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Attorneys for Respondent-Real Party in Interest
Alejandrina Cabrera

**IN THE SUPREME COURT
STATE OF ARIZONA**

ALEJANDRINA CABRERA, a
candidate for elected office,
Respondent-Real Party in Interest,

Appellant,

v.

JUAN CARLOS ESCAMILLA, a
qualified elector of the City of San Luis,
Yuma County, State of Arizona,
Petitioner,

Appellee, and

Supreme Court Case No.

Case No. S1400CV201101582
Yuma County Superior Court

**RULE 8.1(c)
STATEMENT AND FILINGS**

AND

**REQUEST FOR SETTING OF
EXPEDITED INITIAL
SCHEDULING CONFERENCE**

EXPEDITED ELECTION MATTER

SONIA CUELLO, in her capacity as the
City Clerk of the City of San Luis,
Arizona, Respondent,

Appellee.

Appellant/Respondent–Real Party in Interest, ALEJANDRINA CABRERA,
by and through undersigned counsel, hereby notifies the Court as follows, pursuant
to Rule 8.1(c), Arizona Rules of Civil Appellate Procedure:

- (1) A conformed copy of the Notice of Appeal, reflecting the date of filing in the Superior Court, is attached hereto as Exhibit “A” and incorporated herein by this reference.
- (2) This case is an **“EXPEDITED ELECTION MATTER”**.
- (3) The name and contact information of counsel for each party is as follows:

Attorneys for Appellant Cabrera:

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Attorney for Appellee Cuello:

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candy@camarenalaw.com

- (4) A conformed copy of the Superior Court's Judgment and Order dated January 27, 2012, from which this appeal is taken is attached hereto as Exhibit "B" and incorporated herein by this reference.

Appellant/Respondent–Real Party in Interest, ALEJANDRINA CABRERA, by and through undersigned counsel, hereby requests that the Court, pursuant to Rule 8.1(f), Arizona Rules of Civil Appellate Procedure, set an initial scheduling conference on an expedited basis to address the following items:

- (1) Any pending deadlines and/or related requests: **The City Clerk of the City of San Luis, Arizona, reports that the printing of ballots will commence on Thursday, February 2, 2012. This leaves very little time for briefing, argument, and the rendering of a decision on the merits.**
- (2) Any request for a Court Order to facilitate the timely preparation of the record on appeal: **Appellant requests that the Court enter an Order to have the Clerk of the Yuma County Superior Court immediately transmit the Record on Appeal. It may, however, be unlikely that the parties will be able to refer or cite to an official Index of Record from the Clerk of the Yuma County Superior Court in their respective briefs, given the extremely short timeframe in which this matter must be resolved before the printing of ballots on Thursday, February 2, 2012.**
- (3) There is no request to transfer this case.

- (4) *The nature and number of issues on appeal:* This appeal arises from the Yuma County Superior Court's determination that Appellant lacks the proficiency in the English language required to be included on the ballot for the San Luis City Council under A.R.S. § 38-201(C). This appeal to the Arizona Supreme Court seeks to reverse the trial court's Judgment. Appellant expects that this appeal will involve approximately five (5) independent, but related issues.
- (5) *Proposed briefing and disposition of the appeal:* As a result of the ballot printing date, Appellant respectfully submits that this appeal must be resolved on or before Wednesday, February 1, 2012, at 3:30 p.m. In order to facilitate this disposition date, Appellant will immediately file its Opening Brief. Appellant would propose that Appellee file their Answering Briefs by no later than Tuesday, January 31, 2012 at 5:00 p.m. Appellant would file her Reply Brief, if any, by no later than 9:00 a.m. on Wednesday, February 1, 2012, and submit to oral argument on or before 12:00 noon on the same date before the Arizona Supreme Court in Phoenix, Arizona (in the event that the Court orders oral argument).

