

**FIRST JUDICIAL DISTRICT COURT OF NEW MEXICO
SANTA FE COUNTY**

MILLIONS FOR PRISONERS NEW MEXICO; TYLER WAYNE JACKSON; AMBER DAUN SMITH; VIRGIL DIXON; CHARLES CADENA; OLIVIA TUCKER; JAMES PATRICK TUCKER; BREANNA DODGE MOONEY; and THOMAS CHAVEZ,

Plaintiffs,

v.

MAGGIE TOULOUSE OLIVER, in her official capacity as Secretary of State of the State of New Mexico; the NEW MEXICO OFFICE OF THE SECRETARY OF STATE; ALISHA TAFOYA LUCERO, in her official capacity as Secretary of New Mexico Corrections Department; the NEW MEXICO CORRECTIONS DEPARTMENT; CINDY FULLER, in her official capacity as County Clerk for Chaves County; OFFICE OF THE CHAVES COUNTY CLERK; CARA COOKE, in her official capacity as County Clerk for Eddy County; and OFFICE OF THE EDDY COUNTY CLERK,

Defendants.

Case No. D-101-CV-2024-02341
Judge Kathleen McGarry Ellenwood

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Millions for Prisoners New Mexico and Plaintiffs Tyler Wayne Jackson, Amber Daun Smith, Virgil Dixon, Charles Cadena, Olivia Tucker, James Patrick Tucker, Breanna Dodge Mooney, and Thomas Chavez (hereinafter “Individual Plaintiffs”), by and through their counsel, hereby bring this action for declaratory and injunctive relief—pursuant to Article II, §§ 2, 3, 8, and 18 of the New Mexico Constitution, the New Mexico Declaratory Judgment Act, NMSA 1978 §

44-6-13, the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1-13, and the Court’s inherent power in equity—against Defendants (1) Maggie Toulouse Oliver, in her official capacity as Secretary of State of the State of New Mexico, (2) the New Mexico Office of the Secretary of State, (3) Alisha Tafoya Lucero, in her official capacity as Secretary of New Mexico Corrections Department, (4) the New Mexico Corrections Department, (5) Cindy Fuller, in her official capacity as County Clerk for Chaves County, (6) the Office of the Chaves County Clerk, and (7) Cara Cooke, in her official capacity as County Clerk for Eddy County, and (8) the Office of the Eddy County Clerk (collectively “Defendants”), all of whom are officials and agencies responsible for voter registration and data sharing to ensure that voters, including those with past felony convictions, can access the franchise.¹ Plaintiffs include (1) eligible New Mexican voters with past felony convictions—veterans, grandmothers, cub scout moms, hard-working employees, taxpayers, friends, and neighbors, (2) an eligible individual with no felony conviction who was nevertheless denied registration based on mistaken identity, and (3) an organization that represents and assists New Mexicans seeking to restore their voting rights and ensure they can vote in the November 5, 2024 General Election and future elections.

Plaintiffs seek a declaratory judgment that Defendants’ actions violate Plaintiffs’ constitutional fundamental right to vote and right to equal protection of the laws. Plaintiffs also seek a declaratory judgment that Defendants’ actions violate the New Mexico Voting Rights Act (“NMVRA”). Plaintiffs also seek temporary, preliminary, and permanent relief enjoining Defendants’ policies that undermine the promise of the NMVRA and violate Plaintiffs’ fundamental right to vote and right to equal protection of the laws. Plaintiffs ask this Court to order

¹ Pursuant to this Court’s February 5, 2025 Order, the Office of the Bernalillo County Clerk and Bernalillo County Clerk Linda Stover were dismissed as Defendants because they had complied with the Court’s remedial order and, pursuant to this Court’s February 11, 2025 Order, Plaintiffs amend their complaint now to add as Defendants the Office of the Chaves County Clerk, Chaves County Clerk Cindy Fuller, the Office of the Eddy County Clerk, and Eddy County Clerk Cara Cooke. Plaintiffs likewise amend their complaint to add new plaintiffs from both Chaves and Eddy Counties.

Defendants to fulfil their obligations under the NMVRA, as to Individual Plaintiffs and others wrongfully denied registration. Plaintiffs allege, upon information and belief, as follows:

INTRODUCTION

1. In 2023, the New Mexico Legislature passed the NMVRA, which restored the voting rights of over 11,000 residents of New Mexico who were on probation and parole for felony convictions by establishing that the right to vote is restored upon release from prison, regardless of probation and parole status. NMSA 1978 § 1-4-27.1(A) (“A voter is ineligible to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction. Except as provided in this section, an otherwise qualified elector is ineligible to register to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.”). The new law went into effect on July 1, 2023.
2. Unfortunately, as the November 5, 2024 General Election approached over a year later, many potential voters who were enfranchised by the NMVRA were still unable to register and vote because of unnecessary barriers and burdens created by Defendants.
3. Pursuant to the NMVRA, the Corrections Department, under the control of Defendant Tafoya Lucero, is required to provide the Secretary of State, Defendant Toulouse Oliver, with the “information and data necessary to carry out the provisions of this section.” NMSA 1978 § 1-4-27.1(C). As relevant here, that would require the Corrections Department to provide Defendant Toulouse Oliver with a list of people who are currently incarcerated and therefore ineligible to vote, so that Defendant Toulouse Oliver can carry out the successful registration of all otherwise eligible individuals who are *not* incarcerated, including those on probation and parole. But Defendant Corrections Department has failed to fulfill its statutory obligation, leaving Defendant Office of the Secretary of State to rely on outdated and inaccurate information to populate its statewide voter registration electronic management

system (“SERVIS”). Based on information and belief, SERVIS flagged every registrant who has ever been reported to be convicted of a felony as ineligible unless that person had manually had the felony flag removed or if that person was removed based on information provided by the Corrections Department. This means that SERVIS’s felony flags are not necessarily limited to those persons who are actually ineligible because they are currently incarcerated, but instead—as Plaintiffs’ experiences show—include New Mexicans who are on probation or parole or who have long completed their entire felony sentences, and even includes individuals who have never had any felony conviction. The Corrections Department has long failed to provide the necessary data to election officials to verify eligibility and as of the filing of Plaintiffs’ original complaint, had over one year to determine how to fulfill its duty under the NMVRA. It plainly possesses records of who it is holding in prison or not, yet it still has failed to provide accurate records to Defendants Office of the Secretary of State and Toulouse Oliver.

4. The stale, inaccurate data in SERVIS are the reason for erroneous denials by Chaves County Clerk and Eddy County Clerk Defendants of eligible individuals attempting to register to vote. Defendant Clerks Fuller and Cooke, and many of the other 31 New Mexico county clerks and their offices, improperly used the stale and inaccurate felony records in SERVIS as evidence that eligible registrants with past felony convictions are ineligible. But a felony flag in SERVIS merely demonstrates that a person may have been convicted of a felony at some point in time and, under New Mexico law, having once been convicted of felony does not permanently disqualify a person from voting. NMSA 1978 § 1-4-27.1(A). Therefore, these denials are not based on evidence demonstrating actual ineligibility—*i.e.*, current incarceration for a felony conviction—and, thus, are unlawful. To overcome these denials, Secretary of State Defendants, Chaves County Clerk Defendants, and Eddy County Clerk

Defendants have unlawfully required eligible registrants with a past felony conviction to register to vote in person at the clerk's office or motor vehicle office. Worse still, Chaves County Clerk Defendants and Eddy County Clerk Defendants justify their erroneous denials of voter registrations and are requiring in-person appearances from eligible individuals based on the Secretary of State Defendants' outdated guidance and unlawful rules challenged here. Even after the Secretary of State Defendants issued new guidance for registering individuals who match the SERVIS database pursuant to the Court's October 8, 2024 Stipulated Order, Chaves County Clerk Defendants and Eddy County Clerk Defendants refused to abide by it, resulting in the ongoing denial of eligible voters, including Individual Plaintiffs.

5. Despite knowing that the SERVIS data is inaccurate, Defendants Office of the Secretary of State and Toulouse Oliver created an official policy and issued guidance to county clerks instructing them to deny mailed or online voter registrations from individuals with past felony convictions if they match a felony record in the inaccurate SERVIS data list. As instructed in the past by Defendant Toulouse Oliver, eligible individuals must appear in person to register if they are to overcome any such denial. Defendant Toulouse Oliver provided a sample letter for clerks to send to registrants when denying them on this basis. The letter tells a person that they have been marked as "Not Eligible" because of information that they have been convicted of a felony or, under a more recent update, "have been incarcerated for a felony." This confusing statement has led many potential voters, including Plaintiffs, to erroneously believe that having a felony or having been incarcerated means they can never vote again.
6. The denial of eligible voters seeking to register to vote and the requirement that they appear in person to overcome any such denial are likely to confuse and intimidate potential voters. Indeed, many New Mexicans with past felony convictions, and even some with no such

conviction—including Individual Plaintiffs—have had their voter registrations denied despite being eligible to register and to vote. Even if they understand the letter to mean that they *may be* eligible—despite its express statement that they have been marked “ineligible”—many of these people may be unable to appear in person to register because of work obligations, transportation barriers, mobility barriers, disability, or myriad other reasons. Moreover, many people who receive a denial of their voter registration may assume it means they are ineligible to vote at all, such that they never even attempt to register again in person. This policy is especially needlessly discriminatory because individuals already affirm, under penalty of perjury, that they are not currently incarcerated and are otherwise eligible to vote when they complete a voter registration form. Consequently, the denial of individuals’ registrations on these grounds violates both the NMVRA and the fundamental right to vote guaranteed by the New Mexico Constitution.

7. Making matters still worse, it took Defendant Toulouse Oliver more than a year after passage of the NMVRA to update New Mexico’s voter registration forms with the correct eligibility criteria for people with felony convictions. *See* Joint Stipulated Facts ¶ 2 (Jan. 30, 2025); *see also* Order at 1-2 (Feb. 11, 2025). The outdated forms—which incorrectly state that, short of a pardon, people who have been convicted of felonies cannot vote until they have served the entirety of their sentence and completed all conditions of parole and supervised probation—misinform eligible voters about a fundamental right and impose a threat of penalty of perjury for eligible voters on probation or parole seeking to register. Such erroneous instructions confuse, intimidate, and deter eligible voters from registering. Moreover, because Defendant Toulouse Oliver updated these forms so late, as of the date of Plaintiffs’ original filing, the old forms were still widely in circulation; indeed, such outdated forms were still available on the Secretary of State’s own website. Accordingly, even if an

eligible voter attempted to register in person or use same-day registration during early voting or on Election Day for the November 5, 2024 General Election, there was a substantial risk they would be provided with the wrong form, causing eligible individuals with prior felony convictions to be denied the right to register and to vote.

8. Individual Plaintiffs themselves have been erroneously denied their right to vote because of Defendants' policies, practices, and procedures, in contravention of both the promise of the NMVRA and the explicit guarantees of the New Mexico Constitution and the New Mexico Civil Rights Act.
9. At the same time, organizations dedicated to assisting New Mexicans with past felony convictions to register to vote and participate in elections—like Plaintiff Millions for Prisoners—are unable to hold voter registration drives to assist such individuals because of Defendants' policies. The organizations that worked tirelessly to pass the NMVRA are therefore unable to conduct meaningful outreach to newly eligible voters to fulfill the law's promise.
10. Plaintiffs filed their original Complaint and an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on September 26, and October 1, 2024, respectively. Since then, Plaintiffs reached an agreement with the Secretary of State Defendants, Corrections Department Defendants, and Bernalillo County² to resolve Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction. That agreement is memorialized in the Court's October 8, 2024 Stipulated Order, and the Court has continued to monitor the parties' compliance with that Order at status conferences on October 8, 2024 and January 31, 2025, with another status conference scheduled for

² As mentioned above, *supra* note 1, the Office of the Bernalillo County Clerk and Bernalillo County Clerk Linda Stover were dismissed as Defendants by this Court's February 5, 2025 Order because they had complied with the Court's remedial order.

