

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

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	)	)
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	)	)
	)	)
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No. 1:08-cv-702 JOB/WDS

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**REPLY IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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DATED: August 13, 2010

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## I. INTRODUCTION

Plaintiffs' Response to Defendant's Motion for Summary Judgment takes two principal tacks. First, Plaintiffs take issue with the facts upon which Defendant's motion relies. Second, Plaintiffs argue that Defendant has misapplied the balancing test of *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Ultimately, neither attack is sufficient to defeat summary judgment in Defendant's favor. This case ultimately comes down to the straightforward question of whether the burdens imposed by NMSA 1978, § 1-4-49 on Plaintiffs' constitutionally protected speech are justified by the State interest supporting them. In making this determination, Plaintiffs place undue emphasis on the State interest and, in a fundamental way, ignore the fact that *Anderson* establishes a *balancing* test. The undisputed facts indicate that compliance with the law is simply not difficult. The burden on Plaintiffs' protected speech is accordingly light, and the State's interest in defending the integrity of the elective franchise justifies the law.

## II. FACTS

At the outset, it is important to understand which facts are undisputed, and of those facts, which ones are pertinent to application of the *Anderson* balancing test. Plaintiffs' contention that Defendant's Statement of Undisputed Facts "presents the Court with an incomprehensible record" is overwrought. Although not individually numbered, Defendant's undisputed facts are plainly set forth in seven paragraphs separated from the remainder of the Motion by the heading "Statement of Undisputed Facts." Plaintiffs' "deduc[tion]" of those facts is not nearly as taxing an exercise as Plaintiffs allege.

More to the point, many of Plaintiffs' objections to the information contained in the "Statement of Undisputed Facts" portion of the Motion are immaterial. The requirements of

Section 1-4-49 largely speak for themselves.<sup>1</sup> There is, for example, no dispute that the law requires putative third party voter registration agents to themselves register with the Secretary of State. Plaintiffs also take issue with the Secretary's assertions regarding the policy concerns underlying the passage of the law. For instance, Plaintiffs contend that the law was *not* passed "in recognition of the potential harm that unrestrained voter registration agent activity might visit on New Mexico's electoral franchise." (Response, pg. 2.) Plaintiffs' quibble with this point – that the record evidence does not show any harm to the elective franchise as a result of third party voter registration agent activity – is both incorrect and unimportant. It is plain from the face of Section 1-4-49 that the legislature was concerned with third party voter registration agent activity. It would not have otherwise passed a law regulating that conduct. Plaintiffs' allegation that this fact is disputed makes little sense.

Another example is Plaintiffs' dispute with the statement that Section 1-4-49 "requires third party registration agents to either mail or personally deliver to the appropriate election official a completed voter registration form within forty-eight hours of its completion." (Response, pg. 4.) Plaintiffs base their dispute on testimony of County Clerk and Secretary of State representatives indicating that there is some confusion as to the application of the 48-hour requirement. Again, the language of Section 1-4-49 speaks for itself, and on this particular issue the Court has already ruled that it speaks unambiguously.

Ultimately, the real dispute between the parties concerns what constitutes a "fact" and what constitutes a "conclusion." Plaintiffs, for instance, do not dispute that County Clerks and the Secretary have discretion to give out more than fifty forms to a third party agent, but do dispute that this "provides meaningful relief to voter registration organizations." (Response, pg.

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<sup>1</sup> Plaintiffs, of course, contend that the term "assist" as used in the statute as well as the contours of the 48-hour requirement are vague, and that the statute therefore does not speak for itself. The Court has already rejected this contention by dismissing Plaintiffs' vagueness challenge and denying Plaintiffs' request to modify that ruling.

8.) Whether or not the ability to acquire more than fifty forms provides such relief is not, strictly speaking, a fact. It is instead a conclusion to be drawn, one way or another, from the fact that third party agents may, under some circumstances, take more than fifty blank voter registration forms at a time.

Ultimately, the Court need not concern itself with most of the objections Plaintiffs have raised to Defendant's Statement of Undisputed Facts. The Court must instead determine whether the burdens placed on third party agent activity by Section 1-4-49 – the requirement that agents register with the Secretary; the requirement that agents undergo training before engaging in voter registration activities; the requirement that agents return or mail completed forms within forty-eight hours; the fact that agents may presumptively acquire only fifty blank voter registration forms at a time; and the civil and criminal penalties for violations of the statute – render the law unconstitutional. The burdens Plaintiffs have identified are minimal, and the law is justified by the State interest at play.

