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SANTIAGO E. JUÁREZ, ESQ.
ATTORNEY AT LAW

2010 MAR 31 PM 2: 59

March 31, 2010

Honorable Mary Herrera
Secretary of State
State of New Mexico
325 Don Gaspar, Suite 300
Santa Fe, NM 87503

Appeal of Rejection of Application of Dennis W. Montoya For Contributions From The
"Voter Action" Fund As Applicable To Judicial Candidates For State Wide Office

Dear Madame Secretary;

We would like to address;

First, the issue of the alleged violation of 1-19A-5 in that it is alleged that the violation was a contribution by the candidate of over \$5,000.00 in seed money to the campaign. There was no such violation as the contribution by the candidate of his own \$8,887.27 was in fact not "seed money" as that term is defined in section 1-19A-2 "means a contribution raised for the primary purpose of enabling applicant candidates to collect qualifying contributions and petition signatures". As set forth in the declaration of the candidate, the attached spreadsheet to the appeal sets forth that the \$8,887.27 was for general electioneering and preparation for delegate voting at the Democratic State Convention not for the "primary purpose of enabling applicant" to "collect qualifying contributions and petition signatures."

Second, the issue of the alleged violation of 1-19A-3 in that the candidate had contributions or expenditures in excess of \$500.00 prior to the filing of the declaration of intent. We would point out that no contributions in excess of \$500.00 were obtained or expenditures in excess of \$500.00 made between the times of the beginning of the "qualifying period" and the "filing a declaration of intent". The declaration of intent was duly filed with Madame Secretary's office on the 24th of December, 2009 long before the candidate made any contribution or expense in excess of \$500.00. (see copy of attached declaration). Further, it is noted that the \$8,887.27 was not "seed money" as noted above and the \$2,922.56 is well within the \$5,000.00 spending cap.

We have attached the affidavit of Mr. Dennis W. Montoya regarding the "Seed Money Contribution and Expenditure Report" filed with the Secretary's Office and certifying the nature of the expenditures of funds in the campaign.

We have also attached the affidavit of Mr. Andrew Perkins indicating his inability to account for the funds on any form other than that provided by the Secretary of State's Office and wanting to give full disclosure of funds spent, there being no direction under the Statute or the Administrative Code that gave clear direction.

The filing of all the expenses without the breakdown as to what was "seed money" is an attempt to comply with the law fully but because there is no method at the time of filing to be able to separate out "general campaign" expenditures that are not related to the gathering of signatures or "qualifying contributions" for the sake of safety the account filed all the expenses.

It was also noted that all expenditures were pursuant to contributions made by the candidate to his campaign.

The "Voter Action" law as currently written is not clear how judicial candidates shall submit their general electioneering expenses for qualifying as a candidate through the convention process although the State recognizes this as one of the methods that a candidate may pursue and that the State will endorse. It is only when a statewide candidate fails to acquire the necessary signatures that a candidate must get other signatures. The law as now written would appear, also, to foreclose any expenditure by a candidate for signature gathering after the initial date for filing in March, although a statewide candidate by law is allowed to do so. (See the definition of "qualifying period")

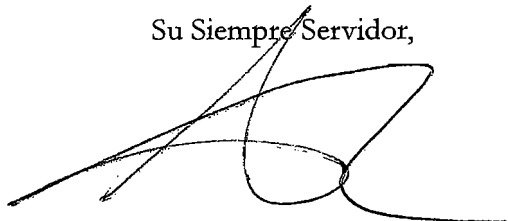
We are trying to preserve the intent and the integrity of the "Act" for public financing because we cannot see how given the inconsistencies in the "Act" as it applies to statewide candidates; if they are denied the right to participate under the general aspects of election laws of the State of New Mexico, then the "Act" faces the pitfall of unconstitutionality. However, given the ability to reasonably understand that it was not the intent of the writers to foreclose full participation by statewide candidates the law can allow Mr. Montoya to participate and the New Mexico Legislature can fix the inconsistencies at the next legislative session.

The "Act" provides, 1-19A-6, that part of the certification is that the candidate "(3) qualified as a candidate pursuant to other applicable state election law;" which would include the usual process of gathering delegate votes for the State Party Nominating Conventions. Yet, there appears to be no place within the context of the "Voter Action" law to either make allowance for these expenditures or to exclude them.