March 31, 2025.

11. Despite the progress made toward universal compliance with the NMVRA, several county clerks continue to flout the law. The express refusal of Chaves County Clerk Defendants and Eddy County Clerk Defendants to implement the Secretary of State’s October 4, 2024 updated guidance, *see* Stipulated Order Resolving Pls.’ Mot. for a Temporary Restraining Order and Prelim. Inj. at 11-17, or to follow the NMVRA has meant that dozens of eligible voters in Chaves County and Eddy County were—despite being eligible—denied the right to register and vote in the November 5, 2024 General Election, and other past elections. In many cases, this denial is ongoing, including for all the Individual Plaintiffs residing in Chaves and Eddy Counties.
12. This case raises statutory and constitutional questions of great public importance. Safeguarding exercise of the fundamental right to vote, in accordance with the New Mexico Constitution and Election Code, is a matter of substantial public interest to all New Mexicans in every county. Absent actions by Defendants to comply with their constitutional and statutory obligations to preserve that right, this issue of great public importance is likely to recur. Accordingly, Plaintiffs seek urgent judicial invention to compel Defendants to fulfill their legal duties and allow New Mexicans with past felony convictions—friends and neighbors who work, live, and pay taxes in their communities—to be able to register and vote.

PARTIES

Plaintiffs

Organizational Plaintiff

13. Plaintiff Millions for Prisoners New Mexico (hereinafter “Millions for Prisoners”) is an organization founded in 2017 with the mission to advance the rights and wellbeing of people affected by the criminal legal system. Millions for Prisoners focuses its efforts on supporting

all individuals affected by the criminal legal system, including formerly incarcerated, directly impacted individuals and their families. Millions for Prisoners is based in Bernalillo County, but its organizers work across New Mexico.

14. Millions for Prisoners is a volunteer-based organization with a core group of organizers who are member-like associates. The time and work devoted by this core group of organizers is Millions for Prisoners' primary resource. This core group plans events and decides how to allocate financial resources. They typically meet twice a month. The members of the core group decide by majority vote on the adoption of their organizational rules and structure. The core group members likewise decide by majority vote how to spend their time and monetary resources. All core group members are directly impacted by the criminal legal system, either because they, themselves, are formerly incarcerated or because they have a close family member who has been or is incarcerated.
15. The Millions for Prisoners core group of organizers help individuals with prior felony convictions navigate the voter registration process. This work includes educating individuals with prior felony convictions about their voting rights, assisting them with voter registration, following up with registrant-applicants, and other voter engagement work. Core group organizers of Millions for Prisoners are voter registration agents registered with the Secretary of State. *See* NMSA 1978 § 1-4-49.
16. Millions for Prisoners believe voting is a critical piece of successful reentry of formerly incarcerated individuals into their communities. In line with that belief, Millions for Prisoners was a key member of the coalition of organizations and legislators who helped pass the NMVRA. Because Defendants are failing to lawfully implement the NMVRA, however, Millions for Prisoners have had to divert resources—in the form of organizer time and capacity—to assist applicants with prior felony convictions who were wrongfully denied

in their attempts to register to vote, including taking wrongly denied applicants to register in person.

17. Core members of Millions for Prisoners' organizer group themselves have been erroneously denied the ability to register to vote and have received denial letters from their respective county clerks.

Individual Plaintiffs

18. Plaintiff Tyler Wayne Jackson is a resident of Bernalillo County, New Mexico. Plaintiff Jackson has two past felony convictions, but has since served his full sentences, including prison and supervision time, on both convictions. Plaintiff Jackson was convicted of a felony in Texas in approximately 2001, when he was 17 years old, and was released from incarceration and all supervision for this conviction in 2004. Plaintiff Jackson was also convicted of a felony in New Mexico in approximately 2010 and was released from incarceration and all supervision for this conviction in 2014. Plaintiff Jackson has thus been eligible to register and vote in New Mexico since 2014, when he was last released from supervision. *Compare* NMSA 1978 § 1-4-27.1(B) (2014) *with* NMSA 1978 § 1-4-27.1(A) (current). He is, therefore, a qualified elector. NMSA 1978 § 1-1-4. Plaintiff Jackson has attempted to register to vote numerous times over the past decade, but to no avail. Plaintiff Jackson first tried to register to vote in approximately 2014, when he applied for Supplemental Nutrition Assistance Program ("SNAP") benefits at a public assistance agency in-person. He then tried to register to vote online approximately every year since 2014, when recertifying his SNAP benefits. In approximately 2015, Plaintiff Jackson attempted to register to vote in-person at the Bernalillo County Metropolitan Court but was denied. Over the past decade, Plaintiff Jackson has tried to register at every opportunity given to him by a public assistance agency or other government office offering voter registration because he

knows that he is eligible and hopes that, eventually, he will be allowed to register. Despite his eligibility, Plaintiff Jackson has received denial letter after denial letter from the Office of the Bernalillo County Clerk every time he has tried to register; these letters cite the reason for denial as Plaintiff Jackson having been convicted of a felony, or in more recent letters, having been incarcerated, and therefore ineligible. But Plaintiff Jackson has not been incarcerated or under any supervision since 2014 and has therefore been eligible to vote since that time. The continued denials of his voter registration attempts over the past decade have been wrongful, discouraging, and have denied him the fundamental right to vote numerous times, including in the June 4, 2024 Presidential Preference Primary Election. Plaintiff Jackson received his most recent denial letter in September 2024, citing the reason for denial as current incarceration. Plaintiff Jackson wanted to be able to vote for the first time in his life in the November 5, 2024 General Election. Being able to vote is very important to Plaintiff Jackson, as he has been trying for a decade to access that right. He wants to have a voice in our democracy and help elect officials to office who would better his community. He also wants to show other formerly incarcerated New Mexicans that they should not give up on the right to vote, and that they too can make a difference. Without this Court's relief, Plaintiff Jackson would have again been denied his fundamental right to vote in the November Election—as he had been denied in every election since his first registration attempt in 2014. On October 10, 2024, the Office of the Bernalillo County Clerk reviewed and activated Plaintiff Jackson's voter registration. Plaintiff Jackson continues to have a stake in this lawsuit due to concerns with Defendants' ongoing delays in compliance with their obligations under the NMVRA and state law.

19. Plaintiff Amber Daun Smith is a resident of Bernalillo County, New Mexico. Plaintiff Smith was 18 years old when she was convicted of marijuana-related felony charges in New

Mexico, about thirty years ago. She was never incarcerated and successfully finished probation with the New Mexico Corrections Department roughly three and a half years later. Plaintiff Smith is a qualified elector. NMSA 1978 § 1-1-4. Plaintiff Smith tried to register to vote numerous times since completing her sentence and received a rejection letter each time, which made her believe that she simply could never vote again in New Mexico because of her past felony conviction. After the NMVRA passed, Plaintiff Smith heard that the law changed and attempted to register to vote again in 2024, but she was denied again by the Office of the Bernalillo County Clerk. The denial letter made her believe yet again that she was permanently ineligible to vote. It was only later, through Millions for Prisoners, that she learned she could register in person to overcome the denial. She appeared at the Office of the Bernalillo County Clerk's office to comply with Defendant Toulouse Oliver's in-person requirement to register. But after Plaintiff Smith became registered to vote, she was concerned that moving residences and updating her registration address prior to the beginning of early voting for the November Election would cause her registration to be denied anew. Plaintiff Smith has moved on with her life since serving her sentence. She is a grandmother and a cub scout mom. Voting is very important to her, and she previously exercised this right when she lived in Texas. She wanted to vote in the 2024 General Election because of the important issues at stake. Plaintiff Smith is upset about having to register to vote differently than other voters and still feels judged based on her conviction despite it being nearly thirty years ago. Without this Court's relief, Plaintiff Smith would have been denied her fundamental right to vote in the November 5, 2024 General Election—as she had been for decades. She has since moved and updated her registration address successfully. Plaintiff Smith continues to have a stake in this lawsuit due to concerns with Defendants' ongoing delays in compliance with their obligations under the NMVRA and state law.

20. Plaintiff Virgil Dixon is a resident of Bernalillo County, New Mexico. Plaintiff Dixon has attempted to register to vote several times in recent years since moving back to New Mexico from out-of-state. Plaintiff Dixon has one past drug-related felony conviction from the late 1990s. He was never incarcerated and successfully finished his unsupervised probation sentence in 2001. He is eligible to register to vote and is a qualified elector. NMSA 1978 § 1-1-4. Nonetheless, he has received at least two denial letters since then from the Office of the Bernalillo County Clerk stating that his registration has been rejected and that his status has been changed to “Not Eligible.” Plaintiff Dixon first tried to register to vote by mail-in application in about July 2023. He received a denial letter from the Office of the Bernalillo County Clerk on July 27, 2023, citing incorrect eligibility criteria. While the NMVRA had gone into effect on July 1, 2023, this letter stated that New Mexicans with past felony convictions are not eligible to register to vote until completion of probation and parole. He then tried to register to vote again in or about August 2024, after which he received another denial letter. Plaintiff Dixon wanted to be able to vote in the November 5, 2024 General Election as he has been voting all of his life in his previous states of residence. Being able to vote is very important to Plaintiff Dixon, as he has been voting all his life and he is a veteran who served during the Vietnam era. Thus, he understands the value of civic participation and service. Mr. Dixon wanted to register and vote by mail because he does not have reliable transportation to comply with the in-person registration requirement. He also experiences post-traumatic stress disorder, which makes in-person interactions at busy and loud locations more strenuous for him than it may be for others. Without this Court’s relief, Plaintiff Dixon would have been denied his fundamental right to vote in the November Election. On October 10, 2024, the Office of the Bernalillo County Clerk reviewed and activated Plaintiff Dixon’s voter registration. Plaintiff Dixon continues to have a stake in

this lawsuit due to concerns with Defendants' ongoing delays in compliance with their obligations under the NMVRA and state law.

21. Plaintiff Charles Cadena is a resident of Bernalillo County, New Mexico. Plaintiff Cadena has one past felony conviction but has completed his full sentence, including his terms of incarceration and parole. Plaintiff Cadena was convicted of a felony in New Mexico in 1987 and was released early from incarceration in 1992. Subsequently, Plaintiff Cadena completed his two-year parole term in 1994, leading to his full sentence completion. Plaintiff Cadena has been eligible to vote since 2001, when New Mexico law changed, restoring the right to vote to all individuals who had fully completed their sentence, including any terms of incarceration and parole. *See* NMSA 1978 § 31-13-1 (2001). Plaintiff Cadena is in all other respects a qualified elector. NMSA 1978 §1-1-4. Plaintiff Cadena has attempted to register to vote several times over the past decade but has been denied for having a felony conviction each time. Specifically, Plaintiff Cadena attempted to register by mail in Bernalillo County for the 2016 General Election but received a denial letter from the Office of the Bernalillo County Clerk on the grounds that he had a felony conviction. Plaintiff Cadena then tried to register to vote in person, on Election Day, during the June 2024 Primary Election, but was denied again on the grounds that he had a felony conviction. Despite Plaintiff Cadena's eligibility, he has received a denial letter from the Office of the Bernalillo County Clerk every time he has attempted to register since as early as 2016. The continued denials of Plaintiff Cadena's voter registration attempts over the past decade have been wrongful and discouraging and have denied him the fundamental right to vote numerous times, including in the June 4, 2024 Presidential Preference Primary Election. Plaintiff Cadena was a registered voter and active civic participant prior to his 1987 conviction and was eager to vote in the November 5, 2024 General Election because he

wants his voice to be heard. Without this Court's relief, Plaintiff Cadena would have been denied his fundamental right to vote in the November Election. On October 10, 2024, the Office of the Bernalillo County Clerk reviewed and activated Plaintiff Cadena's voter registration. Plaintiff Cadena continues to have a stake in this lawsuit due to concerns with Defendants' ongoing delays in compliance with their obligations under the NMVRA and state law.

