

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

RV

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

v.

**D-101-CV-2012-02233
Consolidated with D-101-CV-2012-02353
On remand from Supreme Court No. 33,755**

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

ORDER OF COURT

THIS MATTER came before the Court on Remand from the New Mexico Supreme Court, in case number D-101-CV-2012-02353 and being consolidated with case number D-101-CV-2012-02233. This Court held a hearing on August 28, 2012 to consider the issues on remand, at which counsel for Petitioners and counsel for Defendant requested by Stipulated Motion of August 27, 2012 that this Court consider first the “threshold issue” as framed by counsel of whether NMSA 1978, Section 1-8-31 requires the rejection of petition signatures when “the address provided by the person signing the petition did not match either the mailing or registration address of the person signing as that address (or addresses) are listed in the Secretary of State’s Voter Registration Election Management System database.” The parties stipulate that “should the Court determine that Section 1-8-31 does not require the rejection of petition signatures when such an address mismatch occurs, there is no dispute that Mr. Barrie has submitted a sufficient number of valid petition signatures to appear on the general election ballot.”

Having reviewed the filings and exhibits on remand and having heard considered arguments of respective counsel, the Court **FINDS** as follows:

1. The basis of the Court’s ruling is not based upon equal protection under the Constitution;

2. The premise in New Mexico's case law is that the challenger bears the burden of proving that the nominating petition signatures comply with the law, and the Courts will look very strictly at attempts to disqualify nominating petition signatures, and there is a presumption of putting a candidate on the ballot. The Court is to be very reluctant in allowing a challenge to a voter's right to fully participate in the electoral process.
3. The New Mexico Supreme Court has ordered that in this case the New Mexico Secretary of State "shall have the burden of proceeding and persuasion upon remand as if a challenger under Section 1-8-31."
4. The Court has reviewed the history of NMSA Section 1-8-31, and the changes based upon decisions of the New Mexico Supreme Court. Prior to the 2011 amendment, paragraph (C)(2) included the requirement that a signature was to be counted unless evidence was presented that the person signing "failed to provide information required by the nominating petition sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate."
5. Following the 2011 amendment, Section 1-8-31 includes paragraph (B) requiring that "a person who signs a nominating petition shall indicate the person's registration address" or "mailing address."
6. The Court finds notable that the disqualification requirement in Section 1-8-31(A) is duplicated at Section 1-8-31(C)(4), but the Section 1-8-31(B) disqualification requirement is not duplicated in Section 1-8-31(C).
7. The Court also finds notable that in 2011 the Legislature amended Section 1-8-31(C)(2) to remove the language "sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate." Subsection (C)(2) now simply reads that a signature should be accepted unless the person signing "failed to provide information required by the nominating petition."

8. The Secretary of State posits that reading Section 1-8-31(B) and Section 1-8-31(C)(2) together requires that if any address provided by the person signing the petition did not match either the mailing or registration address of the person signing as that address (or addresses) are listed in the Secretary of State's Voter Registration Election Management System database, then that nominating petition signature must be rejected.
9. Based upon a literal reading of the statute and its history, it appears that the Secretary of State could properly disqualify a nominating petition signature due to an "address mismatch."
10. However, the Court does not find that the inquiry ends at this literal reading of the statute and its history.
11. Based upon the New Mexico Supreme Court's decision in *Ruiz v Vigil-Giron*, 2008-NMSC-063, ¶ 5, 145 N.M. 280, 196 P.3d 1286 and its antecedent cases, the Secretary of State must do more than make a mechanical determination of whether the address of the signatory on the nominating petition matches the data in the Secretary of State's database.
12. The Secretary of State, as any other nominating petition challenger, must show evidence of bad faith, fraud or reasonable opportunity for fraud in order to meet its burden to disqualify a nominating petition signature when the address provided by the person signing the petition does not match either the mailing or registration address of the person signing as that address (or addresses) are listed in the Secretary of State's Voter Registration Election Management System database.
13. Absent a showing that the Secretary of State rejected an "address mismatch" because of bad faith, fraud or reasonable opportunity for fraud, the Court will not uphold the rejection of such nominating petition signatures who appear to be New Mexico registered voters.
14. The Court determines that the Secretary of State's challenge to the "address mismatch" nominating petition signatures is insufficient.
15. The issue of attorney's fees and costs is not before this Court.

WHEREFORE, the Court hereby **ORDERS**:

1. The Secretary of State must accept petition signatures from Jon Ross Barrie that present an “address mismatch” unless there is evidence of bad faith, fraud or the reasonable opportunity for fraud.
2. Either Party desiring to appeal this Court’s Order must file the appropriate pleading with the New Mexico Supreme Court no later than close of business on Wednesday, August 29, 2012.

THE COURT ACKNOWLEDGES THE FOLLOWING STIPULATION OF THE PARTIES:

1. The Secretary of State has reviewed and analyzed a sufficient number of nominating petition signatures and determined that Jon Ross Barrie is qualified to be placed on the 2012 general election ballot in New Mexico as candidate for United States Senate for the Independent American Party.
2. The Secretary of State will take all steps to ensure that Jon Ross Barrie is placed on the 2012 general election ballot in New Mexico as candidate for United States Senate for the Independent American Party.
3. The Parties agree that this Stipulation is enforceable by this Court, or any other Court of competent jurisdiction.

IT IS SO ORDERED.

Approved by:

Charles N. Lakins
Lakins Law Firm, P.C.
P.O. Box 91357
Albuquerque, NM 87199
Counsel for Plaintiffs
(505) 404-9377
Charles@LakinsLawFirm.com


Honorable Sarah M. Singleton



Scott Fuqua, Esq.
Counsel for Respondent
Office of the Attorney General
PO Box 1508
Santa Fe, NM 87504-1508
(505) 827-6920
sfuqua@nmag.gov

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