- (6) Proposed format of briefs: The briefs should be submitted in the format prescribed by Rule 13, Arizona Rules of Civil Appellate Procedure, except that references to the Index of Record may be either to the Record, as (and when certified) by the Clerk of the Yuma County Superior Court, or by name and date of the pleading (or transcript) to which the party refers and cites.
- (7) Oral argument scheduling: Oral argument should be scheduled not later than 12:00 noon on Wednesday, February 1, 2012, and assuming the Court adopts the other deadlines suggested by Appellant.

RESPECTFULLY SUBMITTED this 30th day of January, 2012.

GARCIA, HENGL, KINSEY & VELLARREAL, P.L.C.

By: 

John S. Garcia, Esq.
Attorneys for Appellant

ORIGINAL and FOUR copies were served via ELECTRONIC MAIL and U.S. POSTAL SERVICE this 30th day of January, 2012, to:

Rachelle Resnick, Clerk of the Court
Arizona Supreme Court
1501 West Washington, Ste. 405
Phoenix, AZ 85007-3232

COPY thereof was served via
ELECTRONIC MAIL and
U.S. POSTAL SERVICE
this 30th day of January, 2012, to:

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Phoenix, Arizona 85022

C. Candy Camarena, Esq.
LAW OFFICE OF C. CANDY CAMARENA
217 South 2nd Avenue
Yuma, Arizona 85364

By: _____

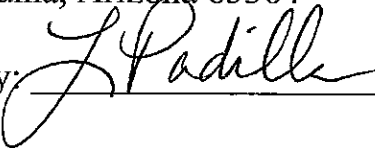


EXHIBIT "A"
NOTICE OF APPEAL

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10 Attorneys for Respondent-Real Party in Interest
11 Alejandrina Cabrera

12 **SUPERIOR COURT**

13 **COUNTY OF YUMA, STATE OF ARIZONA**

14 JUAN CARLOS ESCAMILLA, a qualified
elector of the City of San Luis, Yuma
15 County, State of Arizona,

Case No. S1400CV2011-01582

Div. V

16 Petitioner,

17 vs.

NOTICE OF APPEAL

18 SONIA CUELLO, in her capacity as the
City Clerk of the City of San Luis, Arizona,

(EXPEDITED ELECTION MATTER)

19 Respondent,

(Assigned to the Hon. John N. Nelson)

20 and

21 ALEJANDRINA CABRERA, a candidate
22 for elected office,

23 Respondent-Real Party in Interest.
24

FILED

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LYNN FAZE
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

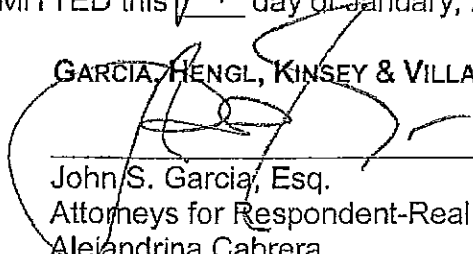
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1 NOTICE IS HEREBY GIVEN that Respondent-Real Party in Interest
2 ALEJANDRINA CABRERA ("Respondent"), by and through undersigned counsel,
3 appeals to the Arizona Supreme Court from that certain Judgment and Orders entered
4 in this action on January 27, 2012, granting final judgment to Petitioner Juan Carlos
5 Escamilla against Respondents Sonia Cuello, in her capacity as the City Clerk of the
6 City of San Luis, Arizona, and Alejandrina Cabrera, a candidate for elected office.

7 This is an appeal from a priority election matter arising under A.R.S. §§ 16-
8 351(A), (B) and 38-201(C).

9 RESPECTFULLY SUBMITTED this 27th day of January, 2012.

10 GARCIA, HENGL, KINSEY & VILLARREAL, P.L.C.

11 
12 _____
13 John S. Garcia, Esq.
14 Attorneys for Respondent-Real Party in Interest
15 Alejandrina Cabrera

16 COPY of the foregoing hand delivered
17 this 27th day of January, 2012, to:

18 The Honorable John N. Nelson
19 Yuma County Superior Court
20 250 West 2nd Street
21 Yuma, Arizona 85364

22 COPY of the foregoing mailed and faxed
23 this 27th day of January, 2012, to:

24 Gregory T. Torok, Esq.
Torok Law Office, P.L.L.C.
268 South First Avenue
Yuma, Arizona 85364
Attorney for Petitioner

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C. Candy Camarena, Esq.
Law Office of C. Candy Camarena
217 South 2nd Avenue
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Attorney for Respondent Cuello

