New Mexico U.S. House District 2, Impoundment of Absentee Ballots and Related Documents

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Introduction

On November 16, 2018, the Yvette Herrell campaign sought permission from a court to impound all Doña Ana County absentee ballots and related documents based on statistical anomalies in the election returns and incident reports of irregularities from voters. The impoundment process commenced on December 4, following the conclusion of the statewide canvass.[1]

Significant Increase in Absentee Voting in 2018

In the 2018 General Election in Congressional District 2, there was an extraordinary amount of absentee voting relative to past election cycles. In Doña Ana County, for example, there were 11,995 absentee ballots issued in the 2018 General with 8,579 returned; by comparison, two years prior, in the 2016 presidential-election year, there were 3,456 absentee ballots cast. Absentee voting in Doña Ana county increased by 148% from the presidential election to the midterm election.

Absentee Voting in the CD2 Race in 2018 and prior elections

In the CD2 race, there were 199,256 votes counted. Districtwide, Yvette Herrell won the Election Day and Early Voting ("EV/ED") by a margin of 2.4%. However, there were 26,844 votes cast by absentee ballot districtwide, and Torres-Small won that universe of votes by a margin of 10.4% (an overall change of 13.11% from the in-person vote split).

In Doña Ana County, in the EV/ED, Torres-Small received 62.5% of the vote, but in absentee she received 77.8%, winning absentee ballots by a margin of 6,551 to 1,774. The Doña Ana County total of 8,425 absentee votes represented 31.4% of the 26,844 absentee ballots cast districtwide.

[1] The New Mexico Secretary of State and Attorney General moved for a dismissal of the petition and objected to the commencement of the impoundment until after the completion of the state canvass. They made their motion to dismiss the request despite the fact that the Secretary of State's office had advised Herrell's counsel that, of the seven categories of impoundable documents listed in § 1-14-8, it would only need the tally sheets to complete the canvass.

In Eddy County, Torres-Small only received 30.9% of the EV/ED vote (she lost by over a two to one margin), but she won the absentee voting with 54.7% of the vote. The same anomaly occurred in both Otero and Sierra Counties — both unique and significant especially in Otero County because Herrell lost her home county in the absentee vote despite a sizeable victory in Election Day and early voting.

These anomalies are not simply organic. Reviewing the historical returns in the CD2 district, over the last five election cycles, the same degrees of variation between absentee votes and EV/ED votes do not exist in CD2 in any cycle to the degree found in the 2018 race.[2]

The NM Voter ID Requirement is Not Being Applied to Absentee Ballots

In the course of the impoundment, the campaign learned that absentee ballots in New Mexico are not subjected to the statutory voter ID requirement that every other type of voting — early, absentee in-person, Election Day and provisional — requires, which is the voter's name, registration address and year of birth. Absentee ballot outer envelopes copied in the impoundment contained significant omissions and errors in the voter ID requirements as detailed below.

Issues Associated with Ballot Security & Statutory Checks and Balances

The impoundment identified issues associated with the data contained in the absentee register, including 577 ballots marked as having been received after 7 p.m. on Election Day. The receipts issued by the Absentee Board to the County Clerk for receipt of ballots are short by 1086 ballots, and there are no recorded seal numbers for various ballot boxes at the close of the days as the absentee ballots were being handled by the absentee precinct board as detailed below.

Evidence of Fraud or Misleading Practices and Voter Disenfranchisement

While the high number of absentee ballots is definitely the result of very well organized, and legal, get out the vote programs for absentee ballots by the campaigns and other third party groups, the significantly high number of absentee ballots that were not returned, coupled with complaints from voters who went to vote and learned that they were shown as having requested an absentee ballot, indicates that voters may have actually been disenfranchised by those activities, through misleading or fraudulent practices. Additionally, the county clerk's office rejected well over 2,000 absentee ballot applications because of errors and omissions in the voter ID, as well as a large number of duplicate applications. The county clerk's office rejected applications for ballots because the voter had already voted in-person, or an absentee ballot had already been returned.

[2] In some counties in prior elections, absentee in-person voters were placed in the absentee category rather than the early vote category as they are in 2018, giving the appearance of a higher absentee turnout.

Issue 1: Voter ID

A. Voter ID Requirement in New Mexico: § 1-1-24

As used in the Election Code [Chapter 1 NMSA 1978], "required voter identification" means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:

> *(1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration; or*
>
> *(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or*

B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix.

B. Statutory Requirements for Voter Identification on Absentee Ballot Applications

The NM Election Code prescribes the requirements for voter ID on absentee ballot applications. Section 1-6-4 provides for the voter ID requirement:

A. Application by a voter for an absentee ballot shall be made only on a paper form or its electronic equivalent as prescribed by the secretary of state. The form shall identify the applicant and contain information to establish the applicant's qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

B. Each application for an absentee ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants who have registered by mail and at that time did not provide acceptable identification. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

Section 1-6-5 addresses how the county clerk's office handles an absentee ballot application. It provides:

> *A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, and if the voter is a uniformed service voter or an overseas voter. If the applicant is a uniformed-service voter or overseas voter, the application shall be processed pursuant to the Uniform Military and Overseas Voters Act [1-6B-1 through 1-6B-17 NMSA 1978].*
>
> *B. If the applicant does not have a valid certificate of registration on file in the county, an absentee ballot shall not be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.*
>
> *C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of the application and, if rejected, shall explain why the application was rejected.*
>
> *D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.*
>
> *E. If the applicant has on file with the county a valid certificate of registration, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.*

C. Handling of Absentee Ballot Applications by the Doña County Clerk's Office

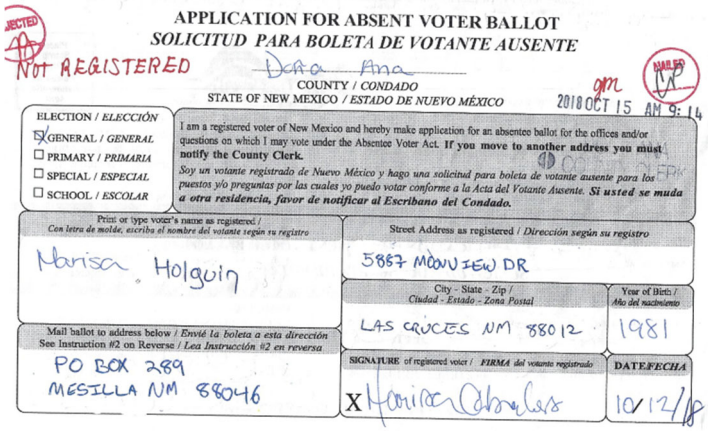
The Doña Ana county clerk's office, in accordance with 1-6-4(B) above, required that each absentee ballot application have the voter's printed name, registration address, year of birth, and signature. All four of these data points are explicitly required to "constitute the required form of identification" (1-6-4(B)) despite the language in Section 1-6-5 that makes reference to only one reason for marking the application "rejected" — that being that the voter does not have a valid certificate of registration on file.

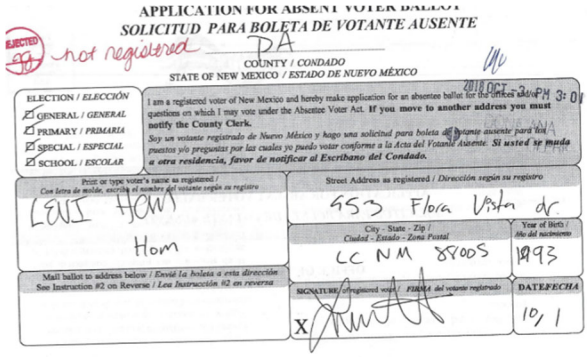
In fact, in the impoundment process, the county clerk's office provided copies of 1,771 rejected absentee applications to the Herrell campaign (even though the County Clerk's absentee register only lists 531 rejected applications). The reasons for the rejection of the applications are noted on each rejected application in red pen by the County Clerk's staff members. In the 1,771 rejected applications, the clerk's staff cited a total of at least 12 different reasons for rejecting the applications. Those reasons are listed in three separate sections.

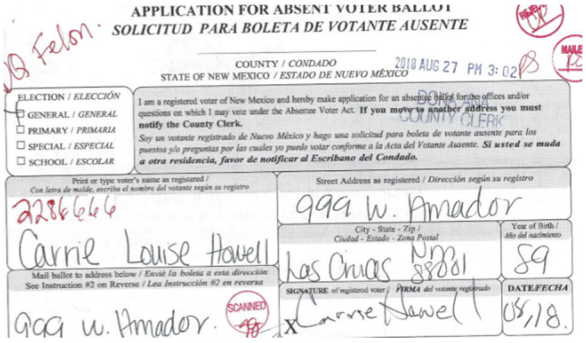
First, there are three grounds for rejection listed in Section 1-6-5 (B):

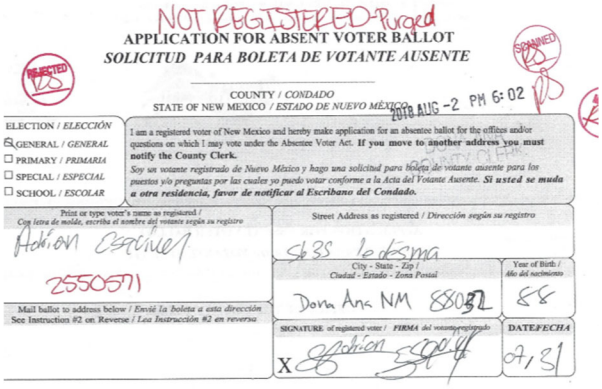
1. Voter not registered
2. Voter has been purged
3. Felon /Not Eligible

Here are examples of each:







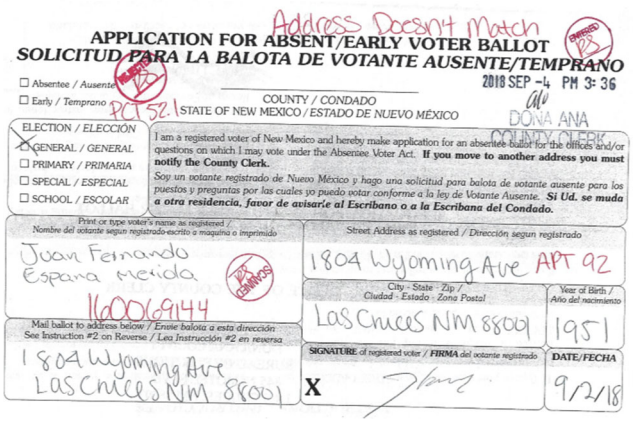


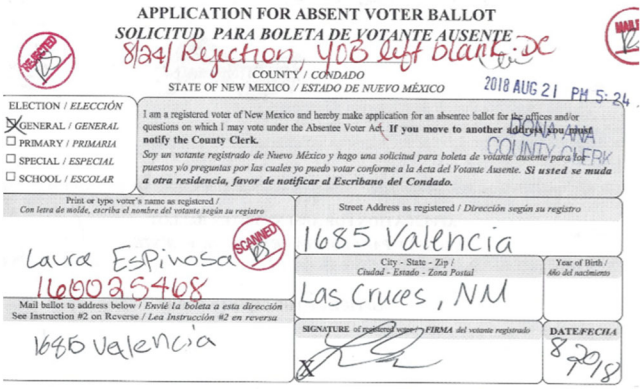
Second, seven additional requirements listed in Section 1-6-4(B) for voter ID:

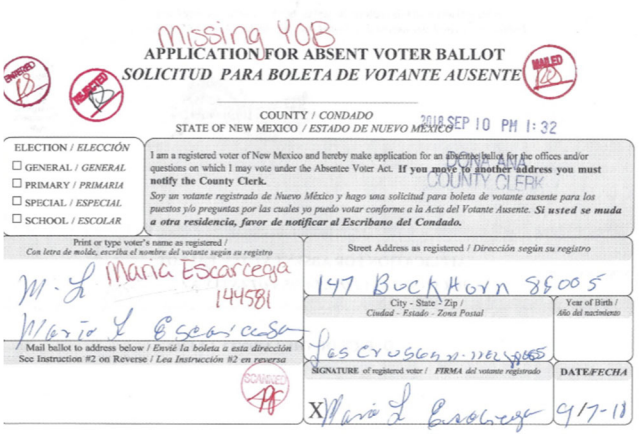
1. Registration Address does not match voter registration
2. No registration address provided
3. Wrong year of birth

