



75 State Street
16th Floor
Boston, MA 02109-1466
t 617 227 7940
f 617 227 0781
www.hembar.com

M. Patrick Moore, Jr.
Direct Dial (617) 557-9715
pmoore@hembar.com

December 17, 2021

VIA EMAIL

Mr. Roy Q. Luckett
Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, NE
Washington, DC 20463
cela@fec.gov

Re: Response to MUR 7934 (Xochitl for New Mexico, et al.)

Dear Mr. Luckett:

We write on behalf of Xochitl for New Mexico, and Joshua Orozco in his official capacity as Treasurer of Xochitl for New Mexico, in response to the Complaint filed by Carol A. Reynolds in MUR 7934.

The Complaint should be dismissed with no further action because it is based on a misunderstanding of the facts and of the application of the Federal Election Campaign Act of 1971, as amended (the "Act") to those facts. The Complaint does not allege any specific violation of the Act; instead, it implies that the Campaign impermissibly expended its funds. As described further below, the Complaint misstates several facts and fails to state a violation of the Act as a matter of law.

Because both the Campaign's payment of legal expenses and its disclosure of those payments were proper, the Commission should find no reason to believe a violation occurred, and dismiss the Complaint.

FACTUAL BACKGROUND

The Complaint alleges that the Xochitl for New Mexico campaign committee (the "Campaign" or "Ms. Torres Small") misused campaign funds by paying the legal expenses of a campaign supporter who challenged the nominating petition of Ms. Torres Small's prospective primary opponent, Angel Peña ("Mr. Peña").

The Complaint conflates two different lawsuits that proceeded in tandem after candidates submitted nominating petitions to the New Mexico Secretary of State in early 2018; both lawsuits are matters of public record. The first action was brought by Mr. Peña, who filed suit



December 17, 2021

Page 2

challenging the Secretary of State's disqualification of his candidacy. Mr. Peña had been disqualified by the Secretary of State because several pages of his nominating petition did not comply with New Mexico's statutory requirements. Accordingly, the Secretary did not count the signatures on those pages, and Mr. Peña's petition consequently lacked the requisite number of signatures required by New Mexico law.¹

At the time, the Campaign was represented by counsel,² which assisted the Campaign in understanding New Mexico's ballot access requirements, as well as evaluating whether Ms. Torres Small's prospective opponents had adequately met the requirements imposed upon them by state law. As the Commission knows, this practice is common in jurisdictions throughout the country, as candidates evaluate—and, at times, seek to limit—their field of potential competitors.³

While the Campaign was aware of the Secretary of State's decision with respect to the deficiency of Mr. Peña's nominating petition, it also knew that the Secretary's decision was the subject of a legal challenge. Consequently, to protect against the possibility that Mr. Peña's legal challenge to the Secretary's decision might be successful, the Campaign, together with its counsel, evaluated whether Peña's nominating petition was vulnerable to challenge on any other ground. Only Mr. Peña and another candidate (L. Madeline Hildebrandt) had submitted nominating petitions that would have potentially qualified them for Democratic primary ballot.⁴ If either candidate failed to qualify, Ms. Torres Small's path to the nomination became less difficult and less costly, better positioning her for what would be a competitive general election.

Accordingly, with the advice of counsel as to New Mexico's ballot access requirements, the Campaign evaluated the sufficiency of Mr. Peña's nominating petition, with particular focus on the signatures on the petition.⁵ Research comparing Mr. Peña's nominating petition signatures to the New Mexico database of registered voters identified over 200 petition signatories who were not qualified to sign (for numerous reasons, including that they were not registered voters or not members of the party from which Ms. Torres Small was seeking a

¹ Press Release, *SOS Toulouse Oliver Qualifies Major Party Candidates for Pre-Primary Convention Delegation*, at 3-4 (Feb. 12, 2018), attached as Exhibit A; see *In re Angel Peña*, D-101-CV-201800527 (Las Cruces Dist., filed Feb. 16, 2018) (challenging Secretary of State's disqualification).

² The Campaign is describing the nature of legal work performed in connection with the ballot access litigation for the sole purpose of demonstrating that the identified legal expenses were made for a permissible purpose under the Act. The information provided regarding the representation is consistent with that which would be required under the Federal Rule of Civil Procedure 26(b)(5) to demonstrate a claim of privilege. The substance of the legal advice provided by Campaign counsel to the Campaign, or to anyone with whom the Campaign had a common interest, is privileged. By describing the nature of the legal work performed in this response, the Campaign preserves and does not waive that privilege.

³ See, e.g., Janny Scott, "In Illinois, Obama Proved Pragmatic & Shrewd," *N.Y. Times* (Jul. 30, 2007) (describing that future-President Obama's first campaign for office was successful partially because of a ballot access challenge brought against his opponent).

⁴ Exhibit A, at 2, 3; Decl. of Brian Sowryda, ¶¶ 2-4 ("Sowryda Decl.").

⁵ Sowryda Decl., ¶¶ 3, 5.



