunteers for its voter-registration drives in Albuquerque, Santa Fe, and Carlsbad, New Mexico. All SWOP canvassers received a thirty-minute training, which the Executive Director of SWOP personally oversaw, on how to complete the voter-registration form. Without the help of SWOP volunteers, SWOP would likely not have been able to undertake an organized voter-registration drive in 2004.

44. In 2004, SWOP targeted for voter registration SWOP members and individuals in the SWOP database who were not found on the county and state voter rolls by calling them and visiting their homes and asking them to register to vote. SWOP also targeted local high schools and college campuses to register students. SWOP workers also brought voter-registration forms whenever they were doing community outreach at either public or private events. Also, SWOP workers brought clipboards or set up tables at various venues, including public-assistance agencies, local shopping centers, laundromats, and high schools. Although most of the voter registration undertaken by SWOP workers and volunteers in 2004 was structured, some was more sporadic and impromptu.

45. SWOP's typical procedure when approaching potential registrants has been to give them nonpartisan educational materials on various issues, a voters' guide, a SWOP newsletter, and a SWOP card or leaflet with SWOP's phone number for voters to call if they do not receive a voter-identification card within thirty days. SWOP

additional information about the organization. New registrants are also often given a copy of the current SWOP newsletter when they register to vote.

49. SWOP enters registrants' information into a central database, which contains information going back fifteen years, including contact information for SWOP's members and donors, those whom SWOP has registered to vote, and people who have signed SWOP petitions, purchased items from SWOP, or attended SWOP events. The approximately 8,000 individuals in the SWOP database receive SWOP's newsletter, which SWOP publishes two to four times per year. The information in the database is also used for SWOP's get-out-the-vote efforts. In 2004, for example, SWOP undertook a get-out-the-vote campaign with its entire membership and database entrants, including new registrants.

50. In 2004, SWOP tried to get completed registration applications to the County Clerk's office as soon as possible after completion. Although voter-registration forms were not always submitted within forty-eight hours of completion, voter-registration forms have always been submitted by SWOP before the voter-registration deadline.

51. SWOP has taken various quality-control measures to prevent late, incomplete, incorrect, or lost submissions. For example, in 2004, a full-time SWOP Field Organizer reviewed every voter-registration application gathered in Albuquerque before it was submitted to the Bernalillo County Clerk's office. This included checking the date on each form to ensure that forms were being returned to SWOP from its employees and

volunteers in a timely fashion. SWOP staff also made random spot-check telephone calls to ensure the accuracy of the collected forms.

52. Although SWOP has, in the past, submitted completed applications by mail, the organization prefers to deliver completed voter-registration forms in person to the County Clerk's office because SWOP believes that in-person delivery involves less risk of error and loss and results in faster registration. In 2004, a SWOP staff member delivered the forms from SWOP's registration drives in Bernalillo County to the County Clerk's office approximately every other day, usually in person. Although SWOP attempted to return forms promptly, the organization did not always return all forms to the County Clerk within forty-eight hours of completion. For instance, sometimes SWOP would register voters in Bernalillo County who were from other counties in New Mexico, in which case the forms were mailed directly to the relevant County's Clerk's office.

53. Since the challenged law was enacted, SWOP has significantly reduced its voter-registration activity, primarily because of a dramatic decrease in the number of workers and volunteers who are willing to register voters. In 2006, for example, SWOP did not undertake any organized voter-registration drives, although the organization did register a handful of voters, probably less than 100 (representing a 98% reduction from the organization's voter-registration results for 2004). SWOP has no plans to undertake a full-scale voter-registration drive in New Mexico in 2008 because of the burdens of New Mexico's voter-registration law. The likelihood of SWOP undertaking voter-registration initiatives for 2008 would increase greatly if the requirements of the law—especially the training and pre-registration requirements—were repealed or invalidated.

