

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

CASE NO. BOE 02-2021

MANUEL GONZALES, III,

Respondent.

**COMPLAINANT’S PREHEARING BRIEF ADDRESSING LEGAL ISSUES TO BE  
CONSIDERED BY THE BOARD AT THE SEPTEMBER 10, 2021 HEARING**

This case involves an unprecedented violation of the Open and Ethical Election Code and a betrayal of the principles that Code embodies. The OEEC requires candidates seeking public financing to show support for their candidacy by obtaining \$5 Qualifying Contributions from registered voters. The Respondent in this case obtained some legitimate contributions. But he has now admitted that his campaign forged the signatures of voters on multiple Qualifying Contribution receipts. The evidence will show that high-level campaign insiders forged dozens upon dozens of Qualifying Contribution receipts and submitted those fraudulent receipts — along with money from unknown sources — to the City Clerk’s Office. They did so to avoid any risk that Respondent would not have a sufficient number of Qualifying Contributions to qualify for public financing. This conduct constitutes a clear violation of the OEEC, as well as the Election Code. The Board should respond with a strong message that this misconduct is unacceptable and should never happens again.

## **BACKGROUND**

The Keller Campaign learned of the forgery scheme at the Gonzales Campaign through sheer happenstance. As the Board is aware, the Keller Campaign learned in early June that Respondent had collected a Qualifying Contribution receipt from an Albuquerque voter, but had not collected a \$5 contribution. To confirm that this had occurred, the Keller Campaign pulled some of the Qualifying Contribution receipt books that the Gonzales Campaign submitted to the City Clerk's Office. The Keller Campaign then noticed something unusual. In some instances, the Gonzales Campaign had submitted more than one receipt from the same voter, but the signatures on those receipts did not appear to match. The Keller Campaign pulled copies of nominating petitions signed by the same voters, as well as voter registrations cards, in order to determine which of the receipts were signed by the voter and which had been forged. The Keller Campaign then began to look further, reviewing additional Qualifying Contribution receipts, even when there was no duplicate. Through this process, the campaign was able to identify multiple Qualifying Contribution receipts that appeared to have forged signatures.

After gathering these examples, the Keller Campaign filed this complaint. Attached to the complaint were documents related to 22 voters. Even within this limited group, one striking fact stood out: the majority of the potentially forged receipts were signed by high level people within the Gonzales Campaign. Of the 29 examples of potential forgery submitted with the Complaint, 15 were signed by Michele Martinez, who works as Respondent's executive assistant at the Bernalillo County Sheriff's Office and has been identified as a "core member" of the Gonzales Campaign. Another 13 were signed by Megan McMillan, who at the time was a paid staffer who acted as the spokesperson for the Gonzales Campaign.

After filing the Complaint, the Keller Campaign continued examining the Qualifying Contribution receipts submitted by the Gonzales Campaign. The Gonzales Campaign submitted 2,609 paper receipts. In the time allotted, the Keller Campaign was able to review about half of those. During this same time frame, the campaign sent private investigators to contact as many voters as possible to ask whether or not they had signed the Qualifying Contribution receipts in question. On July 8, 2021 — the initial deadline for the parties to exchange exhibits — the Keller Campaign submitted a set of 149 examples of potential forgeries. It also submitted statements from 39 individuals confirming that their signatures were forged. Most of these individuals also reported that they also did not give the Gonzales Campaign five dollars, meaning that the Gonzales Campaign had deposited money from another source when it submitted these Qualifying Contributions to the City Clerk.<sup>1</sup>

On July 9, 2021, the City Clerk asked the Office of Inspector General to investigate this pattern of forgery. The following week, Respondent admitted in a brief submitted to this Board that “it does appear, upon the Gonzales campaign’s own investigation, that many of the qualifying-contribution (“QC”) receipts identified by the *Holguin II* complainant — while comprising a tiny fraction of the campaign’s total validated number — were signed by someone other than the voter.” Respondent’s Brief Regarding Public Investigation, filed July 14, 2021 in BOE 01-2021. Respondent made this same admission in a hearing before this Board on July 16, 2021. The Board then joined in the City Clerk’s request that OIG investigate the allegations of this Complaint.

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<sup>1</sup> Some had made a \$5 contribution online, but had not given a separate \$5 contribution for the duplicate paper receipt that was submitted by the Gonzales Campaign.

OIG began its investigation on July 20, 2021. After selecting a random sample of 239 accepted paper Qualifying Contributions, the OIG sent teams to knock on the doors of these voters and ask two questions: 1) did you give a \$5 contribution to the Gonzales Campaign, and 2) did you sign the Qualifying Contribution receipt. As a result of this effort, the OIG found 23 instances where individuals did not sign the Qualifying Contribution receipt that was submitted, in their name, to the City Clerk's Office. Importantly, these voters also reported that they did not give a \$5 contribution. Based on these results, the OIG estimated that the Gonzales Campaign submitted nearly 200 forged Qualifying Contribution receipts and, in those instances, deposited funds that came from someone other than the identified contributor.

OIG also conducted a random sample of 28 voters that had been previously identified by the Keller Campaign. OIG was able to contact 18 of those voters, and eight confirmed that they did not sign the Qualifying Contribution receipt that was submitted by the Gonzales Campaign and did not give a \$5 contribution to the Gonzales Campaign.

On August 31, 2021, the Keller Campaign submitted an updated set of 173 potential forgeries. The updated set includes the additional examples identified by OIG. It also includes some additional potential forgeries that the Keller Campaign identified after submitting the initial set on July 8, 2021. The Keller Campaign also eliminated some examples that it determined had been improperly included. Notably, the Keller Campaign eliminated any Qualifying Contribution from its set of potential forgeries if the voter represented that they had signed the receipt — even when the signatures did not appear to match. The Keller Campaign also eliminated any Qualifying Contributions from the set if the voter indicated that they had given permission to someone else, such as a friend or relative, to sign on their behalf.