### **III. ARGUMENT AND AUTHORITIES**

Plaintiffs castigate Section 1-4-49 as irrational and without basis. In so doing, Plaintiffs ignore record evidence of the very conduct that prompted the passage of the statute in the first instance. Plaintiffs assert, by arguing that there is no evidence of voter registration fraud or widespread disenfranchisement resulting from third party agent behavior, that the Secretary has not produced any evidence of problematic behavior. This is simply untrue. The Court has had that evidence before it for nearly two years. Additionally, despite their claim to the contrary, Plaintiffs attempt to apply *Anderson* through a strict scrutiny lens, arguing that the Secretary must show that the burdens imposed by Section 1-4-49 are strictly *necessary* to effectuate the State's interest in the statute. *Anderson* does not require such a showing.

**A. Anderson Does Not Require A Showing That A Law Is Necessary To Effectuate A State Interest.**

Plaintiffs continue to insist that a law cannot survive the *Anderson* balancing test unless the State can prove that the law is absolutely necessary to effectuate the interest the State has identified as justifying the burden imposed by the law. *Anderson*, however, requires only a showing that the State's interest in a particular law outweighs the burden the law places on constitutionally protected conduct. While a Court must "consider the extent to which [the State's] interests make it necessary to burden the plaintiff's rights," *Anderson*, 460 U.S. at 789, this is not the same thing as requiring the State to prove that the burdens imposed by the challenged law are, in a strict sense, necessary to effectuate the interest. It is, instead, simply another factor to be considered in the application of the balancing test. A law that places minimal burdens on protected conduct in furtherance of an interest of fundamental importance will survive *Anderson* scrutiny even if the law is not the only means – *i.e.* "necessary" – to protect that interest.

Plaintiffs also complain that Defendant attempts in her Motion to create a "weighty interest" exception to *Anderson* by arguing that if a State's interest is sufficiently weighty, the Court need not consider the magnitude of the burden imposed by the law under consideration. (Response, pg. 32). Plaintiffs misunderstand Defendant's argument. If anything, it is Plaintiffs who stretch the language of *Anderson* beyond its reasonable parameters by arguing that the Court's language regarding a consideration "of the extent to which [the State's] interests make it necessary to burden the plaintiff's rights" requires Defendant to prove that Section 1-4-49 is strictly necessary to protect New Mexico's elective franchise. *Anderson* does not require such proof. It simply directs courts to consider *the extent to which* a law may be necessary as part of the application of the *Anderson* balancing test. Plaintiffs treat necessity as a trump card; it is no

such thing. The Secretary need not prove that it could not protect the elective franchise without the passage of Section 1-4-49, yet Plaintiffs attempt to hold Defendant to that standard. If that were the case, *Anderson* would not be a balancing test – it would be a test of necessity. It is not, and the Court need not treat it as one.

**B. The Record Evidence Establishes Instances Of Disenfranchisement Directly Resulting From Third Party Agent Conduct.**

Plaintiffs boldly assert that Defendant “has offered no evidence that (1) prior to the challenged law’s enactment, there was a problem with fraud or proper and timely registration of voters or (2) the requirements of the challenged law are at all necessary to advance the State’s interests in preventing fraud and protecting the franchise.” (Response, pg. 27). Plaintiffs are wrong on both counts.

As the Court is aware, affidavit testimony filed in opposition to Plaintiffs’ application for a preliminary injunction detailed instances in which third party voter registration conduct – either negligent or intentional – resulted in the disenfranchisement of New Mexico voters. Denise Lamb, the former Director of the Bureau of Elections with the Secretary of State and the current Director of the Bureau of Elections for Santa Fe County, described three separate instances of such conduct.

