

CAROL A. REYNOLDS

LAS CRUCES, NM 88012

FEDERAL ELECTION  
COMMISSION

2019 OCT 23

CELA

October 6, 2021

**MUR 7934**

Lisa J. Stevenson  
Office of the General Counsel  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

Dear Ms. Stevenson:

This complaint is being filed to address misuse of campaign finance funds that occurred during the successful election efforts of Xochitl Torres Small to become the U.S. Congressional Representative from New Mexico District #2 in the 2018 election cycle. Rather than simply rely on the primary election to determine which candidate would best serve District #2 constituents, Torres Small sought to eliminate her strongest opponent, Angel Pefia, by using questionable tactics to disqualify Pena's petition forms required for his inclusion as a congressional candidate for District #2 on the primary election ballot. These efforts involved using campaign finance funds to fund a lawsuit by a private citizen who was surreptitiously recruited to file said suit on behalf of the campaign in order to foster the perception of grassroots voter concern over the validity of Pena's petition forms.

Angel Pefia's official government-generated petition forms had naming errors: a computer system glitch failed to generate an "n" in Pefia and a nonsensical symbol appeared in the place of the correct letter.

Campaign staff took action to correct the errors on petition forms. In some instances the nonsense symbol was transformed into an "n" and at other times the entire flawed word that was supposed to represent Pena was crossed out and replaced with the handwritten corrected name. (See enclosed/attached two examples of the petitions identified as problems by Pena's staff/volunteers.)

The rationale for disqualification hinged on the provision found under New Mexico Statute 1-8-31 NMSA 1978 which provides under "E" that: "With or without a showing of fraud or reasonable opportunity for fraud, a nominating petition, including all signatures on the petition page, shall be invalid if any of the information required by Subsection D of this section is not listed on the petition before the petition is signed by a voter or if any of the required information is altered." (Underlining here has been added for emphasis). Subsection D (2) specifies that the candidate's name "shall be listed in the appropriate space at the top of the nominating petition before the petition has been signed by any voter." To invalidate petitions because inaccurate information generated on the official petition form was corrected seemed to many Pena supporters to go beyond the purpose and the intent of the regulation.

Torres Small was well-connected to the Democratic political establishment and the Secretary of State, Maggie Toulouse Oliver, disqualified a substantial number of Pena's petitions which resulted in Pena no longer being eligible for inclusion on the primary ballot. Will Ford in his article, "Party Favors" featured in the December 9, 2019 issue of the *High Country News* reveals that Pena challenged Oliver's decision as being unduly harsh because there was "legal room for bureaucratic discretion" and there was an issue of voter and candidate disenfranchisement. In the court battle that ensued, the attorneys for the state mounted a strong defense and the judge upheld Oliver's action, but recommended that Pena appeal his case to the New Mexico Supreme Court. (See enclosure/attachment: *High Country News* page 22 of print version, page 29-30 for e-mailed PDF.)

Regarding this judge and his decision, journalist Will Ford in the "Party Favors" article, revealed that: "In a later case, he acknowledged that he struggled with the decision, saying he preferred leaning toward the enfranchisement of candidates whenever possible." (See enclosure/attachment: *High Country News* page 22 of enclosed print version, page 30 for e-mailed PDF.)

By comparison, Sharon E. Clahchischilliage, a candidate for the New Mexico House of Representatives, also submitted petitions on which campaign workers had inserted an "E" between her first and last name on the form. The omission of the "E" occurred on the government-generated petition form. This lapse was not addressed by the Secretary of State. A person represented by attorney Karen Mendenhall filed suit against the candidate as well as the county clerk who had not objected to the petitions submitted on behalf of Clahchischilliage. The judge dismissed the case and preserved the status of Sharon E. Clahchischilliage's candidacy finding that: "There was no evidence of voter confusion regarding the name on the petition or that the addition of the initial "E" created confusion as to the name on the petition or the person being nominated." Dismissal was further warranted by the fact that the party filing the suit was not a registered voter in Clahchischilliage's district. (See enclosure/attachment of a Clahchischilliage petition.)

