

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

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

**REPLY DECLARATION OF DAVID H. URIAS IN SUPPORT OF
PLAINTIFFS’ APPLICATION FOR A PRELIMINARY INJUNCTION**

I, David H. Urias, hereby declare:

1. I am a member of the bar of the states of New York and New Mexico and an associate at the law firm of Freedman Boyd Hollander Goldberg & Ives P.A., attorneys for Plaintiffs. I submit this Reply Declaration in support of Plaintiffs’ August 2008 Application for a Preliminary Injunction. I make this Declaration based on personal, firsthand knowledge and if called and sworn as a witness could and would testify competently hereto.
2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the September 2, 2004 transcript of the preliminary injunction hearing in Larranaga v. Herrera, No. 04 Civ. 5391 (N.M. 2d Dist.).

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the September 3, 2004 transcript of the preliminary-injunction hearing in Larranaga v. Herrera, No. 04 Civ. 5391 (N.M. 2d Dist.).

4. Attached hereto as Exhibit C is a true and correct printout of the online version of Sue Major Holmes, Groups sue over New Mexico voter registration law, Las Cruces Sun News, July 24, 2008, available at http://www.lcsun-news.com/region/ci_9985306.

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

Dated: Albuquerque, New Mexico
August 18, 2008

David H. Urias

Exhibit A

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF BERNALILLO
3 STATE OF NEW MEXICO

4 District Court No. CV-2004-05391

5 LARRY LARRANAGA, JUAN PAUL
6 ATENCIO, JR., STEVE CABIEDES,
7 TOBY GUTIERREZ, CARLA GONZALES
8 And DEBORAH TORZA,

9 Plaintiffs,

10 Vs.

11 MARY E. HERRERA, BERNALILLO COUNTY
12 CLERK and REBECCA VIGIL-GIRON,
13 NEW MEXICO SECRETARY OF STATE,

14 Defendants.

15 TRANSCRIPT OF PROCEEDINGS

16 On the 2d day of September, 2004, at approximately 9:57
17 a.m., this matter came on for hearing on a Preliminary
18 Injunction before the HONORABLE ROBERT L. THOMPSON, Division
19 XVI, Judge of the Second Judicial District.

20 The Plaintiffs, LARRY LARRANAGA, et al, appeared by
21 Counsel of Record, DAVID A. GARCIA, Attorney at Law, P.O. Box
22 36618, Albuquerque, NM 87176-6618; and PATRICK J. ROGERS,
23 Attorney at Law, P.O. Box 2168, Albuquerque, NM 87130-2168.

24 The Defendant, MARY E. HERRERA, BERNALILLO COUNTY CLERK,
25 appeared by Counsel of Record, JEFFREY S. LANDERS and PATRICK
26 TRUJILLO, Assistant County Attorneys, 520 Lomas Boulevard NW,
27 4th Floor, Albuquerque, NM 87102.

28 The Defendant, REBECCA VIGIL-GIRON, NEW MEXICO SECRETARY

WENDY MORRISON, CCR CRR CMRS
Official Court Reporter

1 OF STATE, appeared by Counsel of Record, DAVID K. THOMSON and
2 ZACHARY A. SHANDLER, Assistant Attorneys General, P.O. Drawer
3 1508, Santa Fe, NM 87504.

4 The Intervenor Republican Party of New Mexico appeared
5 by Counsel of Record ROBERT E. HANSON and CHRISTOPHER T.
6 SAUCEDO, Attorneys at Law, 20 First Plaza, Suite 725,
7 Albuquerque, NM.

8 The Intervenor Democratic Party of New Mexico appeared
9 by Counsel of Record JOHN W. BOYD, Attorney at Law, P.O. Box
10 25326, Albuquerque, NM 87125-0326; LUIS G. STELZNER and RAY
11 VARGAS, Attorneys at Law, 707 Broadway NE, #300, Albuquerque,
12 NM 87103; RANDI MCGINN and ANDREA ELICIA MONTOYA, Attorneys at
13 Law, 420 Central SW, #200, Albuquerque, NM 87102-3264.

14 JACQUELINE FLORES, Attorney at Law, 1228 Central SW,
15 Albuquerque, NM 87102-2803, appeared on behalf of the witness,
16 MATTHEW HENDERSON.

17 MAUREEN SANDERS and DUFF H. WESTBROOK, Attorneys at Law,
18 102 Granite NW, Albuquerque, NM 87102-2310, appeared on behalf
19 of the witness, GERI PRADO.

