

**IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO**

**JON ROSS BARRIE, and the
INDEPENDENT AMERICAN
PARTY of NEW MEXICO,
Petitioners,**

v.

**DIANNA J. DURAN, in her official capacity
as New Mexico Secretary of State,
Respondent.**

SUPREME COURT OF NEW MEXICO
FILED

AUG 13 2012



VERIFIED EMERGENCY PETITION FOR WRIT OF MANDAMUS

THE PETITIONERS Jon Ross Barrie and the Independent American Party of New Mexico, for their Emergency Verified Petition for Writ of Mandamus, state as follows:

Jurisdiction

1. This is an action to compel the New Mexico Secretary of State to place Jon Ross Barrie, as the candidate for the Independent American Party, on the ballot in the State of New Mexico for the November 6, 2012 general election.
2. The New Mexico Supreme Court has constitutionally invested original jurisdiction in mandamus against all State officers, boards and commissions. Art. VI, § 3, Constitution of the State of New Mexico.
3. Due to the necessity of the Supreme Court resolving a disputed legal question concerning the constitutionality of provisions of the Election Code, as applied in this instance, and the limited time in which to obtain relief and direct action to provide ballot access for the 2012 election, this matter is addressed directly to the Supreme Court.

Parties

4. Petitioner Jon Ross Barrie is a resident of the State of New Mexico.
5. Jon Ross Barrie satisfies all of the requirements for the office of United States Senator as set forth in Article 1, Section 3, clause 2 of the United States Constitution.
6. Jon Ross Barrie desires to be a candidate for election to the office of United States Senator for the State of New Mexico.
7. Petitioner the Independent American Party for New Mexico is a recognized minor political party in the State of New Mexico.
8. Jon Ross Barrie is the declared candidate of the Independent American Party of New Mexico for the office of United States Senator for the State of New Mexico.
9. Defendant, Dianna J. Duran, is the duly elected Secretary of State for the State of New Mexico.
10. In her capacity as Secretary of State, Defendant Dianna J. Duran is responsible for the administration of the New Mexico Elections Code [Chapter 1 NMSA 1978].
11. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, and the Supreme Court should issue a Writ of Mandamus compelling the New Mexico Secretary of State to have the name of Jon Ross Barrie placed upon the 2012 general election ballot as a candidate for United States Senator, Independent American Party.

Facts

12. On January 30, 2012, in accordance with the New Mexico “Primary Election Law” [NMSA 1978, §§1-8-10 to 1-8-52] and the “Presidential Primary Act [NMSA 1978, §§ 1-15A-1 to 1-8-11], New Mexico Governor Susana Martinez issued a “Primary Election Proclamation.”

13. At the time of the Governor's "Primary Election Proclamation," the Independent American Party was not a political party recognized by the State of New Mexico.
14. In April 2012, the Independent American Party of New Mexico submitted requisite information to the New Mexico Secretary of State for the purposes of satisfying its requirement for ballot access and for establishing the organization of the Independent American Party of New Mexico.
15. On April 26, 2012, the New Mexico Secretary of State approved the ballot access petition filed by the Independent American Party and for the first time recognized the Independent American Party as a minor party in the State of New Mexico. (Exhibit 1).
16. On June 26, 2012, Jon Ross Barrie submitted to the New Mexico Secretary of State his 2012 Declaration of Candidacy (Exhibit 2) and 530 pages of nominating petitions. (Exhibit 13).¹
17. On June 26, 2012, the Independent American Party of New Mexico, by and through its Chairman Robert Bridgewater, certified to the New Mexico Secretary of State the name of the party's nominee for United States Senator, that being Jon Ross Barrie. (Exhibit 3).
18. No other political candidate challenged Jon Ross Barrie's nominating petitions.
19. On August 1, 2012, the Secretary of State determined that the Independent American Party of New Mexico and Jon Ross Barrie complied with NMSA 1978, §1-8-4(A). (Exhibit 4).
20. On August 1, 2012, the Secretary of State informed Jon Ross Barrie that the Secretary of State was "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978." (Exhibit 4).