22. Plaintiff Olivia Tucker is a resident of Chaves County, New Mexico. Ms. Tucker was convicted of felonies in 2017 and 2019 and fully completed her sentences, including probation and parole, in October 2022. At that point and since then, she has been eligible to vote as a qualified elector under New Mexico law. NMSA 1978 § 1-1-4. When she attempted to register to vote after July 1, 2023, however, she was denied by Defendants Fuller and the Office of the Chaves County Clerk based on her prior felony convictions. On October 4, 2024, the Secretary of State sent Defendants Fuller and the Office of the Chaves County Clerk a list of 53 individuals who had been denied voter registration on the basis of felony conviction since July 1, 2023, and instructed those Defendants to reprocess the individuals on the list and register them to vote absent evidence of current incarceration. Plaintiff Olivia Tucker was on that list. Defendants Fuller and the Office of the Chaves County Clerk did not register Plaintiff Olivia Tucker, as well as many other registrants, despite their eligibility. Ms. Tucker would have voted in the November 5, 2024 General Election had she been registered and she would like to participate in future elections.
23. Plaintiff James Patrick Tucker is a resident of Chaves County, New Mexico. Plaintiff James Patrick Tucker was convicted of felonies in 2006, 2009, and 2017. He was released from probation in January 2023 and has been eligible to vote as a qualified elector under New Mexico law ever since. NMSA 1978 § 1-1-4. He attempted to register to vote online in

approximately August 2023 but was denied by Defendants Fuller and the Office of the Chaves County Clerk on the basis of his prior felony convictions. On October 4, 2024, the Secretary of State sent Defendants Fuller and the Office of the Chaves County Clerk a list of 53 individuals who had been denied voter registration on the basis of felony conviction since July 1, 2023, and instructed those Defendants to reprocess the individuals on the list and register them to vote absent evidence of current incarceration. Plaintiff James Patrick Tucker was on that list. Defendants Fuller and the Office of the Chaves County Clerk did not register Plaintiff James Patrick Tucker, as well as many other registrants, despite their eligibility. Mr. Tucker would have voted in the November 5, 2024 General Election had he been registered and he would like to participate in future elections.

24. Plaintiff Breanna Dodge Mooney is currently a resident of Eddy County, New Mexico. She has been a resident of New Mexico for 22 years. Ms. Dodge Mooney was convicted of felonies in 2018 and 2021. As part of the sentence for her 2018 conviction and a subsequent parole violation, Ms. Dodge Mooney was incarcerated for periods in 2018 and 2019. After she completed the terms of her sentence and was released from supervision in September 2019, her probation officer helped her attempt to register to vote at her then-home address in Chaves County. Despite no longer being under supervision and therefore eligible to vote, Plaintiff Dodge Mooney's registration attempt was denied by the Chaves County Clerk Defendants via letter on account of her prior felony conviction. For her 2021 felony conviction, Plaintiff Dodge Mooney received a suspended sentence, served almost 2 years on probation and was discharged early in May 2023. She has been eligible to vote as a qualified elector under New Mexico law ever since. NMSA 1978 § 1-1-4. Upon completion of her sentence, Plaintiff Dodge Mooney received a Certificate of Completion of Sentence from the Defendant New Mexico Corrections Department stating that its employee, Ms.

Dodge Mooney's parole officer, certified that (1) she had served the entirety of her sentence, including any terms of probation or parole, (2) her voting rights were "hereby restored," and (3) that Ms. Dodge Mooney had "been informed of [her] entitlement to register to vote." Sometime after she was released from probation in May 2023, she did attempt to register to vote at her new home address in Eddy County, again with the assistance of her probation officer. She received a denial letter from Eddy County Clerk Defendants sometime after July 4, 2023, however, stating that she was ineligible to register on the basis of her previous felony. On October 4, 2024, the Secretary of State sent Defendants Cooke and the Office of the Eddy County Clerk a list of 38 individuals who had been denied voter registration on the basis of felony conviction since July 1, 2023 and instructed those Defendants to reprocess individuals on the list and register them to vote absent evidence of current incarceration. Plaintiff Dodge Mooney was on that list. Defendants Cooke and the Office of the Eddy County Clerk did not register Plaintiff Dodge Mooney, as well as many other registrants, despite their eligibility. Plaintiff Dodge Mooney would have voted in the November 5, 2024 General Election had she been registered and she would like to participate in future elections.

25. Plaintiff Thomas Chavez is a resident of Chaves County, New Mexico and has been for over 13 years. He was a member of the National Guard for more than 13 years and a police officer for approximately seven years. Plaintiff Chavez has been a registered voter since he was 18 and participated in every election until he was wrongfully denied in the fall of 2022. Plaintiff Chavez has never been convicted of a felony, served a term of incarceration, nor been on probation or parole. Plaintiff Chavez has thus never lost his right to vote due to a felony conviction. He is eligible to vote as a qualified elector under New Mexico law. NMSA 1978 § 1-1-4. Three years ago, Plaintiff Chavez moved residences within Chaves County and attempted to update his voter registration address through a third-party voter registration

agent at the Eastern New Mexico State Fair in anticipation of participating in the November 8, 2022 elections. Later, however, he received a denial letter from Defendants Fuller and the Office of the Chaves County Clerk, unlawfully stating that he was ineligible to vote due to a felony conviction. On information and belief, that denial was based on another person's felony conviction, falsely attributed to Plaintiff Chavez. Plaintiff Chavez subsequently went in-person to the Chaves County Clerk's office to register, providing his license, birth certificate, and social security card to prove he is not ineligible to vote. Plaintiff Chavez was nevertheless still denied registration by Defendants Fuller and the Office of the Chaves County Clerk. Last year, prior to the November 5, 2024 General Election, Plaintiff Chavez again attempted to register to vote, this time online. Plaintiff Chavez again received a denial letter from Defendants Fuller and the Office of the Chaves County Clerk stating that he was ineligible to register because of a felony conviction. On October 4, 2024, the Secretary of State sent Defendants Fuller and the Office of the Chaves County Clerk a list of 53 individuals who had been denied voter registration on the basis of felony conviction since July 1, 2023, and instructed those Defendants to reprocess individuals on the list and register them to vote absent evidence of current incarceration. Plaintiff Chavez was on that list. Defendants Fuller and the Office of the Chaves County Clerk did not register Plaintiff Chavez, as well as many other registrants, despite their eligibility. Had he not been erroneously removed from the voter rolls by Chaves County Clerk Defendants in 2022 and been unlawfully denied registration in 2024, Plaintiff Chavez would have voted in multiple elections, including the November 5, 2024 General Election. He would like to participate in future elections.

Defendants

26. Defendant Maggie Toulouse Oliver is sued in her official capacity as the Secretary of State

of New Mexico. Defendant Toulouse Oliver resides in and maintains her office in Santa Fe, New Mexico.

27. Defendant Office of the New Mexico Secretary of State is an executive agency established by Article 5, section 1 of the New Mexico Constitution, N.M. Const. art. 5, § 1, whose principal place of business is Santa Fe, New Mexico.
28. As New Mexico's chief election officer, Secretary Toulouse Oliver and the Office of the Secretary of State have the duty to "obtain and maintain uniformity in the application, operation and interpretation of the [New Mexico] Election Code." NMSA 1978 § 1-2-1. This includes making administrative rules pursuant to and necessary for carrying out the Election Code. *Id.* Defendant Toulouse Oliver and the Office of the Secretary of State also maintain the statewide voter registration electronic management system. *Id.* § 1-5-30.
29. Defendant Toulouse Oliver and the Office of the Secretary of State (collectively "Secretary of State Defendants") are responsible for "maintain[ing] current information in the statewide voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate's eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release." *Id.* § 1-4-27.1(C).
30. Defendant Toulouse Oliver and the Office of the Secretary of State have the additional following relevant duties, to: (1) "prepare instructions for the conduct of election and registration matters in accordance with the laws of the state"; (2) "advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code"; (3) "be responsible for the education and training of county clerks regarding elections"; and (4) "assist the county clerks in the education and training of registration officers." *Id.* § 1-2-2. The Secretary of State is

likewise responsible for prescribing the form of New Mexico’s voter registration application and creating “clear and understandable” instructions for completing it in both English and Spanish. *Id.* § 1-2-3.1.

31. Defendant Alisha Tafoya Lucero is sued in her official capacity as the Secretary of the New Mexico Corrections Department. As the official responsible for the operation of the New Mexico Corrections Department, Secretary Tafoya Lucero has a duty to “administer and enforce the laws with which [s]he or the department is charged.” *Id.* § 9-3-5(A). This includes the New Mexico Voting Rights Act. *Id.* §§ 1-4-27.1, 33-1-6. Defendant Alisha Tafoya Lucero maintains her office in Santa Fe, New Mexico.
32. Defendant New Mexico Corrections Department is a constitutional institution with other duties as established by the Corrections Act, § 33-1-1, et seq. *See* N.M. Const. art. XI, § 1; NMSA 1978 § 33-2-2. The Corrections Department has the duty to “deliver to the secretary of state information and data necessary to carry out” the New Mexico Voting Rights Act. NMSA 1978 § 1-4-27.1(C). The Corrections Department is also responsible for assisting qualified electors with registering to vote or updating their registration during the reentry phase. *Id.* § 1-4-27.1(B). The Corrections Department maintains offices in Santa Fe, New Mexico.
33. Defendant Cindy Fuller is sued in her official capacity as the County Clerk for Chaves County. Defendant Office of the Chaves County Clerk is a government agency authorized by state law. *Id.* §§ 4-40-1–10. Defendants Fuller and the Office of the Chaves County Clerk (collectively, “Chaves County Clerk Defendants”) have a statutory duty to process the voter registration applications, also known as certificates of registration, of qualified electors. *Id.* §§ 1-4-5(B), 1-4-5.1(A), (H). As such, Chaves County Clerk Defendants are responsible for processing the voter registration applications of Individual Plaintiffs who are eligible voters

residing in Chaves County and people assisted by the organizers associated with Millions for Prisoners. Chaves County Clerk Defendants maintain their office in Chaves County, New Mexico.

34. Defendant Cara Cooke is sued in her official capacity as the County Clerk for Eddy County. Defendant Office of the Eddy County Clerk is a government agency authorized by state law. *Id.* §§ 4-40-1–10. Defendants Cooke and the Office of the Eddy County Clerk (collectively, “Eddy County Clerk Defendants”) have a statutory duty to process the voter registration applications, also known as certificates of registration, of qualified electors. *Id.* §§ 1-4-5(B), 1-4-5.1(A), (H). As such, Eddy County Clerk Defendants are responsible for processing the voter registration applications of Individual Plaintiffs who are eligible voters residing in Eddy County and people assisted by the organizers associated with Millions for Prisoners. Eddy County Clerk Defendants maintain their office in Eddy County, New Mexico.