December 17, 2021

Page 3

nomination).⁶ Based on this information and analysis, the Campaign concluded that Mr. Peña had not submitted a sufficient number of valid signatures.

With the permission and assent of the Campaign, Campaign counsel then used the information she had developed with the Campaign to represent a supporter of Ms. Torres Small, William Thomas Morrow, in litigation challenging Peña's nominating petition.⁷

Ultimately, at the initial stages of the litigation, Mr. Peña stipulated that he did not have the required number of signatures to qualify as a candidate, and the parties stipulated to the dismissal of the litigation.⁸ Mr. Peña separately dismissed his appeal of the Secretary of State's disqualification to the New Mexico Supreme Court and withdrew his candidacy.⁹

The Campaign paid the legal fees associated with its own ballot access efforts; its analyses of Mr. Peña's submission; and, when those analyses demonstrated that Mr. Peña's petitions were legally deficient, the lawsuit brought to challenge those submissions. It disclosed the payments as disbursements for legal fees in its pre-primary report on July 14, 2018 and in its July and October quarterly filings.¹⁰

ARGUMENT

The Complaint should be dismissed because it fails to allege facts that amount to a violation of the Act. The Complaint fails to identify any particular violation of the Act, but suggests that the Campaign's payment of legal expenses in evaluating—and ultimately challenging—Mr. Peña's ballot access petition was somehow improper. Federal law is clear, however, that the Campaign's payment of these legal expenses was a permissible expenditure that was properly disclosed.

I. The Commission should find no reason to believe that Torres Small converted campaign funds to personal use because payment of the identified legal expenses was a proper use of campaign funds.

A candidate and the candidate's campaign committee have "wide discretion" in making expenditures to influence the candidate's election so long as campaign funds are not converted to

⁶ Sowyrda Decl., ¶ 5; see N.M. Stat. § 1-8-31(C) (enumerating grounds on which signatures are considered invalid).

⁷ Sowyrda Decl., ¶ 6; *Morrow v. Oliver*, D-307-CV-20180073 (Las Cruces Dist., filed Feb. 16, 2018).

⁸ Stipulation of Dismissal, *Morrow v. Oliver*, D-307-CV-20180073 (Mar. 9, 2018), attached as Exhibit B; Sowyrda Decl., ¶ 7.

⁹ *In re Angel Peña*, D-101-CV-201800527; Sowyrda Decl., ¶ 7.

¹⁰ Excerpts of the Campaign's Pre-Primary Report (as amended); July Quarterly Report (as amended); and October Quarterly Report reflecting payments to The Mendenhall Firm, P.C., are attached as Exhibits C-E. In the Campaign's July Quarterly Report, it disclosed both a payment and a debt incurred during the reporting period; that debt later was paid, as reflected in the October Quarterly Report.



December 17, 2021

Page 4

personal use.¹¹ Campaign funds are converted to personal use when they are used to fulfill any commitment, obligation, or expense of any person “that would exist *irrespective* of the candidate’s election campaign . . .”¹² The Act and Commission regulations enumerate expenses that constitute per se personal use, including expenses for vacation, rent, and household supplies.¹³ The Commission assesses other categories of expenses, including legal expenses, on a case-by-case basis using the “irrespective” standard.¹⁴ Specifically, campaign funds may be used to pay for legal expenses that “directly relate” to the candidate’s campaign activities, *i.e.*, “expenses that “would not exist irrespective” of the candidacy.”¹⁵

The Commission has considered use of campaign funds both to gain and to challenge ballot access. The Commission has advised that legal expenses paid in connection with a candidate’s “attempt to gain ballot access for the primary election” were “directly related” to that candidate’s campaign “and would not exist irrespective” of their candidacy; accordingly, expenditures for that purpose are permissible.¹⁶ Similarly, the Office of General Counsel has noted that legal expenses incurred by a state party committee in defending the sufficiency of a third-party candidate’s nominating petitions were incurred in an “attempt[] to influence an election” because they were made “for the express purpose of siphoning votes away” from one Presidential candidate to another.¹⁷

The Commission also has concluded that a candidate’s *challenge* to an opponent’s ballot access was undertaken “for the purposes of influencing an election,” and therefore expenses incurred in connection with that challenge were not personal in nature.¹⁸ In Advisory Opinion 1980-57 (Bexar County Democratic Party), the Commission advised that a “candidate’s attempt to force an election opponent off the ballot so that the electorate does not have an opportunity to vote for that opponent is as much an effort to influence an election as is a campaign advertisement derogating that opponent.”¹⁹ Similarly, in MUR 5509 (Kerry-Edwards 2004,

¹¹ 52 U.S.C. § 30114(a)-(b); 11 C.F.R. § 113.1(g); *see* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (“Personal Use E&J”) (reaffirming the Commission’s “long-standing opinion that candidates have wide discretion over the use of campaign funds”); *e.g.*, Advisory Opinion 1995-23 (Christopher Shays for Congress), at 1.

¹² 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g) (emphasis added).

¹³ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

¹⁴ 11 C.F.R. 113.1(g)(1)(ii)(A).

