

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF BERNALILLO
3 STATE OF NEW MEXICO

4 EMILY GARCIA, FRANCISCO
5 MARTINEZ, ANTHONY PEDREGO, on
6 behalf of themselves and all others
7 similarly situated, and JENAIS GRIEGO,

8 Plaintiffs,

9 v.

10 JUSTINE FOX-YOUNG, AL ROMERO,
11 and JOHN/JANE DOES,

12 Defendants.

CLASS ACTION

13 **COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF**

14 Plaintiffs Emily Garcia, Francisco Martinez, and Anthony Pedrego are three of
15 many private individuals whose confidential information (dates of birth and social
16 security numbers) on their voter registrations was obtained, copied, conveyed and/or used
17 by Defendants Fox-Young and John/Jane Does as representatives of the Republican Party
18 of New Mexico. Specifically, press packets given to the media by Defendants at an
19 October 16, 2008, press conference disclosed confidential dates of birth. The press
20 packets also evidenced the fact that voters' social security numbers had been copied and
21 used by Defendants Doe to run credit checks or other background checks on Plaintiffs.

22 Defendant Al Romero is a private investigator who used the confidential
23 information to engage in harassing acts against Plaintiff Garcia and her granddaughter,
24 Jenais Griego, in violation of the state constitutional and statutory protections against
25 voter intimidation.

1 Plaintiffs bring claims sounding in tort to remedy the unlawful invasion of their
2 privacy and other unlawful acts. Plaintiffs also seek declaratory and injunctive relief to
3 enjoin the unlawful conduct and to obtain return of all documents containing confidential
4 information.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over all causes of action asserted herein
7 pursuant to the New Mexico Constitution, the New Mexico Declaratory Judgment Act,
8 NMSA 1978, §§ 44-6-1 to 44-6-15 (1975), and common law.

9 2. Venue is proper pursuant to NMSA 1978, § 38-3-1 (1988). All acts
10 complained of herein occurred in Bernalillo County, New Mexico. The claims for
11 injunctive relief are brought pursuant to NMRA 2008 Rules 1-057 and 1-066, and this
12 Court's inherent power in equity.

13 **PARTIES**

14 3. Plaintiff Emily Garcia resides in Bernalillo County, New Mexico. Ms.
15 Garcia registered to vote in Bernalillo County in 2005.

16 4. Plaintiff Jenais Griego resides in Bernalillo County, New Mexico. She is
17 the granddaughter of Plaintiff Emily Garcia.

18 5. Plaintiff Francisco Martinez resides in Bernalillo County, New Mexico.
19 He registered to vote in Bernalillo County in 2008.

20 6. Plaintiff Anthony Pedrego resides in Bernalillo County, New Mexico. He
21 registered to vote in Bernalillo County in 2008.

22 7. Defendant Justine Fox-Young resides in Bernalillo County, New Mexico.
23 She is sued in her individual capacity.

1 13. Defendant Fox-Young gave press packets to members of the media. The
2 press packets evidenced the fact that Defendant Does, apparently on behalf of the
3 Republican Party of New Mexico, had copied and used the social security numbers of the
4 92 voters, allegedly to attempt to verify the validity of the registrations.

5 14. Upon information, Defendants Fox-Young and Does obtained copies of
6 voter registration cards with non-redacted confidential personal information from a
7 County Clerk's office within the State of New Mexico.

8 15. All of the voter registration information provided by Defendant Fox-
9 Young in the press packet was from voters registered to vote in Bernalillo County.

10 16. At the aforementioned press conference, Defendant Fox-Young claimed
11 that 28 of the 92 registrations were suspect and that many of the voter registrations used
12 social security numbers of people other than the registrant's.

13 17. According to the press packet and the statements of Defendant Fox-
14 Young, Defendant Does ran credit checks and driver's license checks and/or other
15 identity/background checks using voters' social security numbers and dates of birth.

16 18. From the press packet, it is apparent that Defendants Doe copied and used
17 the social security numbers of Plaintiffs Garcia, Martinez and Pedrego.

18 19. Defendants' allegations regarding the social security numbers of Plaintiffs
19 Garcia, Martinez and Pedrego are inaccurate and their voter registrations are legal.

20 20. In the press packets, Defendants Fox-Young and Doe unlawfully
21 conveyed the dates of birth from the voter registrations of Plaintiffs Garcia, Martinez and
22 Pedrego.

1 class: all private individuals whose dates of birth or social security numbers, on their
2 voter registration cards, was obtained, copied, conveyed and/or used by Defendants.

3 38. The proposed Class is so numerous that the individual joinder of all its
4 members in one action is impracticable. While the exact number and the identities of
5 Class members are unknown at this time, the voter registrant Class size consists of at
6 least 92 individuals.

7 39. Common questions of law and fact arising out of the claims at issue exist
8 as to all members of the class and predominate over any individual issues. These
9 common legal and factual questions include the issue of unlawful copying, conveying
10 and use of class members' confidential social security numbers and dates of birth.

11 40. The claims of Plaintiffs Garcia, Martinez and Pedrego are typical of the
12 claims of all class members. Plaintiffs Garcia, Martinez and Pedrego have suffered the
13 same invasion of privacy as all other class members.

14 41. Plaintiffs Garcia, Martinez and Pedrego will fairly and adequately protect
15 the interests of all class members, in that they have no irreconcilable conflicts with or
16 interests materially antagonistic to those of the other class members.

17 42. Plaintiffs have retained counsel experienced in the prosecution of class
18 actions and the balancing of personal privacy rights against public disclosure.