20 At which time the following proceedings were had:

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WENDY MORRISON, CCR CRR CMRS
Official Court Reporter

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I N D E X
WITNESSES

All Witnesses:	PAGE
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1	GLENN STOUT	
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6	REBECCA VIGIL-GIRON	
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WENDY MORRISON, CCR CRR CMRS
Official Court Reporter

1 Q. What were the three ways? I'm sorry.

2 A. It's mail, walk, and then the individual codes for the
3 different state agencies, libraries, colleges and universities
4 that basically conduct third party registration for the state
5 of New Mexico.

6 Q. Okay. Is there any way, going back, to break down who
7 stood in front of the County Clerk and who registered through
8 a third party?

9 A. No.

10 Q. Let me ask you this: Is there any requirement, if I
11 stand in front of a county clerk, to show identification when
12 I register?

13 A. No.

14 Q. Okay. Now, turning again then to 1-4-5(E), explain to
15 the Court, as we just discussed, what identification goes on
16 the voter registration, how that provision would, if it does,
17 coincide with the two identifications you've just provided,
18 the mail and the walk-in?

19 A. Well, it says that completed certificates of
20 registration may be mailed, and so they are marked as mailed;
21 or presented in person by the registrant or any other person.
22 And those are considered walk.

23 Q. Okay. Is there an automated statewide system for
24 counties to access voter registration?

25 A. Yes.

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Official Court Reporter

1 Q. What information can be obtained through that?

2 A. The counties can get the state file. And we're in the
3 process of transition. We still have some counties that are
4 working on the transition, but the majority of the counties
5 are already on the state file. And they can, as part of their
6 entry of a registrant, find out if the registrant -- what
7 other county the registrant was previously registered in,
8 verify Social Security number, date of birth, that sort of
9 thing.

10 Q. Is that what an error report is?

11 A. An error report is if two voters are registered that
12 have the same Social Security number, or some other element is
13 wrong, an incorrect address. That would generate an error.

14 Q. Okay. Are all the counties on this statewide system?

15 A. I believe that all are but four counties. And the other
16 four counties should be on it fairly soon.

17 Q. And is that instantaneous?

18 A. Yes. It's an online system.

19 Q. I'll try to wrap up here with you on going through, as
20 the Director of Bureau of Elections, your opinion as to the
21 effects that plaintiffs' interpretation of the voter I.D.
22 requirement would have on the state. How would plaintiffs'
23 interpretation different from yours? How would that affect
24 absentee voters in the upcoming election?

25 A. Well, I mean, obviously, we have a lot of voters that

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Exhibit B

1 SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
2 STATE OF NEW MEXICO

3 CV-2004-05391

4 LARRY LARRANAGA, JUAN PAUL ATENCIO, JR.,
STEVE CABIEDES, TOBY GUTIERREZ,
5 CARLA GONZALES and DEBORAH TORZA,

6

7 Plaintiffs,

8

vs.

9 MARY E. HERRERA, BERNALILLO COUNTY
CLERK and REBECCA VIGIL-GIRON,
10 NEW MEXICO SECRETARY OF STATE,

11

Defendants.

12

TRANSCRIPT OF PROCEEDINGS

13

On the 3d day of September 2004, at approximately 9:21

14

a.m., this matter came on for hearing on PRELIMINARY

15

INJUNCTION, before the HONORABLE ROBERT L. THOMPSON,

16

Division XVI, Judge of the Second Judicial District, State

17

of New Mexico.

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The Plaintiffs, LARRY LARRANAGA, et al, appeared by

19

Counsel of Record, DAVID A. GARCIA, Attorney at Law, P.O.

20

Box 36618, Albuquerque, NM 87176-6618; and PATRICK J.

21

ROGERS, Attorney at Law, P.O. Box 2168, Albuquerque, NM

22

87130-2168.

23

The Defendant, MARY E. HERRERA, BERNALILLO COUNTY

24

CLERK, appeared by Counsel of Record, JEFFREY S. LANDERS and

25

PATRICK TRUJILLO, Assistant County Attorneys, 520 Lomas

1 Boulevard NW, 4th Floor, Albuquerque, NM 87102.

2 The Defendant, REBECCA VIGIL-GIRON, NEW MEXICO
3 SECRETARY OF STATE, appeared by Counsel of Record, ZACHARY
4 S. SHANDLER and CHRIS COPPIN, Assistant Attorneys General,
5 P.O. Box Drawer 1508, Santa Fe, NM 87504.