JURISDICTION AND VENUE

35. This Court has subject matter jurisdiction pursuant to Article VI, Section 13 of the New Mexico Constitution, and NMSA 1978 §§ 44-6-2, 44-6-9, 44-6-13, and 41-4A-1–13.
36. Jurisdiction is also proper in this court pursuant to NMSA 1978 § 38-3-1.1, because Plaintiffs seek a declaratory judgment and further relief regarding the actions of the State of New Mexico, including the executive and legislative branches.
37. This Court has personal jurisdiction over Defendants because Defendants, as New Mexico state and county officials, are residents of New Mexico, do business in New Mexico, and have the requisite minimum contacts with New Mexico necessary to constitutionally permit the Court to exercise jurisdiction. NMSA 1978 § 38-1-16.
38. Venue is proper in this Court pursuant to NMSA 1978 § 38-3-1(G), because the Office of the Secretary of State and Office of the New Mexico Corrections Department and the seat

of the State Government are situated in the City and County of Santa Fe, New Mexico.

FACTUAL ALLEGATIONS

New Mexico Voting Rights Act of 2023

39. On March 30, 2023, Governor Lujan Grisham signed House Bill 4, the New Mexico Voting Rights Act into law. The NMVRA went into effect on July 1, 2023. The NMVRA made numerous, positive changes to New Mexico law with respect to voters with felony convictions.
40. First, the NMVRA established that the voting rights of individuals with felony convictions are restored upon release from incarceration. N.M. Const. art. 7, § 1(A); NMSA 1978 §§ 1-4-24, 1-4-27.1(A).
41. Article 7, Section 1 of the New Mexico Constitution grants the right to vote to all citizens who are qualified electors under federal law, and who meet residency and registration requirements, “except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity.” N.M. Const. art. 7, § 1(A). By passing the NMVRA, the New Mexico Legislature removed almost all statutory restrictions on the right to vote for individuals with felony convictions but maintained a prohibition on voting for such individuals only while they are incarcerated as part of their sentence. NMSA 1978 § 1-4-27.1(A).³
42. It is estimated that, by establishing that the right to vote is restored upon release from prison, the NMVRA restored the voting rights of over 11,000 New Mexicans, including those currently on probation or parole. *See The Sentencing Project, Locked Out 2022: Estimates*

³ “A voter is ineligible to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction. Except as provided in this section, an otherwise qualified elector is ineligible to register to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.” NMSA 1978 § 1-4-27.1(A).

of People Denied Voting Rights Due to a Felony Conviction at 16 (Oct. 2022), <https://www.sentencingproject.org/app/uploads/2024/03/Locked-Out-2022-Estimates-of-People-Denied-Voting.pdf> (estimating that 11,311 New Mexicans were disenfranchised in 2022 while on probation or parole for a felony conviction).

43. The NMVRA also established an affirmative duty for the Corrections Department to provide voter registration opportunities to eligible New Mexicans leaving incarceration. NMSA 1978 § 1-4-27.1(B). The NMVRA specifies that “during the reentry phase of an [individual]’s sentence,” eligible electors “shall be given an opportunity to register to vote or update an existing registration by means of a transaction with the motor vehicle division.” *Id.* Otherwise, “the corrections department shall provide the [individual] an opportunity to register to vote or update an existing registration by means of an online portal provided by the secretary of state or, if such a portal is not available, by means of a paper registration form.” *Id.*
44. Finally, the NMVRA established a requirement for the Corrections Department to share information and necessary data with the Secretary of State for her to meet her obligation to “maintain current information in [SERVIS] on the ineligibility status of an [individual in prison] to vote or register to vote pursuant to this section, as well as an [individual’s] eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.” NMSA 1978 § 1-4-27.1(C).
45. This data sharing requirement led to some administrative changes to the Election Code. Specifically, administrative changes to the Election Code require the Secretary of State to share “information on state and federal felony incarcerations” with county clerks upon receiving this information from “the administrative office of the courts, the department of corrections, the department of justice, or other legally recognized source.” NMAC §

1.10.35.9(D)(1).

Voter Registration Forms and Guidance in New Mexico

46. Eligible New Mexicans can register to vote (1) while making a transaction at a state agency, such as the Motor Vehicle Division (“MVD”), (2) online through the Secretary of State’s website, or (3) by mailing or dropping off a completed voter registration form in-person at their county clerk’s office or the Secretary of State’s Office or (4) with a third-party through a registration drive using the mail-in voter registration forms. NMSA 1978 §§ 1-1-16.1, 1-4-5, 1-4-5.1, 1-4-18.1, 1-4-47, 1-4-48; *see also* 52 U.S.C. § 20504.
47. There are two voter registration forms that New Mexicans can use to register to vote: the New Mexico state voter registration form promulgated by the Secretary of State (the “State Form”) or a federal voter registration form created by the U.S. Election Assistance Commission (the “Federal Form”).
48. Prior to the passage of the NMVRA, the State Form contained the following instructions: “if you have been convicted of a felony and are currently on parole or supervised probation, do not complete this form.” Additionally, it required registrants to “swear/affirm that . . . if I have been convicted of a felony, I have completed all conditions of parole and supervised probation, served the entirety of a sentence or have been granted a pardon by the governor” under penalty of perjury.
49. Despite the changes to the eligibility criteria, this form was still available on Defendant Toulouse Oliver’s website server until January 2025. The only Spanish-language forms maintained by Defendant Toulouse Oliver contained the same incorrect information up until September 20, 2024. While as of September 20, 2024, these outdated forms are no longer

linked directly on the Secretary of State’s “Voting FAQs” webpage,⁴ they were available on the Secretary of State’s website until January 2025⁵ and were the first hits in search engine results related to New Mexico voter registration. Based on information and belief, the old forms are still widely used and in circulation among the county clerks. Pursuant to the Court’s October 8, 2024 Stipulated Order, the Secretary of State Defendants made efforts to systematically remove all of the old registration forms with outdated attestations, instructed that county clerks use only current registration forms that reflect the law in effect as of July 1, 2023, and provided guidance to the clerks instructing them to immediately order the registration forms that reflect the law in effect as of July 1, 2023 but still process any registrations received on the old forms. The parties continue to monitor the Secretary of State’s website for the reappearance of outdated State Forms, consistent with the Court’s February 11, 2025 Order.

50. The erroneous instructions and attestation on the old form confuse would-be registrants and effectively render the form unusable for people on probation or parole, as they require voters to affirm or swear under penalty of perjury that “if [they] have been convicted of a felony, [they] have completed all conditions of parole and supervised probation, served the entirety of a sentence or have been granted a pardon by the governor.” New Mexico Voter Registration Form, New Mexico Secretary of State, <https://portal.sos.state.nm.us/OVR/VRForms/VRFormEnglishFinal.pdf> (old form).
51. Separately, prior to October 2, 2024, the New Mexico state-specific instructions on the Federal Form were not updated to reflect the current eligibility requirements to register to

⁴ See *Voter Registration*, New Mexico Secretary of State, <https://www.sos.nm.gov/voting-and-elections/voting-faqs/voter-registration/> (last visited Sept. 25, 2024).

⁵ See New Mexico Voter Registration Form (English), New Mexico Secretary of State, <https://portal.sos.state.nm.us/OVR/VRForms/VRFormEnglishFinal.pdf> and New Mexico Voter Registration Form (Spanish), New Mexico Secretary of State, <https://portal.sos.state.nm.us/OVR/VRForms/VRFormSpanishFinal.pdf> (last visited Sept. 25, 2024).

vote in New Mexico.⁶

52. The New Mexico state-specific instructions on the Federal Form, prior to October 2, 2024, rendered this form unusable by eligible voters with felony convictions who are on probation or parole. It failed to fully inform these applicants of their true eligibility under New Mexico law. Indeed, the previous New Mexico state-specific instructions on the Federal Form, like the outdated State Form, misled voters as to the applicable qualifications by requiring them to affirm or swear under penalty of perjury that “if [they] have been convicted of a felony, [they] have completed all conditions probation or parole, served the entirety of a sentence or have been granted a pardon by the Governor.” Federal Voter Registration Form, U.S. Election Assistance Comm’n at 16.
53. Defendant Toulouse Oliver has a duty to inform the U.S. Election Assistance Commission (“EAC”), in writing, of changes in the state’s voter eligibility criteria within 30 days of that change so that the instructions on the Federal Form can be updated. 11 C.F.R. § 9428.6(c) (“Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state’s voter eligibility requirements or other information reported under this section.”); *see also* NMSA 1978 § 1-2-1(A) (“The secretary of state is the chief election officer of the state.”).
54. Plaintiff Millions for Prisoners and Plaintiffs’ counsel informed Defendant Toulouse Oliver

⁶ The Federal Form continues to instruct that, “[t]o register in New Mexico you must:

- be a citizen of the United States
- be a resident of the State of New Mexico
- be 18 years of age at the time of the next election
- not have been denied the right to vote by a court of law by reason of mental incapacity and, if I have been convicted of a felony, I have completed all conditions of probation or parole, served the entirety of a sentence or have been granted a pardon by the Governor.”

Federal Voter Registration Form, U.S. Election Assistance Comm’n at 16, https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf (last visited Sept. 25, 2024).

of this requirement to update the EAC of the state's changed voter eligibility criteria multiple times, but she failed to do so until October 1, 2024. As of October 2, 2024, the Federal Form instructions have been updated on the EAC website to accurately reflect state law.

55. Defendant Toulouse Oliver did create an updated version of the State Form at some point prior to July 12, 2024. But until September 20, 2024, this form was found at only one of several locations linking to forms on her website.
56. The newer State Form contains a revised "Attestation of Qualification" that registrant-applicants must sign to register to vote. This attestation now reads:

"I swear/affirm that I am a citizen of the United States and a resident of the state of New Mexico, that I am, or will be at the time of the next election, 18 years of age; and **that I am not currently incarcerated as a result of a felony conviction.** I further swear/affirm that I am authorizing cancellation of any prior registration to vote in the jurisdiction of my prior residence; and that all the information I have provided is correct.

New Mexico Voter Registration Form, New Mexico Secretary of State, <https://portal.sos.state.nm.us/OVR/VRForms/VRFormEnglishFinal-004.pdf> (new form) (emphasis added).

57. This attestation is used by Defendant Toulouse Oliver, Defendant Fuller, Defendant Cooke, and the other 31 county clerks to presume the eligibility of registrant-applicants for other eligibility criteria, including a registrants' U.S. citizen status, residency, and age.
58. Likewise, Defendant Toulouse Oliver, Defendant Fuller, Defendant Cooke, and the other 31 county clerks can and should accept voter registrations from facially eligible voters who attest under penalty of perjury that they are not currently incarcerated as a result of a felony conviction. Absent information establishing that these individuals are *not* eligible, their attestations should create a presumption of eligibility, just as they do when a registrant attests that they are a U.S. citizen. As discussed *supra* ¶¶ 3-5 and *infra* ¶¶ 60-62, a flag in the statewide voter registration electronic management system, SERVIS, for having at some

point been convicted of a felony *is not* information establishing that an individual is not eligible to vote.