First, she described efforts in 1999 by representatives of the Libertarian Party to fraudulently change the status of already registered voters to reflect that those voters were members of the Libertarian Party. To accomplish that end, the third party agents asked voters to sign a petition to qualify the Libertarian Party as a major party for purposes of the 2000 general election. Voters were not, however, presented with such a petition. They were instead given blank voter registration forms and told to leave the “Party Affiliation” line blank. After completing the remainder of the form, the third party agents wrote “Libertarian” on that line of

each form and submitted them to the appropriate election official. As a result, nearly 800 voters had their party affiliation changed, and although most of those fraudulent changes were caught in time, Ms. Lamb personally received phone calls from voters affected by the fraud who were unable to vote in their chosen party's primary. (*See Lamb Aff.*, ¶¶ 4 and 5.)

Second, Ms. Lamb described a call she received from a representative of the Democratic Party following the 2000 general election in which the caller notified Ms. Lamb that nearly 200 completed voter registration forms had been found in a desk drawer at the party's headquarters. Because those forms were not submitted to the proper election official, they were never processed and the potential voters affected were unable to vote. (*See Lamb Aff.* ¶ 6.)<sup>2</sup>

Third, Ms. Lamb described the negligence of a third party registration group called Rock the Vote that resulted in the inability of 60 to 70 young people to vote in the 2004 election. The group had failed to return those forms, and the voters were turned away at the polls. (*See Lamb Aff.* ¶ 7.)

More recently, Maggie Toulouse-Oliver, the Bernalillo County Clerk, testified about a situation in which several voters contacted her office to complain that they were unable to participate in their Democratic precinct meetings because they were not registered Democratic voters. Upon investigating, Ms. Toulouse-Oliver discovered that the complaining voters had registered with a third party agent in November 2009, but the forms had not been submitted to the County Clerk until January 2010. (*See Toulouse-Oliver Dep.*, pg. 168, l. 7-21.) While these voters were not turned away at the polls, they were unable to participate in other aspects of the democratic process in which they were rightfully entitled to participate.

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<sup>2</sup> There is no direct evidence that all 200 people were unable to vote; it is possible that some were already registered and it is possible that some did not try to vote in the 2000 election. But the bare existence of the completed forms in the possession of the Democratic Party after the election is deeply troubling.

This evidence may not, in and of itself, be overwhelming. But *Anderson* does not require proof of a systematic or even widespread problem. It requires proof of a an interest, and this evidence is sufficient to establish that the State does, in fact, have an interest in regulating the conduct of third party voter registration agents. Plaintiffs have confused the State's interest in such regulation with the threat to that interest. The interest is the protection of the electoral franchise. It is this interest that the Secretary legitimately described in her Motion for Summary Judgment as "obvious and weighty." Indeed, Plaintiffs do not dispute the significance of that interest. They dispute instead whether the conduct of third party agents threatens that interest. The record evidence demonstrates that, on some level, it does.<sup>3</sup>

Plaintiffs also question whether Section 1-4-49 adds anything to the statutory scheme already in place criminalizing voter registration fraud. The answer is that it does. Without the requirement, found exclusively in Section 1-4-49, that voter registration agents register with the Secretary and receive a unique registration number they must include on every completed voter registration form they submit, the State has no mechanism by which to trace problematic (and illegal) forms back to their source. So while it may already be a crime to, for example, falsify information on a certificate of registration (*see* NMSA 1978, § 1-20-3(B)), it is impossible to enforce that prohibition against an unknown third party agent. Moreover, while NMSA 1978, § 1-20-9(D) makes it a fourth degree felony to "suppress[] any . . . registration record," it is by no means clear that this language would encompass the suppression of a voter registration *application*. And, even if it does, Section 1-20-9 requires proof of specific intent to engage in

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<sup>3</sup> Plaintiffs contend that Defendant's citations to the report of Matt A. Barreto do not offer support for Section 1-4-49 because the instances Professor Barreto discusses in which voters were turned away from the polls do not include third party voter registration conduct. (*See* Response, pg. 29, n. 7.) This argument entirely misses the point. The reason a voter is denied the exercise of his or her electoral franchise is, of course, immaterial to the impact such denial has on the voter's future democratic participation. Again, Plaintiffs have confused the State's asserted interest with the question of whether the evidence demonstrates a threat to that interest. Professor Barreto's report undoubtedly supports the significance of the State's interest in protecting the electoral franchise.

such suppression. Section 1-4-49, as discussed in the briefing on Plaintiffs' Motion for Summary Judgment, also punishes negligence that results in the disenfranchisement of a voter whose completed application is not timely submitted.<sup>4</sup>

The question is ultimately whether New Mexico can effectuate its interest in protecting the elective franchise through a means that burdens in some way Plaintiffs' constitutionally protected rights. Under *Anderson*, this question is answered by balancing the State's interest against the burden the law effectuating that interest represents. Contrary to Plaintiffs' assertions, the State's interest is real, not merely conjectural. Also contrary to Plaintiffs' assertions, the burdens placed on their First Amendment rights are minimal.

