

**ENDORSED**

**FILED**

**STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT**

2012 APR 18 PM 4:59

DISTRICT COURT  
DONA ANA COUNTY, NM

**PAUL A. MARTINEZ, as  
a Citizen, an Elector, a Taxpayer  
and a Candidate for the Magistrate Court Bench  
Aggrieved By the Actions of the Respondents,  
Petitioner,**

District Court Case No. **CV-2012-878**

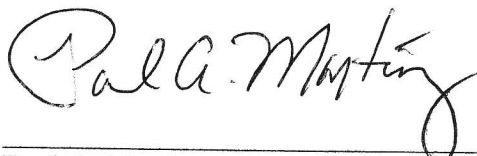
vs.

**LYNN J. ELLINS, as County Clerk of Dona Ana County and the  
HON. SUSANA MARTINEZ, Governor of the State of New Mexico  
Respondents,**

**AMENDED  
NOTICE OF APPEAL**

Paul A. Martinez, Appellant pro se, hereby appeals to the Court of Appeals for the State of New Mexico from an Order of Summary Dismissal For Lack of Jurisdiction in an Emergency Writ of Mandamus entered by the Third Judicial District Court in the State of New Mexico, April 16, 2012. This order was issued by the Honorable James T. Martin, Third Judicial District Court of Dona Ana County. A copy of said order is hereto attached and herein incorporated by reference.

Respectfully submitted:



Paul A. Martinez, Appellant- Pro Se  
2711 Winston Avenue  
Las Cruces, NM 88005  
(575) 312-6327 Cellular Phone  
(575) 527-2460 Home/Fax

## CERTIFICATE OF SERVICE

I certify that I caused a copy of this notice of appeal to be served on the following persons or entities by U.S. Mail with 1<sup>st</sup> Class Postage Pre-paid on this 18<sup>th</sup> day of April, 2012:

1. Hon. Lynn J. Ellins, Dona Ana County Clerk  
845 N. Motel Blvd.  
Las Cruces, NM 88007

2. Hon. Susana Martinez, Governor of New Mexico  
State Capitol  
490 Old Santa Fe Trail, Room 400  
Santa Fe, NM 87501

3. Clerk of the Court of the Third Judicial District  
Of the State of New Mexico, Dona Ana County  
201 West Picacho Ave  
Las Cruces, NM 88005

  
Paul A. Martinez, Appellant Pro-Se

**ENDORSED**

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

2012 APR 19 AM 11:33

DISTRICT COURT  
DONA ANA COUNTY, NM

**PAUL MARTINEZ, as  
a Citizen, an Elector, a Taxpayer  
and a Candidate for the Magistrate Court Bench  
Aggrieved By the Actions of the Respondents,  
Petitioner/Appellant,**

**Ct. App. No. \_\_\_\_\_  
Dist. Ct No. CV-2012-878**

**Vs.**

**LYNN J. ELLINS, as County Clerk of Dona Ana County and the  
HON. SUSANA MARTINEZ, Governor of the State of New Mexico  
Respondents/Appellees.**

**EMERGENCY APPELLANT'S DOCKETING STATEMENT  
APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
DONA ANA COUNTY  
Honorable James T. Martin, District Judge**

Paul A. Martinez, Sr.  
Appellant Pro Se  
2711 Winston Avenue  
Las Cruces, NM 88005  
(575) 527-2460 Home/Fax  
(575) 312-6327 Cellular

## EMERGENCY REQUEST

1. Paul A. Martinez, appellant, appeals from the decision of the Third Judicial District Court, Doña Ana County, New Mexico, which issued an Order for Summary Dismissal for Lack of Jurisdiction on a Petition for Writ of Mandamus that the Petitioner/Appellant filed against the Respondents/Appellees the Hon. Lynn J. Ellins, Dona Ana County Clerk and the Hon. Susana Martinez, Governor of New Mexico.

2. The APPELLENT, in his capacity as a taxpayer, an elector, a citizen and an individual deprived of certain rights by the actions of APPELLEES hereto, requested of the Third Judicial District Court to issue a writ of mandamus ordering that House Bill 275 of the 50th Legislature be reinstated and restoring petitioner's/appellant's name and the names of all those similarly situated as candidates for the Democratic primary for magistrate court judge. Respondents/Appellees are the Governor of the state of New Mexico and the County Clerk of Doña Ana County. This petition sought to remedy constitutional defects in the carrying out the official duties of their respective offices.