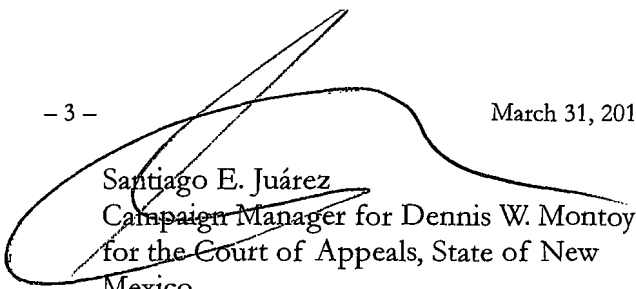
The amended report that was filed on March 25th, 2010 makes clear the "Seed Money Contribution and Expenditure"

The \$150.00 donation by Mr. David Romero was returned with an explanation that he could not contribute more than 100 dollars at that time. This was done in the utmost of caution as we know we could have received such a donation to the general campaign but in fact Mr. Montoya was seeking to use his own money so as to qualify without question for "public financing". None of the contributions have been spent and Mr. Montoya contributed the "seed money" from his personal business earnings.

Su Siempre Servidor,

A handwritten signature in black ink, appearing to be a stylized name, possibly "Su Siempre Servidor". The signature is written in a cursive, somewhat abstract style with several loops and a long horizontal stroke at the end.

March 31, 2010



Santiago E. Juárez
Campaign Manager for Dennis W. Montoya
for the Court of Appeals, State of New
Mexico



**NM SECRETARY OF STATE
 VOTER ACTION ACT
 2010 ELECTION
 PRC OFFICE OR JUDICIAL OFFICE
 APPLICATION FOR DECLARATION OF INTENT
 PARTICIPATING CANDIDATE**

~~RECEIVED~~
 2010 MAR 16 PM 5:08
 OFFICE OF
 SECRETARY OF STATE

PLEASE TYPE		FILER ID NUMBER (AGENCY USE ONLY)	
CANDIDATE NAME DENNIS W. MONTOYA		DISTRICT NUMBER OR POSITION SOUGHT CT APP - POS 2	
ADDRESS (NUMBER & STREET) 720 EMERALD DRIVE, NE		CITY RIO RANCHO	STATE NM
			ZIP 87124
MAILING ADDRESS P.O. BOX 15235		CITY RIO RANCHO	STATE NM
			ZIP 87124
CANDIDATE'S PHONE # (505) 246-8499	CANDIDATE'S CELL # (505) 328-1867	CANDIDATE'S FAX # (505) 246-8599	
CANDIDATE'S PARTY AFFILIATION DEMOCRAT		CANDIDATE'S E-MAIL ADDRESS dmontoya@montoyalaw.com	
PLEASE LIST THE FINANCIAL INSTITUTION FROM WHICH THE CANDIDATE WILL CONDUCT ALL FINANCIAL ACTIVITY FOR THE CANDIDATE'S CAMPAIGN ACCOUNT. (ACCOUNT NUMBER IS NOT NECESSARY)			
FINANCIAL INSTITUTION NAME AND ADDRESS: BANK OF AMERICA - RIO RANCHO HIGH RESORT BRANCH, 4201 CRESTVIEW DR., SE, RIO RANCHO, NM 87124			

**Application of Declaration
DECLARATION OF INTENT
CANDIDATE STATEMENT**

I the undersigned, upon my oath and under penalty of perjury, certify that the following statements are true and accurate to the best of my knowledge; I have complied with and will continue to comply with the act's contribution and expenditure limits and all other requirements set forth in the act and rules issued by the Secretary of State:

- use all money distributed for campaign related purposes in the election cycle in which the money was distributed;
- return to the fund any amount that is unspent or unencumbered at the time I cease to be a candidate before a primary or general election for which the fund money was distributed;
- limit total campaign expenditures and debts to the amount of money distributed to that candidate from the fund.
- shall not accept the contributions or loans from any other source except his/her political party, as specified in Section 1-19A-8 of the Voter Action Act
- return to the secretary, within thirty days after the primary election, any amount that is unspent or unencumbered by the date of the primary election for direct deposit into the fund. 1-19A-7[D] NMSA 1978
- return to the secretary within thirty days after the general election, any amount that is unspent or unencumbered by the date of the general election for direct deposit into the fund. 1-19A-7[E] NMSA 1978
- shall not be eligible to become an applicant candidate if the candidate has accepted contributions or made expenditures totaling five hundred dollars (\$500) or more between the beginning of the qualifying period (October 1, 2009 for major party or February 1, 2010 for independent candidate or minor party) and filing this declaration of intent.