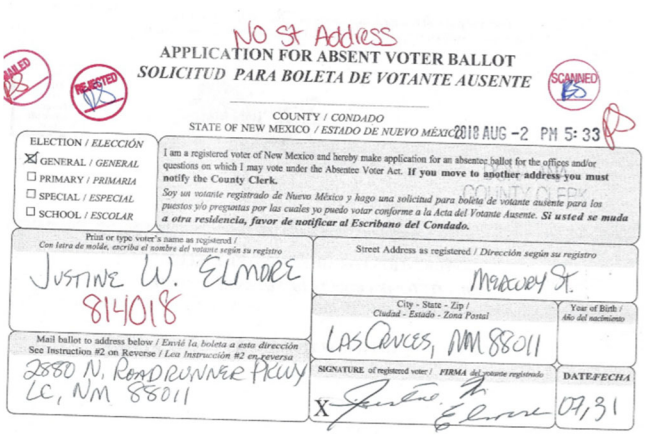
4. No year of birth provided
5. Name does not match voter registration
6. Application not signed
7. No physical address provided (P.O. Box used as registration address)

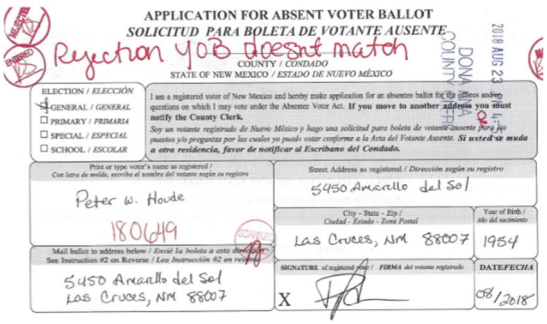
Here are some examples:

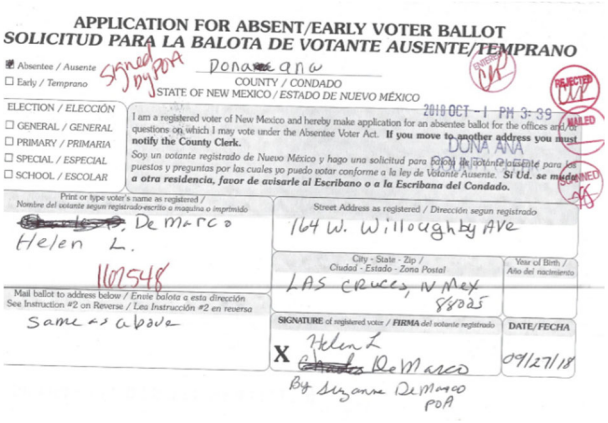


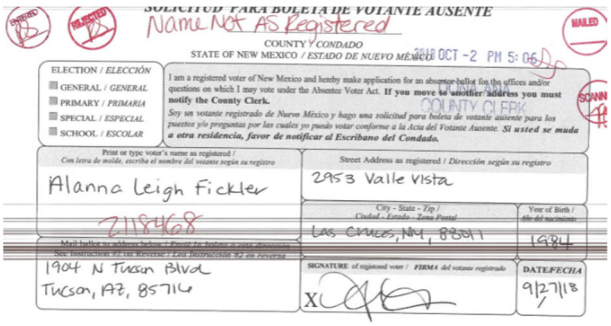


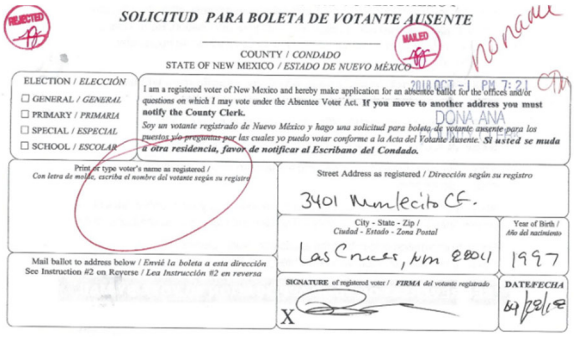





APPLICATION FOR ABSENT VOTER BALLOT
SOLICITUD PARA BOLETA DE VOTANTE AUSENTE
Rejection YOB doesn't match
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
ELECTION / ELECCIÓN
☐ GENERAL / GENERAL
☐ PRIMARY / PRIMARIA
☐ SPECIAL / ESPECIAL
☐ SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la Acta del Votante Ausente. Si usted se muda a otra residencia, favor de notificar al Escribano del Condado.
Print or type voter's name as registered / Con letra de molde, escriba el nombre del votante según su registro: Peter W. Houde
Street Address as registered / Dirección según su registro: 5450 Arcallo del Sol
180649
City - State - Zip / Ciudad - Estado - Zona Postal: Las Cruces, NM 88007
Year of Birth / Año del nacimiento: 1954
Mail ballot to address below / Envié la boleta a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reverso: 5450 Arcallo del Sol Las Cruces, NM 88007
SIGNATURE of registered voter / FIRMA del votante registrado: X
DATE/FECHA: 08/1/2018
2018 AUG 23
SCANNED
REJECTED

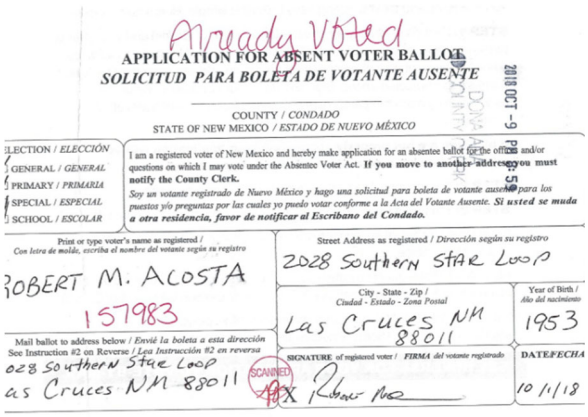

APPLICATION FOR ABSENT/EARLY VOTER BALLOT
SOLICITUD PARA LA BALOTA DE VOTANTE AUSENTE/TEMPRANO
☒ Absentee / Ausente ☐ Early / Temprano
Signed by POA
Donna ana
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
ELECTION / ELECCIÓN
☐ GENERAL / GENERAL
☐ PRIMARY / PRIMARIA
☐ SPECIAL / ESPECIAL
☐ SCHOOL / ESCOLAR
2018 OCT -1 PM 3:39
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la ley de Votante Ausente. Si Ud. se muda a otra residencia, favor de avisarle al Escribano o a la Escribana del Condado.
DONA ANA
Print or type voter's name as registered / Nombre del votante según registrado-escrito a maquina o imprimido: Helen L. DeMarco
Street Address as registered / Dirección según registrado: 164 W. Willoughby Ave
160548
City - State - Zip / Ciudad - Estado - Zona Postal: LAS CRUCES, N Mex 88005
Year of Birth / Año del nacimiento:
Mail ballot to address below / Envíe balota a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reversa: Same as above
SIGNATURE of registered voter / FIRMA del votante registrado: X Helen L DeMarco By Suzanne DeMarco POA
DATE/FECHA: 09/27/18
REJECTED
MAILED
SCANNED

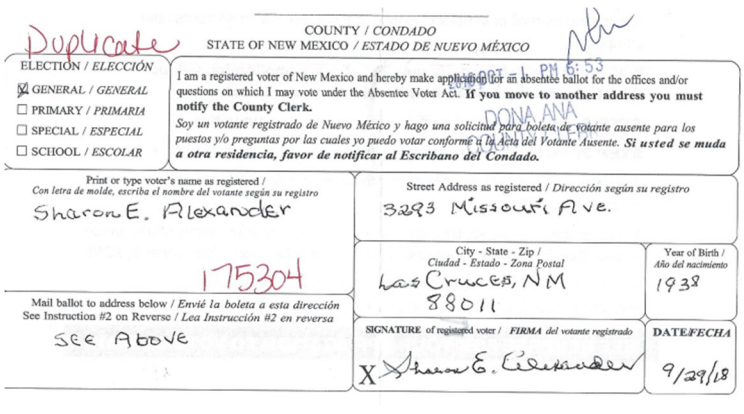

SOLICITUD PARA BOLETA DE VOTANTE AUSENTE
Name NOT AS Registered
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
2018 OCT -2 PM 5:06
COUNTY CLERK
ELECTION / ELECCIÓN
☐ GENERAL / GENERAL
☐ PRIMARY / PRIMARIA
☐ SPECIAL / ESPECIAL
☐ SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la Acta del Votante Ausente. Si usted se muda a otra residencia, favor de notificar al Escribano del Condado.
Print or type voter's name as registered / Con letra de molde, escriba el nombre del votante según su registro: Alanna Leigh Fickler
Street Address as registered / Dirección según su registro: 2953 Valle Vista
2118468
City - State - Zip / Ciudad - Estado - Zona Postal: Las Cruces, NM, 88011
Year of Birth / Año del nacimiento: 1984
Mail ballot to address below / Envié la boleta a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reversa: 1904 N Tucson Blvd Tucson, AZ, 85716
SIGNATURE of registered voter / FIRMA del votante registrado: X
DATE/FECHA: 9/27/18
MAILED
SCANNED

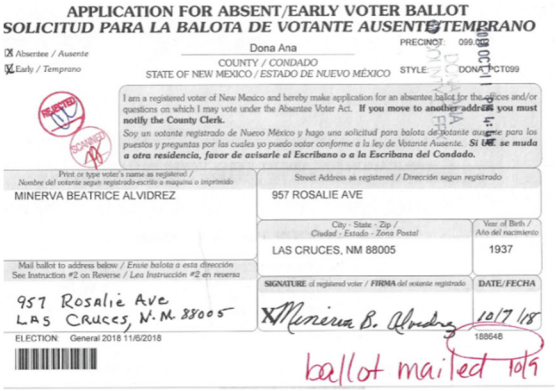

SOLICITUD PARA BOLETA DE VOTANTE AUSENTE
Nonane
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
2018 OCT -1 PM 7:21
DONA ANA
ELECTION / ELECCIÓN
☐ GENERAL / GENERAL
☐ PRIMARY / PRIMARIA
☐ SPECIAL / ESPECIAL
☐ SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la Acta del Votante Ausente. Si usted se muda a otra residencia, favor de notificar al Escribano del Condado.
Print or type voter's name as registered / Con letra de molde, escriba el nombre del votante según su registro:
Street Address as registered / Dirección según su registro: 3401 Mimlecito CF.
City - State - Zip / Ciudad - Estado - Zona Postal: Las Cruces, NM 88011
Year of Birth / Año del nacimiento: 1997
Mail ballot to address below / Envié la boleta a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reversa:
SIGNATURE of registered voter / FIRMA del votante registrado: X
DATE/FECHA: 6/22/18
REJECTED
MAILED

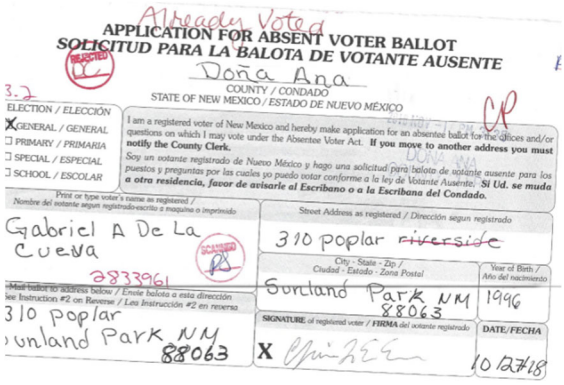
Third and finally, two more reasons are listed in Section 1-6-5(E) to preclude double voting:

