

**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,)	CIVIL ACTION NO: 1:08-cv-00702
)	
v.)	
)	
MARY HERRERA, in her capacity as)	
Secretary of State,)	
)	
Defendant.)	

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to FED. R. CIV. P. 26(f), meetings were held on July 13 and 16, 2009 by telephone and were attended by Charles Borden, Guy Brenner and David Sandler for Plaintiffs and Scott Fuqua for Defendant.

NATURE OF THE CASE

Plaintiffs have brought the above-captioned action 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. Plaintiffs contend that the challenged law is inconsistent with and preempted by the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq. (“NVRA”), and 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.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiffs intend to file an Amended Complaint. Plaintiffs should be allowed until **August 14, 2009** to amend the pleadings and until **October 14, 2009** to join additional parties.

Defendant intends to file a Motion to Dismiss. The parties propose the following briefing schedule for Defendant's Motion to Dismiss:

Motion to Dismiss Due:	August 21, 2009
Opposition Due:	September 16, 2009
Reply Due:	September 25, 2009
Oral Argument:	October 2, 2009

STIPULATIONS

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

PLAINTIFFS' CONTENTIONS:

Plaintiffs contend that 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, violate the United States and New Mexico constitutions and are preempted by the National Voter Registration Act of 1993.

DEFENDANT'S CONTENTIONS

Defendant contends that the challenged law, NMSA 1978, § 1-4-49, is a constitutional exercise of the State of New Mexico's authority to regulate elections conducted in the State.

Defendant further contends that the rules promulgated by the Secretary of State implementing the challenged statute do not unduly infringe on any constitutionally protected rights of Plaintiffs or any other citizens of or organizations in New Mexico.

PROVISIONAL DISCOVERY PLAN

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

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

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

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

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

Name	Address	Summary of Testimony
Defendant Mary Herrera, New Mexico Secretary of State	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, 505-827-3600	Upon information and belief, Ms. Herrera has knowledge concerning the New Mexico voter registration laws and regulations and the conduct by election officials that forms the basis of this action.
Don Francisco Trujillo II, New Mexico Deputy Secretary of State	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, 505-827-3600	Upon information and belief, Mr. Trujillo has knowledge concerning the New Mexico voter registration laws and regulations and conduct by election officials that forms the basis of this action.
A.J. Salazar, Director of the Bureau of Elections	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, 505-827-3600	Upon information and belief, Mr. Salazar has knowledge concerning the New Mexico voter registration laws and regulations and conduct by election officials that forms the basis of this action.

Kelli Fulgenzi, Administrator, Bureau of Elections	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, 505-827-3600	Upon information and belief, Ms. Fulgenzi has knowledge concerning the New Mexico voter registration laws and regulations and conduct by election officials that forms the basis of this action.
Denise Lamb, Chief Deputy Clerk of Elections	Bureau of Elections in the Santa Fe County Clerk's Office, 102 Grant Avenue, Santa Fe, New Mexico 87501, 505-992-6755	Upon information and belief, Ms. Lamb has knowledge concerning voter registration activities in New Mexico, the New Mexico voter registration laws and regulations, and the conduct by election officials that forms the basis of this action.
Maggie Toulouse Oliver, Bernalillo County Clerk	Clerk's Office of Bernalillo County, One Civic Plaza, NW, 6th Floor, Albuquerque, NM 87102, 505-468-1291	Upon information and belief, Ms. Oliver has knowledge concerning voter registration activities in New Mexico, the New Mexico voter registration laws and regulations, and the conduct by election officials that forms the basis of this action.
Larry Dominguez, State Elections Manager	Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, 505-827-3600	Upon information and belief, Mr. Dominguez has knowledge concerning voter registration efforts in New Mexico and the New Mexico voter registration laws and regulations and conduct by election officials that forms the basis of this action.
Selected New Mexico County Clerks	TBD	Upon information and belief, these individuals have knowledge concerning the New Mexico voter registration laws and regulations and the conduct by election officials that forms the basis of this action.

Representative of ACORN	411 Bellamah NW Albuquerque, NM 87102, 505-242-7411	Upon information and belief, the representative has knowledge regarding ACORN's voter registration activities during the relevant time period.
Representative of Libertarian Party	TBD	Upon information and belief, the representative has knowledge regarding the Libertarian Party's New Mexico voter registration activities during the relevant time period.
Representative of Democratic Party of New Mexico	1301 San Pedro NE, Albuquerque, NM 87110, 505-830-3650	Upon information and belief, the representative has knowledge regarding the Democratic Party of New Mexico's voter registration activities during the relevant time period.
Representative of New Mexico Chapter of the League of Conservation Voters	320 Aztec St., Suite B Santa Fe, NM 87501, 505- 992-8683	Upon information and belief, the representative has knowledge regarding LCV's voter registration activities during the relevant time period.
Representatives of other third party registration agents	TBD	Upon information and belief, these individuals have knowledge regarding the New Mexico voter registration activities during the relevant time period.

At this time, neither party can identify specific documents it believes would be exhibits at trial.

At this time, neither party can provide the name of an expert it intends to use at trial.

Discovery will be needed on the following subjects: The application of NMSA 1978, § 1-4-49 and 1.10.25.7-10 NMAC; the role of county clerks in the third party voter registration agent process; alleged issues with the voter registration process before passage of NMSA 1978, § 1-4-49; and third party voter registration agent activities after passage of NMSA 1978, § 1-4-49.

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

Maximum of **30** interrogatories by each party to any other party. (Responses due **30** days after service).

Maximum of **125** requests for admission by each party to any other party. (Response due **30** days after service).

Maximum of **20** depositions by Plaintiffs and **10** by Defendant.

Each deposition (other than of party witnesses and experts) limited to maximum of **4** hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiffs by **December 1, 2009**

from Defendant by **January 4, 2010**

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

All discovery commenced in time to be complete by **January 31, 2010.**

PRETRIAL MOTIONS

Plaintiffs intend to file: Motion for Summary Judgment

Defendant intends to file: Motion for Summary Judgment

ESTIMATED TRIAL TIME

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

This is a non-jury case.

This is a jury case.

The parties request a pretrial conference in **April 2010.**

SETTLEMENT

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

EXCEPTIONS

None.

APPROVED WITH/WITHOUT EXCEPTIONS
(note exceptions above)

/s/ Guy Brenner _____
For Plaintiffs

/s/ Scott Fuqua _____
For Defendant

I certify that on July 28, 2009, I filed the foregoing electronically through the CM/ECF system, which caused parties or counsel in this matter to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

/s/ Edward Ricco
By _____
Edward Ricco