C. **The Challenged Law**

Provisions of the Law and Regulations

(a) *Pre-Registration, Disclosure, and Training Requirements*

54. Section 1-4-49(a) of the New Mexico Statutes provides that registration agents who are acting on behalf of a nongovernmental organization to assist individuals seeking to register to vote shall themselves pre-register with the Secretary of State, and that the organization shall also pre-register and provide the Secretary of State with certain information. NMSA 1978, § 1-4-49(a) (2008). Section 1.10.25.8 of the New Mexico Administrative Code requires that individuals complete this pre-registration process prior to registering another individual to vote. 1.10.25.8 NMAC (2008). Each prospective registration agent must submit a form identifying the name and address of the organization for which he or she is working, and the agent's own name, address, date of birth, and Social Security number. 1.10.25.9(a)-(g) NMAC. The form must also include a signed, sworn statement by the agent that he or she will obey all state laws and rules regarding the registration of voters. 1.10.25.9(i) NMAC. Except for the date of birth and Social Security number, the form is a public record. 1.10.25.9(k) NMAC. Although the statute and rules do not require the disclosure of the registration agent's Social Security number, the pre-registration form does require this information.

(b) *Fifty-Certificate Limit*

55. Sections 1.10.25.8(c) and 1.10.25.10(b) of the New Mexico Administrative Code provide that registration forms are to be distributed in quantities of fifty per organization or individual. 1.10.25.8(c) NMAC, 1.10.25.10(b) NMAC. The

County Clerk and the Secretary of State retain “discretion to increase these quantities for special events or circumstances.” Id. Neither the statute nor the implementing regulations specifies criteria that the County Clerk or the Secretary of State shall apply in exercising such discretion. See id.; see also NMSA 1978, § 1-4-49(a). The forms distributed to each organization or individual are accompanied by a traceable number so that election officials may retain a record of each form. 1.10.25.8(c) NMAC.

(c) *Forty-Eight-Hour Return Requirement*

56. Section 1-4-49(b) of the New Mexico Statutes provides that “[o]rganizations employing registration agents or using volunteer registration agents shall deliver or mail a certificate of registration to the Secretary of State or County Clerk within forty-eight hours of its completion by the person registering to vote or deliver it the next business day if the appropriate office is closed for that forty-eight-hour period.” NMSA 1978, § 1-4-49(b). No exception is provided for exigent or other special circumstances that make return of a form within forty-eight hours impracticable in any particular circumstance. See id. Nor is there an exception for organizations that may receive a certificate from a prospective registrant two or more days after the registrant completed the certificate. See id.

(d) *Criminal and Civil Penalties*

57. Section 1-4-49(d) of the New Mexico Statutes provides that “[a] person who intentionally violates the provisions” of the challenged statute “is guilty of a petty misdemeanor.” NMSA 1978, § 1-4-49(d). The penalties for a petty misdemeanor include imprisonment for up to six months and fines up to \$500. See id. § 31-19-1. The

statute does not specify what constitutes an “intentional” violation, nor does it carve out any defense based on good-faith conduct. See id. § 1-4-49(d).

58. The statute provides for an assessment of civil penalties, including fines of “[\$250] for each violation, not to exceed [\$5,000],” on any person who the Secretary of State “reasonably believes” has “committed a violation of the provisions [of the challenged statute].” Id. § 1-4-49(e). The statute also provides that if a person who violates the statute is “an employee of an organization and has decision-making authority regarding the organization’s voter-registration activities or is an officer of the organization,” the organization itself is strictly liable for civil penalties. Id. § 1-4-49(d).

Unpublished Training Requirement

59. Local County Clerks have advised that registration agents must participate in training before they can complete the pre-registration process. The training requirement does not appear on the face of the statute or the administrative regulations. See NMSA 1978, § 1-4-49 et seq.; 1.10.25.9 NMAC et seq. Nonetheless, representatives of NMPIRG and SWOP have reported that training is a de facto requirement in many parts of New Mexico, particularly in Albuquerque.

D. Impact of the Challenged Law on Plaintiffs’ Voter-Registration Activity

60. New Mexico’s voter-registration law, and its implementation by Defendant, impede the ability of Plaintiffs to conduct voter-registration drives and related speech and association activities in New Mexico.

