

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

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

DIANNA J. DURAN, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 JCH/DJS

**CONSENT ORDER REGARDING PLAINTIFF'S CLAIMS ASSERTING
VIOLATIONS OF SECTION 7 OF THE NATIONAL VOTER REGISTRATION ACT**

I. INTRODUCTION

- A. Plaintiffs Celia Valdez, Graciela Grajeda, Shawna Allers, and Jesse Rodriguez filed the Complaint in this action on July 9, 2009 alleging violations of both Sections 5 and 7 of the NVRA, 42 U.S.C. §§ 1973gg-3, 1973gg-5. The parties settled all claims asserting violations of Section 5 of the NVRA, 42 U.S.C. § 1973gg-3, in an agreement that was filed on July 1, 2010, and which resolved the claims of Plaintiffs Celia Valdez, Graciela Grajeda, and Jesse Rodriguez.
- B. Plaintiff Shawna Allers alleges violations of Section 7 of the NVRA, 42 U.S.C. § 1973gg-5. Her claims are brought against Defendants Dianna J. Duran, in her capacity as the New Mexico Secretary of State, Sidonie Squier in her capacity as Secretary of the New Mexico Human Services Department, Ted Roth in his capacity as Acting Director of the Income Support Division of the New Mexico Human Services Department, and Julie Weinberg in her capacity as Acting Director of the Medical Assistance Division of the New Mexico Human Services Department. Defendants other than the Secretary of State hereinafter are collectively referred to as "HSD." Plaintiff Allers and Defendants Duran and HSD now agree to resolve all claims in this action asserting violations of Section 7 of the NVRA by the terms of this Consent Order.
- C. In its December 21, 2010 Memorandum Opinion and Order [Doc. 131], this Court granted partial summary judgment to Plaintiff Allers holding that that "HSD's current policy of distributing voter registration applications only to clients who affirmatively request them violates Section 7 of the NVRA." *Id.* at 14. The Court explained that: "Section 7 does not make the provision of a voter registration application contingent upon an affirmative request, either written or verbal, from a client. Instead, it directs agencies to distribute voter registration applications to their clients as a part of every

qualifying interaction, unless those clients ‘in writing, decline[] to register to vote.’ Subparagraph (A). . . . A blank response on the declination provision does not constitute an ‘intentional recording of words’ and so cannot be a statement ‘in writing’ for purposes of subparagraph (A).” *Id.* at 10-11.

- D. Plaintiff Allers further asserts that, in addition to the aforementioned violation of Section 7, Defendants have violated Section 7 by consistently failing to offer any voter registration services to HSD’s public assistance clients. HSD recognizes that it may not have been in compliance with Section 7 prior to the filing of this lawsuit.
- E. Plaintiff and HSD agree that HSD shall retain the right to appeal the Court's judgment with respect to the Section 7 violation found by this Court in its December 21, 2010 Memorandum Opinion and Order. The only provisions of this Consent Order which may be affected by such an appeal are certain procedures concerning the distribution of voter registration applications to public assistance clients. Specifically, during the pendency of any such appeal, Defendants shall implement the procedures specified in Section VI.B.2 of this Order. If, pursuant to such a direct appeal, an appellate court holds that Section 7 does not require HSD to distribute voter registration applications to clients who leave blank the “yes” and “no” checkboxes required by Section 7(a)(6)(B)(iii) of the NVRA, Defendants may implement the procedures specified in Section VI.B.3 of this Order, following issuance of the appellate mandate. Unless and until such an appellate ruling and mandate issue, however, Defendants shall continue to implement the procedures required by Section VI.B.2. All other provisions of this Order shall remain in full force and effect regardless of the outcome of an appeal.

