

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
8/26/2026 1:28 PM
AUDREY GARCIA
CLERK OF THE COURT
Gabriella Montoya

GREGORY BENNETT, *Individually*)
& as Chair of the Central of the Central)
Committee of the Democratic Party)
of Sandoval County, and)
MATTHEW WAYNE HERMAN,)
Petitioners,)

Case No. D-1329-CV-2026--01887

versus)
)
)

ANNE BRADY-ROMERO,)
in her official capacity as)
Sandoval County Clerk,)
Respondent,)

Judge Perez

and)
)
)

MAGGIE TOULOUSE OLIVER,)
in her official capacity as)
New Mexico Secretary of State,)
Interested Party.)

**RESPONDENT ANNE BRADY-ROMERO'S
MOTION TO DISMISS PETITION FOR A WRIT OF MANDAMUS
FOR FAILURE TO STATE A CLAIM**

Respondent Anne Brady-Romero, in her official capacity as Sandoval County Clerk, moves to dismiss this case under Rule 1-012(B)(6), NMRA, as it fails to state a claim upon which relief can be granted. NMSA 1978, § 44-2-9 (1884) states “the party on whom the writ is served may show cause by answer, made in the same manner as an answer to a complaint in civil action.” Therefore, Brady-Romero submits this motion to dismiss under Rule 1-012(B)(6), NMRA.

Petitioners argue that NMSA 1978, § 1-8-8(D) (2019) imposes a clear legal duty on Brady-Romero to certify to the general election ballot the name of Matthew Wayne Herman as the Democratic candidate for the New Mexico House of Representatives District 23 . But subsection D is applied only if the condition precedent in NMSA 1978, § 1-8-8(A) (2019) is true. Brady-Romero does not have a clear legal duty and the petition for a writ of mandamus should be denied.

The Election Code allows a political party to replace a candidate nominated in the primary election only if the vacancy arose more than ninety days before the general election, NMSA 1978, § 1-8-8(A) (2019). This petition seeks to require Brady-Romero to place Petitioner Herman’s name on the general election ballot as a replacement for a candidate who withdrew from the race. As the withdrawal was filed on the seventy-eighth day before the election and after the statutory deadline of subsection A, the complaint fails to state a claim upon which relief can be granted. It should be dismissed under Rule 1-012(B)(6), NMRA. See *Delfino v. Griffio*, 2011-NMSC-015, ¶ 12, 150 N.M. 97, 257 P.3d 917 (listing rules for granting motions to dismiss for failure to state a claim).

Attached to this petition as exhibits A through D are copies of the 2023, 2019, 2017, and 2015 versions of NMSA 1978, § 1-8-8.

The House District 23 Race

In the June 2026 primary election, Elise Falanga Taylor received the Democratic Party’s nomination for New Mexico House of Representatives District 23. On August 17, 2026—the seventy-eighth day before the election—Ms. Taylor filed with Brady-Romero a “2026 General Election Statement of Withdrawal of Candidacy.” As a result of this filing, Ms. Taylor’s name will be removed from the ballot. And because the date of Ms. Taylor’s

withdrawal is fewer than ninety days before the election, the resulting vacancy on the ballot cannot be filled by her party.

The Election Code, at NMSA 1978, § 1-8-8(A) (2023), states:

If after a primary election, but ninety or more days before the general election, a vacancy occurs . . . in the list of the nominees of a qualified political party for any public office to be filled in the general election . . . the vacancy on the general election ballot may be filled by . . . the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a . . . legislative district office where the district is entirely within the boundaries of a single county.

House District 23 lies entirely within Sandoval County. NMSA 1978, § 2-7F-29 (2021). Therefore, under the terms of NMSA 1978, § 1-8-8(A) (2023), the Democratic Party of Sandoval County would have been able fill a vacancy on the general election ballot if the vacancy had arisen more than ninety days before the general election. Under that same statute, Brady-Romero is the proper filing officer for a candidate for House District 23.

On August 24, the seventy-first day before the general election, the Petitioners filed with Brady-Romero two documents: (1) “2026 General Election Party Nomination Vacancy Form” and (2) “2026 General Election Declaration of Candidacy.” These documents seek to have Herman’s name placed on the 2026 general election ballot for House District 23. The same day, Brady-Romero notified Herman in writing that his candidacy was disqualified and his name would not appear on the general election ballot because the vacancy arose fewer than ninety days before the election. This petition followed.

Statutory Construction

Petitioners incorrectly rely on one subsection, NMSA 1978, § 1-8-8(D) (2023), when a holistic reading of NMSA 1978, § 1-8-8(D) (2023) is appropriate. Subsection D reads: “When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.” Petitioners focus on the mandatory word “shall.” The wording of Subsection D was adopted in 2011. Laws of 2011, ch. 137, § 51. Before the 2011 amendment, this subsection read: “When the name of a nominee is filed as provided in this section, such name shall be placed on the general election ballot as the party's candidate for that office. In the case of a nominee appointed after the general election ballots are printed, such name shall be placed on the ballot by pasting the printed name of the nominee over the name of the candidate whose vacancy he fills on the general election ballot.” NMSA 1978, § 1-8-8(D) (1995), adopted by Laws of 1995, ch. 124, § 11.