Pre-Registration, Training, and Disclosure Requirements

61. Requiring a registration agent to pre-register in person at a County Clerk's office, attend training, and disclose extensive personal information prevents spontaneous registration drives and makes it difficult to hire workers and use volunteers.

62. The pre-registration, training, and disclosure requirements have, for example, reduced the NMPIRG Education Fund's ability to recruit casual volunteers and have prevented the spontaneous volunteer efforts that are central to its operations. Students for NMPIRG rarely has more than a fraction of their volunteers certified to register others to vote at any given time. Most of their volunteers on any given day are casual volunteers who are not certified and cannot directly register votes. Although the organization still tries to use these volunteers by asking them to walk around campus and bring prospective voters back to a table where a certified student can help students to fill out voter registration forms, this is an inefficient and ineffectual method of voter registration. In the absence of the pre-registration and training requirements, NMPIRG's volunteer voter-registration drives would be vastly more productive.

63. Similarly, SWOP currently has just two employees and one intern who are certified to register voters in New Mexico, and all three work out of Albuquerque. This is in stark contrast to the 100-plus employees and volunteers who engaged in voter registration on behalf of SWOP in multiple counties in New Mexico in 2004. SWOP cannot organize large drives and registration efforts without volunteers, particularly in places like Carlsbad (where SWOP does not have any certified employees). SWOP is

similarly prevented by the training and pre-registration requirements from facilitating spontaneous and informal voter registration via networks of friends and family.

64. The training requirement is particularly burdensome on Plaintiffs because training is typically given only at the County Clerk's office. The times of the training sessions are limited and often inconvenient for Plaintiffs' workers and volunteers. Moreover, the training sessions can take up to an hour and are generally during business hours.

65. For members of Students for NMPIRG, it is difficult to walk to the downtown training location from the University of New Mexico campus in Albuquerque, and the bus ride can take as long as thirty minutes each way. Students who have cars are reluctant to drive downtown to register because there is limited street parking at the Bernalillo County Clerk's office, and many student volunteers do not wish to pay for parking to attend training. Students often cannot attend training due to their class schedules and the training requirement is particularly burdensome for students with jobs.

66. Because disabled people often lack adequate transportation, it is also very difficult for AAPD's coalition groups to send all of their volunteers to centralized in-person training sessions.

67. Similarly, it is not realistic for SWOP to rely on volunteers, many of whom are poor and must work during the day time, to attend certification training sessions—especially in rural communities that may be located a substantial distance from the county seat.

68. The training session is also intimidating, further limiting Plaintiffs' ability to recruit volunteers. An instructor at the Bernalillo County Clerk's office told a student from Student NMPIRG that if an individual did not comply with the requirements of the challenged law, she would be guilty of a felony. SWOP staff members were told that if their specific individual voter-registration numbers did not match up with the specific serial numbers on the forms that they were given, there would be penalties and that "really bad things would happen."

69. SWOP was planning to undertake a significant voter-registration program in 2006. After attending the training, SWOP leadership abandoned those plans, in part because of the intimidating nature of the training, and also because of the inconvenient time and place of the training, which SWOP's employees and volunteers would have to attend before they could assist in SWOP's efforts to register voters.

70. The disclosure requirements present particular barriers for AAPD and AAPD-coalition groups. Many AAPD volunteers do not wish to be identified as disabled or publicly associated with a disability-rights organization. This is especially true of individuals with psychiatric disorders or progressive diseases, some of whom wish to keep their disabilities confidential because they fear discrimination. These individuals are deterred from acting as third-party registration agents because of the challenged law. In addition, some potential voters may be unwilling to register to vote with a member of a disability-rights organization if they believe that that organizational affiliation could be traced to them via the public forms used during the pre-registration process.