1. The voter had already voted or the ballot had already been mailed
2. The application was a duplicate


Already Voted
APPLICATION FOR ABSENT VOTER BALLOT
SOLICITUD PARA BOLETA DE VOTANTE AUSENTE
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
2018 OCT -5
ELECTION / ELECCIÓN
GENERAL / GENERAL
PRIMARY / PRIMARIA
SPECIAL / ESPECIAL
SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la Acta del Votante Ausente. Si usted se muda a otra residencia, favor de notificar al Escribano del Condado.
Print or type voter's name as registered / Con letra de molde, escriba el nombre del votante según su registro: ROBERT M. ACOSTA
Street Address as registered / Dirección según su registro: 2028 Southern Star Loop
157983
City - State - Zip / Ciudad - Estado - Zona Postal: Las Cruces NM 88011
Year of Birth / Año del nacimiento: 1953
Mail ballot to address below / Envié la boleta a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reversa: 2028 Southern Star Loop Las Cruces NM 88011
SIGNATURE of registered voter / FIRMA del votante registrado: X
DATE/FECHA: 10/1/18
SCANNED


Duplicate
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
2018 OCT -1 PM 6:53
DONA ANA
ELECTION / ELECCIÓN
☒ GENERAL / GENERAL
☐ PRIMARY / PRIMARIA
☐ SPECIAL / ESPECIAL
☐ SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para boleta de votante ausente para los puestos y/o preguntas por las cuales yo puedo votar conforme a la Acta del Votante Ausente. Si usted se muda a otra residencia, favor de notificar al Escribano del Condado.
Print or type voter's name as registered / Con letra de molde, escriba el nombre del votante según su registro: Sharon E. Alexander
Street Address as registered / Dirección según su registro: 3283 Missouri Ave.
175304
City - State - Zip / Ciudad - Estado - Zona Postal: Las Cruces, NM 88011
Year of Birth / Año del nacimiento: 1938
Mail ballot to address below / Envié la boleta a esta dirección / See Instruction #2 on Reverse / Lea Instrucción #2 en reversa: SEE ABOVE
SIGNATURE of registered voter / FIRMA del votante registrado: X Sharon E. Alexander
DATE/FECHA: 9/29/18


APPLICATION FOR ABSENT/EARLY VOTER BALLOT
SOLICITUD PARA LA BALOTA DE VOTANTE AUSENTE/TEMPRANO
Absentee / Ausente
Early / Temprano
Dona Ana
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
PRECINCT 099
STYLE DONA PCT099
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para balota de votante ausente para los puestos y preguntas por las cuales yo puedo votar conforme a la ley de Votante Ausente. Si Ud. se muda a otra residencia, favor de avisarle al Escribano o a la Escribana del Condado.
Print or type voter's name as registered / Nombre del votante segun registrado-escrito a maquina o imprimido
MINERVA BEATRICE ALVIDREZ
Street Address as registered / Dirección segun registrado
957 ROSALIE AVE
City - State - Zip / Ciudad - Estado - Zona Postal
LAS CRUCES, NM 88005
Year of Birth / Año del nacimiento
1937
Mail ballot to address below / Envie balota a esta dirección
957 Rosalie Ave
LAS CRUCES, N.M. 88005
SIGNATURE of registered voter / FIRMA del votante registrado
DATE/FECHA
10/17/18
ELECTION: General 2018 11/6/2018
188648
ballot mailed 10/19


Already Voted
APPLICATION FOR ABSENT VOTER BALLOT
SOLICITUD PARA LA BALOTA DE VOTANTE AUSENTE
Doña Ana
COUNTY / CONDADO
STATE OF NEW MEXICO / ESTADO DE NUEVO MÉXICO
ELECTION / ELECCIÓN
X GENERAL / GENERAL
PRIMARY / PRIMARIA
SPECIAL / ESPECIAL
SCHOOL / ESCOLAR
I am a registered voter of New Mexico and hereby make application for an absentee ballot for the offices and/or questions on which I may vote under the Absentee Voter Act. If you move to another address you must notify the County Clerk.
Soy un votante registrado de Nuevo México y hago una solicitud para balota de votante ausente para los puestos y preguntas por las cuales yo puedo votar conforme a la ley de Votante Ausente. Si Ud. se muda a otra residencia, favor de avisarle al Escribano o a la Escribana del Condado.
Print or type voter's name as registered / Nombre del votante segun registrado-escrito a maquina o imprimido
Gabriel A De La Cuena
Street Address as registered / Dirección segun registrado
310 poplar riverside
City - State - Zip / Ciudad - Estado - Zona Postal
Sunland Park NM 88063
Year of Birth / Año del nacimiento
1996
Mail ballot to address below / Envie balota a esta dirección
310 poplar
Sunland Park NM 88063
SIGNATURE of registered voter / FIRMA del votante registrado
DATE/FECHA
10/27/18

With regard to processing absentee ballot *applications*, it is very clear that county clerks do not regard not having "a valid certificate of registration on file" as the only criterion for marking an application as "rejected." They do note the language in Section 1-6-5(B), which requires rejection of an application for which there is no registration on file. However, they also note, and strictly apply as a requirement — as shown in the examples above — the mandatory language found in 1-6-4 which requires the voter to provide the four elements of Voter ID under New Mexico law: 1) name, 2) registration address, 3) year of birth, and 4) signature.

D. Statutes Governing the Handling of Absentee Ballots

The statutes governing the voter ID requirements and standards for rejection or acceptance of the actual returned absentee ballots follow the same general format as the ones governing the review of the absentee application.

1. Statutory Voter ID Requirement for In-Person Absentee Voters

The New Mexico Election Code provides that voters may vote on an absentee ballot either in person or by mailing in the ballot. In Section 1-6-5(G), it states:

> *When marking an absentee ballot in person at the county clerk's office, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required voter identification, the voter, after subscribing an application for an absentee ballot, shall be allowed to vote by inserting the ballot into an optical scan tabulator certified for in-person absentee voting at the county clerk's office.*

2. Handling of In-Person Absentee Ballots by the Doña County Clerk's Office

When Doña Ana County voters voted by means of the in-person absentee ballot, the clerk's office applied the New Mexico Voter ID requirements. Prior to issuing the in-person ballot, elections officials had the voter provide the four components of the voter identification information. If the voter could not provide them, he or she was issued a provisional ballot.

3. Statutory Voter ID Requirement for Mailed-In or Hand-Delivered Absentee Ballot Envelopes

Section 1-6-8 provides for the form to be signed by each voter on the outer envelope containing an absentee ballot that is not voted in person under 1-6-5. Section 1-6-8(C) and (D) provide:

> *C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the absentee ballot. The form shall identify the voter and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."*
>
> *D. The official mailing envelope shall contain a space for the voter to record the voter's name, registration address and year of birth. The envelope shall have a security flap to cover this information.*

And § 1-6-9 provides:

> *Except as provided in Section 1-6-5 [Absentee in-person voting] or Section 1-6-5.7 [early voting] NMSA 1978, a person voting pursuant to the Absent Voter Act shall secretly mark the absentee ballot in the manner provided in the Election Code for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.*

E. Handling of Mailed-in or Hand-delivered Absentee Ballots by the Doña County Clerk's Office

When it comes to absentee balloting by mail, New Mexico county clerks are not applying the statutory voter ID standard to the absentee ballots themselves, even though it is clearly set forth in statute, but instead are looking only to see if a signature is on the flap of the outer envelope.

By following this practice — in other words, by not applying the Voter ID standard in the case of returned absentee ballots — county clerks are making voting by absentee ballot the ONLY means of voting in which state Voter ID requirements are not enforced.

In fact, the absentee ballot outer envelope is the only voter document *of any kind* completed by the voter that, in practice, is not being required to meet the four elements of voter ID established by the Election Code. The minimal "four-element" standard is applied to: 1) the absentee ballot application, 2) the in-person absentee voter, 3) the early voter, and 4) the Election Day voter.

And an even higher voter ID standard — the full date of birth and social security number — is applied to voter registrations and provisional ballots. Additionally, for electronic absentee applications and voter registrations, the Secretary of State adds still another requirement — the voter's New Mexico driver's license or ID number — in addition to those other four elements.

So statewide, despite the statutory requirements for Voter ID, the actual voted and returned absentee ballot itself is the only document in the entire voting and registration process that is subjected to only *one* of the four mandatory Voter ID requirements — the returned ballot outer envelope is checked only to see if it has a *signature*. (And keep in mind there is no verification of even that one element.) The other three statutory requirements are ignored. This is especially notable because absentee voting — whether the ballot is returned by mail or by hand-delivery — is, by far, the method of voting which is most susceptible to irregularities.

F. Statutes and Rules Governing the Handling of Absentee Ballots by Absentee Boards

Section 1-6-14 governs the handling and counting of absentee ballots received in official mailing envelopes, which may be either hand-delivered by the voter or a family member or caregiver to the county clerk, or to a polling place on Election Day, or received in the mail.

> *A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.*
>
> *B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters or register. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.*

C. A lawfully appointed challenger may view the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

> *(1) the official mailing envelope has been opened by someone other than the voter prior to being received by the absent voter precinct board;*
>
> *(2) the official mailing envelope does not contain a signature; or*
>
> *(3) the person offering to vote is not a voter as provided in the Election Code [Chapter 1 NMSA 1978].*

D. If a challenge is upheld by unanimous vote of the presiding judge and the election judges, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass, the official mailing envelope shall be opened and the vote counted. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged: (1) the judges or election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters or register; and (2) only between 8:00 a.m. and 10:00 p.m. on the five days preceding election day, including Saturday and Sunday, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

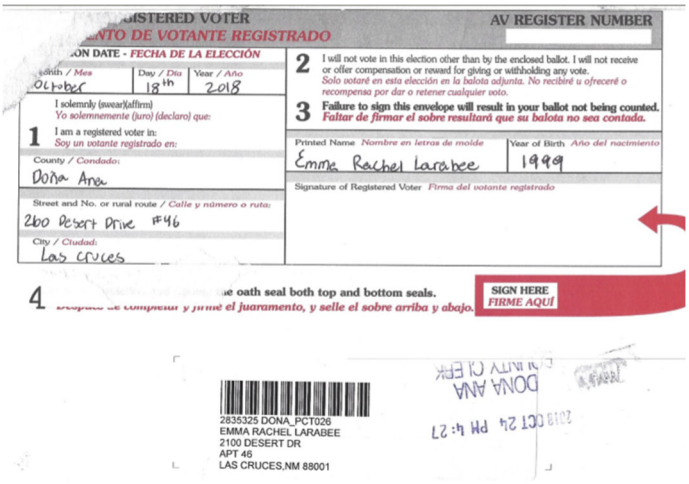
G. Handling of Absentee Ballots by the Doña Ana County Absentee Board and Statewide Practices

Currently, the only review being conducted by the Absent Voter Precinct Boards throughout the state is a check to see if the outer envelope has been signed. There is no check to see whether the voter has correctly completed the three additional required Voter-ID fields — the name, the registration address, and the year of birth. (This has been verified through public records requests to all 33 counties.)

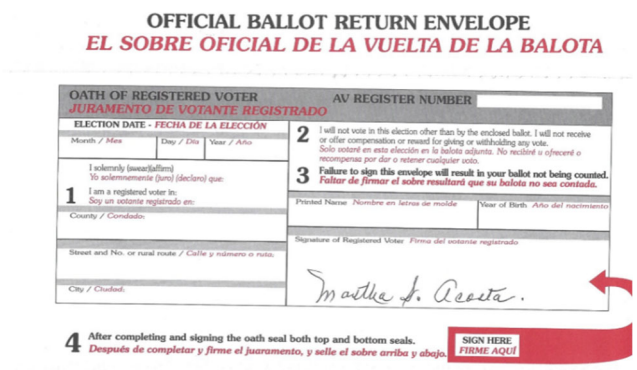
The impoundment review of the 8,577 accepted and counted absentee ballots received in Doña Ana County found that a significant number of the outer envelopes contained the same discrepancies — the same missing or incorrect information — that resulted in the rejection of absentee *applications*. These included missing registration addresses, missing years of birth, or incorrect addresses or years of birth, and missing or incorrect voter names.

