

**STATE EX REL. MONTOYA V. FIORINA, 1962-NMSC-052, 70 N.M. 64, 370 P.2d 206
(S. Ct. 1962)**

**STATE of New Mexico ex rel. Joseph E. MONTOYA, Relator,
vs.
Betty FIORINA, Secretary of State of the State of New
Mexico, Respondent, Joseph M. Montoya, Intervenor**

No. 7173

SUPREME COURT OF NEW MEXICO

1962-NMSC-052, 70 N.M. 64, 370 P.2d 206

April 10, 1962

AUTHOR: COMPTON

OPINION

{*64} Original Mandamus Proceeding.

{1} The Court being fully advised in the premises, FINDS:

1. That the Alternative Writ of Mandamus heretofore entered in this cause was improvidently entered as regards Contention No. 1 of the Relator to the effect the Intervenor's name should be placed on the ballot as Jose Manuel Montoya and Contention No. 3 of the Relator to the effect that the residence of the Intervenor should have been designated as Santa Fe County on the ballot rather than Sandoval County. The Court concluding that mandamus is not a proper remedy under which to obtain a determination of these contentions for the reason that to do so, the Respondent must make a judicial determination.

2. As regards Contention No. 2 of the Relator, the Court finds that the clear legislative intent of Section 3-11-53, N.M.S.A., 1953 Compilation (P.S.) is to benefit the voters by placing the names of the candidates upon the ballot in a clear and unambiguous manner so that each voter may cast his or her vote intelligently and the Court finds that the designation of United States Representative under the name of Candidate Joseph M. Montoya for Position No. 1 for the office of Congress is proper and to do otherwise would circumvent the obvious legislative intent of the stated statute.

{2} ORDERED, ADJUDGED AND DECREED that the Alternative Writ heretofore issued in this cause be and the same is hereby quashed and dismissed and that the Respondent be and she is hereby dismissed and that costs of this proceeding be taxed against Relator.