Defendants' Improper Implementation of the NMVRA Has Resulted in Improper Denials of Eligible Voters

59. The NMVRA requires that the Corrections Department, under the supervision of Defendant Tafoya Lucero, share records with Defendant Office of the Secretary of State and Defendant Toulouse Oliver so that the Secretary of State can maintain current information sufficient to verify potential voters' eligibility status, *i.e.*, that they are not currently incarcerated. NMSA 1978 § 1-4-27.1(C). Defendant Corrections Department and Defendant Tafoya Lucero (collectively "Corrections Department Defendants") have the information necessary for Secretary of State Defendants to determine whether registrants are currently incarcerated. But upon information and belief, Corrections Department Defendants have not fulfilled their duty under the NMVRA to share the information and data necessary to maintain accurate lists of disenfranchised voters.
60. Upon information and belief, Secretary of State Defendants, Chaves County Clerk Defendants, and Eddy County Clerk Defendants are instead unlawfully relying upon incomplete data in SERVIS to determine the eligibility status of registrant-applicants. The "Judicial Information System" provides election officials with the information that an individual has been convicted of a felony, creating a felony flag on an individual. That information is added to the SERVIS database. Defendant Tafoya Lucero is supposed to deliver information on current incarceration status which when inputted into SERVIS, would allow the system to automatically remove the felony flag if someone has been released or never served prison time for the felony. However, based on information and belief, that information is not being reliably provided. As a result, Secretary of State Defendants, Chaves County Clerk Defendants, and Eddy County Clerk Defendants appear to be using past felony

conviction as a proxy for current incarceration when determining eligibility to register to vote, in contravention of the NMVRA. This is despite the fact that many felony convictions do not involve a sentence of incarceration, and, for those that do, individuals who have completed their term of incarceration are eligible to vote immediately upon release, even if they still have a felony flag in SERVIS.

61. Upon information and belief, data in SERVIS is used to flag any applicant-registrant who may have a felony conviction. These individuals are then sent a denial letter by Chaves County Clerk Defendants, Eddy County Clerk Defendants, and other county clerks stating the registrant-applicant has been marked “ineligible.” At least one individual, Plaintiff Thomas Chavez, a long-time Chaves County voter who updated his registration address after moving within the county, received a denial letter and was removed from the voter rolls apparently based on someone else’s felony conviction.
62. The fact that Individual Plaintiffs—who are not incarcerated and, thus, clearly eligible to vote—have been flagged by the SERVIS database demonstrates that this data is woefully inaccurate for determining which registrant-applicants are ineligible to register because they are currently incarcerated for a felony conviction. It is clear that Defendant Toulouse Oliver is failing in her duty to “maintain current information in the statewide voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate’s eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.” NMSA 1978 § 1-4-27.1(C).
63. Separately, Defendant Toulouse Oliver implemented an erroneous interpretation of the NMVRA through her rulemaking authority. In promulgating NMAC §§ 1.10.35.8–1.10.35.9, as effective August 31, 2023, Defendant Toulouse Oliver misinterpreted NMSA 1978 § 1-

4-27.1(D) as requiring in-person registration for all New Mexicans flagged as having been convicted of a felony, regardless of whether they are eligible to vote.

64. The adopted changes promulgated by Defendant Toulouse Oliver on August 31, 2023 require that “[f]or voter registration forms submitted that have a positive match with a felony record in the voter records system, the county clerk shall confirm the application was submitted personally before a county clerk, the clerk’s authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities.” NMAC § 1.10.35.8(C)(4). Once the clerk confirms this information, “the registration shall be accepted.” *Id.* If this information cannot be confirmed, “the county clerk shall process the application with a status of ‘not eligible’ and a status reason of ‘felony incarceration.’” *Id.* Additionally, “[u]pon release from a correctional facility, a voter or a qualified elector who appears personally before” any of the above-named officials or agencies “is presumed to meet the voting and voter registration eligibility requirement of not being incarcerated.” *Id.* § 1.10.35.9(D)(3).
65. Following the adoption of these rules, Defendant Toulouse Oliver issued additional guidance to county clerks in the summer of 2023. In a document entitled “Legislative Changes to Voter Registration Procedures for Voters Formerly Incarcerated as a Result of a Felony Conviction,” (hereinafter “Summer 2023 Guidance”) Defendant Toulouse Oliver wrongly insinuated that the NMVRA requires in-person registration for New Mexicans with prior felony convictions. The letter states the following:

Under new state statutes, effective July 1, 2023, voters remain ineligible to vote and cannot register to vote while they are incarcerated in a correctional facility as a result of a felony conviction. However, a voter or a qualified elector who appears in-person at a designated state agency is presumed to meet the eligibility requirement of non-imprisonment for voting and registering to vote

regardless of their probation or parole status. **They cannot register without being physically present.**

Summer 2023 Guidance (emphasis added).

66. Defendant Toulouse Oliver’s office further provided example denial letters for county clerks to use when denying voter registration applications from hopeful voters who are flagged as having felony convictions. The letter tells a person that they have been marked as “Not Eligible” because of information that they have been convicted of a felony or, under a more recent update, information that they “have been incarcerated for a felony.”
67. This administrative rule and Summer 2023 Guidance are contrary to New Mexico law. The New Mexico Constitution guarantees the fundamental right to vote to all eligible individuals. And under the NMVRA, all people with felony convictions in New Mexico have the same right to vote as any other New Mexican unless they are currently incarcerated.
68. The NMVRA does provide that individuals *who are erroneously flagged as ineligible because of incarceration* should be presumed eligible if they appear in person to register to vote. But this provision is intended to be a safeguard, not a requirement for in-person registration for all New Mexicans with prior felonies. NMSA 1978 § 1-4-27.1(D). Moreover, it is premised on the Corrections Department delivering and the Secretary of State maintaining accurate information on eligibility. *Id.* § 1-4-27.1(B). As such, situations in which a person is forced to appear in person to prove that they are not incarcerated should be the exception, not the rule.
69. As a result of Defendant Toulouse Oliver’s failure to lawfully implement the NMVRA, eligible New Mexico citizens—including Individual Plaintiffs—are being denied the right to register and to vote, because Defendant Office of the Secretary of State and many county clerks’ offices, including Chaves County Clerk Defendants and Eddy County Clerk Defendants, are improperly using evidence of a past felony conviction as a proxy for current

incarceration status.

70. In correspondence from October-December 2024, Defendant Clerks Fuller and Cooke represented to Plaintiffs that they are indeed relying on Defendant Toulouse Oliver's incorrect interpretation of the NMVRA in NMAC §§ 1.10.35.8 and 1.10.35.9 and prior Summer 2023 Guidance as justification for continuing to deny the voter registrations of eligible individuals who attempt to register by mail, online, or with a third-party voter registration agent. *See infra*, ¶¶ 94-97, 102.
71. The Court's February 11, 2025 Order directs the Secretary of State Defendants to promulgate a proposed new regulation that corrects the existing incorrect regulation concerning the methods by which formerly incarcerated people may register to vote in order to comply with the NMVRA, including NMSA 1978 § 1-4-27.1. The Order directs the Secretary of State Defendants to work with Plaintiffs on the wording of this new regulation and mandates that the final regulation shall be issued and in effect no later than May 31, 2025.
72. On October 9, 2024, counsel for Secretary of State Defendants and Corrections Department Defendants provided Plaintiffs with a list of 941 individuals whose voter registration applications were denied after July 1, 2023, but for whom the state did not have evidence of current incarceration as of October 1, 2024. Because this list is tied to incarceration data the state possessed as of October 1, 2024 and is not being regularly updated as additional individuals finish their sentences, the number of affected eligible individuals who have yet to be re-registered is now likely greater than the 941 listed individuals and will continue to increase as individuals are released from terms of incarceration. Moreover, county clerks like Chaves County Clerk Defendants and Eddy County Clerk Defendants are continuing to deny registrations from eligible individuals who do not register in-person but are erroneously flagged in SERVIS as having a past felony conviction.

Notice to Defendant About Violations of the National Voter Registration Act

73. On October 2, 2023, Plaintiffs' counsel and other interested organizations met with Defendant Toulouse Oliver and her General Counsel to discuss potential National Voter Registration Act ("NVRA") and state law violations resulting from her implementation of the NMVRA and its in-person voter registration requirement for people with past felony convictions.
74. The NVRA requires that all election officials ensure that any eligible voter who timely submits a registration form is registered to vote in an election. 52 U.S.C. § 20507(a)(1). Additionally, "[t]he NVRA requires the states to accept voter registration forms in three ways . . . : registration by mail, registration in person at various official locations . . . , and registration in conjunction with driving licensing." *Charles H. Wesley Educ. Found., Inc. v. Cox.*, 408 F.3d 1349, 1353 (11th Cir. 2005).
75. Furthermore, the EAC has established that a registration form with an oath or affirmation under penalty of perjury attesting to an individual's eligibility is sufficient to establish facial eligibility to vote. *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1194-96 (10th Cir. 2014). Accordingly, by completing a valid voter registration form and swearing or attesting to meeting the standards for voting after a felony conviction, the applicant creates a presumption of eligibility.
76. On July 12, 2024, Plaintiffs' counsel sent Defendant Toulouse Oliver a letter alleging that the in-person registration requirement for individuals with prior felony convictions violates the NVRA, thus making Defendant Toulouse Oliver aware of Plaintiffs' concerns about her Summer 2023 Guidance to registrars, and arguing that she can and must instruct county clerks to accept voter registrations using the State Form from facially eligible voters who attest under penalty of perjury that they are not currently incarcerated for a felony conviction.

Secretary of State Defendants never responded to that letter.

77. Plaintiffs' counsel subsequently contacted Defendant Toulouse Oliver's office on July 24, September 3, and September 16 to schedule a meeting to discuss a solution to the Secretary of State's unlawful policies. Prior to September 6, 2024, Defendant Toulouse Oliver was nonresponsive to Plaintiffs' requests for a meeting.
78. In the weeks before the original Complaint was filed on September 26, 2024, Plaintiffs' counsel talked, via telephone, with General Counsel for Defendant Toulouse Oliver's office about this issue multiple times. However, this discussion brought no resolution beyond finally updating the voter registration forms on the Secretary of State's official website—though again, the old forms had yet to be taken down.

Ongoing Nature of the Violations

79. People with felony convictions are particularly susceptible to misinformation about their eligibility to vote because of longstanding misconceptions that they can never vote again. Confusing laws or legally inaccurate data and guidance from election officials only worsen the problem.
80. Here, the Corrections Department Defendants' ongoing failure to provide accurate data to the Secretary of State has impeded the ability of both agencies to carry out their statutory duties under the NMVRA. The Corrections Department and Defendant Tafoya Lucero plainly possess the records of who the agency is holding in prison or not, and the withholding of this information has led the Secretary of State and Defendant Clerk to piece together outdated and inaccurate information to determine whether registrant-applicants are currently incarcerated.
81. In addition, while the NMVRA was enacted in July 2023, it took Defendant Toulouse Oliver's office until September 20, 2024—and only at the request of Plaintiffs' counsel,

under threat of litigation—to update the Secretary of State’s website to stop directing would-be registrants to an outdated state voter registration form that incorrectly stated that a person convicted of a felony must complete probation and parole prior to becoming eligible to vote. Even still, as discussed *supra*, these outdated forms remained available online for much longer, and may still be available to the public.