¹ For organizational purposes, the 76-page "Rejected Signatures Report" (Exhibit 5), the 530 pages of nominating petitions (Exhibit 13) and the 530-page "Petition Pages Report" (Exhibit 14) are included in separate binders. Exhibit 13 is within one binder and Exhibits 5 and 14 are in a second binder.

21. The Secretary of State's determination of being unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" was based upon two statutory sections: 1) NMSA 1978, §1-8-2(B), and 2) NMSA 1978, §1-8-2(D).
22. In order for Jon Ross Barrie to comply with NMSA 1978, §1-8-2(B), he was required to have provided 6,028 valid signatures. (Exhibit 4).
23. The 530 pages of nominating petitions U.S. Senate candidate Jon Ross Barrie submitted to the New Mexico Secretary of State with his 2012 Declaration of Candidacy included 10,279 signatures.
24. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate based upon NMSA 1978, §1-8-2(B) was accompanied by a 76-page "Rejected Signatures Report" summary. (Exhibit 5).
25. The Secretary of State's 76-page "Rejected Signatures Report" reflects that the Secretary of State determined that 4,546 of the 10,279 submitted signatures (44%) were rejected.
26. Of the 4,546 rejected nominating petition signatures:
 - A. 4,050 were rejected for the reason "not registered." (39.4%).
 - B. 22 were rejected for the reason "address not as registered."
 - C. 1 was rejected for the reason "name not as registered."
 - D. 1 was rejected for the reason "not in political subdivision."
 - E. 4 were rejected for the reason "out of district."
 - F. 112 were rejected for the reason "duplicate."
 - G. 27 were rejected for the reason "applicant did not sign."
 - H. 7 were rejected for the reason "voter did not sign."
 - I. 57 were rejected for the reason "unreadable."
 - J. 259 were rejected for the reason "not legible."
 - K. 6 were rejected for the reason "not eligible (felony conviction)."

27. On August 6, 2012, Jon Ross Barrie and members of his campaign staff went to the office of the New Mexico Secretary of State to address the Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to NMSA 1978, §1-8-2(B). In an approximate 6-hour period, campaign staff members were able to identify fifty (50) individuals whose signatures were rejected as being qualified voters, and identified each of these individuals by their voter identification number.
28. When Jon Ross Barrie and his campaign staff informed the New Mexico Secretary of State that they had identified 50 individuals whose signatures were rejected as being qualified voters, the New Mexico Secretary of State refused to reconsider the determination that the individuals were "not registered" and informed Jon Ross Barrie that his only recourse was to bring a lawsuit for judicial review.
29. The Secretary of State provided to the Jon Ross Barrie campaign a 530-page "Petition Pages Report." This report is attached as Exhibit 14 to this Petition.
30. The Secretary of State is incorrect in her determination that Jon Ross Barrie failed to comply with the NMSA 1978, §1-8-2(B) requirement to have submitted at least 6,028 valid signatures.
31. The Secretary of State is incorrect in her determination that Jon Ross Barrie failed to comply with NMSA 1978, §1-8-2(D) due to the impossibility of being a member of a political party that had not been recognized by the State of New Mexico on the day Governor Martinez issued the primary election proclamation, and by holdings of the U.S. District Court and the Tenth Circuit in the matter of *Woodruff v. Herrera*, 623 F.3d 1103 (10th Cir. 2010).