The Uniform Statute and Rule Construction Act, NMSA 1978, § 12-2A-1 to -20, requires that statutes should be read in such a way that all words of a law are given effect. NMSA 1978, § 12-2A-10 (1997). That’s because “the text of a statute . . . is the primary, essential source of its meaning.” NMSA 1978, § 12-2A-19 (1997). The Construction Act codifies long-standing principles of statutory interpretation. See, e.g., *State v. Rue*, 1963-NMSC-090, ¶ 15, 72 N.M. 212, 382 P.2d 697 (statutes should be read in way that harmonizes them); *Hagerman v. Meeks*, 1906-NMSC-032, ¶26, 13 N.M. 565, 86 P. 801 (“effect shall be given to all the words of a statute where this is possible without conflict”). The Construction Act says “‘shall’ . . . express[es] a duty, obligation, requirement or condition precedent.” NMSA 1978, § 12-2A-4(A) (1997). A condition precedent is “an act

or event . . . that must exist or occur before a duty to perform something arises.” BLACK’S LAW DICTIONARY 334 (9th ed. 2009) (s.v. “condition precedent”). In computer science, this is called an “if-then rule,” i.e., “a formulated rule which specifies a logical relationship among a set of facts and which consists of an ‘if’ part representing the premise or condition and a ‘then’ party representing the goal or action to be taken when the ‘if’ part is true.” George McDaniel, IBM DICTIONARY OF COMPUTING 325 (10th ed. 1994) (s.v. “if-then rule”).

“If” First, “Then” Second

NMSA 1978, § 1-8-8(D) (2023) is to be read as an if-then rule. The first part of the subsection, “when the name of a nominee is filed as provided in this section,” is a condition precedent. Only if that condition is met does the second half, “the name shall be placed on the general election ballot as the party’s candidate for that office,” apply.

That’s how the Attorney General approached NMSA 1978, § 1-1-8 in 1980 when asked for an opinion on its application. See N.M.A.G. Op. No. 80-31, 1980 WL 100677 (Aug. 22, 1980). In June 1980, Congressman Harold Runnels won the Democratic nomination for re-election to the U.S. House; he died in August while running for a sixth term. *Id.* at *1, *Harold Runnels, 5-Term Congressman In New Mexico, Dies*, N.Y. TIMES, Aug. 6, 1980, at B19. No Republican had been a candidate in that party’s June primary. Op. No. 80-31, 1980 WL 100677, at *1. The Secretary of State asked for an opinion as to whether the Republican Party could place a name on the November ballot. *Id.* The Attorney General’s answer was negative. *Id.* As there had never been a Republican candidate in the race, there was no vacancy for that party to fill upon Runnels’s death. *Id.* at *3. The Attorney General found that if there was no vacancy, then a party had no ability

to substitute a candidate under the statute. *Id.* at *2. The Republican candidate, Joe Skeen, instead ran a successful write-campaign. Michael Barone & Grant Ujifusa, *THE ALMANAC OF AMERICAN POLITICS* 1982, at 712–13 (1981).

The if-then condition here is the date of the vacancy, which occurred fewer than ninety days before the general election. The current version of NMSA 1978, § 1-8-8(A), was enacted in 2023. See Laws of 2023, ch. 39, § 44. Previously, that same subsection said that a vacancy on the general election ballot arising more than seventy days before the general election could be filled by the nominee’s party. NMSA 1978, § 1-8-8(A) (2019), adopted by Laws of 2019, ch. 212, § 89, between 2019 and 2023 read:

If after a primary election, but seventy or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the secretary of state's general election proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the secretary of state's general election proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled [emphasis added]

The current law states that a replacement candidate must be filed with the proper filing officer within seventy days of the general election—but only if the vacancy arose ninety or more days before the election. NMSA 1978, § 1-8-8 (2023). In the same enactment where the Legislature moved the deadline in NMSA 1978, § 1-8-8(A) from seventy days to ninety days, it also moved the deadline for filing a replacement candidate from sixty-three days before the general election to seventy days before. Compare NMSA 1978, § 1-8-8(D) (2019) with NMSA 1978, § 1-8-8(D) (2023).

The 2017 amendment to this section is instructive. Before that amendment, NMSA 1978, § 1-8-8(A) (2015) did not contain any timeframe: “If after a primary election a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election” Any vacancy that arose, regardless of the date, could be filled as long as the replacement candidate’s name was submitted by the fifty-sixth day before the election. NMSA 1978, § 1-8-8(D) (2015).

This is not a case of two statutes enacted at different times being in conflict. This is revisions by the Legislature to the same statute, enacted by it at the same time, making a policy choice that provided a calendar for when candidates could be replaced.