82. The harms to Plaintiffs from the incorrect instructions on the State Form—and the Federal Form, as discussed *supra* ¶¶ 7, 46-58—are compounded by Defendant Toulouse Oliver’s Summer 2023 Guidance instructing all county clerks to reject registrants flagged as having past convictions and require them to register in person to overcome the denial. As a consequence, some New Mexico county clerks like Chaves County Clerk Defendants and Eddy County Clerk Defendants have and continue to deny the voter registration applications of eligible New Mexico voters—including Individual Plaintiffs—who wanted to participate in the November 5, 2024 General Election and future elections. At the same time, organizations, like Millions for Prisoners, are being hindered in their ability to help eligible voters with prior felony convictions register to vote.

Proceedings and the Parties’ Agreements Since Filing the Original Complaint

83. After Plaintiffs filed the original Complaint and an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on September 26, and October 1, 2024, respectively, Plaintiffs reached an agreement with the Secretary of State Defendants, Corrections Department Defendants, and now-dismissed Bernalillo County Defendants⁷ to resolve Plaintiffs’ emergency motion. This agreement is memorialized in the Court’s October 8, 2024 Stipulated Order. The parties likewise discussed the agreement with the Court at a status conference on October 8, 2024.

⁷ See *supra* note 1.

84. As part of that agreement, the Secretary of State Defendants agreed to notify the EAC of New Mexico's current voter eligibility requirements in order to update the Federal Form's state-specific instructions, and agreed to systematically remove all of the State Forms with attestations that reflect the law prior to July 1, 2023 from the agency website and replace all of them with registration forms that reflect the law in effect as of July 1, 2023.⁸ Additionally, Secretary of State Defendants and Corrections Department Defendants worked together to remove felony records from SERVIS for individuals who were not currently imprisoned in a correctional facility as part of a sentence for a felony conviction as of October 1, 2024. On a monthly basis, the Corrections Department Defendants have provided an updated current incarceration list to the Secretary of State Defendants, who use that data to update the statewide voter registration system. The Corrections Department Defendants and Secretary of State Defendants have also agreed to long-term collaboration with each other to fulfill their duties under NMSA 1978 § 1-4-27.1(B) and (C), with respect to any data sharing necessary for the implementation of NMSA 1978 § 1-4-27.1, though that work remains ongoing.
85. As part of the October 8, 2024 agreement, the Secretary of State Defendants issued new guidance, discussed *infra* ¶¶ 87-88, to all county clerks and sent affected county clerks, including Chaves County Clerk Defendants and Eddy County Clerk Defendants, a list of individuals wrongfully denied registration, instructing county clerks to reprocess those individuals and register them to vote absent evidence of current incarceration. Presently, the Secretary of State Defendants are working to amend its regulations to comply with the New Mexico Constitution and the NMVRA to make clear that persons with past felony

⁸ The parties continue to monitor the Secretary of State's website for the reappearance of outdated State Forms, consistent with the Court's February 11, 2025 Order.

convictions who are not incarcerated do not have to appear in person in order to register to vote. The Court has ordered the Secretary of State Defendants to promulgate a proposed new regulation no later than March 14, 2025, and the final regulation shall be issued and in effect no later than May 31, 2025. *See* February 11, 2025 Order.

86. A second status conference hearing was held before the Court on January 31, 2025. According to the Court's February 11, 2025 Order, the Corrections Department Defendants shall complete the implementation of their new data system in sufficient time to work with the Secretary of State Defendants to achieve the seamless exchange of data pursuant to NMSA 1978 § 1-4-27.1(B) and (C) by June 30, 2025, with no extensions possible.

Updated Secretary of State Guidance and Ongoing Denial of Registrations by Chaves and Eddy County Clerk Defendants

87. On October 4, 2024, New Mexico State Election Director Mandy Vigil, an employee of the Defendant Office of the Secretary of State, provided updated guidance via email to New Mexico's 33 county clerks with new instructions for "processing voter registration applications that match to the SERVIS felon database." October 8, 2024 Stipulated Order, Ex. A. The New Mexico Secretary of State's Office hosted a webinar on October 7, 2024 to explain the new guidance to all county clerks.
88. The October 4, 2024 guidance indicated: "it is necessary to have a second look at registrations that have been received on or after July 1, 2023, where the voter record was updated to reflect a Not Eligible/Felony conviction Status. Clerks should reprocess and approve those registration applications from individuals who have no evidence of incarceration. If SERVIS indicates the individual is incarcerated, this will require use of the DOC hotline above to confirm." October 8, 2024 Stipulated Order, Ex. A. The Secretary of State's guidance included technical instructions for reprocessing of these applications, including information about a 24-7 hotline operated by Defendant Office of the New Mexico

Corrections Department that each clerk's office was required to use to confirm the registrants' incarceration status while reprocessing applications. The Secretary of State's guidance required county clerks to complete this secondary review by October 18, 2024.

89. On October 8, 2024, Defendant Office of the Secretary of State provided Chaves County Clerk Defendants, Eddy County Clerk Defendants, and all other impacted county clerks a list of individuals whose voter registration applications were denied by that county after July 1, 2023, but for whom the state did not have evidence of current incarceration as of October 1, 2024. For Chaves County, the list contained the registration information for 53 individuals, including Plaintiffs Tucker, Tucker, and Chavez. For Eddy County, the list contained the registration information for 38 individuals, including Plaintiff Dodge Mooney. This information and the list of affected individuals was also shared with Plaintiffs' counsel.
90. Based on registrant data obtained from the Defendant Office of the Secretary of State, Chaves County Clerk Defendants and Eddy County Clerk Defendants failed to implement the October 4, 2024 guidance by the Secretary of State's October 18, 2024 deadline to review and reprocess those applications before the upcoming November 5, 2024 General Election.
91. Twice in late October 2024, Plaintiffs received second and third registrant data sets from Defendant Office of the Secretary of State identifying those individuals whose voter registration applications were denied after July 1, 2023, but for whom the state did not have evidence of incarceration as of October 1, 2024. These second and third data sets provided updates on the registration status of the original 941 individuals in the statewide voter registration file as of October 29 and October 31, 2024, respectively.
92. The October 29 and October 31, 2024 data sets indicated that approximately 42 of the 53 voter records sent to Chaves County Clerk Defendants by the Secretary of State for review on October 9 remained "Not Eligible" in the statewide voter registration file, including those

of Plaintiffs Tucker, Tucker, and Chavez.

93. Similarly, the October 29 and October 31, 2024 data sets indicated that approximately 35 of the 38 voter records sent to Eddy County Clerk Defendants by the Secretary of State for review on October 9 remained “Not Eligible” in the statewide voter registration file, including that of Plaintiff Dodge Mooney.
94. On October 31, 2024, Plaintiffs’ counsel contacted Defendant Chaves County Clerk Fuller via email to inquire whether her office had complied with the Secretary of State’s updated guidance for reprocessing voter records sent to her office, including calling the Corrections Department hotline to confirm whether registrants were in fact not incarcerated and therefore eligible to be added to the list of registered voters.
95. On November 1, 2024, Defendant Cindy Fuller responded to Plaintiffs’ counsels’ inquiry, confirming that she had received the Secretary of State’s October 4, 2024 guidance but that she would not be implementing it or reviewing the 53 registrations identified by the Secretary of State’s Office as possibly wrongfully denied because it was the Secretary of State’s responsibility to determine eligibility, not county clerks. As a result of Defendant Fuller and the Office of the Chaves County Clerk’s inaction, dozens of individuals were denied the opportunity to register to vote and participate in the November 5, 2024 General Election, including Plaintiffs Chavez, Tucker, and Tucker.
96. On November 1, 2024, Plaintiffs’ counsel contacted Defendant Eddy County Clerk Cooke via email to inquire whether her office had complied with the Secretary of State’s updated guidance for reprocessing voter records sent to her office, including calling the Corrections Department hotline to confirm whether registrants were in fact not incarcerated and therefore eligible to be added to the list of registered voters.
97. That same day, Defendant Cooke responded that she understood that the Secretary of State’s

guidance had changed with respect to processing the registrations of individuals with felony convictions, but that she did not feel it was the responsibility of her office to follow this new guidance by contacting the Corrections Department hotline to verify the incarceration status of the 38 registrants she had received from the Secretary of State's Office. In response, Plaintiffs' counsel provided Defendant Cooke with language from the Court's October 8, 2024 Stipulated Order and explained that the prior Summer 2023 guidance from the Secretary of State was unlawful and could not be relied upon by a county clerk to refuse to reprocess the erroneously denied registrations of eligible voters. Defendant Cooke did not respond and upon information and belief, did not review the 38 registrations. As a result of Defendant Cooke's inaction, dozens of individuals were denied the opportunity to register to vote and participate in the November 5, 2024 General Election, including Plaintiff Dodge Mooney.

98. In her November 1, 2024 response email, Defendant Cooke also suggested that same day registration would be available for affected registrants who showed up in person on Election Day with proof of residency in Eddy County. But upon information and belief, Eddy County Clerk Defendants failed to educate their election workers about the eligibility of non-incarcerated individuals with felony convictions. At least one eligible individual was initially rejected by an election worker on the basis of his past felony conviction when he showed up at a polling location in Eddy County and attempted to register same day and vote on November 5, 2024. This individual was one of the 38 registrants sent to Defendant Cooke by the Secretary of State. Defendant Cooke had refused to register this individual because he had not presented himself in person when he initially registered. Yet when he attempted to use same-day registration in person, he was initially refused registration by Eddy County Clerk Defendants' trained election workers. This individual was only able to become a

registered voter and participate in the November 5, 2024 General Election after a different poll worker inquired about his registration status and then provided the correct eligibility information. This incident raises the likelihood that other eligible registrants have been and will be denied the ability to register to vote even when they meet Defendants' unlawful and unnecessary in-person requirement.

99. On November 21, 2024, Plaintiffs received the fourth registrant data set from the Defendant Office of the Secretary of State, which provided an update on the registration status of the original 941 individuals in the statewide voter registration file as of that date. Based on this data and Plaintiffs' efforts to cross-reference the Corrections Department's "Offender Search," which provides incarceration information to the public, it appeared that there were still 33 registrations erroneously marked "Not Eligible" in Chaves County and 27 erroneous "Not Eligible" registrations in Eddy County, including Individual Plaintiffs.
100. On December 20, 2024, Plaintiffs' counsel contacted Defendant Cindy Fuller again to inquire about the 33 individuals who remained "Not Eligible" in the statewide voter registration database, according to the November 21 data set but whom Plaintiffs had reason to believe were not currently incarcerated.
101. Defendant Fuller responded on December 31, 2024, that she had reviewed the 33 registrants but would not activate many of these registrations for a variety of unfounded and unlawful reasons, namely a misinterpretation of the NMVRA that ignored the Secretary of State's October 4, 2024 guidance. Defendant Fuller reiterated her belief that the onus was on state officials, not county clerks to activate the registrations of any eligible individuals who were on this list.
102. In the December 31 email, Defendant Fuller indicated that she would not register 16 online registrants and one mail registrant because she believed they were ineligible to register under

NMSA 1978 § 1-4-27.1(D). She stated she would not register one individual who registered with a third-party voter registration agent because she believed they were ineligible to register under NMSA 1978 § 1-4-27.1(D) and under the Secretary of State's *outdated* Summer 2023 Guidance. Defendant Fuller indicated that she would not register two individuals under NMSA 1978 § 1-4-28 and Section 8(d) of the NVRA because her office had sent them a National Change of Address ("NCOA") card and/or her office had received undeliverable mail from them. Defendant Fuller stated she would not register seven people who "[r]egistered from a penitentiary" because she believed they were ineligible to register under NMSA 1978 § 1-4-27.1(A), ignoring that NMSA 1978 § 1-4-27.1(B) contemplates that incarcerated individuals are allowed to register to vote during their reentry phase and that the Secretary of State's Office holds those registrations in suspended status until those individuals are released from incarceration and once again eligible to be registered voters.