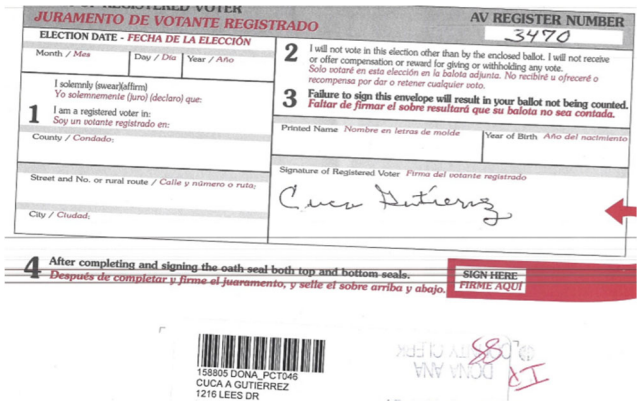
Examples of accepted absentee outer envelopes identified which do not meet the statutory voter ID standard follow:

1. No signature at all:

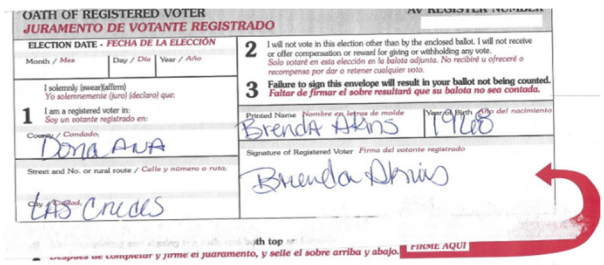


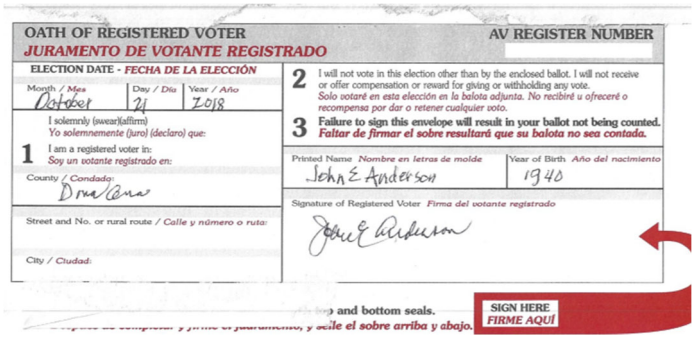
2. No identification other than a signature:



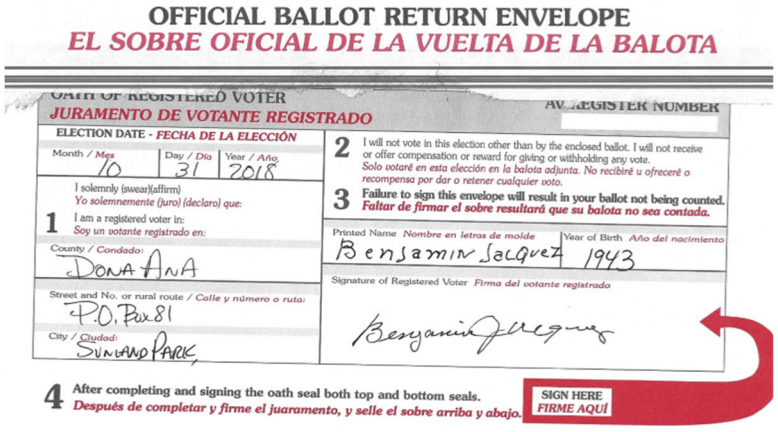


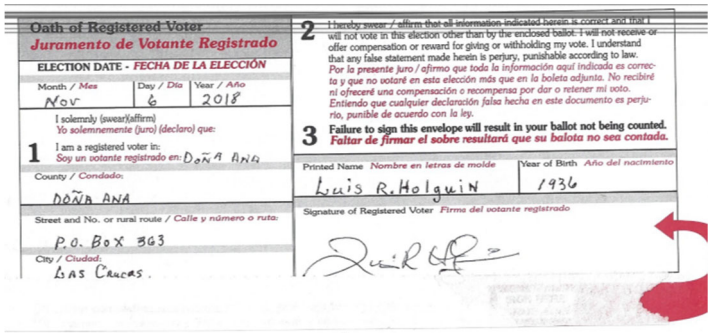
3. No registration address provided:


OATH OF REGISTERED VOTER
JURAMENTO DE VOTANTE REGISTRADO
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes | Day / Día | Year / Año
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: DONA ANA
Street and No. or rural route / Calle y número o ruta: LAS CRUCES
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Brenda Atkins
Year of Birth Año del nacimiento: 1968
Signature of Registered Voter Firma del votante registrado: Brenda Atkins
FIRME AQUÍ

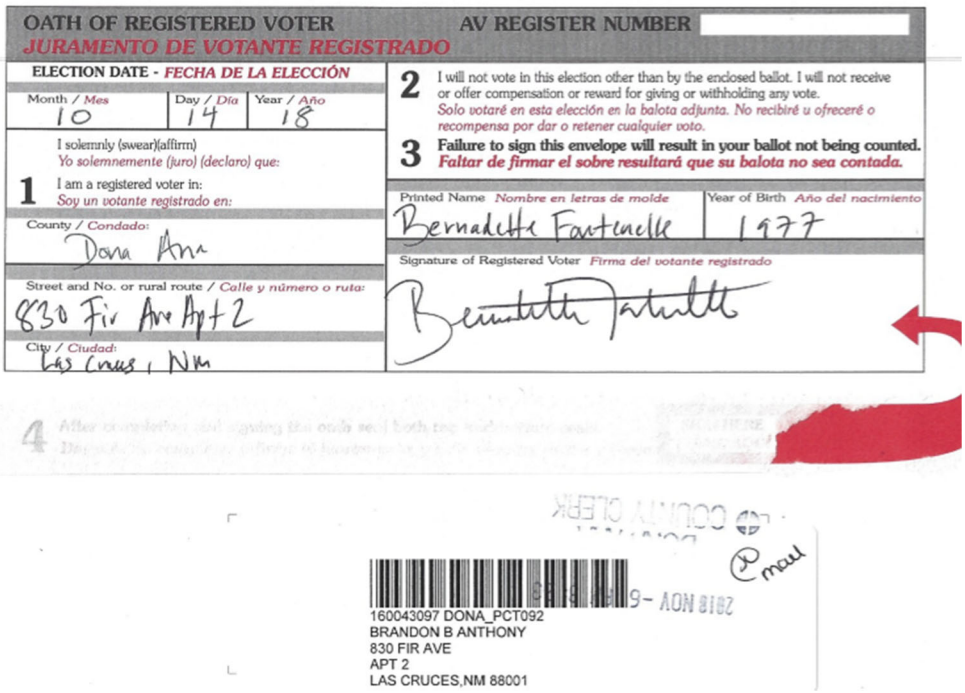

OATH OF REGISTERED VOTER
AV REGISTER NUMBER
JURAMENTO DE VOTANTE REGISTRADO
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: October | Day / Día: 24 | Year / Año: 2018
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: Dona Ana
Street and No. or rural route / Calle y número o ruta:
City / Ciudad:
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Jean E Anderson
Year of Birth Año del nacimiento: 1940
Signature of Registered Voter Firma del votante registrado:
and bottom seals.
SIGN HERE
FIRME AQUÍ

4. A P.O. Box is provided as a registration address — not a physical address as is required by law:

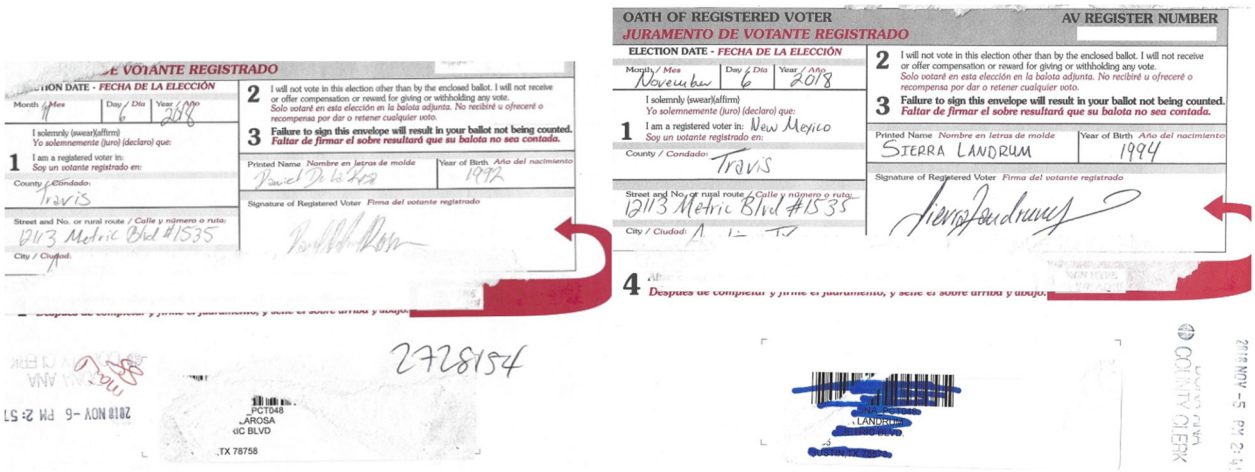

OFFICIAL BALLOT RETURN ENVELOPE
EL SOBRE OFICIAL DE LA VUELTA DE LA BALOTA
OATH OF REGISTERED VOTER
JURAMENTO DE VOTANTE REGISTRADO
AV REGISTER NUMBER
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: 10 | Day / Día: 31 | Year / Año: 2018
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: DONA ANA
Street and No. or rural route / Calle y número o ruta: P.O. Box 81
City / Ciudad: SUNLAND PARK
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Benjamin Salquez
Year of Birth Año del nacimiento: 1943
Signature of Registered Voter Firma del votante registrado:
4 After completing and signing the oath seal both top and bottom seals. Después de completar y firme el juaramento, y selle el sobre arriba y abajo.
SIGN HERE
FIRME AQUÍ


Oath of Registered Voter
Juramento de Votante Registrado
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: Nov | Day / Día: 6 | Year / Año: 2018
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en: DOÑA ANA
County / Condado: DOÑA ANA
Street and No. or rural route / Calle y número o ruta: P.O. Box 363
City / Ciudad: Las Cruces
2 I hereby swear / affirm that all information indicated herein is correct and that I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding my vote. I understand that any false statement made herein is perjury, punishable according to law. Por la presente juro / afirmo que toda la información aquí indicada es correcta y que no votaré en esta elección más que en la boleta adjunta. No recibiré ni ofreceré una compensación o recompensa por dar o retener mi voto. Entiendo que cualquier declaración falsa hecha en este documento es perjurio, punible de acuerdo con la ley.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Luis R. Holguin
Year of Birth Año del nacimiento: 1936
Signature of Registered Voter Firma del votante registrado:

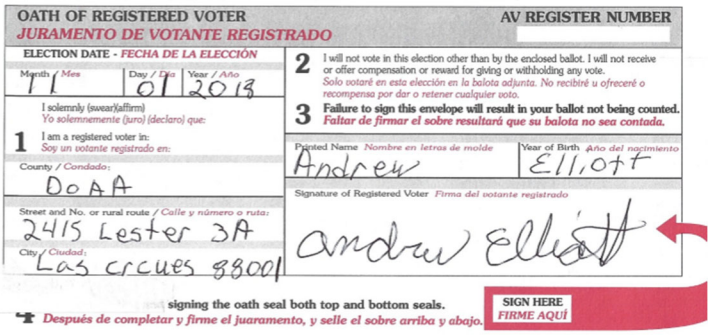
5. The name on the signature line does not match the ballot label:

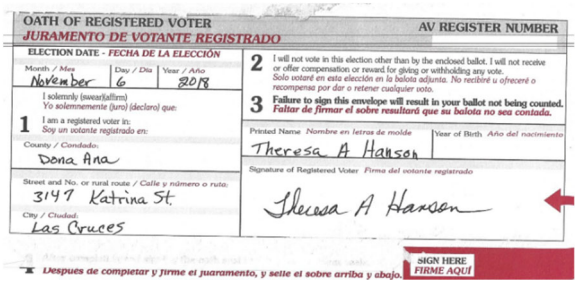


6. A Texas address and county provided by the voter as the registration address:

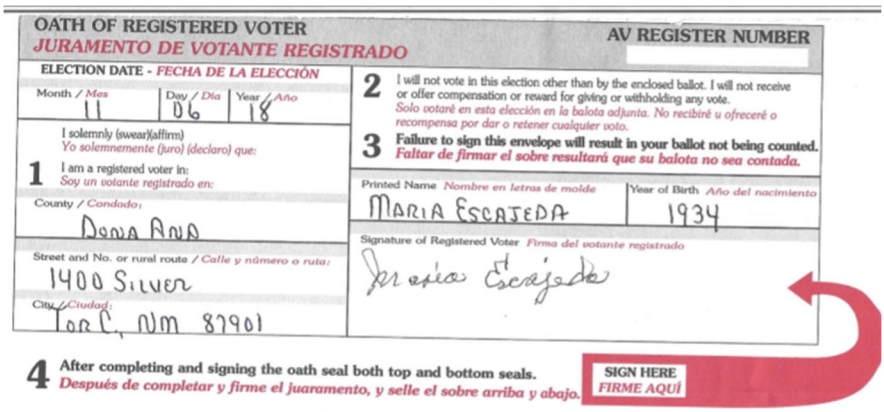


7. No year of birth provided:


OATH OF REGISTERED VOTER
JURAMENTO DE VOTANTE REGISTRADO
AV REGISTER NUMBER
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: 11 | Day / Día: 01 | Year / Año: 2018
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: DoAA
Street and No. or rural route / Calle y número o ruta: 2415 Lester 3A
City / Ciudad: Las crcues 88001
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Andrew
Year of Birth Año del nacimiento: Ell,oft
Signature of Registered Voter Firma del votante registrado: andrew Elliott
signing the oath seal both top and bottom seals.
Después de completar y firme el juramento, y selle el sobre arriba y abajo.
SIGN HERE FIRME AQUÍ


OATH OF REGISTERED VOTER
JURAMENTO DE VOTANTE REGISTRADO
AV REGISTER NUMBER
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: November | Day / Día: 6 | Year / Año: 2018
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: Dona Ana
Street and No. or rural route / Calle y número o ruta: 3147 Katrina St
City / Ciudad: Las Cruces
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: Theresa A Hanson
Year of Birth Año del nacimiento:
Signature of Registered Voter Firma del votante registrado: Theresa A Hanson
Después de completar y firme el juramento, y selle el sobre arriba y abajo.
SIGN HERE FIRME AQUÍ

8. Out-of-county address provided as the registration address:


OATH OF REGISTERED VOTER
JURAMENTO DE VOTANTE REGISTRADO
AV REGISTER NUMBER
ELECTION DATE - FECHA DE LA ELECCIÓN
Month / Mes: 11 | Day / Día: 06 | Year / Año: 18
I solemnly (swear)(affirm) Yo solemnemente (juro) (declaro) que:
1 I am a registered voter in: Soy un votante registrado en:
County / Condado: Dona Ana
Street and No. or rural route / Calle y número o ruta: 1400 Silver
City / Ciudad: Tor C, NM 87901
2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote. Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.
3 Failure to sign this envelope will result in your ballot not being counted. Faltar de firmar el sobre resultará que su balota no sea contada.
Printed Name Nombre en letras de molde: MARIA ESCAJEDA
Year of Birth Año del nacimiento: 1934
Signature of Registered Voter Firma del votante registrado: Maria Escajeda
4 After completing and signing the oath seal both top and bottom seals. Después de completar y firme el juramento, y selle el sobre arriba y abajo.
SIGN HERE FIRME AQUÍ

9. 845 N. Motel Blvd (the Doña Ana County Clerk's address) provided as the registration address:

OFFICIAL BALLOT RETURN ENVELOPE
EL SOBRE OFICIAL DE LA VUELTA DE LA BALOTA

Juramento de Votante Registrado

ELECTION DATE - FECHA DE LA ELECCIÓN

Month / Mes: Nobenver | Day / Día: 2 | Year / Año: 2018

I solemnly (swear)(affirm) / Yo solemnemente (juro) (declaro) que:

1 I am a registered voter in: / Soy un votante registrado en:

County / Condado: Dona Ana

Street and No. or rural route / Calle y número o ruta: 845 N. MOTEL BLVD.

City / Ciudad: LAS CRUCES

2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding my vote. I understand that any false statement made herein is perjury, punishable according to law.
Por la presente juro / afirmo que toda la información aquí indicada es correcta y que no votaré en esta elección más que en la boleta adjunta. No recibiré ni ofreceré una compensación o recompensa por dar o retener mi voto. Entiendo que cualquier declaración falsa hecha en este documento es perjurio, punible de acuerdo con la ley.

3 Failure to sign this envelope will result in your ballot not being counted.
Faltar de firmar el sobre resultará que su balota no sea contada.

Printed Name / Nombre en letras de molde: Maribel Gonzalez | Year of Birth / Año del nacimiento: 1970

Signature of Registered Voter / Firma del votante registrado: Maribel Gonzalez

OATH OF REGISTERED VOTER — AV REGISTER NUMBER

JURAMENTO DE VOTANTE REGISTRADO

ELECTION DATE - FECHA DE LA ELECCIÓN

Month / Mes: 10 | Day / Día: 30 | Year / Año: 2018

I solemnly (swear)(affirm) / Yo solemnemente (juro) (declaro) que:

1 I am a registered voter in: / Soy un votante registrado en:

County / Condado: Dona Ana

Street and No. or rural route / Calle y número o ruta: 845 N. Motel Blvd

City / Ciudad: Las Cruces

2 I will not vote in this election other than by the enclosed ballot. I will not receive or offer compensation or reward for giving or withholding any vote.
Solo votaré en esta elección en la balota adjunta. No recibiré u ofreceré o recompensa por dar o retener cualquier voto.

3 Failure to sign this envelope will result in your ballot not being counted.
Faltar de firmar el sobre resultará que su balota no sea contada.

Printed Name / Nombre en letras de molde: Frcida Cotton | Year of Birth / Año del nacimiento: 1953

Signature of Registered Voter / Firma del votante registrado: Frcida Cotton

After completing and signing the oath / Después de completar y fi-

SIGN HERE / FIRME AQUÍ

H. 1991 Case Law Regarding Absentee Ballot Outer Envelopes — The *Klumker* Case and Subsequent Developments

In *Klumker v. Van Allred*, 112 N.M. 42, 1991-NMSC-045, the Supreme Court wrote:

> *The precinct board rejected absentee ballots cast by Mrs. Tolbert Lyon and Mr. W.A. Sullivan, each of whom voted for Klumker. The two ballots were rejected because the forms on the reverse side of the mailing envelopes for the ballots did not contain the printed name of the voter on a line provided for that purpose, were not dated, contained (in the case of the Sullivan ballot) the wrong registration number, and did not contain (in the case of the Lyon ballot) the voter's address. The district court concluded that these were proper reasons for rejection.*

The New Mexico Supreme Court reversed the trial court's ruling. The Supreme Court noted that Section 1-6-9 provided that, "after marking his or her ballot, "[t]he person voting shall then fill in the form on the reverse of the official mailing envelope and subscribe and swear to it before a person authorized to administer oaths."

The Defendant pointed to the use of the word "shall" in that statute and to the Supreme Court's holding in *Kiehne v. Atwood*, 93 N.M. 657, 667 (1979), that the voter's duty of subscribing and swearing to his ballot is mandatory, not merely directory.

The Supreme Court noted, however, that the *Kiehne* case had involved the requirements in former Sections 1-6-4 and 1-6-9 that the voter subscribe and swear to his affidavit that, inter alia [among other things], he was duly registered and qualified to vote by absentee ballot, and that his signature be attested by a person authorized to administer oaths. The Supreme Court stated, "We properly held that these requirements are of sufficient importance in safeguarding the purity of elections that failure to comply with them necessitates rejection of the ballot." The Court went on to opine that:

> *No similar importance attaches to the requirements in the form on the official mailing envelope that the voter's name be printed beneath his or her signature, that the ballot envelope be dated, or that the voter's address or correct registration number be inserted. These requirements are not found in our Election Code, which provides only that the ballot shall be rejected "[i]f one or both of the signatures are missing." NMSA 1978, § 1-6-14(B). We held in* Kiehne *that a ballot may be declared void only when the legislature expressly provides that deviation from the prescribed procedure prevents counting the vote.*
>
> *The legislature has expressly provided that an absentee ballot shall be rejected if one or both signatures are missing from the mailing envelope, Section 16-14(B); but no other provision of the statutes authorizes disqualifying a ballot on the grounds relied on by the precinct board and the district court in this case.*

1. Legislative Changes to the Voter ID Requirement for Absentee Ballots after 1991

At the time of the *Klumker* decision in 1991, an extremely important difference existed in New Mexico law regarding the validity of a signature. In 1991, Section 1-6-9 required that the ballot "be subscribed and sworn before a person authorized to administer oaths," which mean a notary public, or another registered voter.

That provision appeared to be of significant importance to the court, in that the *Klumker* decision noted that both signatures were required, meaning both the voter's signature and the notary or witness's signature. It is reasonable for the court to have concluded that the signature of the voter, combined with a signature by a notary public or third-party witness who is also a

registered voter, which attests to the voter's identity, was sufficient to safeguard the purity of the election.

In 1993, in the next general session following the *Klumker* decision, the New Mexico legislature opened up absentee voting, eliminating the previously required affidavit and allowing anyone who wanted to vote by that method to apply for an absentee ballot. At the same time, it removed the witness/notary requirement on absentee ballots. At that time, the legislature amended both statutes that had been considered by the *Klumker* court — §§ 1-6-9 and 1-6-14 — and also amended 1-6-4.

That bill, Senate Bill 234, chaptered as 1993 N.M. Laws Ch. 20, was titled "An Act . . . Removing the Requirement That Voter Signatures Be Made Under Oath Before a Witness."

In the new Section 1-6-4, for absentee ballot applications, and in Section 1-6-9 for absentee ballot outer envelopes, the bill eliminated the requirement that the voter's signature be "witnessed by another registered voter or subscribe and swear to it before a person authorized to administer oaths."

2. Changes to the Handling of Absentee Ballots in 1-6-14 in 1993 (Post *Klumker*)

While reducing the signature requirements, the legislature enhanced the requirements that the voter was required to provide. Senate Bill 234 changed the language in § 1-6-14(A), to require, in Subsection A and D, that the information on the outer envelope be <u>completed</u>. These changes addressed the finding in the *Klumker* decision that held that the (previous) statute did not require the *completion* of the form on the outer envelope, but only required that the form be "executed" and both signatures appear. At the time of the *Klumker* decision, that section had provided:

> *Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required oath has been executed on the reverse side of the official mailing envelope.*

Senate Bill 234, post-*Klumker,* in 1993, changed that section to read:

> *Before opening an official mailing envelope, the presiding judge and election judges shall determine that the <u>required information</u> has been completed on the reverse side of the official mailing envelope.*

Section B of 1-6-14 was changed to reflect that only the voter's signature was required, changing the language from "if one or both signatures are missing" to "if the voter's signature is missing." Under that Section, if the voter's signature is missing, the presiding judge is required to

place the envelope, unopened, in another envelope provided for rejected ballots, write the voter's name on the front of the envelope, enter a notation in the absentee register "Rejected-Missing Signature" and deposit the envelope in a locked ballot box.

Another significant change was made to Subsection (D) of Section 1-6-14, which is now codified in Subsection (E). At the time of the *Klumker* decision, 1-6-14(D) read:

> *If the official mailing envelopes have properly executed oaths and the voters have not been challenged, (1) the election judges shall open the official mailing envelopes and deposit the ballot in their still unopened inner envelopes in the ballot box…*

In the 1993 bill, that section was changed to read:

> *If the official mailing envelopes have been properly subscribed and the voters have not been challenged, …*

These changes to 1-6-14, post-*Klumker*, show the legislative intent to require that the information on the reverse of the outer envelope be completed. At the time of the *Klumker* decision, Subsections A, B and D all referred exclusively to the execution, or signing, of the oath, and the *Klumker* court's decision reflects that. But the 1993 bill expressly addressed the other issue raised in *Klumker* regarding the completion of the information on the outer envelope by the voter. The legislature now made that completion requirement in Subsection A.