By *Williamson*

EXHIBIT "B"

JUDGMENT AND ORDERS

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 8 **greg@yumalawyer.net**

FILED
 2012 JAN 27 AM 8:21
 CLERK OF SUPERIOR COURT
 YUMA ARIZONA 85364

9 **Attorney for Petitioner**

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 11 **IN AND FOR THE COUNTY OF YUMA**

12 Juan Carlos Escamilla, a qualified
 13 elector of the City of San Luis
 14 the City of San Luis, Yuma County,
 15 State of Arizona,

16 **Case No. S1400CV201101582**

17 **Petitioner,**

18 **Div. V**

19 **vs.**

20 **Hon. John N. Nelson**

21 Sonia Cuello, in her capacity as the City
 22 Clerk of the City of San Luis, Arizona,

23 **JUDGMENT AND ORDERS**

24 **Respondent,**

25 **and**

26 Alejandrina Cabrera, a candidate for
 27 elected office,

28 **Respondent - Real Party in Interest,**

29 The Court, having considered the various pleadings and memoranda filed by
 30 legal counsel for Petitioner and Respondents and having conducted an evidentiary
 31 hearing on January 25, 2012, during which a number of exhibits were received and
 32 admitted by the Court and testimony was given by Petitioner, Respondent Cabrera, Dr.
 33 William Gregory Eggington, a linguistics expert, and Guillermina Fuentes, hereby finds
 34 as follows:

1 1. Petitioner timely filed his Complaint for Special Action and Injunctive Relief
2 on December 28, 2011 pursuant to the Arizona Rules of Procedure for Special Actions
3 and A.R.S. §§ 12-1801, 12-2021, § 16-351.B, and 38-201.C.

4 2. This Court has jurisdiction to hear and determine this Special Action and to
5 grant the relief requested by virtue of Article VI, Section 18, of the Arizona
6 Constitution; Rule 4, Rules of Procedure for Special Actions; and A.R.S. §16-351.A.

7 3. Petitioner Juan Carlos Escamilla is a qualified elector residing and duly
8 registered to vote in the City of San Luis, Arizona.

9 4. Respondent Sonia Cuello is the City Clerk for the City of San Luis, Arizona.
10 In that capacity, she is the officer with whom petitions for nomination of candidates for
11 the office of City Councilmember for the City of San Luis, Arizona are required to be
12 filed and who is responsible for preparing ballots for City of San Luis elections.

13 5. Respondent Alejandrina Cabrera is a resident of the City of San Luis, Arizona
14 and a person who submitted nomination petitions to be a candidate for the office of
15 Councilmember for the City of San Luis, Arizona to have her name be included on the
16 ballot as a candidate in the regular city elections of 2012 with the primary election to
17 be held on the 13th day of March, 2012.

18 6. The only issue before the Court is whether Respondent Cabrera satisfies the
19 requirement of A.R.S. § 38-201.C that she is able to speak, write, and read the English
20 language with sufficient proficiency so as to be able to perform the duties of a City
21 Councilman for the City of San Luis, Arizona.

22 7. A.R.S. § 38-201.C is presumed to be valid. However, the issue of proper
23 interpretation of A.R.S. § 38-201.C is an issue of first impression, as the statute is not
24 the subject of any reported Arizona appellate decision.

25 8. The Court has a duty to interpret and apply A.R.S. § 38.201.C. In interpreting
26 a statute, a court must look to the legislative intent, but little evidence of legislative
27 intent has been provided to the Court.

1 9. In ascertaining legislative intent, meaning must be given to statutes, and they
2 must be interpreted in such a way as to not render them meaningless.

3 10. A.R.S. § 38-201.C would be rendered meaningless if, as suggested by
4 Respondent Cabrera, it were interpreted as having no standard or only requiring
5 minimal or bare proficiency at speaking, reading, and writing the English language.