71. Plaintiff FAWCO has recommended that its volunteers not assist in registering any New Mexico citizens living abroad to vote principally because it is impossible for any organization operating overseas to comply with the challenged law's certification and training requirements. FAWCO volunteers who help Americans living abroad to register to vote can neither (i) appear at the office of one of the New Mexico County Clerks to be certified nor (ii) attend a training in advance of the certification, as is required. FAWCO volunteers are located in foreign countries, and they cannot be certified without bearing an unreasonable expense to fly to New Mexico. Such an expense would be particularly hard to justify given that, unlike volunteers who reside in a state within the United States, FAWCO volunteers must be familiar with the laws not only of New Mexico but also of the other forty-nine states and five territories.

Fifty-Certificate Limit

72. Limiting the number of registration certificates that may be distributed to any individual or organization dramatically weakens Plaintiffs' registration activities.

73. In the fall of 2005, Students for NMPIRG would routinely run out of forms at registration drives and would suspend operations until fifty completed forms could be reviewed and returned to the County Clerk's office. This process took up to an hour. Moreover, during the same time frame, employees of the Bernalillo County Clerk's office indicated to Students of NMPIRG volunteers that forms could not be picked up or returned on behalf of others. Thus, every single student was forced to go back to the County Clerk's office in downtown Albuquerque when he or she ran out of forms.

74. Since the fall of 2006, the Bernalillo County Clerk's office has allowed certain members of Students for NMPIRG to take out as many as 200 forms at a time and to return forms on behalf of others. It is unclear, however, whether 200 forms will be sufficient when operations are in full swing in 2008. Further, if the Bernalillo County Clerk's office decided to exercise its discretion to deny Students for NMPIRG's request for additional forms, as it did in 2005, then its registration efforts would be burdened even more severely.

75. Plaintiff SWOP has been similarly burdened by the fifty-form limit. The Executive Director of SWOP was given only fifty registration certificates upon his completion of the training. SWOP has had difficulty obtaining sufficient quantities of forms in the past. The fifty-form limit would present a barrier were SWOP to attempt to engage in large-scale voter registration. In addition, the logistics of keeping specific forms linked to each SWOP registration agent would present an administrative challenge were there to be as many SWOP-affiliated registration agents as SWOP would need to run a drive.

76. Because of the challenged law, SWOP can no longer give out voter-registration forms for people to send in on their own but must instead collect the forms. SWOP workers and volunteers can no longer carry voter-registration forms with them to visits and events to seek out prospective voters and encourage and assist them to register to vote, as they have in the past.

77. The Executive Director of SWOP asked, during the training that he attended at the Bernalillo County Clerk's office, whether SWOP could use the federal

form to register voters. He was told that the federal form was not allowed and that SWOP had to use the state forms to register voters in New Mexico.

Forty-Eight-Hour Return Requirement

78. The requirement that Plaintiffs return completed registration certificates within forty-eight hours has substantially burdened Plaintiffs' voter-registration activities by dramatically increasing their risk and cost.

79. AAPD-coalition groups are unable to mail voter-registration forms to clients because there is no way of ensuring that forms will be returned to them or to the County Clerk within forty-eight hours. It is unrealistic to expect some disabled people to mail the forms back that quickly, particularly if the organization involved requests that the form be mailed back to the coalition first for quality-control purposes. For example, transportation is difficult for many disabled people; citizens who are blind must sometimes wait days or weeks for a reader to read their mail; and people with hand limitations sometimes must wait for assistance to open envelopes.

80. SWOP similarly would have to direct significant additional resources to ensure that quality control would be completed within the forty-eight hours mandated by the law if it were to undertake a voter-registration initiative this year.

81. Students for NMPIRG's members have missed class and skipped other activities to turn in voter-registration forms within the mandated deadline. Complying with the forty-eight-hour return requirement cuts into the organization's other activities, such as training new volunteers or participating in phone banks. It also forces the organization to devote a substantial amount of time to performing the clerical tasks

necessary to comply with the law instead of working on the organization's campaigns. This has, in turn, resulted in the loss of volunteers who were unhappy doing the additional clerical work and who were unable to work on other aspects of the campaigns that they found more interesting.