¹⁵ Advisory Opinion 2018-09 (Clements for Congress), at 3, *citing* Advisory Opinion 2013-11 (Citizens for Joe Miller), Advisory Opinion 2011-07 (Chuck Fleischmann for Congress), and Advisory Opinion 2009-20 (Visclosky for Congress).

¹⁶ Advisory Opinion 2018-09 (Clements for Congress), at 3.

¹⁷ MURs 5489, 5581, 5513, and 5533 (MURS 5533 and 5581, Michigan Republican State Central Committee et al.), First Gen. Counsel’s Rept., at 37-39 (June 2, 2005).

¹⁸ Advisory Opinion 1980-57 (Bexar County Democratic Party), at 3.

¹⁹ *Id.* In Bexar County Democratic Party, the Commission opined on whether amounts raised by the Party to challenge the Democratic House candidate’s opponent’s nominating petitions constituted contributions to the candidate under the Act, and found they were because they were for the “purposes of influencing an election.” In Advisory Opinion 1982-35 (Hopfman), the Commission, citing Bexar County, reiterated that funds raised on behalf



December 17, 2021

Page 5

Inc.), the Office of General Counsel noted that Commission precedent supported the conclusion that efforts to deny ballot access to a third-party candidate should be viewed as “qualified campaign expenses” for purposes of the Presidential Election Campaign Fund Act, and recommended that the Commission find that Kerry-Edwards 2004 neither violated the Fund Act nor “any provision” of the FECA.²⁰ The Commission subsequently so found.²¹

Here, the identified legal expenses were, without question, directly related to Campaign activities, and would not have been incurred absent Ms. Torres Small’s candidacy. The Campaign retained an attorney who worked with the Campaign to review Mr. Peña’s nominating petition. Campaign counsel instructed campaign volunteers to compare the signatures on Mr. Peña’s nominating petition against the voter file, including how to identify signatures that fell short of New Mexico’s legal requirements.²² Campaign counsel also advised the Campaign concerning how to mount a legal challenge to the sufficiency of Mr. Peña’s nominating petition, and then worked with a supporter of the Campaign to bring such a challenge. To ensure compliance with the Act, the Campaign took the prudent course of paying the legal fees associated with that lawsuit. In another matter, the Commission may very well determine that the Campaign *must* pay the costs associated with such a suit to avoid an excessive in-kind contribution; at the very minimum, the Campaign *may* do so, just as it did here.

These legal expenses are quite unlike those the Commission has concluded are clearly personal expenses, such as legal fees associated with divorce, charges of driving under the influence, or withdrawing a guilty plea in a disorderly conduct case.²³ But for Ms. Torres Small’s candidacy, the Campaign would not have incurred these expenses.

The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”²⁴ The Campaign has done so here. These legal expenses, incurred to prevent an opponent from appearing on the primary ballot, directly related to Ms. Torres Small’s candidacy, and would not have existed but for that candidacy. The expenses were a proper use of campaign funds, not a conversion to Ms. Torres Small’s personal use.

of a candidate to finance a lawsuit to remove an opponent from the ballot are contributions because “the object of the requestor’s lawsuit was to eliminate the electorate’s opportunity to cast a vote for [the candidate’s] opponent.”

²⁰ MUR 5509 (Kerry-Edwards 2004, Inc.), First Gen. Counsel’s Rept., at 6-7 (Feb. 24, 2005), *citing* Advisory Opinion 1995-45 (Hagelin for President) and Advisory Opinion 1984-11 (Independents for Dennis Serrette) (each concluding that efforts to attain ballot access are “qualified campaign expenses” under the Presidential Primary Matching Fund Act).

²¹ MUR 5509 (Kerry-Edwards 2004, Inc.), Notification to Kerry-Edwards 2004, Inc. (Mar. 9, 2005).

²² Sowyrda Decl., ¶¶ 3-5.

²³ *See* Personal Use E&J, 60 Fed. Reg. 7862, at 7868; *see, e.g., Fed’l Elec. Comm’n v. Craig for U.S. Senate, et al.*, 816 F.3d 829, 839 (D.C. Cir. 2016).

²⁴ Personal Use E&J, 60 Fed. Reg. 7862, at 7867.



December 17, 2021

Page 6

II. The Commission should find no reason to believe that payment of the identified legal expenses was not properly disclosed or described.

The Campaign further notes that the expenses were properly disclosed and sufficiently described in the Campaign's reports filed with the Commission.

Commission regulations require that campaigns keep records of all disbursements, including their purpose.²⁵ In disclosures to the Commission, an expenditure must be explained by a "brief statement or description as to the reasons for the expenditure."²⁶ The regulations provide examples of statements or descriptions that meet this requirement, including, for example, "dinner expenses" and the similarly straightforward "travel expenses."

The Commission's website provides additional sample descriptions it considers "Adequate Purposes of Disbursement." Among the purpose descriptions identified as adequate are "Legal/Legal Fees/Legal Expenses."²⁷ A search of the Commission's disbursement database reveals thousands of entries describing payments for legal expenses variously as "Legal Expenses," "Legal & Treasury Expenses," "Allocable Expenses to Legal Acct," "Retainer and Expenses for Legal Services." It is exceedingly rare that any additional detail regarding the nature of the legal expenses are provided.