6 11. The standard to be applied under A.R.S. § 38-201.C for being able to speak,
7 read, and write the English language must be in the context of the political office at
8 issue, here City Councilman for the City of San Luis, Arizona. What this means is that
9 a candidate must possess sufficient proficiency in speaking, reading, and writing the
10 English language so that he or she has the ability to comprehend and understand the
11 issues that come before the elected body. This benefits not only the elected city
12 councilman but also the community in which that councilman serves.

13 12. The Court finds that expert testimony is appropriate in this case and that Dr.
14 William Gregory Eggington qualifies as an expert in the field of linguistics. Prior to
15 the evidentiary hearing, Dr. Eggington performed a series of three English proficiency
16 tests upon Respondent Cabrera, the American Council on the Teaching of Foreign
17 Languages (ACTFL), the Interagency Language Roundtable (ILR), and the Elicited
18 Oral Response (EOR). The Court finds that all three tests are generally accepted in the
19 scientific community of linguistics, accepts the results of all three tests, and accepts the
20 testimony of Dr. Eggington.

21 13. Dr. Eggington testified that there is a large gap between Respondent
22 Cabrera's ability in speaking English and what is needed to perform City Councilman
23 duties. He also testified that she is not capable of performing those duties. The Court
24 finds this testimony to be compelling and adopts it.

25 14. Based upon both the expert testimony of Dr. Eggington and the Court's
26 personal observations of Respondent Cabrera's lengthy testimony during the
27 evidentiary hearing, the Court finds that Respondent Cabrera does not satisfy the
28

1 requirement of A.R.S. § 38-201.C that she possesses the ability to speak, read, and
2 write the English language with sufficient proficiency to perform as a City Councilman
3 for the City of San Luis.

4 15. It is clear to the Court that Respondent Cabrera would have a difficult time
5 understanding the processes, events, and transactions that take place during City
6 Council meetings. The Court does not believe she has the ability to do this because of
7 her limited English proficiency. It is not an intelligence issue; it is a lack of English
8 proficiency issue.

9 16. The Court finds specifically that Respondent Cabrera's testimony was largely
10 a coping mechanism. Her answers to questions were clearly a survival mode, as stated
11 by Dr. Eggington. It was clear to the Court that she was stymied by many questions,
12 did not understand many questions, failed to comprehend what was being asked, and
13 guessed at answers.

14 17. The Court also specifically finds that Respondent Cabrera's difficulty in
15 answering questions was not a hearing impairment issue; it was a lack of
16 comprehension issue.

17 18. The Court also finds that Respondent Cabrera has been accorded due process
18 in this case.

19 19. The Court also finds that Respondent Cabrera is disqualified from appearing
20 as a candidate for City Council on the ballot and her name shall be removed from the
21 ballot for the regular City of San Luis election to be held on March 13, 2012, pursuant
22 to A.R.S. §§ 13-201.C and 16-351.

23 **BASED UPON THE FOREGOING FINDINGS, IT IS HEREBY ORDERED**
24 **granting the request for injunctive relief as set forth in the Complaint for Special**
25 **Action.**

26 **IT IS FURTHER ORDERED** that Respondent Cabrera is disqualified from
27 appearing as a candidate for City Council on the ballot and her name shall be removed

1 from the ballot for the regular City of San Luis election to be held on March 13, 2012,
2 pursuant to A.R.S. §§ 13-201.C and 16-351.

3 IT IS FURTHER ORDERED, MANDATED, AND DIRECTED that Respondent
4 Cuello, as City Clerk for the City of San Luis, Arizona shall remove Respondent
5 Cabrera's name from the ballot for the regular City of San Luis election to be held on
6 March 13, 2012.

7 IT IS FURTHER ORDERED that Respondent Cabrera's request for an award
8 of attorney's fees is denied.

9
10 Dated this 27th day of January, 2012.

11
12 JOHN N. NELSON

13 John N. Nelson
14 Judge of the Superior Court
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