Peña was considering making an appeal to the New Mexico State Supreme Court, when he was notified that a lawsuit had been filed against his candidacy by William Thomas Morrow who was challenging the validity of the signatures on his petitions. The attorney filing this action on behalf of William Thomas Morrow was also Karen Mendenhall. This additional legal action against Peña made it financially impossible for Peña to proceed. According to Will Ford, the legal fees Peña's campaign incurred at such an early stage in the race "bankrupted" the Peña campaign. Peña had been relying on a "ground game" where he would "out organize" the opposition in contrast to the very well-funded Torres-Small campaign which had financial backing from the Democratic Congressional Campaign Committee (DCCC). Peña withdrew from the campaign. (See *High Country News* article page 23 of enclosed print version, page 30-31 for emailed PDF.)

Journalist Will Ford's article, "Party Favors" in the previously-mentioned issue of the *High Country News*, further reports that this lawsuit filed by William Thomas Morrow was done at the behest of the Torres Small campaign and that the legal fees paid to Karen Mendenhall were funded by the Torres Small campaign. While it is not unknown for a person without financial means to seek funding from a third party in order to secure legal services to pursue his/her grievance through the courts, this is not the situation in the lawsuit filed by William Thomas Morrow. Morrow has admitted that the Torres Small campaign requested that he file the lawsuit and that he "...didn't know many of the details, but...was happy to step forward for them."

The campaign reportedly felt this subterfuge was necessary because some Democratic party members were not pleased with Torres Small's efforts to oust Peña over the tilde issue and felt the voting public might look askance at the Torres Small candidacy if the campaign filed as the plaintiff in the case. Ford further indicates that: "The Morrow lawsuit was also shaky." One of Peña's supporters reviewed the signatures being questioned and found many problems with the allegations being made in the lawsuit. (See *High Country News* article page 22-23 of enclosed print version; page 31-32 for emailed PDF.)

Regarding the use of campaign funds to fund a third-party suit as a "beard" for a political candidate, journalist Will Ford quoted D.C. elections law expert Brett Kappel as follows: "...if there were a complaint over this, the FEC would want to know why the campaign wasn't the plaintiff in the case." Will Ford states in his "Party Favors" article that the amount paid to Karen Mendenhall for the lawsuit is about \$18,000. (See *High Country News* article page 22 of print version; page 32 for emailed PDF.)

This complaint is being filed to dissuade Torres Small (and hopefully other candidates inclined to follow her lead) from using campaign dollars to fund questionable lawsuits by third party individuals in the future and to urge the Federal Election Commission (FEC) to require that Torres Small personally pay to an entity deemed suitable to the FEC an amount equivalent to the dollars paid to Karen Mendenhall for developing and filing the William Thomas Morrow lawsuit. The levying of appropriate additional fines could also be considered.



Because this complaint is based on activity occurring during February 2018, this complaint should remain viable until March of 2023 when the five-year statute of limitations will apply.

2

A complete read of the Will Ford article reveals several ethical lapses on the part of Xochitl Torres Small and her husband, New Mexico State Representative Nathan Small, which although reprehensible unfortunately do not lend themselves to redress under existing legal and regulatory provisions. However, by the FEC following up on this complaint regarding the misuse of campaign funds with meaningful consequences, a signal will be sent to future candidates that: (1) unsavory campaign tactics can be exposed and punished accordingly; (2) such behavior can be judged in the court of public opinion through the dissemination of the findings of the FEC; and (3) the findings of the FEC can have a potentially negative impact on the political and professional futures of those who engage in such practices. Hopefully the actions of the FEC regarding this complaint will provide a future deterrent to such behavior and new young candidates will reflect carefully on what strategy and tactics they select in mounting their campaigns for public office.

The amount of money involved is relatively small in comparison to the dollar amount at stake in other campaign finance violations being reviewed by the FEC, but the implications in redressing this wrong are significant. The voting public needs to have confidence that: (1) political contests are as fair and transparent as possible; (2) any person who wants to be on the ballot can become a candidate by following reasonable procedures; and (3) persons using unethical measures to sabotage a campaign will be held accountable. Angel Peña was forced to withdraw from the election campaign before constituents could vote for him. By suppressing his candidacy, voting rights were also suppressed: constituents who supported him were wrongfully denied the right to select him as their candidate. He may or may not have prevailed in the primary, but a substantial number of voters were deprived of the opportunity to select a candidate of their choice.

Thank you for your consideration,

  
Carol A. Reynolds

Las Cruces, NM 88012

State of New Mexico  
County of Doña Ana

Under penalty of perjury, this Federal Election Commission complaint was signed and sworn to before me on 10/06/2021 by Carol A. Reynolds.