Each of the payments from the Campaign to The Mendenhall Firm, P.C. are described as "Legal Services."²⁸ This description accurately reflects the disbursement and is consistent with the Commission's sample descriptions.

CONCLUSION

For the reasons stated above, the Campaign's payment for the legal expenses incurred in challenging its primary opponent's ballot access was an appropriate expenditure that was disclosed properly. The Commission should find no reason to believe a violation has occurred and dismiss the Complaint.

²⁵ 11 C.F.R. § 104.9(a) (incorporating definition of "purpose" in 11 C.F.R. § 104.3(b)(3)(i)(A)); 11 C.F.R. § 104.3(b)(4)(i)(A) (same definition).

²⁶ 11 C.F.R. § 104.9(a); 11 C.F.R. § 104.3(b)(4)(i)(A).

²⁷ *Purposes of Disbursement*, Fed'l Elec. Comm'n, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last revised Aug. 21, 2018).

²⁸ Exhibits C-E, Excerpts of reports reflecting disbursements to The Mendenhall Firm, P.C.



December 17, 2021

Page 7

Respectfully submitted,

A handwritten signature in blue ink, which appears to read "M. Patrick Moore, Jr.", is written over a horizontal line.

M. Patrick Moore, Jr.
Jennifer Grace Miller
Vanessa A. Arslanian
Hemenway & Barnes LLP
75 State Street, 16th Floor
Boston, MA 02109
(617) 227-7940

BEFORE THE FEDERAL ELECTION COMMISSION

)
)
In the Matter of)
)
)
Xochitl for New Mexico and Joshua)
Orozco, in his Official Capacity as)
Treasurer)
)
)
_____)

MUR 7934

DECLARATION OF BRIAN SOWYRDA

I, Brian Sowyrda, being on oath, hereby depose and state as follows:

1. I served as the Campaign Manager for the Xochitl for New Mexico campaign (the “Campaign”) for the 2018 election.
2. In addition to Ms. Torres Small, two candidates filed nominating petitions before the New Mexico state deadline to be listed on the Democratic primary ballot for New Mexico’s Second Congressional District.
3. Counsel to the Campaign, Karen Mendenhall, advised the Campaign on the legal sufficiency of those petitions.
4. Shortly after his filing, Mr. Angel Peña’s nominating petition was found deficient by the Secretary of State’s office because of issues related to how his name was listed on the petition and alterations made to the petition, and Mr. Peña brought suit to challenge that decision.
5. From advice provided to it by Campaign counsel, however, and from work done by Campaign volunteers, the Campaign was also aware of other deficiencies in Mr. Peña’s

petitions, in particular that more than 200 of Mr. Peña's signatures either could not be verified or were from voters ineligible to sign a petition for a Democratic candidate.

6. With the assent of the Campaign, Campaign counsel then used the information she had developed with the Campaign to represent a supporter of Ms. Torres Small, William Thomas Morrow, in litigation challenging Mr. Peña's nominating petition. The litigation was filed on February 16, 2018. The Campaign paid the legal fees associated with that litigation.

7. Ultimately, the litigation was resolved shortly after it was filed, as the parties stipulated that Mr. Peña did not have sufficient signatures to qualify as a candidate and agreed to voluntarily dismiss the case on March 9, 2018. Mr. Peña withdrew as a candidate soon thereafter.

Executed under the pains and penalties of perjury this 17th day of December, 2021.

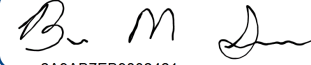
DocuSigned by:

3A0AD7ED0802421...
Brian Sowyrda

Exhibit A

FOR IMMEDIATE RELEASE

February 12, 2018

Contact: Joey Keefe (505) 469-2783

SOS Toulouse Oliver Qualifies Major Party Candidates for Pre-Primary Convention Designation

SANTA FE – New Mexico Secretary of State Maggie Toulouse Oliver today qualified major party candidates for pre-primary convention designation for the offices of U.S. Senator, U.S. Representative, and all elected statewide offices. Secretary Toulouse Oliver's office sent a letter to the leadership of New Mexico's three major political parties – Democratic, Libertarian, and Republican – certifying the names of the candidates who have met the requirements outlined in state law.

“Major party candidates who qualified can now focus on their party's convention as they move forward with their campaigns,” said Secretary Toulouse Oliver. “As always, my staff is available to answer any questions candidates may have as they navigate the electoral process.”

Last week, major party candidates for federal and statewide elected offices filed declarations of candidacy and nominating petitions containing the signatures of qualified New Mexico voters with the Secretary of State's Office. Secretary Toulouse Oliver's office conducted a review of the documents submitted by candidates before qualifying them for pre-primary convention designation today.

Each of the three major parties must now convene a pre-primary convention to elect their candidates to appear on the Primary Election ballot in June.

