



Graves Garrett LLC

April 19, 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 FRAP 28(j), I write in response to Appellants' April 13, 2023 notice of supplemental authority.

The passage of HB 4<sup>1</sup> has no bearing on this appeal.

Appellants concede this amendment substantively changes New Mexico law regarding what constitutes "unlawful use of voter data" by changing the language of §1-4-5.6 to match the meaning for which Appellants had previously argued. Appellants also concede §1-4-5.6, as amended, will deter speech, particularly VRF's speech.

Appellants contend this deterrence is acceptable because it will now arise from the statute's explicit text rather than from Appellants' much-contested interpretation of the old law. But the amendment cannot remedy Appellants' past retaliation or continuing threats to use the old law to prosecute VRF for its past conduct. Those constitutional injuries remain redressable by doing exactly what the District Court did: issuing a narrow injunction enjoining Appellants from "prosecuting [VRF] under N.M.S.A. §§ 1-4-5.5 or 1-4-5.6 for publishing data it already received from Local Labs." Doc 51, p. 210.

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<sup>1</sup> HB 4 was signed by the Governor but does not become effective until July 1.



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Appellants also contend “future prosecutions under the amended §1-4-5.6 are improperly enjoined by the preliminary injunction.” Yet the injunction makes no reference to future actions under the amended statute. And as Appellants are aware, VRF is not currently posting New Mexico data and will not do so absent a court order. If Appellants suggest that they could prosecute VRF under the revised §1-4-5.6 based on speech that occurred pre-amendment, this Court can and should swiftly reject that argument.

Both VRF and Appellants recently filed motions for summary judgment which, among other things, address the impact (if any) of HB 4. The parties’ briefing places HB 4 within the context of facts and law that were not before the District Court when it issued its preliminary junction, including new conduct and admissions by the Appellants, and the National Voter Registration Act of 1993. On this expanded record, the District Court will soon address in the first instance whether HB 4 has any bearing on the outcome of this litigation.

Respectfully Submitted,

/s/Edward D. Greim

Edward D. Greim

Counsel for Appellee Voter Reference Foundation, LLC

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