  
Signature



My Commission Expires:

OFFICIAL SEAL  
April Maese  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
01/08/2023

My commission expires: 01/08/2023

# 2018 PRIMARY NOMINATING PETITION

I, the undersigned, a registered voter of New Mexico, and a member of the Democratic party, hereby nominate

Angel D. Peña who resides at 2505 S. Solano in the county of Dona Ana

New Mexico, for the party nomination for the office of U.S. House of Rep. District 2, to be voted for at the

primary election to be held on June 5, 2018, and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

- |  |   |   |
|--|---|---|
| 1. <u>[Signature]</u><br>(actual signature)  | <u>Elizabeth Bray</u><br>(name printed as registered)       | <u>[Signature]</u><br>(city or zip code)          |
| 2. <u>[Signature]</u><br>(actual signature)  | <u>Elizabeth Bray</u><br>(name printed as registered)       | <u>Las Alamos, NM 87801</u><br>(city or zip code) |
| 3. <u>[Signature]</u><br>(actual signature)  | <u>[Signature]</u><br>(name printed as registered)          | <u>[Signature]</u><br>(city or zip code)          |
| 4. <u>[Signature]</u><br>(actual signature)  | <u>Kathryn [Signature]</u><br>(name printed as registered)  | <u>[Signature]</u><br>(city or zip code)          |
| 5. <u>[Signature]</u><br>(actual signature)  | <u>Laura [Signature]</u><br>(name printed as registered)    | <u>Las Cruces, NM 88001</u><br>(city or zip code) |
| 6. <u>[Signature]</u><br>(actual signature)  | <u>[Signature]</u><br>(name printed as registered)          | <u>[Signature]</u><br>(city or zip code)          |
| 7. <u>[Signature]</u><br>(actual signature)  | <u>Brita [Signature]</u><br>(name printed as registered)    | <u>Las Cruces, NM 88001</u><br>(city or zip code) |
| 8. <u>[Signature]</u><br>(actual signature)  | <u>Fred [Signature]</u><br>(name printed as registered)     | <u>Las Cruces, NM 88001</u><br>(city or zip code) |
| 9. <u>[Signature]</u><br>(actual signature)  | <u>Alfonso [Signature]</u><br>(name printed as registered)  | <u>Las Cruces, NM 88001</u><br>(city or zip code) |
| 10. <u>[Signature]</u><br>(actual signature) | <u>Santiago [Signature]</u><br>(name printed as registered) | <u>[Signature]</u><br>(city or zip code)          |
| 11. <u>[Signature]</u><br>(actual signature) | <u>Elizabeth Rubio</u><br>(name printed as registered)      | <u>LC, 88011</u><br>(city or zip code)            |
| 12. <u>[Signature]</u><br>(actual signature) | <u>Carly [Signature]</u><br>(name printed as registered)    | <u>88001</u><br>(city or zip code)                |
| 13. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>88001</u><br>(city or zip code)                |
| 14. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>88011</u><br>(city or zip code)                |
| 15. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>88011</u><br>(city or zip code)                |
| 16. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>88003</u><br>(city or zip code)                |
| 17. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>[Signature]</u><br>(city or zip code)          |
| 18. <u>[Signature]</u><br>(actual signature) | <u>[Signature]</u><br>(name printed as registered)          | <u>LC 781107</u><br>(city or zip code)            |
| 19. <u>[Signature]</u><br>(actual signature) | <u>Alice Cook</u><br>(name printed as registered)           | <u>88040</u><br>(city or zip code)                |
| 20. <u>[Signature]</u><br>(actual signature) | <u>Felicity [Signature]</u><br>(name printed as registered) | <u>88001</u><br>(city or zip code)                |

# 2018 PRIMARY NOMINATING PETITION

I, the undersigned, a registered voter of New Mexico, and a member of the Democratic party, hereby nominate

Angel D. Peña Yerna, who resides at 2505 S. Solano in the county of Dona Ana

New Mexico, for the party nomination for the office of U.S. House of Rep. District 2, to be voted for at the

primary election to be held on June 5, 2018, and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>2505 S. Solano</u> (city or zip code)
2. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
3. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88007</u> (city or zip code)
4. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88007</u> (city or zip code)
5. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
6. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
7. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
8. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
9. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88002</u> (city or zip code)
10. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
11. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88005</u> (city or zip code)
12. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
13. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
14. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88011</u> (city or zip code)
15. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>2005 Las Cruces</u> (city or zip code)
16. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
17. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
18. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)
19. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88048</u> (city or zip code)
20. <u>[Signature]</u> (actual signature)	<u>[Signature]</u> (name printed as registered)	<u>88001</u> (city or zip code)