Below are the names of the major party candidates who qualified for each federal and statewide elected office (*parties listed alphabetically*):

U.S. Senate

- Martin T. Heinrich, DEM
- Aubrey Dunn, LIB
- Mick Rich, REP

U.S. Representative, District 1

- Patrick M. Davis, DEM
- Debra A. Haaland, DEM
- Damian R. Lara, DEM
- Damon P. Martinez, DEM
- Paul D. Moya, DEM

- Antoinette Sedillo Lopez, DEM
- Lloyd J. Princeton, LIB
- Janice E. Arnold-Jones, REP

U.S. Representative, District 2

- L. Madeline Hildebrandt, DEM
- Xochitl Torres Small, DEM
- Gavin Clarkson, REP
- Clayburn Griffin, REP
- Yvette Herrell, REP
- Monty Newman, REP
- John (Jack) S. Volpato, Jr., REP

U.S. Representative, District 3

- Ben R. Luján, DEM
- Christopher Manning, LIB
- Jerald Steve McFall, REP

Governor

- Jeff Apodaca, DEM
- Joseph Cervantes, DEM
- Peter DeBenedittis, DEM
- Michelle Lujan Grisham, DEM
- Steve Pearce, REP

Lieutenant Governor

- Jeff Carr, DEM
- Billy G. Garrett, DEM
- Javier M. Gonzales, DEM
- Rick S. Miera, DEM
- Howie C. Morales, DEM
- Michelle Garcia Holmes, REP

Secretary of State

- Maggie Toulouse Oliver, DEM
- Sandra D. Jeff, LIB
- JoHanna Cox, REP

State Auditor

- Brian S. Colón, DEM

- Bill McCamley, DEM
- Wayne A. Johnson, REP

State Treasurer

- Tim Eichenberg, DEM
- Arthur L. Castillo, REP

Attorney General

- Hector Balderas, DEM
- A. Blair Dunn, LIB
- Michael Eugene Hendricks, REP

Commissioner of Public Lands

- Stephanie Garcia Richard, DEM
- George K. Muñoz, DEM
- Garrett O. VeneKlasen, DEM
- Michael G. Lucero, LIB
- Patrick H. Lyons, REP

Judge of the Court of Appeals, Position 1

- Kristina Bogardus, DEM
- Stephen G. French, REP

Judge of the Court of Appeals, Position 2

- Jacqueline R. Medina, DEM
- Hank Bohnhoff, REP

Judge of the Court of Appeals, Position 3

- Briana H. Zamora, DEM
- Emil J. Kiehne, REP

Judge of the Court of Appeals, Position 4

- Megan P. Duffy, DEM
- Daniel Jose Gallegos, REP

Judge of the Court of Appeals, Position 5

- Jennifer L. Attrep, DEM

Angel D. Peña, who filed a declaration of candidacy to run for U.S. Representative in the Second Congressional District, was disqualified because a number of his submitted petition

pages failed to meet the requirements set forth in state statute. As a result, Mr. Peña did not meet the minimum number of signatures required for qualification.

Major party candidates for all other offices subject to the New Mexico Campaign Reporting Act must file on March 13, 2018. Those who will file with the Secretary of State on March 13 include: candidates for legislative offices elected from multicounty districts; all candidates for the Public Regulation Commission; all elective judicial offices in the judicial department, except magistrates; and, all offices representing a district composed of more than one county. Those who will file with their county clerk include: all elective county offices; magistrate judges; and, legislative offices elected from a district located wholly within one county.

On June 28, 2018, minor party candidates will be certified by their party leadership to the Secretary of State or their county clerk, depending on the proper filing officer for each office. On that day, minor party and independent candidates will also be required to submit their petition signatures totaling not less than one percent of the total number of votes cast for governor in the state at the last preceding general election in their respective district.

#

Follow Secretary Toulouse Oliver on [Facebook](#) and [Twitter](#).

Exhibit B

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

Case No. D-307-CV-2018-00373

WILLIAM THOMAS MORROW,

Plaintiff,

v.

MAGGIE TOULOUSE OLIVER,
in her Official Capacity as New Mexico
Secretary of State,

And

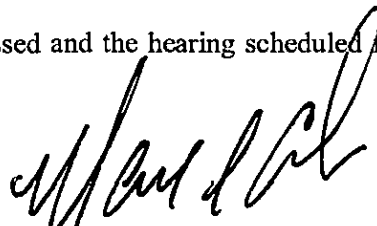
ANGEL D. PEÑA,
Real Party in Interest,

Defendants.

STIPULATION OF DISMISSAL

COME NOW THE PARTIES, William Thomas Morrow, Plaintiff, by and through his counsel of record, Karen Mendenhall, Mendenhall Law Firm, Maggie Toulouse Oliver, in her Official Capacity as New Mexico Secretary of State, by and through Sean Cunniff and Dylan Lange, Assistant Attorneys General for the State of New Mexico, and Angel Peña, the Real Party in Interest (hereinafter "Peña"), by and through his attorney, Erika E. Anderson, Law Offices of Erika E. Anderson, and hereby agree that Peña does not have six hundred twenty-three (623) valid signatures as required by NMSA § 1-8-33(B) to qualify as a candidate for the United States Representative, Congressional District 2.