103. In her December 31, 2024 response, Defendant Fuller acknowledged that two individuals who had registered in person at the MVD should be in active status under NMSA 1978 § 1-4-27.1(D) and stated that she would return their status to "Active." Plaintiffs also learned from Defendant Fuller that four of the 33 individuals identified in the December 20 email were already active registrants.

104. In total, Defendant Fuller's December 31, 2024 email confirmed that 29 eligible individuals were likely denied the opportunity to become registered voters and vote in Chaves County in the November 5, 2024 General Election. Because Defendant Fuller did not provide the individual names of any of the registrants she did activate or declined to activate based on her inaccurate interpretation of the NMVRA or for valid list maintenance reasons, Plaintiffs are left to guess which registrants fall into different denial categories based on the limited information available.

105. A fifth and sixth updated registrant data set provided to Plaintiffs by Defendant Office of the Secretary of State indicates that 29 registrants remained “Not Eligible” in Chaves County as of January 21 and February 21, 2025, respectively.
106. With respect to Eddy County, Plaintiffs’ counsel wrote to Defendant Cooke again on December 20, 2024 to inquire about the 27 individuals who remained “Not Eligible” in the statewide voter registration database according to the November 21 registrant data set, but whom Plaintiffs had reason to believe were not currently incarcerated after cross-referencing the Corrections Department’s “Offender Search.” To date, Defendant Cooke has not responded. The updated registrant data from January 21 and February 21, 2025 indicate that all 27 registrants remain marked “Not Eligible” in Eddy County.
107. Neither Chaves County Clerk Defendants nor Eddy County Clerk Defendants have provided any information to demonstrate that they have followed the Secretary of State’s October 4, 2024 guidance, including calling the Corrections Department hotline to confirm the incarceration status of any of these unregistered individuals, including Plaintiffs Thomas Chavez, Olivia Tucker, James Patrick Tucker, and Breanna Dodge Mooney, all of whom are verifiably not incarcerated and, in the case of Plaintiff Chavez, does not even have a felony conviction. These Individual Plaintiffs and other similarly-situated eligible New Mexicans remain unable to exercise their fundamental right to vote due to these Defendant clerks’ misinterpretation of the law and failure to follow their statutorily mandated duties.

CAUSES OF ACTION

COUNT I

Violation of the Right to Vote Under Article II, Sections 2, 3, and 8 of the New Mexico Constitution and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1–41-4A-13

All Plaintiffs Against All Defendants

108. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this

Complaint.

109. Together, Sections 2, 3, and 8 of the New Mexico Constitution’s Bill of Rights guarantee the fundamental right to vote. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 22-28, 539 P.3d 272, 282-83; *see also State ex rel. Walker v. Bridges*, 1921-NMSC-041, ¶ 8, 27 N.M. 169, 199 P. 370 (“[T]he supreme right guaranteed by the Constitution of the state is the right of a citizen to vote at public elections.”).
110. The popular sovereignty clause of the New Mexico Constitution guarantees “[a]ll political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good.” N.M. Const. art. II, § 2.
111. New Mexicans also enjoy the constitutional right of self-government: “The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.” N.M. Const. art. II, § 3.
112. The Freedom of Election clause of the New Mexico Constitution further recognizes that: “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” N.M. Const. art. II, § 8.
113. The fundamental “right to vote is intrinsic to the guarantees embodied in these provisions” of the New Mexico Constitution. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 23, 539 P.3d 272, 282-83. Discriminatory deprivations of this “fundamental personal right or civil liberty . . . ordinarily [] warrant strict scrutiny.” *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 59, 539 P.3d 272, 291 (cleaned up); *see also id.* ¶¶ 22-28, 57-59, 539 P.3d 272, 282-83, 291; *Marrujo v. N.M. State Highway Transp. Dep’t*, 1994-NMSC-116, ¶ 10, 118 N.M. 753, 887 P.2d 747. At a minimum, they should be subject to “heightened scrutiny.” *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9, 358 P.3d 249, 254.

114. Defendants' actions must survive strict scrutiny or at the very least heightened scrutiny.
Defendants fail all applicable standards of review.

115. Under the New Mexico Civil Rights Act:

A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.

NMSA 1978 § 41-4A-3(B).

116. "In any action brought under the New Mexico Civil Rights Act, the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant." *Id.* § 41-4A-5.

117. Defendants "under color of or within the course and scope of the authority" of their public offices, have violated the New Mexico Constitution by depriving Plaintiffs of their fundamental right to vote. *Id.* § 41-4A-3(B).

118. Registering to vote is a necessary predicate to casting a vote and is therefore part and parcel of the fundamental right to vote. *See* NMSA 1978 § 1-1-5 ("voter" means any qualified elector or federal qualified elector *who is registered to vote* under the provisions of the Election Code") (emphasis added); 52 U.S.C. § 10310(c)(1) (defining "vote" and "voting" to encompass "all action necessary to make a vote effective . . . , including, but not limited to, . . . action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly."). Defendants' policies deny or burden Individual Plaintiffs' fundamental right to vote and Millions for Prisoners' right to help register eligible voters with felony convictions in violation of the New Mexico Constitution.

119. Defendant Tafoya Lucero has failed to deliver accurate, current information on incarceration

status and Defendant Toulouse Oliver has failed to maintain information sufficient to assess eligibility based on incarceration status, despite the requirements of the NMVRA to do so. NMSA 1978 § 1-4-27.1(C).

120. Despite knowing that her data is fatally flawed, through rulemaking and guidance, Defendant Toulouse Oliver previously instructed clerks to rely on her data to deny registrations. This policy has deprived Individual Plaintiffs of their fundamental right to vote. Many other New Mexicans have had their voter registrations denied on this basis despite being fully eligible to register and vote. It also harms Millions for Prisoner by not registering the eligible voters that the core group assists, as required by the NMVRA, NMSA 1978 § 1-4-27.1(B), and by denying the right to vote to members of the core group themselves.
121. Defendant Toulouse Oliver's template denial letter is likely to, and has been known to, confuse eligible voters into believing they cannot vote because it states that they have been marked "ineligible."
122. Defendant Toulouse Oliver's requirement that eligible voters—including Individual Plaintiffs and people assisted by Millions for Prisoners—overcome the denial by appearing in person to register is an unnecessary and burdensome hurdle that infringes on the fundamental right to vote. This requirement has and will continue to disenfranchise those denied registrants who are unable to appear in person because of time commitments, distance, physical abilities, or other legitimate reasons. Alternative procedures for verifying eligibility status exist, including accepting the registrants' attestation under penalty of perjury that they are eligible, checking publicly available data from the Correction Department on incarceration status, and/or directly contacting the Correction Department to verify the registrants' incarceration status. These solutions would avoid unnecessarily confusing, burdening, and suppressing the right to vote.

123. Chaves County Clerk Defendants and Eddy County Clerk Defendants have deprived Plaintiffs of their fundamental right to vote by erroneously denying the voter registration applications of Individual Plaintiffs, as well as members of Millions for Prisoners' core group and voters they assist.
124. Because they deny or burden the fundamental right to vote, Defendants' policies and procedures warrant strict or heightened scrutiny, neither of which Defendants can satisfy.
125. Defendants' policies and procedures create a heavy burden and, at times, a complete barrier to Plaintiffs' and other eligible voters' access to the right to vote. The significant burdens that Defendants' policies and procedures impose on the right to vote far exceed any possible countervailing state interest.
126. This case presents matters of substantial public interest and great public importance as the case "involves a constitutional question or affects a fundamental right such as voting," *Republican Party of N.M. v. N.M. Tax'n & Revenue Dep't*, 2012-NMSC-026, ¶ 10, 283 P.3d 853 (citation omitted), and pertains to "the issue of clarifying our Election Code," *Cobb v. State Canvassing Board*, 2006-NMSC-034, ¶ 39, 140 N.M. 77, 140 P.3d 498.
127. Absent actions by Defendants to conform with their constitutional and statutory obligations to preserve the fundamental right to vote, its infringement—an issue of great public importance to all New Mexicans—is likely to recur. *See, e.g., City of Albuquerque v. Campos*, 1974-NMSC-065, ¶ 13, 525 P.2d 848 (when "questions of public importance are likely to recur, additional reason exists for the exercise by this court of its inherent discretion to resolve those questions").
128. Defendants' policies and procedures are not closely related to nor narrowly tailored to a compelling governmental interest, substantially related to an important government interest, or rationally related to a legitimate governmental purpose.

129. Defendants’ policies and procedures are not compelled by New Mexico state law. To the contrary, they defy it. Defendants’ procedures do not improve election integrity because they result in eligible voters being unnecessarily denied. In sum, Defendants maintain voter registration forms that mislead and are unusable for eligible voters and they deny valid voter registrations based on information they know to be inaccurate. These policies cannot be justified.
130. Plaintiffs bring their constitutional claims related to deprivation of the right to vote against Defendants Tafoya Lucero, Toulouse Oliver, Fuller, and Cooke, and their claims under the Civil Rights Act against Defendants Corrections Department, the Office of the Secretary of State, the Office of the Chaves County Clerk and the Office of the Eddy County Clerk.

COUNT II

Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1–41-4A-13

All Plaintiffs, Except Thomas Chavez, Against All Defendants

131. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this Complaint.
132. The New Mexico Constitution guarantees all New Mexicans equal protection and due process. *See* N.M. Const. art. II, § 18 (“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.”).
133. The Equal Protection Clause of the New Mexico Constitution affords rights and protections independent of the United States Constitution. *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 14, 138 N.M. 331, 120 P.3d 413. Government policies that impact an important or fundamental right are subject to review under heightened or strict scrutiny. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 55-59, 539 P.3d 272, 290; *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9, 358 P.3d 249, 254. Additionally, policies that discriminate against a

sensitive or protected class may be subject to heightened scrutiny. *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶¶ 11-13.

134. To survive strict scrutiny, the government must show that a policy is narrowly tailored to achieve a compelling government interest. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 57. To survive intermediate scrutiny, a policy must be “substantially related to an important governmental interest.” *Id.* Here, the challenged policy and procedures both deny or burden a fundamental right *and* discriminate against a sensitive or protected class, and therefore should be subject to strict or heightened scrutiny. Defendants’ policies and procedures are not tailored to achieve any legitimate government interest, so would fail any level of review under the Equal Protection Clause.
135. As discussed *supra*, the New Mexico Constitution guarantees the fundamental right to vote and discriminatory deprivations of this “fundamental personal right or civil liberty ordinarily warrant strict scrutiny.” *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 59 (cleaned up). At a minimum, they should be subject to “heightened scrutiny.” *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9. As described *supra*, Defendants’ policies and procedures create a heavy burden and, at times, a complete barrier to Plaintiffs’ access to the fundamental right to vote, based on their status of having a prior felony conviction. Defendants’ actions discriminate against and single out New Mexicans with past felony convictions. Under election officials’ policies and procedures, the attestation or oath of eligibility on voter registration forms is accepted as sufficient proof of eligibility to vote for purposes of, for example, verifying residence, age, and citizenship status. New Mexicans who have been flagged as having a felony conviction, however, are not able to attest or swear to their eligibility like everyone else. Instead, they are—based on inaccurate data—required to register to vote in person, unlike all other eligible New Mexicans. This policy clearly singles

out New Mexicans with past felony convictions for discriminatory treatment.