II. DEFINITIONS

- A. “Public assistance benefits” refers to benefits received pursuant to Temporary Assistance to Needy Families, Food Stamps (Supplemental Assistance Nutrition Program), Medicaid, Insure New Mexico Solutions, Low Income Home Energy Assistance Program, and/or General Assistance.
- B. “HSD offices” refers to all offices in New Mexico at which individuals may apply for public assistance benefits, recertify or renew their public assistance benefits, or change their address with regard to the receipt of public assistance benefits.
- C. “ISD employees” refers to employees of HSD who are responsible for interacting with clients regarding the provision of public assistance benefits, and immediate supervisors of such employees.
- D. “Federal Form” refers to the federal by-mail voter registration application promulgated pursuant to 42 U.S.C. § 1973gg-7.

III. RECITALS

HSD and the Secretary of State shall implement and maintain the procedures and practices set forth in Sections IV through XI, below. Unless otherwise indicated, these procedures and practices shall be implemented immediately upon entry of this Order or have already been implemented.

IV. STAFFING STRUCTURE

A. Office of the Secretary of State

1. The Secretary of State shall designate a staff position whose duties include being the “State NVRA Coordinator” and shall notify Plaintiff’s counsel as to the identity of that individual. The State NVRA Coordinator shall coordinate and oversee statewide compliance with the requirements of Section 7 of the NVRA and the provisions of this Order. During the term of this Order, the Secretary of State shall notify Plaintiff’s counsel of any change in the identity of the State NVRA Coordinator.
2. The State NVRA Coordinator shall provide support and guidance to HSD, including the HSD NVRA Coordinator and Voter Registration Site Coordinators (defined below), to ensure compliance with Section 7 of the NVRA and the provisions of this Order. The State NVRA Coordinator shall consult regularly with the HSD NVRA Coordinator regarding office-level compliance and any corrective action plans, as specified in Section VIII of this Order. The State NVRA Coordinator shall serve as a liaison between the Secretary of State, HSD, and local election authorities regarding NVRA compliance at HSD offices.
3. The State NVRA Coordinator shall monitor and evaluate office compliance with the NVRA and this Order. The State NVRA Coordinator shall further ensure that NVRA registration data are posted on the New Mexico Secretary of State’s website, as specified in Section IX.C of this Order.
4. Within 14 days of the entry of this Order, the State NVRA Coordinator shall provide the HSD NVRA Coordinator with a complete list of the last dates to register to vote in elections in New Mexico for the year 2011. Thereafter, the State NVRA Coordinator shall provide the HSD NVRA Coordinator with a complete list of such voter registration deadlines for the coming year by December 15 of each year for the term of this Order.
5. NVRA compliance shall be incorporated into performance reviews of the State NVRA Coordinator. Failure of the State NVRA Coordinator to meet the responsibilities and duties imposed by this Order shall be grounds for disciplinary action, subject to the State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement.

F. HSD

1. HSD shall designate a staff position whose duties include being the statewide “HSD NVRA Coordinator” and shall notify Plaintiff’s counsel as to the identity of that individual. During the term of this Order, HSD shall notify Plaintiff’s counsel of any change in the identity of the HSD NVRA Coordinator.
2. The HSD NVRA Coordinator shall maintain a current list of Voter Registration Site Coordinators designated as specified below. If the HSD NVRA Coordinator learns at any time that a Site Coordinator position is unfilled at any HSD office, the HSD NVRA Coordinator shall appoint an employee to fill that position within fifteen business days of the date of discovery.
3. The HSD NVRA Coordinator shall coordinate and oversee compliance with the requirements of Section 7 of the NVRA and the provisions of this Order. Such coordination shall involve regular communication with the State NVRA Coordinator and the Voter Registration Site Coordinators to ensure that HSD fully complies with the requirements of Section 7 and the provisions of this Order. The HSD NVRA Coordinator shall serve as a liaison between the Voter Registration Site Coordinators and the local election authorities regarding NVRA compliance at HSD offices.
4. The HSD NVRA Coordinator shall conduct reviews of compliance with Section 7 of the NVRA and the provisions of this Order at each HSD office in New Mexico for the duration of the Order, in the manner specified in Section VIII of this Order.
5. The HSD NVRA Coordinator shall be responsible for ensuring that HSD conducts an NVRA education and training program, as specified in Section V of this Order.
6. The HSD NVRA Coordinator shall ensure that each HSD office maintains an adequate supply of voter registration forms for distribution in the manner required by this Order.
7. Within 14 days after receiving the complete list of the last dates to register to vote in elections in New Mexico for the year 2011 from the State NVRA Coordinator, the HSD NVRA Coordinator shall provide every Voter Registration Site Coordinator such list. The HSD NVRA Coordinator shall provide every Voter Registration Site Coordinator with a complete list of such voter registration deadlines for the coming year by December 31, 2011, and every year thereafter for the term of this Order.
8. NVRA compliance shall be incorporated into performance reviews of the HSD NVRA Coordinator. Failure of the HSD NVRA Coordinator to meet the responsibilities and duties imposed by this Order shall be grounds for disciplinary