Under Subsection D, which was amended at the same time, it now became a requirement that each of the steps outlined in Subsections A (determination that the required information has been completed on the outer envelope), Subsection B (determination that the voter's signature is present) and Subsection C (opportunity for challenges to the ballots) be completed before the outer envelope could be opened under Subsection D.

3. Requiring Voter ID in 2005 — the Adoption of an Explicit Voter Identification Standard

In 2005, another bill was passed into law titled, in part, "REQUIRING VOTER IDENTIFICATION FOR IN-PERSON AND ABSENTEE VOTING." In that bill, the Legislature adopted the standard for Voter Identification that still exists today, except for one requirement. It was codified as Section 1-1-24 of the Election Code, titled "Required Voter Identification."

At that time, the verbal or written statement of the voter ID was the "name, year of birth and unique identifier." "Unique identifier" was defined as the last four digits of the voter's social security number.

That bill again amended Section 1-6-9 to state:

> *The voter shall then complete the form on the reverse of the official mailing envelope, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, year of birth and unique identifier.*

This bill added the phrase:

> *and the voter's name, year of birth and unique identifier" to the mandatory affirmation completed by the voter.*

The bill also amended Section 1-6-8 to provide:

> *D. The official mailing envelope shall contain a space for the voter to record the voter's unique identifier, year of birth and name. The envelope shall have a security flap to cover this information."*

The 2005 bill strengthened the requirements in Subsection A of 1-6-14 by expressly providing in Sections 1-6-8 and 1-6-9 that the Voter ID information is required to be completed. It also added another Section to 1-6-14, Subsection H, which is now codified as Subsection I:

> *H. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code.*

It is important to note the distinction in the type of identification required under this subsection. Under both federal and state law, a voter who registers for the first time by mail is required to provide a physical form of identification, either at the registration stage, or at the time the voter first appears to vote — whether in-person or by absentee ballot. For an absentee ballot by mail, the identification required under this section would be a physical form of ID located inside the outer ballot envelope, rather the identification on the outside of the envelope.

The added subsection, which is below subsection D, deals with an outer envelope that has already been qualified under Subsections A, B, and C, and opened under Subsection D, but is then missing the identification inside the envelope. At that point, the ballot is required to be treated as a provisional ballot.

The 2005 bill also contained a provision which makes it clear that the signature on the outer envelope was not intended to be the only criteria for not counting an absentee ballot. That section provided:

Section 61. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read: "QUALIFYING PROVISIONAL, ABSENTEE AND OTHER PAPER BALLOTS. —

A. The secretary of state shall issue rules to create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted.

B. When qualifying provisional, absentee and other paper ballots, middle initials, suffixes and addresses shall not be dispositive as to whether that person's ballot is qualified and counted in the vote totals, provided that the county clerk can otherwise verify the person is a voter based on the information provided on the outer envelope of the paper ballot or affidavit.

However, the statute did not make any such allowances for the items of voter ID that were required under the bill — the voter's name, year of birth, and the last 4 digits of the Social Security Number. That section currently codified as Section 1-12-29.1 requires a uniform process for qualifying all paper ballots, whether they are voted as in-person absentee, during early voting, on election day, or are completed via mail-in absentee.

It is also clear from the 2005 legislation that the legislature intended for a uniform voter ID requirement to apply to all paper ballots, whether absentee, provisional or otherwise. (At that time, in-person voters did not vote on paper ballots, but the paper ballot was adopted during the same session for all methods of voting.) In *Klumker*, the Court stated:

We held in Kiehne that a ballot may be declared void only when the legislature expressly provides that deviation from the prescribed procedure prevents counting the vote.

In Section 1-12-29.1, the legislature in 2005 established that there shall be a "uniform process" for determining if provisional, absentee and other paper ballots shall be counted. Currently, the only form of voting that does not require the four elements of voter ID is absentee voting.

Secondly, under that section, if the elements of the voter ID are not present and correct on the outer envelope, the ballot would be disqualified, or treated as a provisional ballot. The clerk would then be afforded the opportunity to "otherwise verify that the person is a voter based on the information on the outer envelope." The county clerks follow that process with regard to the qualification of provisional ballots, but it has been ignored entirely with regard to absentee ballots that are missing the required voter ID.

4. Changes to the Voter ID requirement, Adopted in 2008

In 2008, a bill was passed which changed the Voter ID requirement from the voter's name, year of birth and last 4 digits of SSN, to the voter's name, registration address and year of birth. This has not been amended and it remains the current standard for Voter ID.

Issue 2: Ballots Marked by the Doña Ana County Clerk as Received after the Deadline

As provided in the Election Code, the deadline by which absentee ballots may be received by the county clerk or by a poll worker is 7:00 PM on the evening of the election. Section 1-6-10 states:

> ***Receipt of absentee ballots by clerk.***
>
> *A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the absent voter precinct board or until it is canceled and destroyed in accordance with law.*
>
> *B. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to the absent voter precinct board but shall be preserved by the county clerk until the time for election contests has expired....*

Absentee ballots may be delivered to Election Day polling places by voters, but are required to be delivered to the county clerk by the presiding judges at those locations by midnight on Election Day under Section 1-12-8.2, which provides:

> ***Conduct of election; election day delivery of absentee ballot by voter; procedures***
>
> *A. A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter's absentee ballot on election day to any polling location in the county in which the voter is registered if the voter presents the official mailing envelope to the presiding judge before the polls close on election day.*
>
> *B. The judge shall note that the voter delivered the absentee ballot in person on election day. The official mailing envelope shall not be opened but shall be placed in an envelope provided for delivery to the county clerk. The precinct board shall deliver the unopened official mailing envelopes to the county clerk before midnight on election day....*

Additionally, a county clerk is required to maintain an absentee ballot register. Section 1-6-6 provides:

> *A. For each election, the county clerk shall keep an "absentee ballot register", in which the county clerk shall enter:*

(1) the name and address of each absentee ballot applicant;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;

(5) the applicant's precinct;

(6) whether the applicant is a voter and whether the voter is a uniformed-service voter or an overseas voter;

(7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978;

(8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location.

In Doña Ana County, 577 absentee ballots are listed on the absentee register as being received by the clerk after 7:00 p.m. on election night. The vast majority, 452 of them, are marked as having been received the next day. The ballot receipts from Election Day polling places do not account for all of those ballots.

The absentee ballot register is required to have "the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location." NMSA 1978, § 1-6-6(A)(8).

Furthermore, it is the duty of the county clerk in all cases, including those involving replacement ballots or emergency procedures, to determine that "no absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day." NMSA 1978, § 1-6-16.1(d)(2).

And the county clerk is to maintain records which provide verification of that information, as provided in 1-6-10(A):

The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register....

These provisions of the Election Code make it clear that the time recorded in the register should match the timestamp on the ballot itself. Significantly, in the review of the ballots, none

(or very few) of the returned Doña Ana County absentee ballots had a date/time stamp which matched the time shown on the register.

Additionally, a number of the 577 ballots in question show no time stamps or initials from the presiding judge at all. There is nothing to indicate that those additional unstamped ballots were timely received, and the absentee register itself indicates they were received the day after the election.

Issue 3: Chain of Custody Issues

A. Ballot Security Issues

On Monday, December 17, Doña Ana County provided their Absentee Ballot Transfer Receipts for the 2018 General Election, as well as the documentation for the seal numbers on each ballot box.

Those receipts show that they accounted for 12 ballot boxes on Sunday, November 4. They are listed as Ballot Boxes 1 through 12. There are no receipts for any ballot boxes beyond that date. The receipts for the 12 ballot boxes account for a total of 7,105 ballots.

(In a report provided by Dan Parrott earlier, he listed the 12 ballot boxes and a total of 7,105 ballots delivered on Sunday, November 4. He noted, on the 4th, that the county clerk's total of 7,105 was 36 more ballots than shown on the absentee register. He noted that the clerks were expecting to find 7069 ballots.)

In addition to the receipts for ballot delivery from the clerk's office, there are 40 more individual receipts from presiding judges at Election Day polling places where ballots were dropped off. Those 40 receipts total 387 more absentee ballots that had been delivered to Election Day polling places. Together, the two separate groups of receipts (ballots from the county clerk and ballots delivered to Vote Centers) add up to 7,492 ballots, or 1,085 fewer ballots than the total number cast.

However, the enclosed Doña Ana clerk documents show that by the end of the night on Tuesday, November 6, they are *referring to* additional Ballot Boxes 13 and Ballot Box 14 in their notes, but without providing any receipts from those boxes.

B. Seal Numbers for Ballot Boxes

Doña Ana county also provided seal numbers that were used to indicate that each ballot box was properly secured overnight beginning when the absentee board convened on Sunday.

There are two seals on each ballot box. In the Election Code, you will mostly find references to lock, but there is a reference to seals in Article 6. Traditionally, there were two locks on each ballot box — with one key kept by the county clerk and one key mailed to the district judge. That resulted in lots of locks having to be cut off of ballot boxes when they have to be opened for legitimate purposes, so most, if not all, of the clerks now use breakable seals. It would be normal to break the seals on a ballot box to open it and remove ballots for qualification and tabulating. The clerks would bring over ballot boxes full of unopened ballot outer envelopes. The absentee board would break the seals, qualify the ballots (normally), open the envelopes, open the inner envelope and then tabulate the ballots. The ballots would then be returned to the ballot box and new seals would be put on.

It is not normal in any way, shape or form to leave a ballot box unlocked overnight. Ballot boxes are required to be locked (sealed) at any time that the board is not handling the ballots from that box.

On their document titled "Absentee Ballot Boxes End of Night — November 4, 2018," the seal numbers are provided for Ballot Boxes 1 and 2 as well as Boxes 5 through 12. But no seals were indicated as being applied to Boxes 3 and 4. Those boxes have blanks on them, so there is no verification from the precinct board that they were sealed that night. On the receipts, those ballot boxes had 501 and 384 ballots in them, respectively. The documents also indicate that Box 12 was "cut" and new seals were applied when it was returned from the clerk's office. (At the bottom of the page, after the judges and clerks had signed the document, a notation indicates "Box 13…coming from clerk's office.")

On their list "End of Night — November 5," (the day before the election) Box 3 now indicates that it has had seals applied, while there are still no seal numbers on Ballot Box 4. Also, there is no reference at all to Box 13. This may indicate that the reference tacked on to the end of the November 4 document may have been added later.

On the "End of Night — November 6," (Election Day) all 12 ballot boxes now are shown as having seals applied. Additionally, Boxes 13 and 14 are added to the bottom of the form — however there are still no receipts for Box 13 or Box 14, and therefore no showing of the number of ballots contained in those boxes.

On the document titled "Absentee Ballot Boxes — November 7," (the day after the election) there are no seal numbers recorded for Ballot Box 5. Boxes 1 to 4 and 6 to 12 have different seal numbers, and the newly-added (still unaccounted for) Boxes 13 and 14 have seals as well.

On the document titled "Absentee Ballot Boxes — November 8," Ballot Boxes 3, 5, and 6 have no seals. All the others do.

Summary of the Ballot Boxes and their Seals

Ballot Box 1: Original (November 4) 13045 and 13046; Changed on November 7. No changes after that.

Ballot Box 2: Original (November 4) 13049 and 13050; Changed on November 5, 6, & 7. No change thereafter.

Ballot Box 3: Original (November 4) None. On Nov 5: 13037, 13038; Changed on November 6 & 7. No seal on Nov 8.

Ballot Box 4: Original (November 4) None. None again on November 5. On Nov 6: 13093, 13094; Changed November 7. Seals reversed November 8.

Ballot Box 5: Original (November 4) 13047 and 13048; Changed November 5 & 6. No seal on November 7 or November 8.

Ballot Box 6: Original (November 4) 13043 and 13043; Changed November 5, 6, & 7. No seal on November 8.