Deadlines

There are a series of deadlines in the Election Code that Brady-Romero must meet that all flow from the ballot being finalized. E.g., NMSA 1978, § 1-10-4(B) (2023) (“not less than sixty days before the election [i.e. September 4, 2026], each county clerk shall certify in writing the ballot for each precinct in the county containing the name of each candidate that has been certified as the nominee of a qualified political party”), NMSA 1978, § 1-6B-7 (2019) (requiring under the Uniform Military and Overseas Voters Act that absentee ballots must be mailed to certain voters no later than September 19, the forty-fifth day before the general election). Election officials such as Brady-Romero must strictly apply the Election Code in their conduct of elections. *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 36, 487 P.3d 815. Its deadlines must be scrupulously observed. E.g., *Wilson v. Denver*, 1998-NMSC-016, ¶ 10, 125 N.M. 308, 961 P.2d 153 (stating this in context of election contest proceeding).

Petitioners ask the Court to apply *Jaramillo v. Whitehead*, N.M. No. S-1-SC-41374 (decided Apr. 22, 2026) for the principle that candidacy is favored. Brady-Romero believes in that principle. For example, in *Trujillo v. Brady-Romero*, 13th Dist. No. D-1329-CV-2024-00536 (filed Mar. 25, 2024), Brady-Romero qualified a legislative candidate resident in the Town of Bernalillo who wrote “Bernalillo” rather than “Sandoval” in the petition blank for her county of residence; that decision was upheld by this Court. But in *Jaramillo*, unlike here, there was no question of timeliness. A more apposite case is *State ex rel. Oliver v. Aragon*, N.M. No. S-1-SC-40569 (filed Sept. 11, 2024), which is also about Election Code deadlines. In *Aragon*, the Guadalupe County Commissioners missed the seventy-day deadline in NMSA 1978, § 1-16-3(B) (2019) to place a tax levy in support of the county hospital on the general election ballot. In 2024, that deadline was August 27. The county commissioners met on September 6 to approve the levy, then later that day obtained a stipulated order from the Fourth Judicial District Court to place the tax levy on the ballot. The Secretary of State brought a petition for a writ of superintending control against the judge, writing that ignoring the deadlines meant “the orderly administration of this election has been upended and thrown into a chaotic scramble.” *State ex rel. Oliver v. Aragon*, N.M. No. S-1-SC-40569, Verified Petition for Writ of Prohibition or Superintending Control and Request for Stay, at 7 (Sept. 11, 2024). The Supreme Court granted the writ and ordered the question removed from the ballot.

Conclusion

“In interpreting statutes, [courts] seek to give effect to the Legislature’s intent, and in determining intent [courts] look to the language used and consider the statute’s history and background. Under the plain meaning rule, when a statute contains language which is clear and unambiguous, [courts] must give effect to that language and refrain from further statutory interpretation.” *Lerma v. State*, 2025-NMSC-033, ¶ 21, 578 P.3d 1111 (cleaned up). The statute sets a clear deadline of ninety days before the date of the general election and after that date, no vacancy on the general election ballot can be filled.

The ninety-day deadline of NMSA 1978, § 1-8-8(A) (2023) was properly applied by Brady-Romero and that decision should be upheld by the Court. Plaintiff’s complaint should be dismissed for failure to make a claim upon relief can be granted.

Respectfully submitted:

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Certificate of Service

I certify that on August 26th, 2026, a copy of this document was served through the Court's online filing system on:

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ARTICLE 8 Nominations and Primary Elections

1-8-8. Vacancy on general election ballot; occurring after primary.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election, but ninety or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the secretary of state's general election proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the secretary of state's general election proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

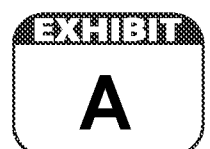
C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed with the proper filing officer on or before the seventieth day prior to a general election using the form prescribed by the secretary of state, along with the declaration of candidacy form subscribed and sworn by the selected nominee and the form for candidates pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978].

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51; 2015, ch. 145, § 51; 2017, ch. 101, § 8; 2019, ch. 212, § 89; 2023, ch. 39, § 44.

2023 version



ARTICLE 8 Nominations and Primary Elections

1-8-8. Vacancy on general election ballot; occurring after primary.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election, but seventy or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the secretary of state's general election proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the secretary of state's general election proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

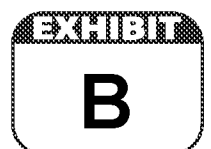
C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed with the proper filing officer using a form approved by the secretary of state at least sixty-three days prior to the general election, along with a declaration of candidacy subscribed and sworn by the selected nominee and the required form for candidates pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978].

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51; 2015, ch. 145, § 51; 2017, ch. 101, § 8; 2019, ch. 212, § 89.

2019 version



ARTICLE 8 Nominations and Primary Elections

1-8-8. Vacancy on general election ballot; occurring after primary.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election, but seventy or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the governor's proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed with the proper filing officer using a form approved by the secretary of state at least sixty-three days prior to the general election.

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51; 2015, ch. 145, § 51; 2017, ch. 101, § 8.

2017 version



ARTICLE 8 Nominations and Primary Elections

1-8-8. Vacancy on general election ballot; occurring after primary.

1-8-8. Vacancy on general election ballot; occurring after primary.

A. If after a primary election a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the governor's proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed at least fifty-six days prior to the general election.

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office.

History: 1953 Comp., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51; 2015, ch. 145, § 51.

2015 version