action, subject to the State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement.

C. Local HSD Offices

1. HSD shall designate a single staff position in each HSD office whose duties include being the “Voter Registration Site Coordinator” for that office. During the term of this Order, HSD shall notify Plaintiff’s counsel of any change in designation for Voter Registration Contacts at regular intervals or as otherwise necessary.
2. The Voter Registration Site Coordinators shall be responsible for reading and understanding the voter registration manual prepared per Section V of this Order.
3. The Voter Registration Site Coordinators shall coordinate and oversee compliance with the requirements of Section 7 of the NVRA and the provisions of this Order at their respective HSD offices. Voter Registration Site Coordinators shall provide support and guidance to HSD employees at their assigned offices regarding proper HSD NVRA procedures. Voter Registration Site Coordinators will also be responsible for answering questions from the public relating to voter registration at HSD offices.
4. The Voter Registration Site Coordinators shall ensure that each employee at their assigned offices who provides public assistance benefits services receives NVRA training as provided in Section V of this Order. The Voter Registration Site Coordinators shall ensure that all such training is completed in the time periods outlined in Section V of this Order, and keep records to that effect.
5. The Voter Registration Site Coordinators shall ensure that signs are posted in prominent locations in their assigned HSD offices advising the public of the right to register to vote at that site, per Section VII of this Order.
6. The Voter Registration Site Coordinators shall be responsible for transmitting all completed voter registration applications to the county clerk’s office not later than 10 days after the date of acceptance, or, if the registration application is accepted within five days before the last day for registration to vote in an election in New Mexico, not later than five days after the date of acceptance.
7. Each Voter Registration Site Coordinator shall be responsible for ensuring that his or her assigned office has an adequate supply of voter registration forms for distribution in the manner required by this Order, and for notifying the HSD NVRA Coordinator when supplies are low.
8. The Voter Registration Site Coordinators shall ensure that forms containing completed voter notice questions specified in Section VI.A of this Order are retained in clients’ case files for at least 22 months following their completion.

9. The Voter Registration Site Coordinators shall ensure the completion of all required recordkeeping and reporting related to voter registration, as outlined in Section VIII of this Order.
10. NVRA compliance shall be incorporated into performance reviews of the Voter Registration Site Coordinators. Failure of Voter Registration Site Coordinators to meet the responsibilities and duties imposed on them by this Order shall be grounds for disciplinary action, subject to the State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement.