ISSUE I
Disqualification under NMSA §1-8-2(B)

32. Petitioners incorporate paragraphs 1 through 31 above as if set forth herein in full.
33. Upon information and belief, the staff of the Secretary of State's office manually inputs the names and addresses of individuals who have signed any given candidate's nominating petitions into a computer system for the purpose of comparing the information to the registered voter database maintained by the Secretary of State. The human element in this process inherently involves typographic and other interpretive errors, which can result in qualified electors being rejected. The software system utilized by the Secretary of State requires an exact match of the name and address manually entered to that same data existing in the database in order to validate a nominating petition signature.
34. New Mexico law is clear that an exact match of name and address is not necessary in order to validate a nominating petition signature.
35. The factors the Secretary of State is required to utilize in order to determine if nominating petition signatures are valid are set forth in NMSA 1978, §1-8-31 (Primary Election Law; nominating petition; signatures to be counted) (2011). This section states (in pertinent part):
- A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case, a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.
- B. A person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.
- C. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

- (1) was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition;
- (2) failed to provide information required by the nominating petition;
- (3) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;
- (4) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;
- (5) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or
- (6) is not the person whose name appears on the nominating petition.

E. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraphs (1) and (5) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties.

36. "Although the title of this section is "Primary Election Law; nominating petition; signatures to be counted," it is obvious from the explicit language of Subsection C [now Subsection D] that the legislature intended this section to apply to all petitions required by the Election Code, including ballot access petitions." *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).
37. "The burden is on the challenger to demonstrate that specific signatures should not be counted in a primary election nominating petition, and we are "committed to examine 'most carefully, and rather unsympathetically' any challenge to a voter's right to participate in an election, and will not deny that right 'absent bad faith, fraud or reasonable opportunity for fraud'." *Ruiz v. Vigil-Giron*, 2008-NMSC-063, ¶5, 145 N.M. 280.
38. "This section [1-8-31] does not include as a reason for disqualification the failure to provide on the petition the signatory's name or address printed as registered. Therefore, where a county clerk automatically excluded signatures of registered voters whose names and

addresses on the petitions varied somewhat or differed from their affidavits of registration, there was a failure to comply with the statutory requirements.” *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (D.N.M. 1988).

39. “The sole grounds for rejection of a signature on a nominating petition are set forth in §1-8-31(C).” *Woodruff v. Herrera*, 623 F.3d 1103, 1112 (10th Cir. 2010). “As relevant here, §1-8-31(C) requires that a signature on a petition be counted unless the person signing the petition failed to provide required information “sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented.” *Id.*
40. “Settled New Mexico law provides that a signature on a petition will be counted if it gives the relevant government officer sufficient information to determine its validity, even if it does not conform to the exact requirements of a statutory petition form. *See Gallagher*, 697 P.2d at 939 [*State ex rel Citizens for Quality Educ. v. Gallagher*, 102 N.M. 516, 697 P.2d 935, 939 (1985)] (failure of signature to conform with statutory form would not invalidate signature so long as information provided was sufficient to allow county clerk to determine that signer was qualified voter); *Simmons v. McDaniel*, 101 N.M. 260, 680 P.2d 977, 978-79 (1984) (refusing to invalidate petition signatures that provided address other than registered address required by statutory form, because lack of registered address was not a cause for disqualification listed in what is now § 1-8-31(C)).” *Woodruff v. Herrera*, *Id.* at 1112.
41. In the case of *Woodruff v. Herrera*, three separate suits were brought in the United States District Court for the District of New Mexico against the New Mexico Secretary of State to challenge several provisions of the New Mexico Election Code. These were Nos. 1:09-CV-00449-JCH-KBM, 1:10-CV-00123-JCH-KBM and 1:10-CV-00124-JCH-KBM.