3. There are no other candidates that filed in their respective primary elections. No licensed New Mexico attorney filed for this position.

**Jurisdictional Issues:  
District Court**

4. The District Court had original jurisdiction to issue writs of mandamus against all state officers. The N.M. Const. Article VI, § 3: Mandamus is an appropriate means to compel official action that is legally required or to prevent a public official from acting unlawfully. *State ex rel. Clark v. Johnson*, 120 N.M. 562, 569-70, 904 P.2d 11, 18-19, (1995). Petitioner has appropriately invoked this Court's jurisdiction in the first instance because this is a matter of great public concern, the material facts are sufficiently developed leaving questions of law for determination, and an immediate determination of the issues is necessary. *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 17, 125 N.M. 343, 961 P.2d 768. The Honorable Lynn Ellins Respondent herein, in his capacity as County Clerk for Doña Ana County, New Mexico, is a "public official" within the meaning of the aforementioned constitutional provision.

5. Initially the Appellant filed this Writ with the New Mexico Supreme Court as an Emergency due to the impending election and because the Writ of Mandamus was also against the Governor, so that the Supreme Court had the proper jurisdiction.

6. On April 9, 2012, the Appellant filed his petition for writ with the NM Supreme Court. It was issued Case No. 33,556.

7. On April 10, 2012, the Court issued a denial order. Counsel for the Appellant was informed by Court personnel that the High Court desired that a record be established in a lower court.

8. Consequently, the Appellant filed this Writ of Mandamus in the Third Judicial District of Dona Ana County, State of New Mexico, on April 11, 2012. This case was initially assigned to the Honorable Judge Manuel I. Arrieta and consequently, reassigned to the Honorable James T. Martin.

9. A copy of this Court's Order was provided to the District Court as a supplemental document on April 13, 2012.

10. On April 16, 2012, the District Court issued the Appellant an Order of Summary Dismissal For Lack of Jurisdiction. This Court did not afford the Appellant or others similar situated with an evidentiary hearing which could have provided needed testimony and material facts necessary to prove that the Appellees' action were unlawful.

### **Supreme Court**

11. This Court has jurisdiction under Article VI, section 3 (granting original jurisdiction of mandamus against all state officers, boards and commissions as well as to issue writs of mandamus and all other writs necessary or proper to complete exercises jurisdiction and to hear and determine the same). The issues involved in this case involve the unlawful

veto of legislative acts, separation of powers as set forth in the Constitution the state New Mexico, the proper exercise of those powers and the right of citizens to run for State office.

12. It is the Supreme Court which is the proper vehicle by which to test the constitutionality of vetoes or attempted vetoes by the Governor, *State of New Mexico ex rel. William A. Sego v. Kirkpatrick*, 86N.M. 359, 524P2d. 975 (1975). In addition, the petitioner has standing to bring this action, as a private citizen, in order to vindicate the public's interest in this case due to the fact that it presents issues of great public importance, *Sego*, p.979, *State of New Mexico ex rel. Frank R. Gomez et al. v. Jack M. Campbell*, as Governor et al., 75 N.M. 86, 400 P2d. 956, Rehearing Denied April 28, 1965 (1965).

## **FACTS:**

### **A. PARTIES:**

13. Petitioner/Appellant is a private citizen, a taxpayer, and elector residing the city of Las Cruces, county of Doña Ana, state of New Mexico. He is a high school graduate. In that capacity he prepared, circulated, and submitted a petition to be placed on the ballot for the Democratic Party nomination for the office of magistrate judge.

14. Respondents/Appellees:

a. Respondent Lynn J. Ellins is the County Clerk of Doña Ana County with whom the Petitioner filed the petition.

b. Respondent, the Honorable Susana Martinez, is the Governor of the State of New Mexico who exercised a pocket veto of House Bill 275.

**B. ADDITIONAL SUPPORTING FACTS:**

15. This original mandamus proceeding, filed by Petitioner concerns his declaration of candidacy filed in the Doña Ana County Clerk's Office on March 20, 2012. The Petitioner filed for the Magistrate Judge position in Division 3. (See Petitioner **Exhibit A.** in Record Proper) On this date, the Petitioner/Appellant was a resident of Doña Ana County and, in all respects, qualified, pursuant to House Bill 275 passed unanimously by the New Mexico state legislature during its fiftieth session, to run for office of magistrate Judge in Doña Ana County.