V. TRAINING

- A. Within 60 days of the date of the entry of this Order, the State NVRA Coordinator and the HSD NVRA Coordinator together shall develop a comprehensive manual, and any related training materials, regarding the requirements of Section 7 of the NVRA and all related New Mexico state statutes, and the procedures used by HSD offices to comply with Section 7 of the NVRA. Before the manual and any related training materials are finalized, the proposed manual and training materials will be provided to Plaintiff's counsel for review and comment, and the parties shall make every effort to ensure that the manual and training materials are finalized no later than 70 days after the entry of this Order. Defendants will consider including in training materials a powerpoint presentation forwarded by Plaintiff's counsel prior to the time when the manual and training materials are finalized. The Coordinators shall update the manual when needed, subject to Plaintiff's counsel's review and comment.
- B. The State NVRA Coordinator will provide the HSD NVRA Coordinator with supplemental guidance as needed (e.g., to communicate any changes in federal or state law that relate to voter registration at HSD offices, or to address any problems with NVRA compliance, as determined by the procedures outlined in Section VIII of this Order).
- C. Training of all Voter Registration Site Coordinators and ISD employees shall occur within 120 days of the finalizing of the manual specified in Section V.A of this Order, and annually thereafter for the term of this Order. All Voter Registration Site Coordinators and ISD employees shall complete and attest to having completed that training. All Voter Registration Site Coordinators and ISD employees on annual, sick or other leave at the time when their annual training is scheduled shall be trained within one month of their return to active work status. All newly appointed Voter Registration Site Coordinators and ISD employees shall receive training equivalent to the annual NVRA training program within one month of their appointment to the position if the Coordinator or employee has not previously received the annual training.
- D. HSD shall provide for special supplemental training to Voter Registration Site

Coordinators and ISD employees on new or amended HSD NVRA policies upon adoption of those policies.

- E. HSD shall maintain the NVRA training materials and other NVRA support information on its intranet.

VI. PROVISION OF FORMS AND ASSISTANCE

- A. Voter Registration Language on Agency Forms.** All HSD public assistance application, renewal, recertification, and “change” forms will continue to include the following “voter notice” question:

“If you are not registered to vote where you live now, would you like to apply to register to vote here today?”

This question will continue to be followed by boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote. The options provided to the client are: *Yes; No*. The following statements will also continue to be included, along with a space for the client’s signature and date:

“IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME. The National Voter Registration Act provides you with the opportunity to register to vote at this location. If you would like help filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private. IMPORTANT: Applying to register or declining to register to vote WILL NOT affect the amount of assistance that you will be provided by this agency. CONFIDENTIALITY: Whether you decide to register to vote or not, your decision will remain confidential. If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Office of the Secretary of State, 419 State Capital, Santa Fe, NM, 87503. (Phone: 1-800-477-3632).”

All HSD offices shall discontinue the use of all application, renewal, recertification, and “change” forms that do not contain the above language.

- B. Voter Registration Application Forms and Distribution**

1. All voter registration application forms distributed pursuant to this Order shall be coded so that a voter registration official who receives a completed application shall be able to identify that it originated from HSD.
2. HSD shall follow the following procedures in distributing voter registration

applications to public assistance clients subject to the provisions of Section VI.B.3 below:

- a. The Federal Form shall be attached to all benefits application, renewal, and recertification paperwork distributed at agency offices. ISD employees shall verbally advise clients during in-office interviews for benefits applications and renewals and recertifications that they may complete a voter registration application by completing the Federal Form attached to the paperwork, that the employee is available to provide assistance in completing the form, and that HSD will forward a completed application to the appropriate county clerk. ISD employees shall document the offer of voter registration and the client's response in the interview narrative.
 - b. If a client requests application, renewal, or recertification paperwork by phone, fax, or electronically, or otherwise receives application, renewal, or recertification paperwork by mail or other remote means, HSD shall mail a Federal Form with the agency paperwork.
 - c. HSD shall mail a Federal Form to any client who submits a "change" form and either checks the "yes" box in response to the voter notice question or leaves the box blank.
3. HSD may amend the procedures specified in Section VI.B.2 as follows if, upon direct appeal of this Court's judgment with respect to the question of law decided in its December 21, 2010 Memorandum Opinion and Order, an appellate court holds that Section 7 does not require that HSD distribute voter registration applications to clients who leave blank the "yes" and "no" checkboxes required by Section 7(a)(6)(B)(iii) of the NVRA; specifically, HSD may amend its procedures following the issuance of the mandate by the appellate court following its decision including that holding.
- a. Instead of the procedure specified in paragraph VI.B.2.a, HSD may specify that a Federal Form will be provided to any client who, during in-office interviews for benefits applications and renewals and recertifications, either (i) checks the "yes" box in response to the voter notice question specified in paragraph VI.A., or (ii) indicates verbally that s/he wishes to submit a voter registration application. This procedure shall require the ISD employee conducting such interview to verbally advise the client that the client may receive a voter registration application at the HSD office and also may complete a registration application at the office, that the employee is available to provide assistance in completing the registration form, and that HSD will forward a completed application to the appropriate county clerk. ISD employees shall document the offer of voter registration and the client's response in the interview narrative.
 - b. Instead of the procedure specified in Section VI.B.2.b of this Order, HSD may