6 The Intervenor Republican Party of New Mexico appeared
7 by Counsel of Record, ROBERT E. HANSON and CHRISTOPHER T.
8 SAUCEDO, Attorneys at Law, 20 First Plaza, Suite 725,
9 Albuquerque, NM; PAUL KENNEDY, Attorney at Law, 201 12th
10 Street, NW, Albuquerque, NM 87102; LISA TORRACO, Attorney at
11 Law, P.O. Box 20220, Albuquerque, NM 87154-0220.

12 The Intervenor Democratic Party of New Mexico appeared
13 by Counsel of Record, JOHN W. BOYD, Attorney at Law, P.O.
14 Box 25326, Albuquerque, NM 87125-0326; LUIS G. STELZNER and
15 RAY VARGAS, Attorneys at Law, 707 Broadway NE, #300,
16 Albuquerque, NM 87103; RANDI MCGINN and ANDREA ELICIA
17 MONTOYA, Attorneys at Law, 420 Central SW, #200,
18 Albuquerque, NM 87102-3264.

19 MAUREEN SANDERS and DUFF H. WESTBROOK, Attorneys at
20 Law, 102 Granite NW, Albuquerque, NM 87102-2310, appeared on
21 behalf of the witness, GERALDINE.

22 DANIEL MACKE, Attorney at Law, 3909 Juan Tabo NE #2,
23 Albuquerque, NM 87111-3973, appeared on behalf of the
24 witness, AMANDA COOPER.

25 At which time the following proceedings were had:

MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 statute.

2 Q. So it could be brought by a member of the family?

3 A. Yes.

4 Q. Son, father, daughter, whatever?

5 A. Yes.

6 Q. Okay. Could it be brought by a friend or an

7 acquaintance?

8 A. Yes.

9 Q. And as we understand, it can be brought by a

10 representative of one of these organizations that's carrying

11 on registration drives?

12 A. Yes.

13 Q. And regardless of who brings it in, the identification

14 is not going to be checked at the county clerk's office,

15 correct?

16 A. No.

17 Q. Where does the checking for fraud, for duplication, for

18 incompleteness, etc., where does that take place in our

19 system?

20 A. That as a rule that takes place at the time that the

21 certificate is being entered into the voter file.

22 Q. And this is the system that you were talking about

23 yesterday that is about to go statewide?

24 A. Yes.

25 Q. But that's just -- that doesn't exist now?

45

MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 A. Yes, in all but four counties.

2 Q. Just explain briefly how does that system work in New
3 Mexico?

4 A. Well, it's an interactive on-line system where if you
5 enter the information on the certificate of registration, it
6 shows you in real time if the voter is registered in another
7 county. If so, where. It shows you -- you can check with
8 social security matches, if there's an error in the social
9 security number if two voters have the same social security
10 number. It would show you if the voter was registered in
11 another county under a different name. It would show you if
12 the voter was already registered in your county under a
13 different address. So it checks -- it would show you if the
14 voter was making a party registration affiliation change, so
15 there's several elements on the certificate of registration
16 that it would match with information that might be on file
17 in other counties if the voter had been registered there.

18 Q. And that system is going to go statewide this month,
19 isn't it?

20 A. Well, I believe -- I think the counties that are not
21 currently on will be running parallel. They'll be running
22 their old system and their new system for the general
23 election, and so they'll be running parallel systems, I
24 believe, the end of the month.

25 Q. The end of this month?

1 A. I think so.

2 Q. Okay. So the system will be effective before the
3 election?

4 A. I hope so.

5 Q. Okay. That's the plan?

6 A. Yes.

7 Q. Let me show you Plaintiff's Exhibit 2, which is the
8 Kevin Stout registration form. The social security number
9 is blocked out there, but I assume there was a social
10 security number on that registration form, correct?

11 A. Yes.

12 Q. That's required as part of the completeness of the
13 form?

14 A. Yes.

15 Q. Assuming that that social security number was the
16 social security number of a person registered, I believe
17 Mr. Stout said he had managed to trace the person whose
18 social security number was on there to Otero County,
19 assuming that social security number is the social security
20 number of a person registered in Otero County, would the
21 system pick up the duplicate registration?

22 A. Yes. Both under the current system and the new system
23 it would show up as a duplicate. The new system, it would
24 show up immediately. Under the current system, it would
25 show up in an error report that would be generated within a

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MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 complaint to the Secretary of the State's Office regarding
2 voter registration matters?

3 A. No.

4 Q. Okay. Ms. Lamb, are you familiar with the sections of
5 the Election Code that address cancellation of voter
6 registration?

7 A. Yes.

8 Q. Can you tell the Court some of the methods that are
9 available under the Election Code to cancel voter
10 registration?