16. On March 20, 2012 Petitioner/Appellant filed the necessary documents to secure a place on the ballot for the primary election of the Democratic Party for Magistrate Judge, Division 3, in Doña Ana County to be held on June 5, 2012.(Exhibit A-see in the Record Proper). The Petitioner/Appellant was one of only two candidates that filed and declared their candidacy for this position.



17. At this point, a primary election to name the Democratic candidate for magistrate court judge, Division 3 in Doña Ana County is scheduled to take place on June 5, 2012. The disqualification of the petitioner/appellant was based upon the unlawful veto by Respondent Martinez of the law passed unanimously by the legislature the State New Mexico. This position was recently vacated by the Honorable Olivia Nevarez-Garcia.

18. The Governor has not yet named a replacement to temporarily occupy this judgeship until the expiration of this term of office. Anyone that the Governor appoints will not be able to run due to the fact that March 20, 2012, was the last day to file. This is notwithstanding candidates that are DTS (decline to state) independent or no party affiliations.

19. It is clear that there is not a plain, speedy and adequate remedy in the ordinary course of law by which to address the issues raised in the instant petition. Without the assistance of this Court the people of Doña Ana County may not be entitled to vote for magistrate judge in Division 3. Governor Martinez may make a choice for the people of Doña Ana County.

20. Subsequently, the Doña Ana County Clerk, Mr. Lynn Ellins, sent the Petitioner an email on March 22, 2012, (Petitioner's **Exhibit B- See in the Record Proper**) this communication requested that Petitioner provide proof that he is a licensed attorney in the state of New Mexico. This notice

indicates that if production of such documentation is not forthcoming by March 26, 2012, the Respondent will remove the Petitioner from the ballot and declare that he is ineligible to be a candidate in both the primary and general elections.

21. The Respondent Ellins removed Appellant's name and others similarly situated from the Democratic Primary ballot for the magistrate judge position, division 3 for Dona Ana County.

22. Governor Susana Martinez pocket vetoed HB-275, an emergency bill concerning the safety, health and peace, which passed both of the Houses unanimously.

### **ISSUES PRESENTED BY THIS APPEAL**

23. Whether this ruling is unlawful because the law is vague and ambiguous, with conflicting state constitutional provisions and statutes concerning magistrate judges and metropolitan court judges, and the alleged requirement that Petitioner have a law license has never been previously imposed in this county. In fact, the enforcement of such a rule would not only disqualify Petitioner from running, but would disqualify all but one presently sitting magistrate judges from serving in this county in further settings.

24. Whether the legislative intent was clearly to protect sitting magistrate judge in Dona Ana County by maintaining the status quo ante for at least another decennial census. The legislature has the power and duty to set the standards for magistrate judges in the state of New Mexico. They acted accordingly in the interest of public safety, equal protection and to assure that non-licensed attorney magistrate judge were not treated unequally.

25. Whether, pursuant to the New Mexico State Constitution, the Governor can only line item veto, but not destroy the legislative intent. HB-275 was an emergency bill that passed unanimously (the requirement for it to be law without the Governor's approval is 2/3 majority on both houses on emergency bills) and this legislation contained no appropriations. It was in duality with HB-229. Governor pocket vetoed this bill after the 2011 regular session. She has expressed vehemently that she desires that all magistrate judges (particularly in Dona Ana County) be licensed attorneys. She refused to allow this bill to be placed on her call during the 2012 regular session. In *State ex rel. Stewart v. Martinez*, 2011 -NMSC- 045, December 14, 2011 (NO. 33,028), the NM Supreme Court held that the governor did abuse her powers and could not dilute the duties and powers of the legislature

particularly with respect to the legislative intent. This case is directly on point with the aforementioned.

26. The District Court failed to provide the Appellant and those similarly situated with an evidentiary hearing, which could have allowed the Appellant to opportunity to provide relevant testimony and provide the Court with the facts to demonstrate that this case is on analogous with *State ex rel. Stewart v. Martinez*, 2011 -NMSC- 045, December 14, 2011 (NO. 33,028) and that the Appellees actions were unlawful.