specify that if a client requests application, renewal, or recertification paperwork by phone, fax, or electronically, or otherwise receives application, renewal, or recertification paperwork by mail or other remote means, HSD will mail a Federal Form to the client if the client first returns the paperwork with the “yes” box checked in response to the voter notice question specified in Section VI.A of this Order.

- c. Instead of the procedure specified in Section VI.B.2.c of this Order, HSD may specify that it will mail a Federal Form to any client who submits a “change” form and checks the “yes” box in response to the voter notice question specified in Section VI.A of this Order.
4. HSD will provide a Federal Form to anyone at an HSD office who requests an application to register to vote.
5. HSD shall, on its website, include a PDF of the Federal Form as part of the downloadable PDF of the benefits application and any downloadable recertification forms (both English and Spanish versions).

C. Equal Assistance

1. Each HSD office shall provide the same degree of assistance to a client in completing the application for voter registration as is provided for completing the agency’s own forms, unless the client declines such assistance. Such assistance shall include a verbal review of the voter notice question specified in paragraph VI.A of this Order as well as examination of the client’s response or lack thereof. Regardless of the client’s response to the offer of voter registration, agency staff shall ensure the client signs and dates this portion of the form. Equal assistance also shall include examination of a completed voter registration application to determine whether all required information has been provided and that the form has been signed by the client.
2. All voter registration applications mailed to a client pursuant to Section VI.B.2.c or Section VI.B.3.c shall be accompanied by a notice advising the client that (1) s/he may receive assistance in filling out the voter registration application by visiting a local HSD or county clerk’s office; and (2) s/he may return the completed registration application by delivering it to the local HSD or county clerks’ office, and providing the mailing addresses for each. HSD shall mail this same notice to those clients who receive and return benefit application, renewal, or recertification paperwork per Section VI.B.3.b and do not have an interview in connection with that transaction.

C. Remedial Mailing

From the date of this Order, if HSD determines that a client was not given the opportunity to register to vote as specified in Sections VI.B and VI.C, an HSD employee shall immediately notify the HSD NVRA Coordinator who shall send a letter and a Federal Form to the individual, offering him/her the opportunity to register to vote. This mailing shall include instructions to the individual advising that (1) s/he may receive assistance in filling out the voter registration application by calling or visiting a local HSD or county clerk's office; (2) s/he may return the completed registration application by mailing it or delivering it to the local HSD office or county clerk's office, and providing the mailing addresses for each; (3) s/he is receiving the mailing because HSD has determined it has a record of the individual not being offered the opportunity to register to vote, and that the mailing does not affect the individual's registration status if the individual is already registered to vote at the individual's current address; and (4) receipt of this mailing does not indicate any information about the individual's eligibility to register to vote. A copy of the letter shall be maintained in the central file regarding voter registration maintained by the HSD NVRA Coordinator.