Penalties

82. The challenged law's severe criminal and civil penalties burden Plaintiffs' voter-registration activities and constitute a severe threat to individuals who work and volunteer for Plaintiffs. The penalties have made it more difficult for Plaintiffs to conduct their voter-registration activities and have caused some Plaintiffs to cease such activities altogether. The ongoing threat of enforcement by Defendant of the challenged law's criminal and civil penalties has had and continues to have a chilling effect on Plaintiffs' speech and association.

83. FAWCO has advised its volunteers not to register New Mexico residents living abroad because of the civil and criminal penalties. FAWCO relies on volunteers dispersed throughout many countries, who are associated with many different membership organizations. FAWCO cannot, with its limited budget and lack of paid full-time employees, monitor the voter-registration activities of each of FAWCO's local clubs and their countless volunteers on a daily, or even weekly, basis. Moreover, the New Mexico law potentially exposes FAWCO to fines of \$250 for each violation, up to \$5,000. These fines would drain an unacceptable portion of the organization's annual budget of approximately \$45,000. FAWCO leadership believes that it is impossible for any organization operating internationally to comply with the challenged law's

certification requirements, its restrictions on voter-registration forms, or its forty-eight-hour return requirement. FAWCO is unaware of any exception for organizations operating abroad or for registration using the FPCA, and it is unwilling to subject its volunteers and member organizations to potential civil and criminal fines.

84. A principal reason why SWOP has cut back on voter-registration activities is that the penalties make it much more difficult to use volunteers. SWOP leadership does not feel comfortable encouraging its employees and volunteers to register voters, thereby subjecting them to civil and criminal liability, because of the unreasonable amount of risk involved. In addition, SWOP leadership fears that penalties could impact SWOP's budget or its volunteer board of directors. As a result, SWOP is not undertaking a full-scale voter-registration initiative in New Mexico this year.

85. The civil and criminal penalties associated with any failure to return forms within forty-eight hours have caused Students for NMPIRG to lose volunteers. Students literally have been brought to tears because of stress associated with trying to comply with the forty-eight hour return requirement. Students for NMPIRG believes that the possibility of penalties—criminal penalties in particular—cast a shadow on the entire process of voter registration, and that the organization would have had more volunteers, and more enthusiastic and productive volunteers, if not for the criminal and civil penalties threatened by the challenged law. Moreover, Students for NMPIRG believes that the application of even a single \$250 penalty or a criminal penalty against one of its members would have the effect of permanently stopping many of its members from ever registering voters again.

86. AAPD and AAPD-coalition groups are particularly susceptible to fines because errors and mistakes are more likely when dealing with disabled registrants. Risks of errors in connection with registering voters can be higher; for example, when AAPD engages in voter registration, there could be a greater rate of incomplete registration forms or duplicate forms submitted. Moreover, many of the organizations with which AAPD works are under-funded and cannot risk diverting resources to pay fines. Because of the requirements of the challenged law, AAPD has decided that it cannot establish a coalition to run comprehensive voter registration of disabled New Mexicans, despite interest by Centers for Independent Living and the Statewide Independent Living Council in New Mexico.

Vagueness

87. The challenged law fails to define what is meant by “assist persons to register to vote.” It is unclear whether distributing forms, assisting voters in completing forms, or collecting forms will trigger the law’s coverage, or what combination of those actions is necessary to render the law applicable to Plaintiffs. It is unclear whether FAWCO “assists” voters in registering by distributing voter-registration forms or directing voters to the on-line voter-registration form without taking part in the physical completion and return of the forms. Likewise, it is unclear whether AAPD “assists” when it simply mails forms to members’ homes, answers members’ questions over the telephone, or provides general training but does not collect forms for return.

E. Attempts to Obtain Clarification from the Secretary of State

88. In 2006, voting-rights advocates met with then-New Mexico Secretary of State Rebecca Vigil-Giron and members of her staff to discuss their concerns about the challenged law. They explained their concerns that the law and rules run afoul of constitutionally protected rights to free speech, violate the NVRA, 42 U.S.C. § 1973gg et seq., and interfere with efforts to increase the political participation of low-income and minority citizens. The Secretary of State was not receptive to their concerns.