**C. Section 1-4-49 Does Not Unduly Burden Plaintiffs' First Amendment Rights.**

As demonstrated in Defendant's Motion, none of the requirements of Section 1-4-49 unconstitutionally burden Plaintiffs' free speech rights. Each requirement is briefly discussed below.

**1. The forty-eight hour requirement is constitutional.**

Plaintiffs take issue with Defendant's assertion that, at bottom, turning in a completed voter registration form within forty-eight hours is a simple matter. Plaintiffs vigorously dispute this assertion, arguing among other things that they cannot adequately employ their internal quality control procedures in such a short amount of time. This argument defies logic.

Plaintiffs contend that they must review each completed form they gather to ensure that the voter has correctly filled it out and must contact any voter whose form is incomplete or otherwise problematic. This argument is insufficient to topple the 48-hour requirement for two

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<sup>4</sup> Indeed, this fact underlies a portion of Plaintiffs' challenge to the civil penalties found in Section 1-4-49. As the Secretary has already argued to the Court, in light of the importance of the elective franchise, negligence is not a sufficient excuse for disenfranchisement. A third party agent who disenfranchises a voter through negligence has caused just as much harm as an agent who has done so intentionally.

reasons. First, Plaintiffs voluntarily choose to take these quality control measures. Section 1-4-49 does not require them. Plaintiffs can no more use those measures as support for their challenge to Section 1-4-49 than they could an internal policy that required their agents to circumnavigate the globe with a completed voter registration form before turning it in to the appropriate election official.<sup>5</sup>

Second, the problems Plaintiffs identify by reference to the deposition testimony of Mario Jimenez, the Doña Ana Chief Deputy Clerk, are not problems of inaccurate information on a form, but rather problems with a form being *incomplete*. Specifically, Mr. Jimenez describes the most common problems with voter registration forms being the lack of a physical address, the lack of a signature, and the failure of a voter to indicate by completing the appropriate boxes both that he or she is at least eighteen years of age and that he or she is a citizen. (Jimenez Dep., pg. 59, l. 15 – pg. 60, l. 9.) Under these circumstances, the voter registration form is not complete, and the 48-hour time limit, which is predicated upon the completion of a form, has not yet begun to run.<sup>6</sup>

Ultimately, the Secretary stands by her assertion that turning in a completed voter registration form to an appropriate election official within forty-eight hours of its completion is simply not as difficult as Plaintiffs try to make it seem. The Secretary also submits that this is not the kind of “fact” that Plaintiffs complain the Secretary asserts without reference to a record citation. This is, instead, a factual conclusion drawn from a common sense consideration of what, exactly, is entailed in either (1) physically turning in a completed registration form within

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<sup>5</sup> Moreover, Plaintiffs are voluntarily assuming the duties of New Mexico election officials, who are themselves able and empowered to contact voters who have failed to provide all of the information necessary to process a form.

<sup>6</sup> Plaintiffs do not contend that they perform quality control checks to ensure that the information a voter provides on the form is accurate. Unless an organization already had information about a potential voter, there would be no way for that organization to know whether the information the voter provides is accurate or not. This fact underlies the Secretary’s contention that third party voter registration agents cannot be held accountable for the accuracy of the information a voter provides to them. (*See* Herrera Dep., pg. 140, l. 24 to pg. 125, l. 8.)

forty-eight hours or (2) dropping a complete form in the mail within forty-eight hours. Even in the context of a massive voter registration drive, it should not take an organization more than two days to submit completed voter registration applications. Third party voter registration agents need not process the forms in any way; they are merely a conduit between the voter and the State. Plaintiffs cannot provide a plausible explanation for why such activity as a conduit must be delayed by more than forty-eight hours.