D. Future Changes to Processes

1. If HSD implements new technology or software for processing public assistance applications, HSD will incorporate the following voter registration procedures as an element in the new or updated system if that may be accomplished at a reasonable cost in relation to the overall cost of the upgrade. If the program provides for a computer guided interview for public assistance applications and/or recertifications and renewals, the program will include the question whether the client wishes to register to vote, and provide for the employee to enter the client's response in the computer. Also, if the computer guided interview allows for a question to be designated as mandatory such that the employee is prevented from continuing with the computer guided interview unless a response to the question is entered in the computer, the voter registration question will be programmed as mandatory. A standard report of voter registration responses entered in the computer will be programmed in the same manner as other standard reports, and will report the number of clients, by office, who respond "yes," "no," or provided no response; such reports will be provided to Plaintiff's counsel on a monthly basis if available.
2. If HSD implements a system that allows for online application for benefits, recertification/renewal, and/or change of address, HSD will integrate the voter notice question specified in Section VI.A of this Order into that system as well as distribution of voter registration application forms as required by this Order, so long as that may be accomplished at a reasonable cost in relation to the overall cost of the upgrade/system implementation. A standard report of voter registration responses entered in the computer will be programmed in the same manner as

other standard reports, and will report the number of clients, by office, who respond “yes,” “no,” or provided no response; such reports will be provided to Plaintiff’s counsel on a monthly basis if available.

VII. OFFICE SIGNS

HSD shall prominently post signs at every HSD office generally advising the public of the opportunity to register to vote when an individual submits a benefits application, recertification, renewal, or a change of address. These signs will include language indicating that the process is simple for the applicant, that agency staff are available to assist clients with filling out their voter registration application form, and that the decision whether or not to register to vote does not affect the amount of assistance they will be provided by the agency. Plaintiff’s counsel and HSD will consult regarding a sign design, and Plaintiff’s counsel will then submit a proposed design to HSD within 45 days of the entry of this Order; HSD will implement that design unless it determines that it is substantially unreasonable.

VIII. NVRA MONITORING AND COMPLIANCE ASSURANCE

A. Data Collection and Reporting

1. On the 15th day of each calendar month after this Order is entered and thereafter until the expiration of this Order, HSD shall provide to Plaintiff’s counsel a monthly report containing the following data for the preceding month: (i) the total number of applications and processed recertifications for Food Stamps (Supplemental Assistance Nutrition Program); (ii) the total number of voter registration applications distributed by HSD pursuant to Section VI.B.3 of this Order, if HSD implements any or all of the provisions of that Section; (iii) the number of completed voter registration application forms collected by HSD and distributed to the appropriate election authority; and (iv) the number of remedial mailings. The foregoing data shall be provided in the aggregate on a statewide basis, as well as by HSD office. If the due date of the report falls on a weekend or holiday the report shall be submitted on the next business day following the weekend or holiday. The report shall be submitted in Excel spreadsheet format or a format that can be easily converted to Excel. A copy of the report shall also be provided to the Secretary of State upon request by the Secretary of State.
2. The State NVRA Coordinator shall provide the HSD NVRA Coordinator, with a copy to Plaintiff’s counsel, a quarterly report containing the following data for the preceding quarter: (i) the number of voter registration forms received from state public assistance agencies; (ii) the number of such forms that resulted in new registrations or a change in registration address; and (iii) the number of such forms which could not be processed because required information was missing from the form. The foregoing data shall be provided in the aggregate on a statewide basis, as well as by HSD office. This report shall be provided on or before the fifteenth day of the month following the quarter reported. If the due

date of the report falls on a weekend or holiday the report shall be submitted on the next business day following the weekend or holiday.