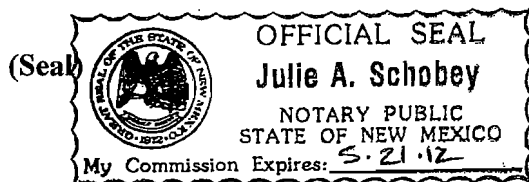
I have complied with and will continue to comply with the following reporting requirements:

- file qualifying contributions with the secretary during the qualifying period according to procedures developed by the secretary.
- report expenditures according to the campaign reporting requirements specified in the Election Code [Chapter 1 NMSA 1978].


Candidate's Signature

State of New Mexico
County of Bernalillo

Subscribed and sworn before me this 22nd day of December, 2009 by Dennis W Montoya




Notary Signature
Commission Expires: 5.21.12

SANTIAGO E. JUÁREZ, ESQ.
ATTORNEY AT LAW

March 27, 2010

Honorable Mary Herrera
Secretary of State
State of New Mexico

In Re:
Appeal of Rejection of Application of Dennis W. Montoya
For Contributions From The "Voter Action" Fund As
Applicable To Judicial Candidates For State Wide Office

State of New Mexico)
) ss.
County of Sandoval)

DECLARATION OF THE HONORABLE IRA ROBINSON

I, IRA ROBINSON, being first duly sworn, do hereby state and declare as follows:

1. I have been active for more than 30 years in New Mexico Democratic Party politics;
2. I served for more than 10 years on the Democratic State Central Committee;
3. I was Bernalillo County Democratic Party Chairman for 3 terms;
4. I was Regional Vice Chair of the State Democratic Party;
5. I have been a Democratic Party National Committeeman;
6. I participated as a candidate in more than ten (10) county-wide races (primary and general elections);
7. I participated in two statewide races, included obtaining petition signatures and going to a pre-primary convention seeking delegate votes;
8. I have also been a delegate several times to Democratic State Pre-Primary Convention;
9. Based on my experience as an active member of the New Mexico Democratic Party politics and as a candidate and participant in electoral politics in the State of New Mexico, the preferred method by all candidates running for office is to obtain the required number

of Nominating Petition signatures to participate in the pre-primary convention, and then get the requisite 20% of delegates to get on the Primary Ballot.

10. It is emphasized to anyone running in the Party that it is important to show some strength in the Democratic Party by obtaining the minimum 20% delegate vote at the Pre-Primary Convention because no one can recall anyone ever winning the Primary who merely got on by petition signature gathering.

11. The garnering of Delegates is essential to a winning campaign and is an essential part of running for statewide office. It is part of building a base of support. I have never been involved with a campaign where there was not an effort to obtain Delegate votes and participate in the County Pre-Primary Conventions, as well as the State Pre-Primary Convention.

JR

12. I have reviewed the "Voter Action" law as it applies to judges and it appears to me that it was not made clear how "general campaign" expenditures would or could be reported within the context of the Act. When a person is running for the Public Regulatory Commission, they do not have to participate in the Delegate process because the only way they get on the ballot is by petition signatures, so it is easy to read the law as it applies to that office. The law is not so clear when it comes to the new process of allowing judges to run "publicly financed."

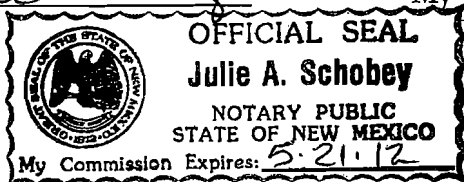
I hereby state that the foregoing is true and correct to the best of my knowledge and understanding, under penalty of perjury under the laws of the State of New Mexico.

Ira Robinson
IRA ROBINSON

SUBSCRIBED AND SWORN before me, a Notary Public of the State of New Mexico, on March 29th, 2010, by Ira Robinson.