42. In its September 9, 2010 *Order and Judgment*, No. 10-2076, in the *Woodruff v. Herrera* case, the Tenth Circuit acknowledged the District Court's holding that New Mexico's Election Code is inconsistent regarding "whether signers of petitions must state their address of residence or their address as registered," and is therefore unconstitutionally vague. This holding was not appealed.
43. Attached to this Petition are affidavits of five specific individuals whose nominating petition signatures were rejected by the New Mexico Secretary of State, and who are qualified electors under NMSA 1978, §1-1-4. See the attached Affidavits of:
- a. Michael S. Heller – Exhibit 6
 - b. Theresa Garcia – Exhibit 7
 - c. Yolanda Tucker and Patrick Tucker – Exhibit 8
 - d. Robert Cain (father) and Robert Cain (son) – Exhibit 9
44. The affidavits (Exhibits 6 – 9) from individuals whose nominating petition signatures were rejected by the New Mexico Secretary of State, and who are qualified electors under NMSA 1978, §1-1-4, demonstrate that the Secretary of State has incorrectly determined that these five specific individuals were lawfully rejected. Four of these individuals were rejected as "not registered" and Robert Cain (father) was rejected for being a duplicate.
45. A review of the nominating petitions and the respective "Petition Pages Report" attached to Exhibits 6, 7, 8 and 9, along with three additional nominating petitions and their respective "Petition Pages Report" illustrate the typographic and interpretive errors inherently involved due to the human element in the Secretary of State's validation process that actually resulted in qualified electors being rejected. See Exhibit 10.

46. Exhibit 10 describes further incorrectly rejected nominating petition signatures. Page 80 of the “Petition Pages Report” lists at Line 3 a “Jason Arculeta,” who was determined to be “not registered.” The corresponding nominating petition reflects this individual completed the form as “Jason Archuleta.” This individual was identified by Jon Ross Barrie’s campaign staff as a registered voter, with voter identification number 2489058. (See Exhibit 10, pages 11 and 12.). At line 8 of page 155 is the nominating petition signature of Rodney Stevens, whose address is in Embudo, New Mexico. He was rejected for the reason of “not in political subdivision” – when the entire State of New Mexico is the “political subdivision” in which Jon Ross Barrie is running. Page 155, line 20 lists a “Savanna Bridgnator,” who was determined to be “not registered.” Savanna Bridgwater lives in Clovis. Exhibit 10, pages 13, 14 & 15. Page 127, line 14 lists “Glenn (not legible).” The name printed on the nominating petition clearly is “Glenn Riordan.” Exhibit 10, pages 16 & 17. Additional illustrations of incorrectly rejected nominating petition signatures are more fully described in Exhibit 10.
47. The New Mexico Secretary of State failed to adequately analyze the information on the nominating petitions to determine whether each person is a qualified voter/qualified elector.
48. The New Mexico Secretary of State has failed to comply with well-established law by the determination that 4,566 of the 10,279 nominating petition signatures submitted by Jon Ross Barrie were rejected, in particular those rejected for the reason “address not as registered” and many of those rejected for being “not registered.”
49. The Secretary of State’s refusal to accept as valid the 50 individuals whose signatures were identified by their voter identification number by the Jon Ross Barrie campaign staff reflects disparate treatment of Jon Ross Barrie. When State House District 48 candidate Bob Walsh

challenged the exact same issue, the Secretary of State reviewed the disqualified signatures, determined that a number of signatures which had been rejected as “not registered” were incorrectly rejected, and placed Mr. Walsh on the ballot. See Exhibit 11 attached.

50. Petitioner Jon Ross Barrie has been injured as a qualified candidate for federal elective office by the Secretary of State’s failure to adequately analyze the information on the nominating petitions to determine whether each person is a qualified voter/qualified elector.
51. Petitioner the Independent American Party of New Mexico has been injured as party fielding a qualified candidate for federal elective office by the Secretary of State’s failure to adequately analyze the information on the nominating petitions to determine whether each person is a qualified voter/qualified elector.
52. The New Mexico Secretary of State should follow the law in “determining whether all of the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with and that the petitions and lists of signatures and addresses of voters are valid and comply with law,” as stated in her August 1, 2012 letter – not a computer’s interpretation of data and the law.

ISSUE II
Disqualification under NMSA 1978, §1-8-2(D).

53. Petitioners incorporate paragraphs 1 through 52 above as if set forth herein in full.
54. The reasoning for the Secretary of State’s determination of being “unable to certify” Jon Ross Barrie “as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978” based upon NMSA 1978, §1-8-2(D) is stated in the Secretary of State’s August 1, 2012 letter. (Exhibit 4).
55. The Secretary of State reasons in her letter that:

In addition, Section 1-8-2(D) provides that "Persons certified as nominees shall be members of the party before the day the governor issues the primary election proclamation." The Independent American Party was not a recognized party on the date of the Governor's proclamation, January 30, 2012. It became a recognized minor party pursuant to the requirements of 1-7-4 NMSA 1978 by filing before the first Tuesday in April. Your voter registration application on file in Bernalillo County shows that you registered as a member of the Independent American Party on June 15, 2012.

