

September 30, 2010 Advisory Letter - Write-in Candidate for Governor

September 30, 2010

Honorable Howie C. Morales
New Mexico State Senator
4285 North Swan
Silver City, NM 88061

RE: Write-in Candidate for Governor

Dear Senator Morales:

You contacted our office regarding a write-in gubernatorial candidate. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that the ballots, as presented, are neither blatantly illegal nor unconstitutional. We further conclude that the New Mexico Constitution does not specifically prohibit the write-in gubernatorial candidate and that the Secretary of State has not done anything illegal.

Article V, Section 1 of the New Mexico Constitution states that "the governor and lieutenant governor shall be elected jointly by the casting by each voter of a single vote applicable to both offices." On its face, the current ballot is consistent with the constitutional requirements. The space for write-in candidates in the current ballot requires a single vote. It does not require voters to make two separate votes for governor and lieutenant governor, nor does it otherwise distinguish between the candidacies of the two offices. The ballot does not state the name of write-in candidates; it merely sets forth a blank line for purposes of writing in an individual's name.

Article V, Section 1 is premised on the traditional existence of a candidate for governor and a candidate for lieutenant governor who have been separately elected in a primary election. The Constitution does not contemplate or address an individual, like a write-in candidate, who becomes eligible to run for governor by means other than an election. Nevertheless, the Constitution does not, by its terms, prohibit a person from qualifying and running for governor as a write-in candidate without a corresponding write-in candidate for lieutenant governor. The Constitution provides a procedure for filling the vacancy in the office of lieutenant governor, should the necessity arise.

The Secretary of State is required to certify a candidate who properly files a declaration of intent pursuant to Section 1-12-19.1(D) of the Election Code. Mr. Gomez timely filed his declaration of intent the day after the primary election, with all the required documentation. The provisions of the Election Code governing the certification of write-in candidates do not differentiate between gubernatorial candidates and candidates for any other office in the general election. In particular, the statute is silent as to any additional requirements for the gubernatorial candidate, such as the need for a

lieutenant governor candidate or the process for designating a lieutenant governor candidate.

Mr. Gomez has met all the statutory requirements for certification. On balance, and absent additional legislative or judicial guidance, it appears that the best course under the circumstances favors permitting the certification of the write-in candidate to stand and to allow votes cast for him to be counted and canvassed. To do otherwise would disenfranchise voters who choose to vote for a candidate who has complied with all statutory requirements. If there are any further questions that I can assist you with, do not hesitate to contact me.

Sincerely,

Tania Maestas
Assistant Attorney General

cc: Gary K. King, Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General