19 43. To the extent that it is an element for establishing class certification for
20 certain causes of action, a class action is superior to other available methods for the fair
21 and efficient group-wide adjudication of this controversy and, as applicable, possesses
22 substantial benefits. Individual joinder of all members of the class is impracticable, and
23 no other group method of adjudication of all claims asserted herein is more efficient and
24 manageable while at the same time providing all the remedies available to remedy the

1 invasion of their right to privacy. Individualized litigation would also present the risk of
2 varying, inconsistent, or contradictory judgments and would magnify the delay and
3 expense to all parties and to the court system resulting from multiple adjudications of the
4 same issues. The conduct of this action as a class action presents fewer management
5 difficulties, conserves the resources of the parties and the court system, and better
6 protects the rights of all parties as compared to other methods for the group-wide
7 adjudication of this controversy. Thus, both the parties and the Court achieve substantial
8 benefits from the prosecution of this action on a class-wide basis by avoiding the burden
9 of multiple cases involving identical claims.

10 44. Plaintiffs contend that Defendants have invaded the privacy of all class
11 members, conspired to do so, and violated N.M. const. art II, § 8, NMSA 1978, § 1-20-14
12 and §1-20-1.

13 **COUNT ONE**

14 **(INVASION OF PRIVACY - DEFENDANTS**
15 **FOX-YOUNG and DOES)**

16 45. Plaintiffs Garcia, Martinez and Pedrego on their own behalf and on behalf
17 of the class members reallege and incorporate by reference the foregoing paragraphs as
18 though set forth in full.

19 46. Plaintiffs Garcia, Martinez and Pedrego and all persons similarly situated
20 have a legally recognized privacy interest and a reasonable expectation of privacy in
21 protecting their dates of birth and social security numbers, from public disclosure without
22 their consent, and such disclosure represents a serious invasion of their privacy.

23 47. In addition to the legally recognized privacy interest and reasonable
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1 expectation of privacy in protecting their dates of birth and social security numbers,
2 Plaintiffs Garcia, Martinez and Pedrego and all persons similarly situated have a legally
3 recognized privacy interest and a reasonable expectation of privacy in protecting their
4 personal information, including their names, addresses, and telephone numbers, from
5 public disclosure on the same document as their dates of birth and/or social security
6 numbers, without their consent, and such disclosure represents a serious invasion of their
7 privacy.

8 48. By unlawfully obtaining, copying, conveying, and using the confidential
9 personal information of Plaintiffs Garcia, Martinez and Pedrego and all persons similarly
10 situated, and publicly disclosing the confidential personal information, Defendants are
11 liable for the tort of invasion of privacy.

12 49. As a direct and proximate cause of the conduct of Defendants, Plaintiffs
13 and those similarly situated to them have sustained harm for which they are entitled to
14 compensatory damages.

15 50. Defendants acted in a willful, malicious, intentional and unlawful manner,
16 and in reckless disregard of Plaintiffs' rights and the rights of those similarly situated to
17 them, and Plaintiffs and those similarly situated to them demand and are entitled to
18 exemplary or punitive damages.

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1 Plaintiffs Garcia and Griego have sustained harm for which they are entitled to
2 compensatory damages.

3 74. Defendant Romero acted in a willful, malicious, intentional and unlawful
4 manner, and in reckless disregard of the rights of Plaintiffs Garcia and Griego, and
5 Plaintiffs Garcia and Griego are entitled to exemplary or punitive damages.

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7 **COUNT SIX**

8 **(DECLARATORY AND INJUNCTIVE RELIEF**
9 **- ALL DEFENDANTS)**

10 75. Plaintiffs on their own behalf and on behalf of the class members reallege
11 and incorporate by reference the foregoing paragraphs as though set forth in full.

12 76. N.M. const. art II, § 8 provides:

13 All elections shall be free and open, and no power, civil or military, shall at any
14 time interfere to prevent the free exercise of the right of suffrage.

15 77. NMSA 1978, § 1-20-14 provides:

16 Intimidation consists of inducing or attempting to induce fear in any member of a
17 precinct board, voter, challenger or watcher by use of or threatened use of force,
18 violence, infliction of damage, harm or loss or any form of economic retaliation,
19 upon any voter, precinct board member, challenger or watcher for the purpose of
20 impeding or preventing the free exercise of the elective franchise or the impartial
21 administration of the election or Election Code [Chapter 1 NMSA 1978].
22 Whoever commits intimidation is guilty of a fourth degree felony.

23 78. NMSA 1978, § 1-20-15 provides

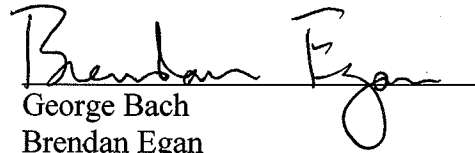
24 Conspiracy to violate the Election Code [Chapter 1 NMSA 1978] consists of
25 knowingly combining, uniting or agreeing with any other person to omit any duty
or commit any act, the omission of which duty, or combination of such act, would
by the provisions of the Election Code constitute a fourth degree felony. Whoever
commits conspiracy to violate the Election Code is guilty of a fourth degree
felony.

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- 7. compensatory and punitive damages against all Defendants jointly and severally;
- 8. pre- and post-judgment interest as allowed by law;
- 9. costs and attorney fees as may be appropriate under applicable law; and
- 10. such other and further relief as the Court deems just and proper.

Dated this 27th day of October 2008.

ACLU of NEW MEXICO



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PROJECT VOTE

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