Of the 173 examples in the set submitted by the Keller Campaign, 71 have been confirmed by the voter to be forgery. Sixty-one of the voters have provided written statements — either to the Keller Campaign or to OIG — and another 10 additional voters reported to the private investigators that they had not signed the Qualifying Contributions receipts. Respondent has also made additional statements admitting that some of the Qualifying Contribution receipts were forged, although he has refused to say how many receipts were forged, who was responsible, or how the forgeries occurred. But as was true for the initial set submitted with the Complaint, the vast majority of the forged documents were signed by either Michele Martinez and Megan McMillan. Of the 173 potential forgeries, 94 were signed by Ms. Martinez, while 34 were signed by Ms. McMillan. Another 15 were signed by Dominic Crespín, another campaign volunteer who also works at BCSO. The Keller Campaign will explain, at the September 10 hearing, how it believes the Gonzales Campaign went about creating at least some of the fraudulent Qualifying Contributions.

#### **LEGAL ISSUE TO BE RESOLVED BY THE BOARD**

During the August 27, 2021 hearing, the Board made clear that its jurisdiction is limited. It cannot determine whether the Qualifying Contributions in question should be rejected. It also cannot determine whether the City Clerk had grounds to deny certification to Respondent under Part C(15) of the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code. It also cannot determine — at this time or in this proceeding — whether there would be grounds to revoke certification pursuant to Part (C)(17) of those regulations. Instead, the only question to be resolved is whether Respondent has violated either the OEEC or the Election Code. Respondent has violated both.

First, the Codes clearly prohibit forgery. Section 3(P) of the OEEC provides that a Qualifying Contribution is “a donation of \$5.00 ... that ... is acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the Clerk and that is signed by the contributor ... .” In addition, Part C(6) of the OEEC Regulations provides that “the contributor himself or herself must sign the receipt” for a Qualifying Contribution. Here, the receipts submitted by Respondent were not signed by the contributor. Thus, Respondent has violated both Section 3(P) of the OEEC and Part C(6) of the OEEC Regulations.

Second, the Codes clearly prohibit fraud. In particular, a candidate violates the Codes by depositing funds that did not come from the contributor. Part C(6) of the OEEC Regulations provides that “All \$5 Qualifying Contributions must be paid by the contributor; if the funds are provided by any person other than the contributor who is listed on the receipt, the Qualifying Contribution will be deemed fraudulent.” In addition, the 2021 Regulations of the Albuquerque City Clerk for the Election Code, Part I(1), provide that:

No person may make a Contribution in the name of another person or knowingly permit his or her name to be used to accomplish such a Contribution. No person may knowingly accept a Contribution made by one person in the name of another. The contributor identified in the reports submitted to the City Clerk must be the actual source of funds for the Contribution.

Here, the funds deposited into the CAOEE fund did not come from the identified contributors.

Thus, Respondent violated both Part C(6) of the OEEC Regulations and Part I(1) of the EC Regulations.

**THE BOARD SHOULD ISSUE A REPRIMAND AND  
A FINE COMMENSURATE WITH THE SEVERITY OF THE VIOLATIONS**

In light of the unprecedented, egregious misconduct by the Gonzales Campaign, the Board should issue both a reprimand and a fine.

“Pursuant to the Codes, the Board may, after due hearing, impose on a Candidate ... a fine not to exceed the maximum set by state law, \$500, for each violation of the Codes or these Rules and Regulations or issue a public reprimand or do both.” Rules and Regulations § 4(G)(1). Complainant believes that it is vital for the Board to issue a reprimand. Complainant is not aware of any prior case involving the forgery of Qualifying Contributions or an orchestrated effort to obtain public financing through fraud. The misconduct that occurred at the Gonzales Campaign has already undermined the public’s confidence in the public financing system and has likely resulted in long-lasting damage. As the first step in restoring public confidence in the OEEC, the Board should issue a reprimand that recognizes the severity of the misconduct that occurred at the Gonzales Campaign and the pervasive nature of that misconduct.

Some level of fine is also appropriate, given the egregious nature of the violations at issue. If the Board were to find all 173 examples to be forgeries, the maximum fine would be \$86,500. If the Board were to include only the 71 confirmed cases, the maximum fine would be \$35,500. Complainant, however, recognizes that Respondent has already been penalized through the denial of public financing, and that Respondent may not have the means to pay a large fine. While Complainant believes that some level of fine is appropriate, in order to send the message that the conduct that occurred here will not be tolerated, Complainant will leave it the discretion of the Board to determine the appropriate level of fine to be issued.

## CONCLUSION

For the foregoing reasons, Complainant respectfully requests that the Board determine that Respondent violated the Election Code and the Open and Ethical Election Code and issue a fine and a reprimand.

Respectfully submitted,

KEEFE LAW FIRM

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7th day of September, 2021, the foregoing was sent via email to [ewatson@cabq.gov](mailto:ewatson@cabq.gov), [mdiemer@cabq.gov](mailto:mdiemer@cabq.gov), [Aschultz@rodey.com](mailto:Aschultz@rodey.com), and [carter@harrisonhartlaw.com](mailto:carter@harrisonhartlaw.com) [daniel@harrisonhartlaw.com](mailto:daniel@harrisonhartlaw.com).

KEEFE LAW FIRM

By: */s/ Lauren Keefe* \_\_\_\_\_  
Lauren Keefe