11 A. Well, you can -- well, the obvious one is for death,
12 and the county -- the state and the county are notified from
13 the Vital Statistics Office of the death of a registrant.
14 Another is a determination of incompetence or insanity.
15 That's made by the courts and again we have to be notified.
16 Felony convictions, we're notified by both state and federal
17 courts on those. The applicant can notify us that they
18 don't wish to be registered anymore. They send a letter.

19 Q. Ms. Lamb, let me ask you, is there any method for
20 individuals in the Election Code for individuals to try to
21 obtain cancellation of voter registration?

22 A. Yes, there is. There is a cancellation at the voter's
23 request.

24 Q. Okay. What about if it's not the voter? What about in
25 this case if the Plaintiffs -- is there a procedure or

1 Q. Okay. And then after that?

2 A. After that, there is a process that work flow set up in
3 our office so when we do get forms in by the mail, they are
4 opened. They are separated. We remove the instruction part
5 of the form. If the registrant has not indicated any
6 physical address on the bottom where the map can be drawn,
7 we remove that. If they do, we keep that intact with the
8 certificate. The certificate is then -- or the form is then
9 crossed or entered into our system, what we call inquire.
10 So we inquire the form to make sure the registrant does not
11 exist in our county nor does -- nor is placed on the
12 deceased list or the social security number on the form is a
13 number that we have from the deceased list or the felon
14 list. The form is then identified whether it's new or
15 changed. Those forms are then separated, new and changed,
16 and the process -- you continue the process.

17 Q. I'll stop you there. At some point in this initial
18 step, is a stamp applied to the form?

19 A. Yes, sir, I'm sorry. We do time stamp each form when
20 they are received by our office.

21 Q. Is another kind of stamp also applied to the form?

22 A. Yes, a mail stamp or the word, the handwritten "mail"
23 in the gray box in number three, the far right side.

24 Q. And, of course, we're still talking about forms you
25 receive in the mail?

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MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 than the applicant?

2 A. No, sir.

3 Q. Okay. After a form -- you started going through your
4 initial flow processing, and I think we've gotten through
5 the initial, and you asked me if you wanted to go on.
6 What's the next process that happens if you can recall where
7 you were? I think you had gotten to the inquiry process.

8 A. Yes, sir. Whether the form comes in through the mail
9 or comes in over the counter as a walk or comes through our
10 Native American coordinator from the reservations and
11 pueblos, these forms are -- and again, I want to mix them
12 all, walk, agency code, mail, those forms, these forms or
13 these cards -- the terminology keeps changing, so I guess
14 I'll use cards. Our staff then inquires into our current
15 voter database. We inquire by social security number first.
16 If we do not find another person with that social security
17 number, then we inquire by address and we inquire by name.
18 Once the form is identified whether it's a new registrant or
19 a change, then that separates. These forms have been
20 batched into groups of about 25.

21 The change process is much different than the new, so
22 I'll stay with the new. Once the new registrants have been
23 inquired and are identified by our office as being new, the
24 entering process begins into our voter system.

25 Q. Okay. And what groups are the cards compiled into? At

1 STATE OF NEW MEXICO)
) ss
2 COUNTY OF BERNALILLO)

3 I, MELANIE D. LUCERO, Official Court Reporter for the
4 Second Judicial District of the State of New Mexico, hereby
5 certify that I reported, to the best of my ability, the
6 proceedings, CV-2004-05391; that the pages numbered 1
7 through 275, inclusive, are a true and correct transcript of
8 my stenographic notes, and were reduced to typewritten
9 transcript through Computer-Aided Transcription; and that on
10 the date I reported these proceedings, I was a New Mexico
11 Certified Court Reporter.

12 Dated at Albuquerque, New Mexico, this 7th day of
13 September, 2004.

14

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MELANIE D. LUCERO, CCR-CRR
New Mexico CCR No. 280
Expires: December 31, 2004

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20 **THE COST NOT NECESSARY FOR NONAPPEALS**

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The total cost of this

22

Transcript is \$_____.

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MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO) ss

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5
6 I, WENDY MORRISON, official Court Reporter for the
7 Second Judicial District of the State of New Mexico, hereby
8 certify that I reported the attached proceedings; that the
9 pages numbered 1 through 274, inclusive, are a true and
10 correct transcript of my stenographic notes, and were reduced
11 to typewritten transcript through Computer-Aided
12 Transcription; and that on the date I reported these
13 proceedings, I was a new Mexico Certified Court Reporter.