B. Compliance Checks

1. When the HSD NVRA Coordinator or a HSD Bureau Chief has occasion to visit an HSD office to review compliance with public assistance requirements, the Coordinator or Bureau Chief shall make reasonable efforts to provide a review of whether that office is also offering voter registration in accordance with the NVRA and this Order.
2. HSD shall continue to incorporate NVRA compliance into the management evaluation process for the Supplemental Nutrition Assistance Program (SNAP), with reports prepared of these evaluations of NVRA compliance forwarded to Plaintiff's counsel.
3. HSD shall implement a "Secret Shopper" program, contingent upon sufficient appropriations by the New Mexico State Legislature, during the term of this Order to provide "spot checks" to determine whether HSD clients are being offered the opportunity to register to vote in accordance with the NVRA and this Order. The "Secret Shopper" program, if and when implemented, shall conduct "spot checks" through the use of persons who represent themselves as applicants for public assistance benefits.
4. Annual performance reviews of HSD employees shall include compliance with NVRA requirements in evaluating each employee's job performance, subject to State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement.
5. HSD office supervisors shall, as part of their regular supervision of employees, ensure that the employees offer voter registration in the manner specified by Section VI of this Order, subject to State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement.
6. HSD shall ensure that any complaints made by the public regarding the provision of voter registration by HSD offices shall be forwarded to the Voter Registration Site Coordinator for the affected office and also forwarded to the HSD NVRA Coordinator.

C. Compliance Analysis, Corrective Actions, and Reporting

1. On a quarterly basis, the HSD NVRA Coordinator shall provide to Plaintiff's counsel a report in which the Coordinator analyzes the data from the HSD and Secretary of State monthly and quarterly reports, including the results of any "Secret Shopper" program described in VIII.B.3 if implemented, and describes

any corrective actions undertaken during the preceding quarter. Quarterly reports also shall include the results of any secret-shopper activities undertaken during the previous quarter, and changes to coordinators and contacts. The quarterly report shall be provided by July 25 for the quarter ending June 30, October 25 for the period ending September 30, January 25 for the period ending December 31 and April 25 for the period ending March 31. If the due date of the report falls on a weekend or holiday the report shall be submitted on the next business day following the weekend or holiday.

2. HSD shall analyze the registration data specified in Section VIII.A.1 of this Order by comparing each office's numbers with that office's prior numbers, as well as by comparing voter registration numbers between offices that have comparable monthly numbers of persons who apply for benefits, recertify, and renew taking into account other relevant factors pertaining to client flow.
3. HSD shall identify any HSD office that may not be complying with NVRA requirements and the requirements of this Order and conduct a review to determine whether corrective measures are needed. Potential problems to be investigated or reviewed include, but are not limited to:
 - a. offices exhibiting unusually low registration rates as compared to (1) an office's rates during previous reporting periods, or (2) the rates of other offices in the state that have comparable monthly numbers of persons who apply for benefits and recertify, taking into account other relevant factors pertaining to client flow;
 - b. offices exhibiting potential compliance problems based on information obtained from a "spot check," any other auditing procedure, office managers or supervisors, the use of remedial mailings pursuant to Section VI.D; and
 - c. offices that are the subject of a complaint from the public regarding the provision of voter registration.
4. In addition, Plaintiff's counsel may provide HSD with a list of no more than two offices per month that Plaintiff believes require further review and possible corrective action, with an explanation of the reason for review. In such a case, HSD shall conduct a review of any such offices to determine whether corrective measures are needed and communicate the results to Plaintiff's counsel.
5. Should the HSD NVRA Coordinator determine that a particular HSD office is not complying with Section 7 of the NVRA or the provisions of this Order or otherwise needs corrective action to assure compliance, the HSD NVRA Coordinator, in conjunction with the local Voter Registration Site Coordinator and management employees and in consultation with the State NVRA Coordinator, shall determine the source of the problem and develop and

implement an appropriate corrective action plan. The local Voter Registration Site Coordinator and the HSD NVRA coordinator shall monitor the implementation of the corrective action plan.

6. HSD shall take appropriate corrective action, subject to State personnel law and regulations promulgated pursuant thereto, and any applicable collective bargaining agreement, when it is determined that individual employees at a particular office are not complying with Section 7 of the NVRA or the provisions of this Order, or otherwise are in need of corrective action to assure compliance.