Julie A. Schobey
NOTARY

My Commission Expires: 5.21.12
(SEAL)



SANTIAGO E. JUÁREZ, ESQ.
ATTORNEY AT LAW

March 31, 2010

Honorable Mary Herrera
Secretary of State
State of New Mexico

In Re:

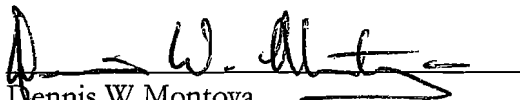
Appeal of Rejection of Application of Dennis W. Montoya
For Contributions From The "Voter Action" Fund As
Applicable To Judicial Candidates For State Wide Office

DECLARATION OF DENNIS W. MONTOYA


I, DENNIS W. MONTOYA, being first duly sworn, do hereby state and declare as follows;

1. I am the candidate applying of certification under the "Voter Action Act";
2. That at the time that we were submitting our application and the statement of expenditures I was asked by Mr. Andrew Perkins where we listed our expenses;
3. I reviewed the form and indicated that I believe we should put them all in as there was no way to break them down given the form we were to use;
4. A day or so later Mr. Santiago E. Juarez was reviewing our paperwork and indicated that he did not believe that the form was adequate to provide for what the law required and indicated that we should file an amended declaration with an explanation;
5. I requested that Mr. Andrew Perkins review with me and Mr. Juarez the expenditures and contributions of the campaign and having did so a spread sheet was prepared, which is attached hereto explaining the expenditures of the campaign in a manner that was consistent with the requirement of the reporting of the "Voter Action" law;
6. I have reviewed the spread sheet and the allocation of the expenses in the context of the "Voter Action" law and I believe the same to be true and correct.

FURTHER AFFIANT SAYETH NAUGHT.


Dennis W. Montoya

SUBSCRIBED AND SWORN TO before me on 31 March 2010 by Dennis W.
Montoya.

 My Commission Expires: May 21, 2012
NOTARY PUBLIC OFFICIAL SEAL
(Seal) Julie A. Schobey
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 5/21/12

March 31, 2010

Honorable Mary Herrera
Secretary of State
State of New Mexico

In Re:

Appeal Of Rejection Of Application Of Dennis W. Montoya
For Contributions From The "Voter Action" Fund As
Applicable To Judicial Candidates For State Wide Office

DECLARATION OF ANDREW PERKINS

I, ANDREW PERKINS, do hereby state and declare as follows;

1. I am the accounting officer Treasurer for the Dennis W. Montoya Campaign;
2. That at the time that we were submitting our application and the statement of expenditures I was asked Mr. Montoya how we were going to list our expenses as the form for the "Voter Action" law was quite limited;
3. We reviewed the form and decided we should put them all in as there was no way to break them down given the form we were to use;
4. A day or so later Mr. Santiago E. Juarez was reviewing our paperwork and indicated that he did not believe that the form was adequate to provide for what the law required and indicated that we should file an amended declaration with an explanation;
5. Mr. Montoya then requested that I review with him and Mr. Juarez the expenditures and contributions of the campaign and having did so a spread sheet was prepared, which is attached hereto explaining the expenditures of the campaign in a manner that was consistent with the requirement of the reporting of the "Voter Action" law;
6. I have reviewed the spread sheet and the allocation of the expenses in the context of the "Voter Action" law and I believe the same to be true and correct.
7. I have attached hereto a line item break down.
8. The expenditures for other items, not identified as "seed money", were used for "general electioneering".

I hereby state that the foregoing statements are true and correct to the best of my knowledge and understanding.

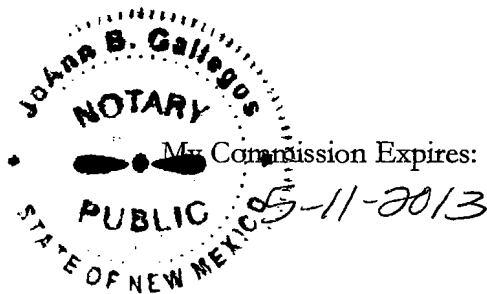
Dated: 3/31/10

Andrew J. Perkins

Andrew Perkins

SUBSCRIBED AND SWORN To before me this 31st day of March, 2010.

John B. Gallegos
NOTARY PUBLIC



Committee to Elect Dennis Montoya Operations
Transaction Detail by Account
January 1 through March 16, 2010