In a federal case against the previous secretary of state, *Woodruff v. Herrera*, 623 F.3d 1103 (10th Cir. 2010), the Tenth Circuit Court of Appeals ruled that the secretary of state may not require a candidate to be registered to vote or to prove party affiliation through voter registration. However, in a subsequent order issued by the United States District Court of New Mexico, in case no. 09-449 (consolidated), on March 31, 2011, the District Court cited the holding of *Woodruff*, above, and noted "it is not clear to the Court at this time the manner or extent to which §§ 1-8-2(D) or 1-8-18(A) will be enforced in the future." Since the federal court did not specifically strike down the provision of 1-8-2(D), it would appear that the Secretary of State is still required to enforce the statute as written.

As a result, you have not complied with the requirements of Section 1-8-2(D).

56. While the District Court did cite to the holding of *Woodruff v. Herrera* in its March 31, 2011, and noted "it is not clear to the Court at this time the manner or extent to which §§1-8-2(D) or 1-8-18(A) will be enforced in the future," the Secretary of State appears not to have recognized the remainder of the Court's holdings in its *Memorandum and Opinion*.
57. The quote the Secretary of State cites to is from footnote 12 of the Court's *Memorandum and Opinion*, (Exhibit 12) where the Honorable Judge J. Herrera stated in full:

The Court has held that the Secretary of State may not require a candidate to be registered to vote or to prove party affiliation through voter registration. Thus, it is not clear to the

Court at this time the manner or the extent to which §§ 1-8-2(D) and 1-8-18(A) will be enforced in the future. However, that question is not currently before the Court.”

58. This footnote was referenced in the Court’s statement “The burden that Woodruff identifies here is the choice that a candidate must make before the date of the Governor’s proclamation, if that candidate is a member [fn12] of a party that is not qualified [fn13].” This statement was part of the Court’s consideration of Plaintiff’s contention that the interplay of Sections 1-8-2(D) and 1-8-45 of the Election Code unfairly forces a candidate to choose, before the Governor’s proclamation, whether to run as a member of a minor party or to run as an independent candidate. Because this contention was raised in a summary judgment motion, but not pled in Woodruff’s Complaint, the Court declined granting summary judgment.
59. The conclusion stated by the Secretary of State does not comport with the decision the Court did reach in granting summary judgment on Count VII of the Plaintiffs’ Complaint in cases 10cv123 and 10cv124, where they had alleged that Sections 1-8-18(A) and 1-8-2(D) of the Election Code impair the rights of minor political parties and minor party candidates. See Exhibit 12 attached; Doc. 224, *Memorandum Opinion and Order*, 3/31/11, Case No.1:09-cv-00449-JCH-KBM at pages 23 – 31.
60. In *Woodruff v. Herrera*, the Plaintiffs had alleged, and the Secretary of State had admitted, that Sections 1-8-18(A) and 1-8-2(D) preclude a person who is a non-resident of New Mexico, or a resident who is a non-voter, at the time of the proclamation from being the nominee of a political party for the office of U.S. representative. “Similarly, these provisions preclude political parties from nominating otherwise qualified candidates who are not registered voters, a practice already held by this Court to be invalid. Finally, these portions

of the Election Code require political parties to nominate only candidates who are identified on their voter registration as members of that party.” (quoting Court).