# 2018 PRIMARY NOMINATING PETITION

RECEIVED SAN JUAN COUNTY CLERK

I, the undersigned, a registered voter of New Mexico, and a member of the Republican party, hereby nominate  
Sharon Clahchischillage, who resides at 25 Road 9499, Shiprock, NM 87420 in the county of San Juan  
(candidate name) (candidate's address) (candidate's county of residence)

New Mexico, for the party nomination for the office of State Representative - District 4 to be voted for at the  
(office sought, including district or division #, if applicable)

primary election to be held on June 5, 2018, and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. <u>[Signature]</u> <small>(usual signature)</small>	<u>Joseph Nelson</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
2. <u>[Signature]</u> <small>(usual signature)</small>	<u>JUDY NELSON</u> <small>(name printed as registered)</small>	<u>87416</u> <small>(city or zip code)</small>
3. <u>Dana Nelson</u> <small>(usual signature)</small>	<u>Dana Nelson</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
4. <u>Syndee Nelson</u> <small>(usual signature)</small>	<u>Lyndae Nelson</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
5. <u>[Signature]</u> <small>(usual signature)</small>	<u>Jennifer Warner</u> <small>(name printed as registered)</small>	<u>87401</u> <small>(city or zip code)</small>
6. <u>[Signature]</u> <small>(usual signature)</small>	<u>Jenni Warner</u> <small>(name printed as registered)</small>	<u>87401</u> <small>(city or zip code)</small>
7. <u>Esther Facticeau</u> <small>(usual signature)</small>	<u>Esther Facticeau</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
8. <u>Wesley Warner</u> <small>(usual signature)</small>	<u>Wesley Warner</u> <small>(name printed as registered)</small>	<u>Farmington 87401</u> <small>(city or zip code)</small>
9. <u>[Signature]</u> <small>(usual signature)</small>	<u>Lindsey Haws</u> <small>(name printed as registered)</small>	<u>Kirtland NM 87417</u> <small>(city or zip code)</small>
10. <u>Jamie L Rogers</u> <small>(usual signature)</small>	<u>Jamie L Rogers</u> <small>(name printed as registered)</small>	<u>Waterflow, NM 87421</u> <small>(city or zip code)</small>
11. <u>[Signature]</u> <small>(usual signature)</small>	<u>[Signature]</u> <small>(name printed as registered)</small>	<u>Waterflow, NM 87421</u> <small>(city or zip code)</small>
12. <u>Tasha Begay</u> <small>(usual signature)</small>	<u>Tasha Begay</u> <small>(name printed as registered)</small>	<u>Kirtland, NM 87417</u> <small>(city or zip code)</small>
13. <u>[Signature]</u> <small>(usual signature)</small>	<u>Garry King</u> <small>(name printed as registered)</small>	<u>87416</u> <small>(city or zip code)</small>
14. <u>Verleen King</u> <small>(usual signature)</small>	<u>Verleen King</u> <small>(name printed as registered)</small>	<u>87416</u> <small>(city or zip code)</small>
15. <u>Margaret Bodkin</u> <small>(usual signature)</small>	<u>Margaret Bodkin</u> <small>(name printed as registered)</small>	<u>87416</u> <small>(city or zip code)</small>
16. <u>[Signature]</u> <small>(usual signature)</small>	<u>Kyle M. Haws</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
17. <u>Megan Matthews</u> <small>(usual signature)</small>	<u>Megan Matthews</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>
18. <u>[Signature]</u> <small>(usual signature)</small>	<u>TuAnn L. Darch</u> <small>(name printed as registered)</small>	<u>87401</u> <small>(city or zip code)</small>
19. <u>Trandac Cluff</u> <small>(usual signature)</small>	<u>Trandac Cluff</u> <small>(name printed as registered)</small>	<u>87401</u> <small>(city or zip code)</small>
20. <u>Melissa Beckstead</u> <small>(usual signature)</small>	<u>Melissa Ann Beckstead</u> <small>(name printed as registered)</small>	<u>87417</u> <small>(city or zip code)</small>

394

# High Country News

For people who care about the West

December 9, 2019 | \$5 | Vol. 51 No. 21-22 | www.hcn.org



## PARTY FAVORS

Should parties pick candidates before voters do? | By Will Ford