Plaintiffs include in their discussion of the 48-hour requirement the claim that the penalties for violations of Section 1-4-49 are unconstitutionally severe. Specifically, Plaintiffs argue that the \$5,000 cap found in Section 1-4-49(E) is “illusory” because while the statute limits fines in any civil action to \$5,000, the statute does not limit the number of civil actions the State may bring against an agent for violations of the statute. (Response, pg. 38.) The import of this argument is unclear. In order to reach the \$5,000 cap in a civil action, the State must prove that an agent has violated the statute ten times. Plaintiffs seem to suggest that if, in another election cycle, the same agent’s conduct results in another ten violations of the statute, it would be unconstitutional to punish the agent for that separate conduct.<sup>7</sup> This makes no sense. While New Mexico’s penalties may be high, that does not render them unconstitutional, particularly when compliance with the statute is simply not that difficult.

## **2. The fifty form limit is constitutional.**

Plaintiffs take issue with the Secretary’s contention that the fifty form limit does not significantly hamper their voter registration drives and that they may avoid the fifty form limit in its entirety by using the federal voter registration form. Plaintiffs cannot, however, overcome the record evidence on either of these points.

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<sup>7</sup> A third party agent who manages twenty violations of Section 1-4-49 in two election cycles should take a hard look at whether he or she is suited to the business, particularly in light of the consequences such violations could bring to bear on the electorate.

First, as detailed in Defendant's Motion, NMPIRG's own documents indicate that it was able to overcome the obstacles presented by the fifty form limit in the 2006 election cycle. Plaintiffs contend that it is unfair to hinge the success of a large-scale voter registration drive on successfully convincing a County Clerk to exercise its discretion and provide additional forms. This does not, however, change the fact that NMPIRG did exactly that. The record evidence indicates that Plaintiffs are, in fact, capable of operating effectively in the face of this limitation.

Moreover, Plaintiffs utterly fail to come to grips with the fact that the federal form renders the fifty form limit essentially irrelevant. Plaintiffs make a good effort at establishing that County Clerks may discourage or even reject the federal form, but the record ultimately does not support that contention. Even if a County Clerk did discourage a third party agent from using the federal form, the Clerk would still be bound by law to accept it. A Clerk's preference regarding the form an agent uses is wholly irrelevant to determining whether the agent may, in fact, use the form. That question is answered – and answered definitely in the affirmative – by federal law. *See* 42 U.S.C. § 1973gg-4(a)(1) (“Each state shall accept and use the mail voter registration application form prescribed by the Federal Election Commission . . . for the registration of voters in elections for Federal office.”).

Accordingly, if the fifty-form limit makes it as difficult as Plaintiffs contend to conduct their voter registration activity, they may solve that problem by the simple expedient of switching to the use of the federal form.<sup>8</sup> At that point, they are limited only by the immutable laws of physics in how many forms they may print and use.

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<sup>8</sup> In connection with their argument that the Secretary cannot justify the registration requirement, Plaintiffs suggest that “unscrupulous persons bent on fraudulent activity can avoid the State's regime” because third party agents may use the federal form with, in the Secretary's words, impunity. (Response, pp. 43-44.) Plaintiffs overstate the Secretary's position. The Secretary has consistently maintained that agents using the federal form must include on that form their registration number precisely to avoid the consequences Plaintiffs posit.

**3. The training requirement is constitutional.**

Plaintiffs press on the training requirement primarily by arguing that there is no interest justifying the requirement that agents receive in-person training. Plaintiffs cannot, however, establish that such training is actually required. The Secretary freely admits that some organizations, such as Plaintiff Federation of American Women's Clubs Overseas ("FAWCO"), cannot reasonably comply with such a requirement. In recognition of that fact, the Secretary is willing to make the necessary accommodations to groups like FAWCO to ensure that their members may complete the required training. Importantly, while Plaintiffs contend the fact that such training has never been offered justifies summary judgment on behalf of FAWCO, Plaintiffs fail to establish that FAWCO (or any other organization, for that matter) has ever requested such training. The record evidence indicates that no such request has ever been made. (*See* Trujillo Dep., pg. 76, l. 21-23.) The record evidence also indicates that the Secretary of State would accommodate such a request. (*See* Herrera Dep., pg. 82, l. 11-14.)

