



RAÚL TORREZ
ATTORNEY GENERAL

April 13, 2023

Mr. Christopher M. Wolpert
Clerk of the Court
United States Court of Appeals
for the Tenth Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, Colorado 80257

Re: Voter Reference Foundation, LLC v. Torrez, No. 22-2101

Dear Mr. Wolpert,

Pursuant to Federal Rule of Appellate Procedure 28(j), I provide the Court with notice of New Mexico's enactment of House Bill 4 (2023) ("HB 4").¹

HB 4 amends N.M. Stat. Ann. § 1-4-5.6, one of the provisions of New Mexico's Election Code at issue in this appeal. Specifically, HB 4 revises the Election Code's description of what constitutes the "[u]nlawful use of voter data" to include "causing voter data ... that identifies ... a specific voter or the voter's name, mailing or residence address to be made publicly available on the internet" HB 4, § 3.

While pending, HB 4 was mentioned in Voter Reference's Answer Brief (p. 8, n.4) and New Mexico's Reply Brief (p. 5 & n.2).² The enacted version of the bill strengthens the State's appeal in two ways. First, the explicit prohibition on posting voter data online provides a basis for any potential prosecution of Voter Reference independent of the Secretary of State referral that the district court held to be a prior restraint. See Opening Br. at 34 (describing

¹ The enacted bill is available at <https://www.nmlegis.gov/Sessions/23%20Regular/final/HB0004.pdf>.

² Senate Bill 180, which makes confidential public officials' home addresses and is mentioned in New Mexico's Reply Brief (p. 27), also has been chaptered in law. <https://www.nmlegis.gov/Sessions/23%20Regular/final/SB0180.pdf>

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Attorney General's independent prosecutorial discretion). Such independent, future prosecutions under the amended Section 1-4-5.6 are improperly enjoined by the preliminary injunction.

Second, HB 4's revision of the Election Code to make expressly clear that a party may not post voter data online will render moot Voter Reference's claims that the Secretary's investigative referral constitutes a prior restraint. Once HB 4 is in effect,³ the existence of Section 1-4-5.6's prohibition on posting voter data will deter, presumably, Voter Reference from placing New Mexico's voter data on its website. Any chilled speech will not be traceable to the Secretary's referral or alleged viewpoint discrimination, but the statute itself. *California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (plaintiff must establish injury fairly traceable to the defendant's allegedly unlawful conduct).

Respectfully Submitted,

/s/ Nicholas M. Sydow

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cc: All Counsel of Record (via CM/ECF)

³ The relevant provisions of HB 4 are effective July 1. HB 4, § 25(a).