

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

MILLIONS FOR PRISONERS NEW
MEXICO; TYLER WAYNE JACKSON;
AMBER DAUN SMITH; VIRGIL DIXON;
and CHARLES CADENA,

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; LINDA
STOVER, in her official capacity as County
Clerk for Bernalillo County; and OFFICE OF
THE BERNALILLO COUNTY CLERK,

Defendants.

Case No. D-101-CV-2024-02341

Case assigned to Sanchez-Gagne, Maria

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Millions for Prisoners New Mexico and Plaintiffs Tyler Wayne Jackson, Amber Daun Smith, Virgil Dixon, and Charles Cadena (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-1–41-4A-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) Linda Stover, in her official capacity as County Clerk for Bernalillo County, and (6) the Office of the Bernalillo County Clerk (collectively “Defendants”), all of whom are officials and agencies responsible for voter registration and data sharing to ensure that voters with past felony convictions can access the franchise. Plaintiffs are New Mexicans with past felony convictions—veterans, grandmothers, cub scout moms, hard-working employees, taxpayers, friends, and neighbors—and an organization that represents and assists such New Mexicans, seeking to restore their voting rights and ensure they can vote in the November 5, 2024 General Election.

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 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, over one year later, many potential voters who were enfranchised by the NMVRA have been 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 will flag every registrant who has ever been reported to be convicted of a felony as ineligible unless that person has manually had the felony flag removed or if that person was removed based on information provided by the Correction Department. This means that SERVIS’s felony flags are not limited to those who are actually ineligible because they are currently incarcerated, but instead—as Plaintiffs’ experiences show—include New Mexicans who are on probation or parole as well as individuals who have long completed their entire felony sentences. The

Corrections Department has long failed to provide the necessary data to election officials to verify eligibility and now has 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 form the basis for erroneous denials by Defendants Stover and the Office of the Bernalillo County Clerk, of eligible individuals attempting to register to vote. Defendant Stover, and the other 32 New Mexico county clerks and their offices, improperly use the 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 has 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 and, thus, are unlawful. To overcome these denials, Defendants require eligible registrants with a past felony conviction to register to vote in person at the clerk's office or motor vehicle office. Worse still, county clerks erroneously denying voter registrations and requiring in-person appearances from eligible individuals are acting according to official rules and guidance issued by Defendants Office of the Secretary of State and Toulouse Oliver.
5. Despite knowing that the SERVIS data is inaccurate, Defendants Office of the Secretary of State and Toulouse Oliver have 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 by Defendant Toulouse Oliver, eligible individuals must appear in person to register if they are to overcome any such denial. Defendant Toulouse Oliver has 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—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—and she did so only recently under threat of imminent litigation. 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, the old forms have been and are still widely in circulation; indeed, such outdated forms are still available on the Secretary of State’s own website. Accordingly, even if an eligible voter attempts to register in person or use same-day registration during early voting or on Election Day, there is a substantial risk they will 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. This case raises statutory and constitutional questions of great public importance. 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

11. 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 in McKinley County, Doña Ana County, Lea County, and Santa Fe County.
12. 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.

13. The Millions for Prisoners core group of organizers helps 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.
14. Millions for Prisoners believes 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 has 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.
15. 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 Defendants Stover and the Office of the Bernalillo County Clerk.

Individual Plaintiffs

16. 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 Defendants Stover and 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 would like 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 will again be denied his fundamental right to vote in the November Election—as he has been denied in every election since his first registration attempt in 2014.

17. 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 this year, but she was denied again by Defendants Stover and 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 Defendants Stover and the Office of the Bernalillo County Clerk's office to comply with Defendant Toulouse Oliver's in-person requirement to register. While Plaintiff Smith is now registered to vote, she is moving residences prior to the beginning of early voting for the November Election and so must update her voter registration. If she attempts to update her voter registration online or by mail, she fears she may 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 wants to vote in this 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 may again be denied her fundamental right to vote in the November Election—as she has been for decades.

18. 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 Defendants Stover and 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 Defendants Stover and 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 would like 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 in Vietnam. Thus, he understands the value of civic participation and service. Mr. Dixon would like 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 will be denied his fundamental right to vote in the November Election.