WHEREFORE, IT IS HEREBY ORDERED that the Amended Complaint Challenging the Decision to Disqualify Angel Peña as a Candidate is dismissed and the hearing scheduled for March 9, 2018, at 1:00 p.m. is hereby vacated.



Honorable Manual L. Arrieta
Third Judicial District

SUBMITTED BY:

LAW OFFICES OF ERIKA E. ANDERSON

By: /s/ Erika E. Anderson
Erika E. Anderson
2025 Rio Grande Blvd. N.W.
Albuquerque, NM 87104
(505) 944-9039 / (505) 243-3534 Fax
erika@eandersonlaw.com

APPROVED:

THE MENDENHALL FIRM, P.C.

By: /s/ Karen S. Mendenhall (approved via email 3/9/18)
500 Tijeras Ave., NW
Albuquerque, NM 87102
(505) 243-3357/(505 842-7129 (fax)
karenm@mendenhallfirm.com

and

ATTORNEY GENERAL OF NEW MEXICO

By: /s/ Sean Cunniff (approved via email 3/9/18)
Sean Cunniff and Dylan Lange
Assistant Attorneys General
P.O. Drawer 1508
Santa Fe, NM 87504
scunniff@nmag.gov
dlange@nmag.gov

Exhibit C

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼

Example: If typing, type over the lines.

12FE4M5

Xochitl for New Mexico

ADDRESS (number and street)

PO Box 2250



Check if different than previously reported. (ACC)

Las Cruces

NM

88004

CITY ▲

STATE ▲

ZIP CODE ▲

2. FEC IDENTIFICATION NUMBER ▼

C C00666149

3. IS THIS REPORT



NEW (N)

OR



AMENDED (A)

STATE ▼ DISTRICT

NM

02

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:



April 15 Quarterly Report (Q1)



July 15 Quarterly Report (Q2)



October 15 Quarterly Report (Q3)



January 31 Year-End Report (YE)



Termination Report (TER)

(b) 12-Day PRE-Election Report for the:



Primary (12P)



General (12G)



Runoff (12R)



Convention (12C)



Special (12S)

Election on

M M / D D / Y Y Y Y
06 / 05 / 2018

in the State of

NM

(c) 30-Day POST-Election Report for the:



General (30G)



Runoff (30R)



Special (30S)

Election on

M M / D D / Y Y Y Y

in the State of

5. Covering Period

M M / D D / Y Y Y Y
04 / 01 / 2018

through

M M / D D / Y Y Y Y
05 / 16 / 2018

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Orozco, Joshua, ,

Signature of Treasurer

Orozco, Joshua, ,

[Electronically Filed]

Date

M M / D D / Y Y Y Y
07 / 14 / 2018

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. §30109.

Office
Use
Only**FEC FORM 3**
(Revised 05/2016)

SCHEDULE B (FEC Form 3) **ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 174 OF 181

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Xochitl for New Mexico

Full Name (Last, First, Middle Initial)

A. Strategies 360

Mailing Address 1505 Westlake Ave N
Ste 1000

City
Seattle

State
WA

Zip Code
98109-6211

Purpose of Disbursement
Consultant - Research

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
04 / 27 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

2000.00

Transaction ID : VVAHB9SJ988

☐ Memo Item

B. STUDENTS FOR A NEW AMERICAN POLITICS PAC

Mailing Address PO Box 206886

City
New Haven

State
CT

Zip Code
06520-6886

Purpose of Disbursement
Staff Time

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
05 / 01 / 2018

FEC Identification Number

C C00412122

Amount of Each Disbursement this Period

1800.00

Transaction ID : VVBGKDXW6T2I

☐ Memo Item * In-Kind Received

c. The Mendenhall Firm, P.C.

Mailing Address 500 Tijeras Ave NW

City
Albuquerque

State
NM

Zip Code
87102-3133

Purpose of Disbursement
Legal Services

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
04 / 02 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

9000.00

Transaction ID : VVAHB9SH489

☐ Memo Item

SUBTOTAL of Disbursements This Page (optional)

12800.00

TOTAL This Period (last page this line number only)

SCHEDULE B (FEC Form 3) **ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 175 OF 181

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Xochitl for New Mexico

Full Name (Last, First, Middle Initial)

A. The Mendenhall Firm, P.C.

Mailing Address 500 T jeras Ave NW

City
Albuquerque

State
NM

Zip Code
87102-3133

Purpose of Disbursement
Legal Services

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
05 / 01 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

3000.00

Transaction ID : VVAHB9SJ9F3

☐ Memo Item

Full Name (Last, First, Middle Initial)

B. The New Media Firm

Mailing Address 1730 Rhode Island Ave NW
Ste 1014

City
Washington

State
DC

Zip Code
20036-3112

Purpose of Disbursement
Consultant - Strategy

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
04 / 26 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

13000.00

Transaction ID : VVAHB9SJ970

☐ Memo Item

Full Name (Last, First, Middle Initial)

C. The New Media Firm

Mailing Address 1730 Rhode Island Ave NW
Ste 1014

City
Washington

State
DC

Zip Code
20036-3112

Purpose of Disbursement
Consultant - Strategy

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Category/
Type

Date of Disbursement

M M / D D / Y Y Y Y
05 / 03 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

68640.78

Transaction ID : VVAHB9SJ9Q6

☐ Memo Item

SUBTOTAL of Disbursements This Page (optional)

84640.78

TOTAL This Period (last page this line number only)

Exhibit D

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼

Example: If typing, type over the lines.