Ballot Box 7: Original (November 4) 13041 and 13042; Changed November 5, 6, & 7. No change thereafter.

Ballot Box 8: Original (November 4) 13008 and 13009; Changed November 5, 6, & 7. No change thereafter.

Ballot Box 9: Original (November 4) 13006 and 13007; Changed November 5, 6 & 7. (Seal numbers matched but reversed on the form on November 8).

Ballot Box 10: Original (November 4) 13003 and 13005; Changed November 5, 6 & 7. Seals match but reversed on the form on November 8.

Ballot Box 11: Original (November 4) 13002 and 13004; Changed November 5, 6, 7 & 8.

Ballot Box 12: Original (November 4) 13010 and 13001*; Changed November 5, 6 & 7. Seal numbers match but reversed on the form on November 8.

Ballot Box 13: Original (November 4) No Box accounted for in receipts. At the bottom of the November 4 document, after the board had signed the page, at the bottom in different ink is a notation that says "Box 13 13031 and 13032, coming from clerk's office." Ballot Box 13 does not show up on the November 5 report. On November 6 the seals are changed. They are changed again on November 7. The seal numbers are the same on November 8 but reversed on the form.

Ballot Box 14: Original (November 4) No Box accounted for in receipts. Box 14 appears on November 6: 13079 and 13080. The seals numbers match but are reversed on the form on November 7 and 8.

Issue 4: Electronic Absentee Applications

In the spring of 2018, a new process was developed by the Secretary of State which allowed voters to apply for absentee ballots online. This is presumed authorized by a provision of the Election Code, NMSA 1978, § 1-6-4(A), which reads:

> *Application by a voter for an absentee ballot shall be made only on a paper form or its electronic equivalent as prescribed by the secretary of state.*

In April, the Secretary of State completed a rulemaking that resulted in the enactment of what is now NMAC § 1.10.12.4. Two brief references in two subsections of that rule, § 1.10.12.8(A) and (B), imply the creation of an online application portal, though it is not clear whether the actual content of the electronic application was ever subjected to the rulemaking process. IPRAs and their responses have provided no further insight in answer to that key question. All statutory or rule-derived changes that affect absentee balloting should receive the strictest scrutiny by lawmakers and voters for reasons discussed by Elizabeth Bircher in her *Election Law Manual*, 6-9 (2008):

> *Absentee voting that occurs outside a polling location is usually unsupervised; thus it carries an inherent risk of election fraud. This increased fraud risk allows states to regulate absentee voting more extensively than in-precinct voting, including limiting its availability.*

The Herrell campaign submitted a number of questions to the Secretary of State, none of which were answered.[3] Section 1-6-4(B) provides that "[e]ach application for an absentee ballot shall be signed by the applicant." It is not clear whether submissions through the online portal

[3] These include a number of questions regarding the process followed by the Secretary of State when creating the portal, including: (1) whether the Secretary's office issue a rule governing the process; (2) whether it held hearings; (3) whether another state's system was used as a model; (4) whether any non-governmental entities, including § 501(c)(4)s, 527s, or political committees participated in the process of designing or implementing the portal; and (5) whether the GOP was invited to participate in the process.

contain an "electronic signature" under the Uniform Electronic Transactions Act, NMSA 1978, §§ 14-16-1 to -21 ("UETA").

It is also unclear that the language included on the electronic application, and the actions required of the applicant is sufficient to ensure that the voter's interaction with the portal constitutes an actual "electronic signature" under UETA, with reference to NMSA 1978, § 14-16-2(8). That provision defines the term as a "symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

At this time, it is unknown if the oath and affirmation from NMSA 1978, § 1-4-18.1 is used on the application. This is a key question for the following reason: For an electronic signature to be valid in lieu of a physical one, the process must show that the applicant is the person he or she is purporting to be. This can be done a number of ways, including by procuring after-the-fact verification from the person whose name is on the application that he or she in fact submitted the application. However, on a system-wide level, verification is achieved from the outset by "showing the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." NMSA 1978, § 14- 16-9(a).

Questions remain as to what efforts, if any, are actually made to verify the identities of the applicants. While the electronic applications request driver's license numbers, the Secretary of State has not provided the written process for verification with Motor Vehicle Division (MVD) in such a way as to match up with other information provided by the applicant.

The campaign has questioned how this was done, and what statutory authority (if any) the Secretary of State relied upon for the right to authenticate applications with driver's license numbers and whether the process complies with the Driver Privacy Protection Act, NMSA 1978, § 66-2-7.1.

Prior to the 2018 Primary Election, <u>all</u> absentee ballot applications had always been handled exclusively by the county clerks, whereas, with the new electronic application portal, a substantial percentage of applications began to be received by the SOS, processed there, and then transmitted to the clerks — accompanied by language that informs the clerks that the applicant's data has been verified and that he or she should be issued a ballot.

The campaign has not been provided the directive(s), if any, were given to the clerks about how to process the electronic applications. It is unclear to us whether the Secretary of State made it clear that the clerks continue to play a role in independently validating the applications. This also raises a question as to whether there a uniform, non-discriminatory, written process in all 33 counties to be followed by the county clerks with regard to the electronic absentee applications.

There is some indication that when the electronic application portal went to the design phase, the intention was for MVD to not only validate the applications but also to apply a facsimile of the applicant's physical signature (such as those that are displayed on New Mexico driver's licenses) onto the application.

NOTE: This is an especially crucial component in that the lack of a physical signature on the electronic application removes what is arguably the most important layer of authentication at the point of absentee ballot issuance — because all of the other information on an absentee-ballot application can be taken from publicly purchasable voter rolls. The absence of this layer of authentication is especially problematic for any after-the-election ballot review because the signature on the absentee ballot outer envelope cannot possibly be matched with either the application or the voter registration form.

Based on information provided, it appears that the Secretary of State attempted to have facsimiles of physical signatures from the MVD database applied to the electronic applications, but that there were insurmountable programming and interface issues and that the effort was abandoned.

Issue 5: Questionable or Possibly Fraudulent Absentee Ballot Applications

Of the 11,464 (11,995) people who applied for and were sent an absentee ballot by the Doña Ana County Clerk, roughly 2,885 (about 25% of the total) never mailed them back in to vote. This is a very anomalous. Historically, the people who apply for an absentee ballot (assuming it is the actual voter who is personally applying) are among the most intensely conscientious of voters. It requires more effort than showing up on Election Day or visiting an early voting site. For that reason, the rate of non-return rarely reaches 5%. The 25% figure is simply not normal. (Imagine if all 1,200,000 New Mexico voters personally requested an absentee ballot application, filled it out, asking that an absentee ballot to be sent to them, then received the absentee ballot at their home or post office. Then 300,000 of them refused to vote the ballot or return it. It is inconceivable — provided that the voters themselves actually went to the trouble to personally apply.)

This is marked change from 2016, when Doña Ana County's non-return rate hewed closely to the figures for Bernalillo, Chaves, and the state as a whole. The non-return rate of absentee ballots in various jurisdictions in the two years is as follows:

	2016	2018
Bernalillo	4,874/30,411 (**16.0%**)	2,375/26,207 (**9.1%**)
Chaves	196/1,289 (**15.2%**)	191/1,704 (**11.2%**)
Doña Ana	657/3,758 (**17.5%**)	2,891/11,428 (**25.3%**)

Statewide	12,283/69,966 (**17.6%**)	9,095/75,470 (**12.1%**)

Of the 2,891 Doña Ana County voters who were sent absentee ballots but did not return them, 1,718 of them were registered Democrats, while only 306 were Republicans, and the bulk of the remainder are DTS or independent — a number exceeding the GOP total, which is unusual in that Republicans vastly outnumber DTS voters both statewide and in the county. This is suggestive — it is probably the strongest purely statistical red flag present in this whole election — of the possibility that someone was submitting absentee ballot applications for Democrats. There is also a significantly high number of duplicate applications — where one voter supposedly submitted more than one absentee ballot application or submitted an absentee application after the absentee ballot had been received, or the voter had voted in person. In many of these cases the signature on the duplicate applications do not match each other.

Issue 6: Non-Resident and Non-Citizen Voters

There have been complaints about voters who may or may not be residents or citizens, but the impoundment did not focus on those issues. Sunland Park, which is the second largest municipality in Doña Ana County, has been plagued by voter fraud issues in the past, resulting in a number of convictions related to El Paso residents voting in Sunland Park elections. These convictions were obtained by a Republican district attorney, Amy Orlando. However, after she was defeated by her Democrat challenger, the new District Attorney dropped the cases and apparently did not pursue any of the remaining indictments.

Also of note is the position taken by the Secretary of State Maggie Toulouse Oliver in an email she composed in response to an inquiry about a non-citizen being found registered to vote in Doña Ana County:

> *First, as you are probably unaware, in 2009, former Secretary of State Mary Herrera and the State of New Mexico were sued by a national organization called Project Vote. The basis of the lawsuit was that New Mexico Human Services departments were failing to comply with provisions of the NVRA. Here is a brief overview of the case, from a report issued by the Plaintiff in the case:* [Her excerpt is omitted here.]
>
> *As a result of the case, a Federal Consent Decree was ordered in 2010, requiring Human Services and other state-funded agencies to offer every client the opportunity to register to vote every time they come into the office, or when they receive renewal paperwork in the mail.*
>
> *It sounds like this particular agency needs to be re-trained to ensure they are giving out correct information to their clients regarding who is eligible to vote. My office is happy to make that outreach once we are completed with the 2018 general election canvass.*

However, that agency is required to make the offer to every client. I have learned based on my discussions with the state Human Services department that the department does not necessarily have data on whether clients are citizens or not.

Second, although, in this case, your staff may have failed to note the "no" selected on the voter registration form checkbox denoting citizenship, it doesn't surprise me that during the weeks leading up to a General Election, with a significant increase in voter registration activity, and a previous registration on file, that the "no" checkbox was missed. If not already in place, I would advise you to implement internal voter registration processing policies in the future that will help your staff ensure this type of human error is minimal. The industry standard for human error in data processing is between 1-4%, so ideally the number of errors in the file at any given time would be in that range.

Further, you have already certified the voter registration records for the purposes of this election. While conducting a review of the registrations processed close to the election would be pertinent, I don't advise you conduct that process until after the canvass of the election has been certified. In addition to being statutorily unable to render retroactive changes to the voter rolls during this time, it will prevent you from having to dedicate critical resources to the conduct of the election away from those important duties. It may be important for you to clarify for the Commissioner that you're not refusing to conduct a review, but rather you're not able to conduct a review until the general election and canvass are completed.

Issue 7: Possible Ballot Harvesting

The only provision addressing third-party delivery of absentee ballots is found in NMSA 1978 1-6-10.1. That section provides:

A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

That's the entirety of the statute, and no penalty nor declaration of criminality (let alone classification of the degree of criminality) is provided. There is a general rule that "[i]f the Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, whoever knowingly commits such violation is guilty of a petty misdemeanor," but it is not clear that § 1-6-10.1 "prohibit[s] a specific act." Although there is clearly an implied prohibition in that section, it does not use prohibitory language. NMSA 1978, § 1-20-22.

A voter, caregiver to that voter, or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot. If a third-party, not identified in statute as authorized to deliver, were to drop off an absentee ballot for someone, such an act, if accepted at

all, (and there is no statutory authorization for such a transaction) should be treated — at best — as a provisional ballot. In other words, if someone unauthorized by law to deliver the ballot delivers the ballot, this would require the actual voter to come in and verify the ballot, or otherwise confirm its validity. However, there is no process in place to govern this kind of event.

The campaign made a public records request for "[a] list of any persons who delivered to the custody of the Doña Ana County Clerk the absentee ballots (as described in NMSA 1978, § 1-6-10.1) of five or more other persons, and, if no such list exists, any documents discussing or mentioning the existence of any person noticed by a Doña Ana County employee or member of the public to be delivering an unusual number of absentee ballots." The County responded that "[n]o such records exist." So it is likely that the counties (or at least Doña Ana County) make no attempt to track possible ballot brokers.