19. 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 Defendants Stover and 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 Defendants Stover and 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 is 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 will again be denied his fundamental right to vote in the November Election.

Defendants

20. 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.
21. 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.
22. 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.

23. Defendant Toulouse Oliver and the Office of the Secretary of State 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).
24. 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
25. 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. 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.

26. 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.
27. Defendant Linda Stover is sued in her official capacity as the County Clerk for Bernalillo County. Defendant Office of the Bernalillo County Clerk is a government agency authorized by state law. *Id.* §§ 4-40-1–10. Defendants Stover and the Office of the Bernalillo County Clerk 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, Defendant Stover and the Office of the Bernalillo County Clerk are responsible for processing the voter registration applications of Individual Plaintiffs and people assisted by the organizers associated with Millions for Prisoners. Defendants Stover and the Office of the Bernalillo County Clerk maintain their office in Bernalillo County, New Mexico.

JURISDICTION AND VENUE

28. 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.

29. 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.
30. 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.
31. 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

32. 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.
33. 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).
34. 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).¹

35. 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 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).
36. 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.*

¹ “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).

37. 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).
38. 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

39. 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.
40. 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”).

41. 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.
42. Despite the changes to the eligibility criteria, this form is still linked on Defendant Toulouse Oliver’s website. 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,² they remain available on the Secretary of State’s website³ and are 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.
43. 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

² 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).

³ 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).

Registration Form, New Mexico Secretary of State, <https://portal.sos.state.nm.us/OVR/VRForms/VRFormEnglishFinal.pdf> (old form).

44. Separately, the New Mexico state-specific instructions on the Federal Form have not yet been updated to reflect the current eligibility requirements to register to vote in New Mexico.⁴
45. The New Mexico state-specific instructions on the Federal Form render this form unusable by eligible voters with felony convictions who are on probation or parole. It fails to fully inform these applicants of their true eligibility under New Mexico law. Indeed, the New Mexico state-specific instructions on the Federal Form, like the outdated State Form, mislead 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.
46. 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)

⁴ 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).

(“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.”).

47. Plaintiff Millions for Prisoners and Plaintiffs’ counsel have informed Defendant Toulouse Oliver of this requirement to update the EAC of the state’s changed voter eligibility criteria multiple times, but she has failed to do so.
48. 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 only found at one location on her website.
49. 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).

50. This attestation is used by Defendant Toulouse Oliver, Defendant Stover, and the other 32 county clerks to presume the eligibility of registrant-applicants for other eligibility criteria, including a registrants’ U.S. citizen status, residency, and age.
51. Likewise, Defendant Toulouse Oliver, Defendant Stover, and the other 32 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* ¶¶ 53-55, 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

52. 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 have the information necessary for Defendant Office of the Secretary of State and Defendant Toulouse Oliver to determine whether registrants are currently incarcerated. But upon information and belief, neither Defendant Corrections Department nor Defendant Tafoya Lucero have fulfilled their duty under the NMVRA to share the information and data necessary to maintain accurate lists of disenfranchised voters.
53. Upon information and belief, Defendant Office of the Secretary of State, Defendant Toulouse Oliver, and Defendant Stover 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, Defendant Office of the Secretary of State, Defendant Toulouse Oliver, and Defendant Stover appear to be using felony conviction as a proxy for current incarceration when determining individuals' 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.

54. 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 Defendant Stover and other county clerks stating the registrant-applicant has been marked "ineligible."
55. 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).

56. Separately, Defendant Toulouse Oliver has implemented an erroneous interpretation of the NMVRA through her rulemaking authority. In promulgating NMAC §§ 1.10.35.8--1.10.35.9, 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.
57. The adopted changes promulgated by Defendant Toulouse Oliver 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).
58. Following the adoption of these rules, Defendant Toulouse Oliver issued additional guidance to county clerks. In a document entitled “Legislative Changes to Voter Registration Procedures for Voters Formerly Incarcerated as a Result of a Felony Conviction,” 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.**” (emphasis added).

59. 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.”
60. This administrative rule and 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.
61. 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.* at § 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.
62. 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 the county clerks' offices, including Defendant Stover's office, are improperly using evidence of a felony conviction as a proxy for current incarceration status.