136. New Mexicans with felony convictions should be considered a sensitive class for equal protection analysis because, as a class, people with felony convictions are generally “limited in [their] political power or ability to advocate within the political system” based on “external and artificial barriers created by societal prejudice.” *Breen v. Carlsbad Mun. Schs.*, ¶¶ 18, 20. Defendants’ discriminatory treatment of this class is thus subject to at least intermediate scrutiny because the state cannot demonstrate its actions against this sensitive class of eligible voters are “substantially related to an important governmental interest.” *Griego v. Oliver*, 2014-NMSC-003, ¶ 39, 316 P.3d 865, 879-80.
137. In short, the discriminatory nature of Defendants’ in-person registration requirement for voters with felony convictions thus warrants strict scrutiny, which Defendants cannot satisfy. But at a minimum, the infirmities of Defendants’ in-person registration requirement for voters with felony convictions provisions warrants heightened scrutiny, which Defendants likewise cannot satisfy. Whatever the legal standard, Defendants fail it.
138. The significant burdens that Defendants’ policies and procedures impose on the right to vote and equal protection far exceed any possible countervailing state interest. Defendants’ policies and procedures are not closely related to nor narrowly tailored to achieve a compelling governmental interest, nor are they substantially related to an important government interest or even rationally related to a legitimate governmental purpose.
139. Defendants’ actions do not preserve the integrity of the voter rolls, rather, Defendants’ actions lead to more inaccurate voter rolls. Defendants are aware that the data in SERVIS cannot be relied upon as evidence that a person is, in fact, incarcerated and therefore ineligible. That data is therefore not a useful tool to keep ineligible voters off the rolls, instead it harms the integrity of the voter rolls by leading to erroneous denials of eligible

voters. As a result, Defendant Office of the Secretary State’s policy requiring reliance on that list to deny certain voter registrations is not narrowly tailored or even substantially related to that interest. Moreover, there are other pathways available to ensuring that only eligible registrants are added to the rolls—starting with Defendants Tafoya Lucero and the Corrections Department maintaining accurate data to provide to Defendants Toulouse Oliver and the Office of the Secretary of State to maintain accurate records of ineligible voters. Beyond that, the Secretary’s Office could direct county clerks to accept the attestations of eligibility that voters sign under penalty of perjury at face value—as they do for other eligibility criteria and classes of registrants. The Secretary could also direct county clerks to verify the incarceration status of individual registrants directly with the Corrections Department. Finally, Chaves County Clerk Defendants, Eddy County Clerk Defendants, and other county clerks, can take steps to comply with the law, and ensure that eligible individuals with prior felony convictions are able to register to vote.

140. Defendants’ policies and procedures are not compelled by New Mexico state law, in fact, they contravene the direction and promise of the NMVRA.

141. Under the New Mexico Civil Rights Act:

A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.

NMSA 1978 § 41-4A-3(B).

142. “In any action brought under the New Mexico Civil Rights Act, the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant.” NMSA 1978 § 41-4A-5.

143. Defendants “under color of or within the course and scope of the authority” of their public offices, have violated the New Mexico Constitution by depriving Plaintiffs of equal protection. NMSA 1978 § 41-4A-3(B). They have thus clearly also violated the New Mexico Civil Rights Act.
144. Plaintiffs bring their constitutional claims related to deprivation of their right to equal protection against Defendants Tafoya Lucero, Toulouse Oliver, Fuller and Cooke, and their claims under the Civil Rights Act against Defendants Corrections Department, the Office of the Secretary of State, the Office of the Chaves County Clerk, and the Office of the Eddy County Clerk.

COUNT III

Violation of New Mexico Voting Rights Act (New Mexico Declaratory Judgment Act, NMSA 1978 § 44-6-13)

All Plaintiffs Against All Defendants

145. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this Complaint.
146. Under the Declaratory Judgment Act, any New Mexico official “may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof.” NMSA 1978 § 44-6-13.
147. The NMVRA provides that “a voter is ineligible to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.” NMSA 1978 § 1-4-27.1(A).
148. The NMVRA mandates data sharing between certain state agencies to ensure newly eligible voters have access to the ballot and can register to vote. Specifically, state statute provides that:

The Corrections Department shall deliver to the secretary of state information and data necessary to carry out the provisions of this section. The secretary of state shall maintain current information in the statewide voter registration electronic management system [SERVIS] on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate's eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.

NMSA 1978 § 1-4-27.1(C).

149. Defendants Toulouse Oliver and Tafoya Lucero have failed to lawfully implement this provision and therefore have violated, and continue to violate, the NMVRA.
150. Defendant Tafoya Lucero has not delivered to the Secretary of State the “information and data necessary to carry out” the relevant provisions of the NMVRA. To the contrary, Defendant Tafoya Lucero has delivered woefully inaccurate information that has stymied the relevant provisions of the NMVRA.
151. Defendant Toulouse Oliver informed Plaintiffs’ counsel in a meeting on October 2, 2023 that the Corrections Department has not been delivering the necessary data to carry out the provisions in the NMVRA. Failure to comply by one state agency does not excuse another state agency from complying with state law. Defendant Toulouse Oliver has an obligation, under state law, to ensure election and registration matters are being conducted in accordance with the law. *See* NMSA 1978 § 1-2-2(B). Notwithstanding any failures by the Corrections Department, Defendant Toulouse Oliver still directs elections officials to rely on data she knows to be inadequate.
152. Defendant Toulouse Oliver also failed to timely update the federal voter registration form to provide accurate instructions that comply with the NMVRA. And her extreme delay in updating the state registration forms means that the old, erroneous forms are still widely in circulation, misinforming eligible voters.
153. These outdated State Forms erroneously tell applicants on probation or parole they are

- ineligible to register to vote. These forms are thus unusable by eligible voters on probation or parole because they require the registrant to affirm or swear under penalty of perjury that “if [they] have been convicted of a felony, [they] have completed all conditions of parole and supervised probation, served the entirety of a sentence or have been granted a pardon by the governor.” Upon information and belief, the outdated State Form is still in circulation.
154. Until October 2, 2024, the New Mexico-specific instructions on the Federal Form likewise still incorrectly stated that applicants must complete probation and parole or be pardoned to become eligible to register to vote. These forms too were thus unusable by eligible voters on probation or parole.
 155. Defendant Toulouse Oliver has an obligation to comply with the Election Code and she does not have discretionary power to deviate from it. *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 40, 487 P.3d 815 (“[W]e conclude that Respondent had a nondiscretionary duty to follow the primary election procedures set forth in the Election Code, and we cannot order relief that deviates from those procedures.”).
 156. Defendant Toulouse Oliver, Defendant Fuller, and Defendant Cooke are in violation of NMSA 1978 § 1-4-27.1 by denying the registration applications of eligible voters with past felony convictions and requiring them to register in person to overcome those denials.
 157. The NMVRA ensures that otherwise eligible voters with felony convictions have the right to vote, NMSA 1978 § 1-4-27.1(A), and requires that the New Mexico Corrections Department shares records with Defendant Toulouse Oliver’s office so that she can maintain current information sufficient to verify potential voters’ eligibility status. *Id.* § 1-4-27.1(C).
 158. The NMVRA likewise includes a safeguard in the event that the voter registration electronic management system is not accurate—such as by erroneously stating that a person is ineligible by reason of incarceration—that “[n]otwithstanding a person’s status in the

statewide voter registration electronic management system,” they are “presumed to meet the eligibility requirement of non-imprisonment for voting and registering to vote” *Id.* § 1-4-27.1(D). This provision allows an individual wrongly flagged as ineligible to appear in person to prove their eligibility, but it does not, in its plain language, mandate it.

159. Defendant Toulouse Oliver’s adopted administrative code changes, however, turn the safeguard provision into a requirement for all people flagged as having been convicted of a felony, regardless of whether they are eligible to vote. *See* NMAC § 1.10.35.8(C)(4).
160. Defendant Toulouse Oliver has imposed an unlawful in-person registration requirement for individuals formerly incarcerated for a felony conviction.
161. Defendant Toulouse Oliver’s continued failure to update the state-specific instructions on the Federal Form, and her failure to lawfully implement the NMVRA, will lead to more wrongful denials and will disenfranchise more eligible voters.
162. Individual Plaintiffs and the New Mexicans that Plaintiff Millions for Prisoners assists are being wrongfully denied voter registration and are unlawfully being required to register in person due to Defendants’ failures to lawfully implement the NMVRA.
163. Plaintiffs’ claims under the NMVRA are brought against all Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and:

A. Declare that Defendant Toulouse Oliver’s in-person registration requirement for formerly incarcerated, eligible voters violates the New Mexico Constitution, the New Mexico Voting Rights Act, and the New Mexico Civil Rights Act;

B. Temporarily, preliminarily, and permanently enjoin Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them,

from enforcing the in-person registration requirement for eligible voters with prior felony convictions;

C. Order Defendant Toulouse Oliver to issue guidance to all county clerks that they must accept a voter registrant's attestation on a voter registration form that they are not currently incarcerated as evidence of their eligibility to register to vote;

D. Order Defendant Office of the Secretary of State and Defendant Toulouse Oliver to (1) update the Federal Form's instructions to include a statement explaining the new eligibility requirements for people with felony convictions, including those on probation or parole, (2) issue guidance to ensure that only the correct, updated forms are in use by county clerks during early voting and on Election Day, and if necessary provide the clerks with copies of the correct form, and (3) remove the inaccurate forms from all places on her website;

E. Order the Secretary of State Defendants and New Mexico Corrections Department Defendants to fully implement NMSA 1978 § 1-4-27.1(B), including issuing any guidance necessary for the successful registration of qualified electors by county clerks;

F. Order Defendant Toulouse Oliver to issue guidance to all county clerks, including Defendants Fuller and Cooke, instructing them to (1) reprocess all voter registration forms submitted by voters with felony convictions that were denied since July 1, 2023, (2) register the voters with felony convictions who were denied based on unreliable information in SERVIS absent *credible* information *demonstrating* that they are currently incarcerated as obtained through the Corrections Department hotline, and (3) inform the new registrants that they have been registered within a week of the grant of relief;

G. Order Defendant Tafoya Lucero to provide Defendant Toulouse Oliver with accurate and up-to-date lists of all individuals who are currently incarcerated under her supervision on at least a monthly basis;

H. Order Chaves County Clerk Defendants and Eddy County Clerk Defendants to (1) reprocess all voter registration forms submitted by voters with felony convictions that were denied since July 1, 2023, including those from the Individual Plaintiffs, (2) register the voters with felony convictions who were denied based on unreliable information in SERVIS absent *credible* information *demonstrating* that they are currently incarcerated, and (3) inform the new registrants that they have been registered within a week of the grant of relief;

I. Order Chaves County Clerk Defendants and Eddy County Clerk Defendants to comply with the Secretary of State's October 4, 2024 guidance and future guidance related to the processing of voter registrations of applicants who match the SERVIS database;

J. Retain jurisdiction to ensure Defendants' ongoing compliance with the foregoing Orders and issue any and all further Orders that this Court may deem necessary;

K. Award Plaintiffs their reasonable costs and attorneys' fees under the New Mexico Civil Rights Act; and

L. Grant Plaintiffs any and all relief this Court deems just and proper.

Respectfully submitted this 18th day of March, 2025.

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