89. As part of these discussions, voting-rights advocates stated that certain organizations might use federal voter-registration forms to alleviate the burden caused by the restrictions associated with using the New Mexico voter-registration forms. The Secretary of State's office indicated that New Mexico election officials would "red flag" applications submitted on the federal form and subject those applications to "extra scrutiny."

90. In response to more recent requests for clarification regarding whether organizations and canvassers would be exempt from the provisions of the challenged law if they used only the federal mail-in registration form (as prescribed in the NVRA) rather than state certificates of registration to register voters in New Mexico, the Office of the New Mexico Attorney General informed counsel for Plaintiffs that no such exemption would be given.

V. CAUSES OF ACTION

Count I—Violation of the First and Fourteenth Amendments to the United States Constitution

91. Plaintiffs incorporate by reference paragraphs 1 through 90 as if fully set forth herein.

92. New Mexico's voter-registration law and implementing regulations, NMSA 1978, § 1-4-49 and 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks, impose severe burdens on Plaintiffs. They require that individuals pre-register with the state and attend training before registering voters. They limit the number of registration certificates that a County Clerk may provide to each individual and require that Plaintiffs return each card within forty-eight hours of its completion. They impose civil and criminal penalties for any violation of these requirements.

93. The challenged law severely burdens Plaintiffs' rights to engage in core political speech and association. It dramatically curtails Plaintiffs' ability to speak and associate with those whom they wish to encourage to participate in the political process.

94. The challenged law is overbroad on its face because it chills substantially more speech than is necessary.

95. The challenged law is unconstitutionally vague because it does not provide an individual of ordinary intelligence guidance with regard to what is prohibited.

96. The challenged law is not narrowly tailored to any compelling interest that justifies the severe and unduly discretionary burdens it imposes on Plaintiffs' constitutionally protected speech and associational activities.

97. As a result of the chilling effect and severe burdens on speech and association imposed by the challenged law, the overall quantum of political speech and association undertaken in New Mexico has been dramatically reduced. Plaintiffs communicate fewer political messages and refrain from engaging in certain associational activities as a direct result of the challenged law's rigid requirements and harsh penalties.

98. Defendant, under color of the challenged law, is subjecting Plaintiffs to the deprivation of their constitutional rights. New Mexico's voter-registration law and regulations unduly chill and burden Plaintiffs' speech and association in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Count II—Violation of the National Voter Registration Act of 1993

99. Plaintiffs incorporate by reference paragraphs 1 through 98 as if fully set forth herein.

100. New Mexico's voter-registration law and implementing regulations, NMSA 1978, § 1-4-49 and 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks, violate the NVRA, 42 U.S.C. § 1973gg et seq.

101. The NVRA was enacted "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" and "enhance[] the participation of eligible citizens as voters." 42 U.S.C. § 1973gg(b).

102. The NVRA provides that the "chief State election official of a State shall make [voter-registration application] forms . . . available for distribution through

governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” 42 U.S.C. § 1973gg-4(3)(b).

103. The NVRA further provides that states must “accept and use the mail voter registration application form prescribed by the Federal Election Commission.” 42 U.S.C. § 1973gg-4(a)(1).

104. The challenged law’s requirement that individuals pre-register with the state and attend training before registering voters on behalf of Plaintiffs violates the NVRA.

105. The challenged law’s restriction limiting the number of voter-registration forms that are distributed to fifty and limiting distribution of forms only to individuals who have first pre-registered with the state of New Mexico violates the NVRA.

106. The challenged law’s requirement that organizations deliver or mail certificates of registration to the Secretary of State or County Clerk within forty-eight hours of their completion violates the NVRA.

107. Finally, the challenged law’s prohibition on the use of, and the placing of “red flags” on, the federal voter-registration form violates the NVRA.

**Count III—Violation of Article II, §§ 8 and 17 and Article VII, § 3
of the New Mexico State Constitution**

108. Plaintiffs incorporate by reference paragraphs 1 through 107 as if fully set forth herein.

109. New Mexico’s voter-registration law and implementing regulations, NMSA 1978, § 1-4-49 and 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks, impose severe financial and

administrative burdens on Plaintiffs. They require that individuals pre-register with the state and attend training before registering voters on behalf of Plaintiffs. They limit the number of registration certificates the County Clerk may provide to each individual and require that Plaintiffs return each card within forty-eight hours of its completion. They impose civil and criminal penalties for any violation of these requirements.