Finally, the Secretary stands on her argument presented in her Motion that the training requirement is not nearly as cumbersome as Plaintiffs suggest. Even the longest training session is less than half a day, and most training sessions are considerably shorter. Weighed against the interest in ensuring that third party agents can competently complete their task, this burden is constitutional.

**4. The registration requirement is constitutional.**

Plaintiffs contend that the registration requirement for third party agents unconstitutionally compels disclosure of membership in third party agent organizations. The Secretary has previously argued to the Court two points on this issue. First, registration is important in assuring that the State has some means of tracking problematic forms. As noted above, without such tracking, bare prohibitions on fraudulent conduct are prohibitively difficult

to enforce. Second, as the Secretary noted in her opposition to Plaintiffs' application for preliminary injunction, the identification of a group's members is principally important in order to identify the members of the organization who have decision-making authority with regard to the organization's voter registration efforts. *See* NMSA 1978, § 1-4-49(D). To the extent the officers of organizations such as the American Association of People with Disabilities ("AAPD") are publicly known, this requirement places no additional burden on them.

Moreover, unlike the circumstances before the Court in *NAACP v. Alabama*, 357 U.S. 449, Plaintiffs present no record evidence that any member of AAPD or any other organization has ever suffered negative repercussions arising from the disclosure of their affiliation with AAPD through the third party agent registration requirement. Just as hypothetical harms are often insufficient to support an alleged State interest, so too are they insufficient to support an alleged burden on constitutionally protected activity.<sup>9</sup>

**5. The cumulative burden of Section 1-4-49 is constitutional.**

Finally, Plaintiffs contend that the Secretary has failed to contemplate the cumulative burden Section 1-4-49's independent requirements place on third party voter registration agents. Plaintiffs, however, have failed to articulate exactly what that cumulative burden is. It is not enough for Plaintiffs to merely claim that the Court must consider the cumulative effect of these burdens; they must explain what that effect is and why that effect renders the statute unconstitutional. Plaintiffs also have presented no record evidence beyond their own voluntary cessation of voter registration activity to demonstrate that this alleged cumulative burden is unconstitutional (and even here, Plaintiffs point principally to the 48-hour requirement as the

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<sup>9</sup> Section 1-4-49 also provides an alternative method for the registration, as third party agents, of AAPD's members. Nothing in the statute requires AAPD itself to register as a third party agent in order for its members to engage in third party agent activities. If each member who intended to participate in such activities registered independently, and AAPD never registered at all, those members would still be able to assist New Mexico citizens in registering to vote and would never need to disclose the fact of membership in AAPD.

basis for that cessation). As the Court has already recognized, Plaintiffs cannot render a statute unconstitutional through their own unilateral conduct. What cumulative burden does Section 1-4-49 represent that is not addressed through an examination of the burdens presented by the provisions Plaintiffs have specifically challenged (*i.e.* the registration requirement, the 48-hour requirement, the fifty form limit, and the civil and criminal penalties)? Plaintiffs provide no answer to this question, and their complaint that the Secretary has failed to answer it herself rings hollow.<sup>10</sup>

At bottom, the cumulative effect of these burdens is not demonstrably different than the effect of each individual burden. Plaintiffs are not significantly burdened by having to register as third party agents, they are not significantly burdened by the 48-hour requirement, they are not significantly burdened by the fifty form limit, and they are not significantly burdened by the potential applications of civil and criminal fines stemming from any negligent or intentionally unlawful conduct. They are also not significantly burdened by the combination of these elements, and the law thus survives scrutiny under *Anderson*.

#### IV. CONCLUSION

For the foregoing reasons, the Secretary of State respectfully requests that this Court: (1) grant summary judgment to the Secretary on Counts I and V of Plaintiffs' Amended Complaint; (2) order all parties to pay their own costs; and (3) provide Defendant any additional relief to which she may be entitled.

DATED: August 13, 2010

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<sup>10</sup> Plaintiffs contend that the Secretary has argued that the law does not burden their core political speech because the law permits Plaintiffs to engage whomever they choose in whatever speech they desire. (Response, pg. 20.) The Secretary recognizes that Section 1-4-49 burdens Plaintiffs' core speech, but submits that the magnitude and nature of that burden are lessened by virtue of this fact.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing reply on Plaintiffs' counsel of record via electronic filing with the CM/ECF filing system on August 13, 2010.

/s/ Scott Fuqua  
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