12FE4M5

Xochitl for New Mexico

ADDRESS (number and street)

PO Box 2250



Check if different than previously reported. (ACC)

Las Cruces

NM

88004

CITY ▲

STATE ▲

ZIP CODE ▲

2. FEC IDENTIFICATION NUMBER ▼

C C00666149

3. IS THIS REPORT



NEW (N)

OR



AMENDED (A)

STATE ▼ DISTRICT

NM

02

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:



April 15 Quarterly Report (Q1)



July 15 Quarterly Report (Q2)



October 15 Quarterly Report (Q3)



January 31 Year-End Report (YE)



Termination Report (TER)

(b) 12-Day PRE-Election Report for the:



Primary (12P)



General (12G)



Runoff (12R)



Convention (12C)



Special (12S)

Election on

M M / D D / Y Y Y Y

in the State of

(c) 30-Day POST-Election Report for the:



General (30G)



Runoff (30R)



Special (30S)

Election on

M M / D D / Y Y Y Y

in the State of

5. Covering Period

M M / D D / Y Y Y Y
05 / 17 / 2018

through

M M / D D / Y Y Y Y
06 / 30 / 2018

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Orozco, Joshua, , ,

Signature of Treasurer

Orozco, Joshua, , ,

[Electronically Filed]

Date

M M / D D / Y Y Y Y
07 / 20 / 2018

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. §30109.

Office
Use
Only**FEC FORM 3**
(Revised 05/2016)

SCHEDULE B (FEC Form 3) **ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 386 OF 394

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Xochitl for New Mexico

Full Name (Last, First, Middle Initial)

A. Tapia, Edna, T, ,

Mailing Address 280 N Carapa Ave.
Apt. 317

City
Andrew

State
IA

Zip Code
52030

Purpose of Disbursement
Salary

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☐ Primary ☒ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M / D D / Y Y Y Y
06 / 29 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

1151.88

Transaction ID : VVAHB9V7437

☐ Memo Item

Full Name (Last, First, Middle Initial)

B. The Mendenhall Firm, P.C.

Mailing Address 500 Tijeras Ave NW

City
Albuquerque

State
NM

Zip Code
87102-3133

Purpose of Disbursement
Legal Services

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M / D D / Y Y Y Y
05 / 23 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

3000.00

Transaction ID : VVAHB9T7077

☐ Memo Item

Full Name (Last, First, Middle Initial)

C. The New Media Firm

Mailing Address 1730 Rhode Island Ave NW
Ste 1014

City
Washington

State
DC

Zip Code
20036-3112

Purpose of Disbursement
Media Advertising

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☒ Primary ☐ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M / D D / Y Y Y Y
05 / 17 / 2018

FEC Identification Number

C

Amount of Each Disbursement this Period

24634.82

Transaction ID : VVAHB9V74H8

☐ Memo Item

SUBTOTAL of Disbursements This Page (optional)

28786.70

TOTAL This Period (last page this line number only)

SCHEDULE D (FEC Form 3)**DEBTS AND OBLIGATIONS****Excluding Loans**(Use separate
schedule(s)
for each
numbered line)

PAGE 394 OF 394

FOR LINE NUMBER:
(check only one)
☐ 9
☒ 10

NAME OF COMMITTEE (In Full)

Xochitl for New Mexico

A. Full Name (Last, First, Middle Initial) of Debtor or Creditor

The Mendenhall Firm, P.C.

Nature of Debt (Purpose):

Legal Services

Mailing Address 500 Tijeras Ave NW

City

Albuquerque

State

NM

Zip Code

87102-3133

Outstanding Balance Beginning This Period

0.00

Transaction ID : VV8JV9H71S3

Amount Incurred This Period

3073.02

Payment This Period

0.00

Outstanding Balance at Close of This Period

3073.02

B. Full Name (Last, First, Middle Initial) of Debtor or Creditor

Nature of Debt (Purpose):

Mailing Address

City

State

Zip Code

Outstanding Balance Beginning This Period

Amount Incurred This Period

Payment This Period

Outstanding Balance at Close of This Period

C. Full Name (Last, First, Middle Initial) of Debtor or Creditor

Nature of Debt (Purpose):

Mailing Address

City

State

Zip Code

Outstanding Balance Beginning This Period

Amount Incurred This Period

Payment This Period

Outstanding Balance at Close of This Period

1) **SUBTOTALS** This Period This Page (optional)

3073.02

2) **TOTALS** This Period (last page this line number only)

6330.53

3) **TOTAL OUTSTANDING LOANS** from Schedule C (last page only)

0.00

4) **ADD** 2) and 3) and carry forward to appropriate line of Summary Page (last page only)

6330.53

Exhibit E

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼

Example: If typing, type over the lines.