61. What Honorable District Court Judge J. Herrera stated in her March 31, 2011 *Memorandum and Opinion*, which is directly on-point to the Secretary of State’s determination concerning Jon Ross Barrie, was:

“The Court concludes that the motion for summary judgment should be granted. As written, Section 1-8-18(A) requires that one must be registered to vote in New Mexico in order to be nominated as a candidate of a political party or to have one's name printed on the primary election ballot-it provides for no other mechanism for demonstrating one's party affiliation or residency. Thus, as the Court has previously explained, under Tenth Circuit law such provisions violate the Qualifications Clause by effectively making voter registration a requirement for candidacy. *Campbell v. Davidson* , 233 F.3d 1229 (10th Cir. 2000). See Doc. No. 106.

Together, Sections 1-8-18(A) and 1-8-2(D) also violate the First Amendment rights of parties to free association by restricting their right to nominate as candidates persons of their choosing. Instead, under these provisions, political parties may only nominate individuals who are registered members of the party. The Supreme Court has indicated that this is unconstitutional.”

62. After analyzing *Tashjian v. Republican Party of Conn*, 479 U.S. 208 (1986) and *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223-24 (1989), Honorable Judge Herrera continued:

“In light of *Tashjian* and *Eu* the Court concludes that Sections 1-8-18(A) and 1-8-2(D) violate the qualifications clause as well as the First Amendment right of free association. The Secretary [of] State not only has failed to distinguish these authorities, but she also has failed to come forward with a compelling state interest to justify the burden that these

provisions impose on the free association rights of political parties. Accordingly, Plaintiffs' motion for summary judgment on Count VII should be granted and declaratory judgment entered in their favor."

63. The Secretary of State did not appeal this determination.
64. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) as stated in the Secretary of State's August 1, 2012 letter is contradictory to the federal District Court's determination that Section 1-8-2(D) violates the First Amendment rights of parties to free association by restricting their right to nominate as candidates persons of their choosing.
65. "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment. *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n. 2 (1975), and cases cited. In several situations concerning the electoral process, the principle has been developed that restrictions on access to the electoral process must survive exacting scrutiny. The restriction can be sustained only if it furthers a "vital" governmental interest, *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974), that is achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." *Buckley v. Valeo*, 424 U.S. 1, 94-95 (1976).
66. "Restrictions upon the access of political parties to the ballot impinge upon the rights of individuals to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively, *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), and may not survive

scrutiny under the First and Fourteenth Amendments.” *Munro, Secretary of State of Washington v. Socialist Workers Party*, 479 U.S. 189, 193 (1986).

67. The State of New Mexico has no legitimate, compelling or vital interest in enforcing the provision of NMSA §1-8-2(D) of the New Mexico Election Code, when doing so prohibits a minor party candidate from being on the general election ballot for a given minor political party when that party did not exist in the State on the day of the Governor’s Proclamation.
68. That “together, Sections 1-8-18(A) and 1-8-2(D) violate the First Amendment rights of parties to free association by restricting their right to nominate as candidates persons of their choosing” is *res judicata*. That Section 1-8-2(D) violates the qualifications clause as well as the First Amendment right of free association is also *res judicata*.
69. Enforcing the provision of NMSA §1-8-2(D) of the New Mexico Election Code, when doing so prohibits Jon Ross Barrie from being on the general election ballot for the Independent American Party when the Party did not exist in the State on the day of the Governor’s Proclamation violates the qualifications clause as well as Jon Ross Barrie’s constitutional rights of freedom of association to associate for political purposes.
70. Enforcing the provision of NMSA §1-8-2(D) of the New Mexico Election Code, when doing so prohibits Jon Ross Barrie from being on the general election ballot for the Independent American Party when the Party did not exist in the State on the day of the Governor’s Proclamation violates the Independent American Party’s constitutional rights of freedom of association to associate for political purposes, as well as the rights of qualified Independent American Party voters to cast their votes effectively.


71. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) as stated in the Secretary of State's August 1, 2012 letter violates the qualifications clause of the United States Constitution as well as Jon Ross Barrie's First Amendment right of free association.
72. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) is stated in the Secretary of State's August 1, 2012 letter has violated the First Amendment rights of the Independent American Party of New Mexico by restricting its right to nominate as a candidate for political office the person of its choosing.
73. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) is stated in the Secretary of State's August 1, 2012 letter has violated the rights of individual members of the Independent American Party of New Mexico to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively.
74. The Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) should be overturned, and the New Mexico Secretary of State should be required to place the name of Jon Ross Barrie upon the 2012 general election ballot as a candidate for United States Senator, Independent American Party.

WHEREFORE, Petitioners Jon Ross Barrie and the Independent American Party of New Mexico respectfully requests that the New Mexico Supreme Court:

- A. Issue a Peremptory Writ of Mandamus, compelling the Secretary of State to review and verify all of Jon Ross Barrie's nominating petitions signatures that:
- a. were rejected for being "not registered," and
 - b. were rejected for being "address not as registered," and
 - c. were rejected for being "name not as registered," and
 - d. were rejected for being "duplicate," and
 - e. were rejected for the reason "unreadable," and
 - f. were rejected for the reason "not legible," and
 - g. were rejected for being "not in political subdivision."
- B. Following the Secretary of State's review and verification, determine that Jon Ross Barrie has complied with NMSA 1978, §1-8-2(B), and;
- C. Determine that the Secretary of State's determination of being "unable to certify" Jon Ross Barrie "as a candidate for U.S. Senate pursuant to Section 1-8-4 NMSA 1978" based upon NMSA 1978, §1-8-2(D) is barred by *res judicata*, and;
- D. Determine that the New Mexico Secretary of State's application of NMSA §1-8-2(D), as applied in this matter, violated the qualifications clause as applied to Jon Ross Barrie as well as Jon Ross Barrie's First Amendment right of free association, and;
- E. Determine that the New Mexico Secretary of State's application of NMSA §1-8-2(D), as applied in this matter, violated Jon Ross Barrie's right to Equal Protection under the Fifth Amendment, and;
- F. Determine that the New Mexico Secretary of State's application of NMSA §1-8-2(D), as applied in this matter, violated the First Amendment rights of the Independent American Party of New Mexico to free association by restricting the party's right to nominate as a candidate a person of its choosing, and;

- G. Issue a Writ of Alternative Mandamus requiring the New Mexico Secretary of State to have the name of Jon Ross Barrie placed upon the 2012 general election ballot as a candidate for United States Senator, Independent American Party, and;
- H. Under NMSA 1978, §44-2-12, and NMRA Rules 12-403(B) and 12-504(F), award Petitioners their costs and attorneys fees incurred, and;
- I. Issue such further and necessary relief as the Court deems just and appropriate.


Most Respectfully Submitted,
LAKINS LAW FIRM, P.C.



Charles N. Lakins, Esq.
PO Box 91357
Albuquerque, NM 87199
(505) 404-9377

Certificate of Service

I, Charles N. Lakins, do hereby certify that on the 13th day of August 2012, I served a copy of this *Verified Emergency Writ for Petition of Mandamus* on the New Mexico Secretary of State and the Attorney General for the State of New Mexico.



Charles N. Lakins, Esq

**IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO**

**JON ROSS BARRIE, and the
INDEPENDENT AMERICAN
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v.

**DIANNA J. DURAN, in her official capacity
as New Mexico Secretary of State,
Respondent.**

AFFIDAVIT OF JON ROSS BARRIE

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

COMES NOW the Affiant, Jon Ross Barrie, being first duly sworn upon his oath, and states as follows:

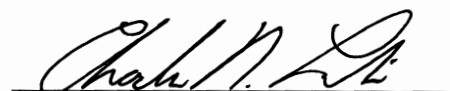
1. I, Jon Ross Barrie, am the Plaintiff-Petitioner named in this matter.
2. I, Jon Ross Barrie, state and affirm that I have read the Petition for Writ of Mandamus and the statements contained in the petition are true and correct to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.


Jon Ross Barrie

The foregoing instrument was acknowledged before me this 12th day of August 2012 by Jon Ross Barrie.

Witness my hand and official seal.


Notary Public