27. The District Court did have jurisdiction to issue a decision based on the fact that court has equitable powers and pursuant to: 1. *State ex rel. Clark v. Johnson*, 120 N.M. 562, 569-70, 904, P.2d 11, 18-19,(1995); 2. *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 17, 125 N.M. 343, 961 P.2d 768; 3. *State of New Mexico ex rel. William A. Sego v. Kirkpatrick*, 86N.M. 359, 524P2d. 975 (1975); and 4. *State of New Mexico ex rel. Frank R. Gomez et al. v. Jack M. Campbell*, as Governor et al., 75 N.M. 86, 400 P2d. 956, Rehearing Denied. Appellant provides all applicable citations supporting that the actions of the Appellees was unlawful and that the Appellant and those similarly situated should be placed back on the Democratic Primary ballot. This information is in both the record proper and the brief in chief.

28. Is the Governor's action on the pocket veto of HB-275 in violation of the unequal treatment with respect to all of the sixty-six (63) non-lawyer magistrate judge across the state. The Governor's actions abuse her authority by encroaching on the legislature's powers and duties.

29. The Appellant did file a writ of mandamus in the Supreme Court on April 9, 2012. The Appellant and his former attorney believed that this was the proper venue because this action was also against the Governor and that this matter was an emergency due to time constraints with the primary election being held on June 5, 2012. Consequently, on April 10, 2012, the Supreme Court issued an order of denial. The Appellant was advised by former attorney Kenneth Henrie that the Court did not want to create a record and that a record proper should be created by a lower court.

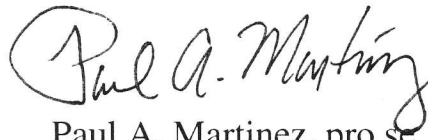
30. Consequently, the Appellant filed his writ of mandamus pro se in the Third Judicial District Court, Dona Ana County, state of New Mexico on April 11, 2012. On April 16, 2012, the Appellant received the aforementioned order (Summary Dismissal for Lack of Jurisdiction) from the Honorable James T. Martin.

31. Because this a time sensitive matter involving whether or not the Appellant and those similarly situated can be reinstated on the primary

elections ballot as candidates for the magistrate position in division 3, this matter requires immediate attention.

38. The Docket Fee of \$125.00 is enclosed

Respectfully Submitted,

A handwritten signature in black ink that reads "Paul A. Martinez". The signature is written in a cursive style with a large, circular initial "P" and a long, sweeping tail on the "y".

Paul A. Martinez, pro se  
2711 Winston Avenue  
Las Cruces, NM 88005  
(575) 312-6327 Cellular  
(575) 527-2460 Home/Fax

**AFFIDAVIT OF SERVICE**

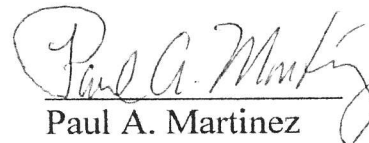
Paul A. Martinez, being duly sworn upon his oath, states that he mailed a copy of the foregoing docketing statements with sufficient first-class postage affixed thereto to the following people on the 17<sup>th</sup> day of April, 2012:

Hon. Susana Martinez, Governor of the State of New Mexico  
490 Old Santa Fe Trail  
Room 400  
Santa Fe, New Mexico 87501

Hon. Lynn J. Ellins, Dona Ana County Clerk  
845 N. Motel Blvd.  
Room 1-200  
Las Cruces, New Mexico 88007

District Court Clerk  
Third Judicial District Court  
201 W. Picacho Ave.  
Las Cruces NM 88005

Hon. James T. Martin  
District Judge-Third Judicial District Court  
201 W. Picacho Ave.  
Las Cruces NM 88005

  
Paul A. Martinez

Subscribed and sworn to before me this 18<sup>th</sup> day of April, 2012.

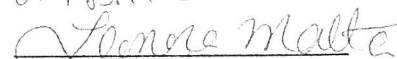


OFFICIAL SEAL  
LEONORA MATTA  
NOTARY PUBLIC - STATE OF NEW MEXICO

MY COMMISSION EXPIRES:

June 27, 2015

18<sup>th</sup> day of April 2012

  
Notary Public

June 27, 2015