12FE4M5

Xochitl for New Mexico

ADDRESS (number and street)

PO Box 2250



Check if different than previously reported. (ACC)

Las Cruces

NM

88004

CITY ▲

STATE ▲

ZIP CODE ▲

2. FEC IDENTIFICATION NUMBER ▼

C C00666149

3. IS THIS REPORT



NEW (N)

OR



AMENDED (A)

STATE ▼ DISTRICT

NM

02

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:



April 15 Quarterly Report (Q1)



July 15 Quarterly Report (Q2)



October 15 Quarterly Report (Q3)



January 31 Year-End Report (YE)



Termination Report (TER)

(b) 12-Day PRE-Election Report for the:



Primary (12P)



General (12G)



Runoff (12R)



Convention (12C)



Special (12S)

Election on

M M / D D / Y Y Y Y

in the State of

(c) 30-Day POST-Election Report for the:



General (30G)



Runoff (30R)



Special (30S)

Election on

M M / D D / Y Y Y Y

in the State of

5. Covering Period

M M / D D / Y Y Y Y

07 / 01 / 2018

through

M M / D D / Y Y Y Y

09 / 30 / 2018

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Orozco, Joshua, ,

Signature of Treasurer

Orozco, Joshua, ,

[Electronically Filed]

Date

M M / D D / Y Y Y Y

10 / 15 / 2018

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. §30109.

Office
Use
Only**FEC FORM 3**
(Revised 05/2016)

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**Use separate schedule(s)
for each category of the
Detailed Summary PageFOR LINE NUMBER:
(check only one)

PAGE 1608 OF 1633

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
20a	20b	20c	21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Xochitl for New Mexico

Full Name (Last, First, Middle Initial)

A. The Mendenhall Firm, P.C.

Mailing Address 500 T jeras Ave NW

City
AlbuquerqueState
NMZip Code
87102-3133Purpose of Disbursement
Legal Services

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☐ Primary ☒ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M	D D	Y Y Y Y
07	03	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

3037.02

Transaction ID : VVAHB9XY9P4

☐ Memo Item

Full Name (Last, First, Middle Initial)

B. The New Media FirmMailing Address 1730 Rhode Island Ave NW
Ste 1014City
WashingtonState
DCZip Code
20036-3112Purpose of Disbursement
Media Production

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☐ Primary ☒ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M	D D	Y Y Y Y
07	10	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

13389.02

Transaction ID : VVAHB9XY9Q2

☐ Memo Item

Full Name (Last, First, Middle Initial)

C. The New Media FirmMailing Address 1730 Rhode Island Ave NW
Ste 1014City
WashingtonState
DCZip Code
20036-3112Purpose of Disbursement
Media Production

Candidate Name

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For: 2018

☐ Primary ☒ General
☐ Other (specify) ▼

State:

District:

Date of Disbursement

M M	D D	Y Y Y Y
08	13	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

23000.00

Transaction ID : VVAHB9XY9R0

☐ Memo Item

SUBTOTAL of Disbursements This Page (optional)

39426.04

TOTAL This Period (last page this line number only)

SCHEDULE D (FEC Form 3)**DEBTS AND OBLIGATIONS****Excluding Loans**(Use separate
schedule(s)
for each
numbered line)

PAGE 1633 OF 1633

FOR LINE NUMBER:
(check only one)☐ 9
☒ 10

NAME OF COMMITTEE (In Full)

Xochitl for New Mexico

A. Full Name (Last, First, Middle Initial) of Debtor or Creditor

The Mendenhall Firm, P.C.

Nature of Debt (Purpose):

Legal Services

Mailing Address 500 Tijeras Ave NW

City

Albuquerque

State

NM

Zip Code

87102-3133

Outstanding Balance Beginning This Period

3037.02

Transaction ID : VV8JV9H71S3

Amount Incurred This Period

0.00

Payment This Period

3037.02

Outstanding Balance at Close of This Period

0.00

B. Full Name (Last, First, Middle Initial) of Debtor or Creditor

Nature of Debt (Purpose):

Mailing Address

City

State

Zip Code

Outstanding Balance Beginning This Period

Amount Incurred This Period

Payment This Period

Outstanding Balance at Close of This Period

C. Full Name (Last, First, Middle Initial) of Debtor or Creditor

Nature of Debt (Purpose):

Mailing Address

City

State

Zip Code

Outstanding Balance Beginning This Period

Amount Incurred This Period

Payment This Period

Outstanding Balance at Close of This Period

1) **SUBTOTALS** This Period This Page (optional)

0.00

2) **TOTALS** This Period (last page this line number only)

0.00

3) **TOTAL OUTSTANDING LOANS** from Schedule C (last page only)4) **ADD 2) and 3)** and carry forward to appropriate line of Summary Page (last page only)