	Type	Date	Num	Name	Memo	Class	Clr	Split	Amount	Balance
Advertising										
Radio										
	Check	02/02/2010	ach	Sangre de Cristo Broadcasting	6 commercials	general		Bank of America	64.61	64.61
Total Radio									64.61	64.61
Advertising - Other										
	Check	01/15/2010	7624	Hoursament Publications	campaign ads on nmpolitics.net	general		Bank of America	253.55	253.55
	Check	02/16/2010	7698	Democratic Party of San Juan Co.	website	general		Bank of America	100.00	353.55
Total Advertising - Other									353.55	353.55
Total Advertising									418.16	418.16
Campaign Expense										
Contract Wages										
	Check	01/15/2010	8502	A.J. Perkins, CPA	Campaign Treasurer	general		Bank of America	600.00	600.00
	Check	02/08/2010	7676	Jose Lechuga	campaign worker	seed expenditures		Bank of America	180.00	780.00
	Check	02/08/2010	7677	Rick Lass	campaign worker	seed expenditures		Bank of America	375.00	1,155.00
	Check	02/09/2010	7682	Amanda Gonzales	campaign worker	seed expenditures		Bank of America	70.00	1,225.00
	Check	02/09/2010	ach	A.J. Perkins, CPA	Treasury	general		Bank of America	600.00	1,825.00
	Check	02/16/2010	7694	Jesus Cano	campaign worker	seed expenditures		Bank of America	465.00	2,290.00
	Check	02/23/2010	ach	Santiago E. Juarez	campaign advisor	general		Bank of America	2,500.00	4,790.00
Total Contract Wages									4,790.00	4,790.00
Events										
	Check	03/05/2010	ach	Carlisle-Bennet Post 13	Hall rental	seed expenditures		Bank of America	1,000.00	1,000.00
Total Events									1,000.00	1,000.00
general										
	Check	02/09/2010	ach	A.J. Perkins, CPA	Signature work	seed expenditures		Bank of America	637.56	637.56
Total general									637.56	637.56
Literature										
	Check	01/03/2010	ach	Vista Print	campaign printing	general		Bank of America	104.61	104.61
	Check	01/03/2010	ach	Vista Print	literature pieces	general		Bank of America	599.72	704.33
	Check	01/25/2010	ach	Vista Print	sticky notes, banner, window decals, bus cards	general		Bank of America	438.49	1,142.82
	Check	03/04/2010	ach	Vista Print	Sundry campaign material	general		Bank of America	825.65	1,968.47
	Check	03/12/2010	7755	Bare Bones Graphics	2500 brochures	general		Bank of America	581.11	2,549.58
Total Literature									2,549.58	2,549.58
Meals										
	Check	01/24/2010	ach	Village Inn		general		Bank of America	75.38	75.38
	Check	01/29/2010	ach	Pizza Hut	food	general		Bank of America	22.34	97.72
	Check	02/18/2010	ach	Las Vegas Optic	campaign food	general		Bank of America	69.13	166.85
	Check	03/08/2010	ach	Landmark Grill	campaign food	general		Bank of America	499.68	666.53
Total Meals									666.53	666.53
Operations										
Supplies										
	Check	03/09/2010	ach	Target	printer	general		Bank of America	66.48	66.48
Total Supplies									66.48	66.48
Total Operations									66.48	66.48
Sundry Items										
	Check	02/01/2010	ach	Dr. Don's Buttons, Badges and Magnets	pinback buttons	general		Bank of America	124.61	124.61
	Check	02/09/2010	1	Terence International	tote bags (20)	general		Cash	239.60	364.21
	Check	02/20/2010	ach	Hobby Lobby	campaign material	general		Bank of America	13.99	378.20
	Check	02/23/2010	ach	Dr. Don's Buttons, Badges and Magnets	Custom Lapel Stickers	general		Bank of America	353.57	731.77
	Check	02/25/2010	ach	Walmart	t-shirts	general		Bank of America	28.79	760.56

Committee to Elect Dennis Montoya Operations
Transaction Detail by Account
January 1 through March 16, 2010

Type	Date	Num	Name	Memo	Class	Clr	Split	Amount	Balance
Check	03/04/2010	ach	Tan's Club	Tote Bag (20)	general		Bank of America	239.60	1,000.16
Check	03/04/2010	ach	Terence International	Colton Tote bag	general		Bank of America	239.60	1,239.76
Check	03/08/2010	ach	Hobby Lobby	wear art	general		Bank of America	105.44	1,345.20
Check	03/08/2010	7699	Sams	food	general		Bank of America	135.66	1,480.86
Check	03/08/2010	ach	Sams	Misc food	general		Bank of America	5.68	1,486.54
Total Sundry Items								<u>1,486.54</u>	<u>1,486.54</u>
Total campaign Expense								11,196.69	11,196.69
Contract Services									
Accounting Fees									
Check	02/03/2010	7667	Rachel de la Cruz	Campaign worker	seed expenditures		Bank of America	195.00	195.00
Total Accounting Fees								<u>195.00</u>	<u>195.00</u>
Total Contract Services								<u>195.00</u>	<u>195.00</u>
TOTAL								<u>11,809.85</u>	<u>11,809.85</u>