14 Dated at Albuquerque, New Mexico, this 8th day of
15 September, 2004.

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20 -----
WENDY MORRISON, CCR-CRR-CMRS
New Mexico CCR No. 195
21 Expires 12/31/04
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Exhibit C

LAS CRUCES SUN-NEWS.com

Groups sue over New Mexico voter registration law

By SUE MAJOR HOLMES Associated Press Writer

Article Launched: 07/24/2008 01:54:26 PM MDT

ALBUQUERQUE, N.M.—Voter rights advocates want a judge to overturn New Mexico's law on registering voters, saying it has a chilling effect on registration drives and groups' ability to encourage people to participate in the political process.

The lawsuit, filed Thursday in state district court on behalf of four organizations, asks that the 2005 law be declared unconstitutional and that Secretary of State Mary Herrera be barred from enforcing it.

The "unduly onerous law" places an unconstitutional burden on the rights of free speech and association by hindering groups that help people register, and is inconsistent with the 1993 National Voter Registration Act, the organizations contend.

The secretary of state and county clerks have separate systems to verify eligible voters and to prevent registration "from becoming a mechanism for fraudulent voting," the lawsuit said.

James Flores, a spokesman for the secretary of state, said the office was reviewing the complaint and would confer with its lawyers.

Similar laws have been challenged in other states. The League of Women Voters of Florida sued in April over a law that imposes fines if groups do not turn in voter registrations by deadlines. Florida enacted the law after an earlier law was declared unconstitutional in 2006. A federal judge in Ohio set aside provisions of Ohio's election reform law in

2006, saying rules seemed to set up barriers to registering voters.

New Mexico's law limits organizations to 50 registration forms at a time, requires groups to record registrars with the secretary of state and provide information on them and give registrations to county clerks within 48 hours. Registering ineligible voters is subject to a \$500 fine and-or up to six months in jail.

"There are a lot of registration activities that would normally be going on right now," said John Boyd, one of the attorneys filing the lawsuit. "Some groups are braving the risk of criminal penalties and fighting their way through the new requirements, but other groups, particularly volunteer groups, are not willing to risk criminal penalties."

The complaint was filed by the American Association of People with Disabilities, the Federation of American Women's Clubs Overseas Inc., New Mexico Public Interest Research Group and the SouthWest Organizing Project.


They conduct nonpartisan registration partly to increase the political power of certain groups, including "the disabled, the poor, racial minorities, students and the disenfranchised," but the law is forcing them to halt or dramatically cut their efforts, the lawsuit said.

"It's definitely hurt our numbers," said Katryn Fraher of the Albuquerque-based Public Interest Research Group.

Each time PIRG uses up the 50 forms allowed, it has to shut down registration operations to return the forms to the clerk and get new ones, she said.

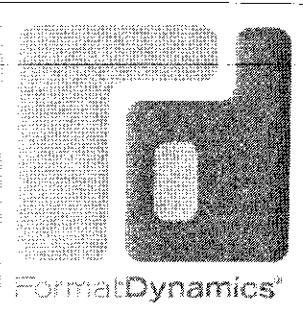
Denise Lamb, former longtime head of the state Elections Bureau and now chief deputy clerk for

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Santa Fe County, favors the 48-hour limit.

In her experience, organizations—even political parties—not turning in completed registration forms "was one of the biggest causes of voters being disenfranchised," she said. "...I think turning in the forms in 48 hours is a small thing to ask when weighed against a person's right to vote."

Still, she said, the law is "ineffective in a lot of ways." New Mexico, for example, has no control over people using a federal voter registration form that states are required to accept and which is available on a Web site, she said.

Before the law, Fraher said it wasn't difficult to get University of New Mexico students to volunteer to register their peers. But requirements on registrars and the difficulty of returning forms to the county clerk have had an impact, she said.

A required class she attended for registrars was nerve-racking with its emphasis on criminal charges for turning in forms with something wrong, Fraher said.

"We had some students actually go down to the class and then never come back," she said.

Boyd said the law punishes well-meaning civic groups without addressing any real problem.

"There is no evidence that improperly filled-out or even fraudulent voter registration forms, if someone could actually find one, has ever resulted in any name being improperly added to the voter rolls or any ineligible person voting," he said.

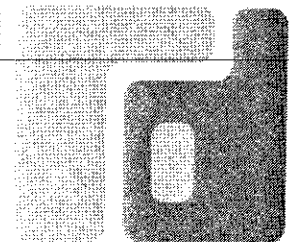
The Brennan Center for Justice at New York University, which helped file the New Mexico lawsuit, also was involved in the challenges in Florida and Ohio.

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