63. Based on a public records request submitted by Plaintiffs' counsel, since July 1, 2023 when the new rights restoration criteria went into effect, it appears that at least 119 voters living in Bernalillo County alone have been denied registration simply because they had past felony convictions, without regard to current incarceration status.

Notice to Defendant About Violations of the National Voter Registration Act

64. 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.
65. The NVRA requires that all elections 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, "the 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).
66. 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 Com'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.

67. 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 current 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. Defendants have never responded to that letter.
68. 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.
69. In recent weeks, Plaintiffs' counsel has 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 have yet to be taken down.

Ongoing Nature of the Violations

70. 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 themselves only worsen the problem.

71. Here, the Corrections Department and Defendant Tafoya Lucero’s 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.
72. 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 now though, as discussed *supra*, these outdated forms are still available on the Secretary of State’s website and are widely available to the public.
73. The harms to Plaintiffs from the incorrect instructions on the State Form—and the Federal Form, as discussed *supra* ¶¶ 7, 40-50—are compounded by Defendant Toulouse Oliver’s 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, New Mexico’s county clerks like Defendant Stover have and are continuing to deny the voter registration applications of eligible New Mexico voters—including Individual Plaintiffs—who want to participate in the November 5, 2024 General Election. 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.

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

74. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this Complaint.
75. 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.”).
76. 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.
77. 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.
78. 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.
79. 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; *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.

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

81. 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).

82. “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.

83. 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).

84. 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.

85. 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).
86. Despite knowing that her data is fatally flawed, through rulemaking and guidance, Defendant Toulouse Oliver instructs clerks to rely on it 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.
87. 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.”
88. 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.

89. Defendant Stover has 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.
90. 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.
91. 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.
92. 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.
93. 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.

94. Plaintiffs bring their constitutional claims related to deprivation of the right to vote against Defendants Tafoya Lucero, Toulouse Oliver, and Stover, and their claims under the Civil Rights Act against Defendants Corrections Department, the Office of the Secretary of State, and the Office of the Bernalillo 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

95. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this Complaint.
96. 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.”).
97. 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, 138 N.M. 331, ¶ 14, 120 P.3d 413 (2005). 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, 29; *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*, at ¶ 11-13.
98. 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.

99. 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, 539 P.3d 272, 291 (cleaned up). At a minimum, they should be subject to “heightened scrutiny.” *Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 9, 358 P.3d 249, 254. 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.
100. 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.*, at ¶¶ 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.

101. 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.
102. 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.
103. 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, Defendants Stover and the Office of the Bernalillo County Clerk, 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.

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

105. 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).

106. “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.

107. 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.
108. Plaintiffs bring their constitutional claims related to deprivation of their right to equal protection against Defendants Tafoya Lucero, Toulouse Oliver, and Stover, and their claims under the Civil Rights Act against Defendants Corrections Department, the Office of the Secretary of State, and the Office of the Bernalillo County Clerk.

COUNT III

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

109. Plaintiffs reiterate and reincorporate by reference the factual allegations set forth in this Complaint.
110. 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.
111. 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).
112. 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).

113. Defendants Toulouse Oliver and Tafoya Lucero's have failed to lawfully implement this provision and therefore have violated, and continue to violate, the NMVRA.
114. 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.
115. 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.
116. Defendant Toulouse Oliver has also failed to 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.

117. 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.”
118. The New Mexico-specific instructions on the Federal Form likewise still incorrectly state that applicants must complete probation and parole or be pardoned to become eligible to register to vote. These forms too are thus unusable by eligible voters on probation or parole.
119. 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, 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.”).
120. Defendant Toulouse Oliver and Defendant Stover 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.
121. 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).
122. 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.

123. 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).
124. Defendant Toulouse Oliver has imposed an unlawful in-person registration requirement for individuals formerly incarcerated for a felony conviction.
125. 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.
126. 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.
127. 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 Defendant Toulouse Oliver to issue guidance to all county clerks, including Defendant Stover, 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, and (3) inform the new registrants that they have been registered within a week of the grant of relief;

F. 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;

G. Order Defendant Stover 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;

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

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

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

Respectfully submitted this 26th day of September, 2024.

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**pro hac vice application forthcoming*