110. The challenged law limits Plaintiffs' ability to participate in free and open elections. It dramatically curtails Plaintiffs' ability to speak and associate with those whom they wish to encourage to participate in the political process. Plaintiffs communicate fewer political messages and refrain from engaging in certain associational activities important to advancing their missions and beliefs as a direct result of the statute's rigid requirements and harsh penalties. As a result of the chilling effect and severe burdens on speech and association imposed by the challenged law, the overall quantum of political speech and association undertaken in New Mexico has been dramatically reduced. The public receives less information about current political issues and has fewer opportunities to associate with Plaintiffs and others in meaningful efforts to affect governmental decision-making about those issues.

111. The challenged law severely burdens Plaintiffs' core political speech. It dramatically curtails their ability to speak and associate with those to whom they wish to encourage to participate in the political process.

112. The challenged law is overbroad on its face because it chills substantially more speech than is necessary.

113. The challenged law is unconstitutionally vague because it does not provide an individual of ordinary intelligence guidance with regard to what is prohibited.

114. The challenged law is not narrowly tailored to serve any compelling interest that justifies the severe and unduly discretionary burdens it imposes on Plaintiffs' constitutionally protected speech and associational activities.

115. New Mexico's voter-registration law and regulations (1) deprive Plaintiffs of their right to free and open elections in violation of Article II, § 8 of the New Mexico Constitution; (2) unduly chill and burden Plaintiffs speech and association in violation Article II, § 17 of the New Mexico Constitution; and (3) deprive Plaintiffs and their members of their right to a pure election in violation of Article VII, § 3 of the New Mexico Constitution.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

- A. This Court enter a declaratory judgment pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978, § 44-6-1 et seq., and/or the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, declaring NMSA 1978, § 1-4-49, 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks to be in violation of the First and Fourteenth Amendments of the United States Constitution;
- B. This Court enter a declaratory judgment pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978, § 44-6-1 et seq., and/or the

Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, declaring NMSA 1978, § 1-4-49, 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks to be in violation of and preempted by the NVRA, 42 U.S.C. § 1973gg et seq.;

- C. This Court enter a declaratory judgment pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978, § 44-6-1 et seq., and/or the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, declaring NMSA 1978, § 1-4-49, 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks to be in violation of Article II, §§ 8 and 17, and Article VII, § 3 of the New Mexico Constitution;
- D. This Court enter a preliminary and permanent injunction pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1973gg-9(b), restraining and enjoining Defendant from prosecuting Plaintiffs for their voter-registration activities and from enforcing those provisions of NMSA 1978, § 1-4-49, 1.10.25.7-10 NMAC, and other de facto requirements imposed by Defendant and/or the County Clerks that violate the Constitution and laws of the United States and the New Mexico Constitution;
- E. This Court award Plaintiffs nominal damages;
- F. This Court grant Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1973gg(c), 42 U.S.C. § 1983, and 42 U.S.C. § 1988(b); and

G. This Court grant Plaintiffs such other and further relief as may be just and equitable.

Dated: Albuquerque, New Mexico
July 24, 2008

Respectfully Submitted,

FREEDMAN BOYD HOLLANDER GOLDBERG &
IVES P.A.

By: 

John W. Boyd
David H. Urias
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
Wendy R. Weiser
161 Avenue of the Americas,
12th Floor
New York, NY 10013
(212) 998-6130

DAVIS POLK & WARDWELL
Daniel F. Kolb
Neal A. Potischman
Russell L. Lippman
Anna Thea Bridge
David J. Lisson
Rosanna Garza Lipscomb

450 Lexington Avenue
New York, NY 10017
(212) 450-4000

1600 El Camino Real
Menlo Park, CA 94025
(650) 752-2000

Counsel for Plaintiffs