Investigating this is a matter of identifying unusual clusters of walk-in ballots. An investigation would involve a slow and cumbersome process of contacting people to see what they say. Clusters like nursing homes — which are doubly susceptible to harvesting given the vulnerability to fraud of so many residents — could legitimately see "caregivers" walk in their ballots for them. The same can be said of those apartment complexes which have become well organized by a particular political party or operative within the party. However, ballot harvesting does not necessarily have to be done in clusters, so a full investigation will involve calls or visits with individuals who supposedly walked in their ballots to see if they used a broker.

Issue 8: Disenfranchisement Due to Wrongful Absentee Ballot Application Rejections

An unusually large number of absentee-ballot applications from registered voters were rejected by the Doña Ana County Clerk's office for reasons other than duplicate submissions. There are a total of 531 rejections on the register, but over 2000 rejected absentee applications provided in the impoundment process.

The Doña Ana County Clerk's office rejected applications for such Voter-ID discrepancies as "failing to put an apartment number on a registration address" (even if the voter did include the address of the apartment complex itself).

Other reasons used by the clerk's staff to reject applications may have more validity (discussed below as examples) however it is important to note that those same criteria used by the staff to reject applications were not applied by the Absent Voter Precinct Board to accept or reject actual ballots that the voters sent back to be counted.

For example, county clerk personnel rejected absentee ballot applications for having: "the wrong registration address," "no registration address," "no year of birth," "the wrong year of birth," "listed registration address does not match address in voter file," "no physical registration address provided," and "no signature." Yet the Absent Voter Precinct Board accepted all of those discrepancies without question, applying only the last criterion ("no signature") as the sole rationale for rejecting a ballot.

Given that the Absent Voter Precinct Board applied no Voter-ID standard at all — at the point of actual absentee voting — applying such standards for the mere application for a ballot seems unduly harsh. At the very least there is no uniformity in the application of a coherent, consistent standard of eligibility throughout the voting process. Such a non-uniform process may have disenfranchised voters — possibly more than 500 of them — especially those who were to be out of town on Election Day, or who were infirm, and thus could not vote because they were not issued an absentee ballot.

Issue 9: Electronic Application v. Physical Application

While the new electronic absentee ballot application portal and process was discussed earlier, there are other aspects of the absentee ballot application that require consideration.

The electronic application must include language that ensures that an applicant clearly intends that his or her electronic signature carries the force of a lawful signature, i.e. it must have the use of a word such as "sign" or "signature," combined with a serious-sounding affirmation or statement (perhaps even admonition). The user has to be informed — and must accept — that the improper use of the portal or process is a criminal offense. It must be clear that a would-be absentee voter is swearing that the information provided is true and that he or she understands the penalty for providing false information.

If the Secretary of State or the MVD does not truly verify a driver's license number (which is uncertain at this point) an electronic absentee-ballot application could be filled out using entirely publicly information. And even if the driver's license is provided, there is no guarantee that ballot harvesters are not obtaining that information in the same manner that paper applications may be processed.

Some of the same potential opportunities for fraud also exist with the paper applications, even though the paper applications have the additional security layer of the physical signature. In practice however, the clerks do not actually compare the signature on the absentee-ballot application with the signature on the voter-registration certificate. Nor does the AVPB verify the signature when qualifying received absentee ballots on Election Day.

So the only real-world consequence of not having a physical signature on the application is that it makes all post-election reviews more difficult because: 1) there are only two signatures to compare (the ballot's outer envelope and the registration certificate) rather than three; and 2) you have to pull voter registration certificates, which, unlike the applications and the envelopes, are not physically stored together after the election.

Issue 10: Commercial Mail Boxes

A number of voters have been found to use commercial mail boxes, provided by such companies as United Parcel Service, as their voter registration addresses, despite the requirement that a voter must have a residential address. This issue has arisen, especially in Bernalillo County, over the past several years, despite notices from prior Secretaries of State that the practice is unlawful.

The Election Code requires voters to register using the address where the voter resides. Section 1-4-5.4 (B) provides:

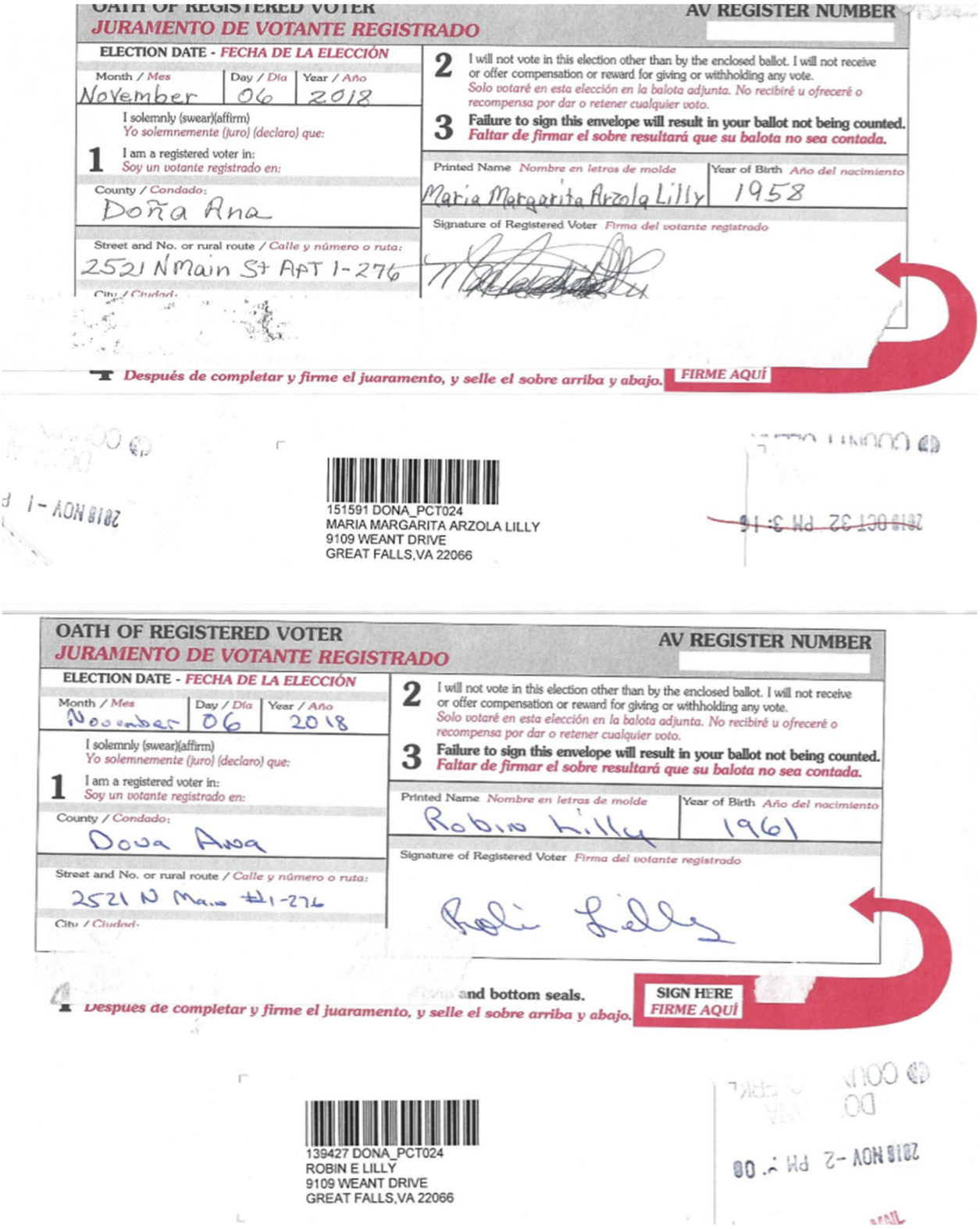
> *The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county of former registration, social security number, date of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.*

However, in Doña Ana County, numerous voters are registered using commercial mail box addresses rather than residences.

1300 El Paseo Road is a commercial shopping center. Suite 181 is a UPS store location. The voter file shows 12 voters registered at this address.

The UPS Store
ups
Mailbox & Postal Solutions
Small Business Solutions
Mailbox & Postal Solutions
Pack & Ship Guarantee
MBE
MBE
MBE
180
181
182

Two voters whose registration addresses are commercial mail boxes, and the ballots were mailed out of state. The voter file shows 17 voters registered at this UPS store location:



The UPS Store
ups
metro
Authorized
OPEN
Get a plan with:
amazon prime

The following voter registered at a commercial mailbox in Doña Ana County and had his ballot mailed to an Albuquerque address:

Issue 11: Voter Incident Reports

An additional source of concern within Doña Ana County was the number of voter incident reports received from citizens concerned that they had either personally been affected by some kind of irregularity or that they had observed something that seemed not to track with proper procedures. Listed below is a sampling of those reports.

Among these reports are those provided by Donnie K. Parrott, who served as the presiding judge at the Thomas Branigan Library Early Voting location. He prepared Voter Incident Reports for numerous voters who appeared on the absentee list, but who stated that they had neither requested nor received an absentee ballot.

Incident Report 1: Voter Cynthia Cook, Democrat

> "Torres campaign ask Cynthia Cooke [sic] to sign card for support and she received an absentee ballot. I suggested voter use the absentee ballot if it were available. I didn't record the way she voted and don't remember her choice."
>
> **Status on the Absentee Register:** Ballot Mailed

Incident Report 2: Voter Peggy King

"Never voted absentee ballot and never will."

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 3:

"Four different people complained about not requesting an absentee ballot and were upset about not realizing they needed to use them. The were misplaced or destroyed or the voter thought/told me they could still vote by ballot and tabulator at voting locations.

Incident Report 4: Voter Christopher Schurtz, Democrat

"Did not request absentee ballot. Didn't receive. Didn't/would not vote provisional. Bureau of Elections stated they received his request 10-9-2018 and would show it to him when I called to complain. Voter was very upset.

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 5: Nancy Flowers, Democrat

"This she signed a "small" request for support not realizing it may have been an absentee ballot request. She stated she felt pressured by people at her home and signed to get rid of them. She did vote provisional.:

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 6: George R. Foster, Democrat

"Did not request absentee ballot. Threw the ballot away. Voted provisional."

Status on Absentee Register: Ballot Mailed

Incident Report 7: Jennifer Vega-Brown, Democrat

"Did not request absentee ballot. Did not receive absentee ballot. Voted provisional.

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 8: Sarahi Bedell

"Did not request absentee ballot. Did not receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 9: Laura Gaudarrama, Democrat

"Received absentee ballot. Did not request an absentee ballot. Voted provisional."

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 10: Pete Cordova Flores, Democrat

"Received absentee ballot. Did not request an absentee ballot. Voted provisional."

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 11: Danielle Marie Cuellar, Democrat

"Voter didn't request an absentee ballot. Voter didn't receive an absentee ballot. Voted provisional."

Status on Absentee Register: Ballot Mailed (not returned)

Incident Report 12: Carmen Rausch, Democrat

"Did not request absentee ballot. Did not receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 13: Elisa Prado, Democrat

"Didn't request absentee ballot. Didn't receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 14: Maliza Melon, Democrat

"Did not request absentee ballot. Did not receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 15: Deloris Dallas, Democrat

"Didn't request absentee ballot. Didn't receive absentee ballot. *probably voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 16: Raymond Emanuelson, Decline to State

"Didn't request absentee ballot. Didn't receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 17: Betty Rios, Democrat

"Didn't request absentee ballot. Didn't receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 18: Mercedes Madrid, Democrat

"Didn't request absentee ballot. Didn't receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 19: Justice All, Republican

"Didn't request absentee ballot. Received absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 20: Guillermina Apodaca, Democrat

"Did not request absentee ballot. Did not receive absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)

Incident Report 21: Miguel Angel Rios Diaz, Democrat

"Requested absentee ballot. Received absentee ballot. Voted provisional on my list. *an early county list shows precinct voting, not provisional."

Status on Absentee Register: Not listed

Incident Report 22: Cubia Clayton , Democrat

"Didn't request absentee ballot. Received absentee ballot. Voted provisional."

Status on Absentee Register: Ballot mailed (not returned)