IX. HSD Website and Public Relations, and Secretary of State Website

- A. HSD shall provide information on its website to notify the public of the opportunity to register to vote during application for benefits, recertification, renewal, and change of address. The information to be placed on the website shall be submitted to Plaintiff's counsel for review and comment. HSD, in its sole discretion, may consider recommendations from Plaintiff's counsel for any improvements to the website regarding voter registration.
- B. During the three-month period prior to the close of registration for any statewide primary or general election, HSD shall conduct a public relations campaign to publicize the availability of voter registration services at HSD offices.
- C. The Statewide NVRA Coordinator shall, on a quarterly basis, post on the Secretary of State website the following statewide data for the immediately preceding quarter: the total number of applications and processed recertifications for Food Stamps (Supplemental Assistance Nutrition Program); and the data specified in Section VIII.A.2 of this Order. As new quarterly data are posted, prior quarterly data shall remain posted.

X. BILINGUAL PROVISIONS

The voter registration processes and notices specified in Sections VI and VII shall be undertaken in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. See also 28 C.F.R. § 55.17 (targeting of minority language materials and assistance).

XI. NOTIFICATION OF SETTLEMENT

HSD shall provide notice to all ISD employees of this Consent Order, including a statement notifying all such employees of HSD's requirement to provide voter registration pursuant to the Section 7 of the NVRA. Within 30 days of the entry of this Order each HSD office shall hold a meeting for all ISD employees to discuss the procedures for offering voter registration, including any changes to office procedures resulting from this Order.

XII. ATTORNEYS' FEES AND EXPENSES


Plaintiff shall be entitled to recover reasonable attorneys' fees and litigation expenses related to her Section 7 claims. With regard to such fees and expenses incurred prior to entry of this Order, the parties shall confer in good faith to resolve the amount and payment of attorneys' fees and litigation expenses. If the parties are unable to reach agreement within 45 days of the entry of this Order, Plaintiff shall submit an application for attorneys' fees and expenses to Judge Herrera no later than 60 days after entry of this Order. Such application may include a request for fees for time spent in preparing the fees application.

XIII. TERM AND ENFORCEMENT

- A. The U.S. District Court for the District of New Mexico shall retain jurisdiction for three years following entry of this Order, after which time, unless otherwise ordered by the Court, the parties will file a stipulated motion for an order of dismissal of Plaintiff's claims brought against Defendants under Section 7 of the NVRA, 42 U.S.C. § 1973gg-5. After dismissal of Plaintiff's claims and termination of this Court's jurisdiction, the above terms of this Order, without exception, shall be treated as an agreement between the parties for one additional year and shall be enforceable in New Mexico district court.
- B. Before filing a motion seeking enforcement by this Court during the period of time when the United States District Court has retained jurisdiction, Plaintiff shall provide Defendants with written notice of any claim of breach of this Order. Defendants shall have 30 days to respond to such notice. The parties shall then attempt to resolve Plaintiff's concerns within 30 days of the date that Plaintiff receives the response. In the event that the parties are not able to resolve their dispute within 30 days, the parties shall submit the case to mediation of the dispute under the supervision of a mediator to be designated by Judge Herrera.
- C. After Plaintiff's claims asserting violations of Section 7 of the NVRA are dismissed pursuant to paragraph A above, if Plaintiff concludes that Defendants are in breach of the continuing agreement, Plaintiff first shall notify Defendants in writing of the asserted breach. Plaintiff then shall allow Defendants 30 days to respond to the notice and take action to cure the asserted breach before filing an enforcement action in New Mexico district court.

It is hereby ordered, adjudged and decreed that this Consent Order shall constitute the Court's final judgment and remedy in this case, resolving Plaintiff's claims made pursuant to Section 7 of the NVRA, 42 U.S.C. § 1973gg-5.

It is so ORDERED on this date of February 24, 2011:


UNITED STATES DISTRICT JUDGE

With agreement by the parties,

On behalf of Plaintiff Shawna Allers:

s/ Nicole K. Zeitler

PROJECT VOTE

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On behalf of Defendants Sidonie Squier, Ted Roth, and Julie Weinberg:

s/ Mark Reynolds

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FOR DEFENDANT DURAN:

s/ Dianna J. Duran

Dianna J. Duran

New Mexico Secretary of State