

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

JOAQUIN BACA,

Complainant,

v.

Case No. BOE 09-2021

REBECCA HAMPTON,

Respondent.

RESPONDENT REBECCA HAMPTON'S
BRIEF OF LEGAL AUTHORITIES

Respondent Rebecca Hampton (hereinafter, “Ms. Hampton”) hereby submits the following Brief of Legal Authorities seeking dismissal of the Complaint filed by Complainant Joaquin Baca (hereinafter, “Baca”) pursuant to Amendment I to the U.S. Constitution and Sec. 17, Article II of the New Mexico Constitution, and as a basis for which, states:

I. INTRODUCTION

1. During the 2021 City of Albuquerque municipal election, Ms. Hampton personally opposed the \$50 million Stadium Bond sought by the New Mexico United team ownership group, including Peter Trevisani, seeking public-money to finance the destruction of Albuquerque's historic communities, including Barelás and South Broadway. On October 18, 2021, Baca filed a Complaint against Ms. Hampton, individually, with the City of Albuquerque Board of Ethics. The Complaint alleges that “SSC [Stop the Stadium] and/or the Party for Socialism and Liberation would be in violation of the following sections of the City Charter...” Neither Stop the Stadium

nor the Party for Socialism and Liberation are named or identified as parties to the Complaint. Ms. Hampton is named in the Complaint solely in her *individual capacity* as a United States citizen exercising her right to political expression and free speech. Ms. Hampton's exercise of free speech and free expression in the political process cannot be abridged, restricted or punished by the City of Albuquerque, Board of Ethics, or political operatives such as Baca.

II. ARGUMENT AND ANALYSIS

A. Baca's Complaint Fails to Name a Proper Party.

2. It is well established in federal and New Mexico law that any cause of action must name a proper party. This requirement is embodied in civil law under Rules 1-017 and 1-019 NMRA, requiring dismissal for failure to prosecute an action in the name of the real party in interest and is a proper exercise of a court's discretion. This general principle extends even to procedural rules concerning discovery which were clearly created with the common understanding that each party, even if on the same side of a lawsuit, remain separate and discovery against each party is a separate action. *Cf. Romero v. Felter*, 1972-NMSC-032, ¶ 14, 83 N.M. 736, 497 P.2d 738. New Mexico law requires that proper parties be named in the pleadings.

3. Baca's Complaint naming only Ms. Hampton is improper and should be dismissed for failing to name a proper party. Baca has been placed on notice of this deficiency by the Answer filed in this matter and has therefore been afforded the opportunity to seek amendment to include parties he claims have violated the City Charter and Election Code. Ms. Hampton, as an individual citizen who engage in

personal expressions of her beliefs, is not a proper party and Baca's Complaint should therefore be dismissed with prejudice in its entirety.

B. Baca's Use of the City Charter and Election Code Against Ms. Hampton Restricts, Limits and Punishes Ms. Hampton's Exercise of Her Constitutionally Protected Right to Free Speech and Free Expression.

4. Baca's Complaint uses the City Charter and Election Code for its sinister, but intended, purpose—to limit, restrict and punish Ms. Hampton's exercise of free speech and free expression. The only allegations in the Complaint referencing Ms. Hampton allege that her name and personal email address appear on a single undated Facebook post allegedly by Stop the Stadium referencing her as a "Contact." The Facebook post cited by Baca contains three paragraphs of First Amendment protected advocacy stating that grassroots "voices need to be heard" in opposition to "using public resources to finance a wasteful sports stadium." No reference to any event, to any material, to any expenditure of money is made in this post. The aforementioned allegation does not even purport to allege a violation by Ms. Hampton and is intended only to limit and restrict her individual ability to participate in the political process.

5. The New Mexico Constitution free speech clause mandates broad protections for free speech and free expression to a level exceeding the standards set forth in the First Amendment to the United State Constitution. N.M. Const. Art. II, §17, is an affirmative grant of fundamental liberty to the citizens of New Mexico, affirmatively stating that speech on any and all subjects is protected. ("Every person may freely speak, write and publish his or her sentiments on all subjects, being

responsible for the abuse of this right.”) By contrast, the federal constitution merely forbids abridging “the freedom of speech” and makes no reference to protecting speech on “all subjects.” U.S. Const. amend. I. It is axiomatic that the New Mexico Constitution may be construed so as to offer greater protection for individual rights than the U.S. Supreme Court has afforded under the federal constitution. *See, e.g., Breen v. Carlsbad Mun. School*, 2005-NMSC-028, 138 N.M. 331, 120 P.3d 413 (interpreting N.M. Const. art. II, § 18 equal protection clause); *State v. Cardenas-Alvarez*, 2001-NMSC-017, 130 N.M. 386, 25 P.3d 225 (2001) (interpreting N.M. Const. art. II, § 10 regarding prolonged checkpoint stop); *State v. Nunez*, 2000-NMSC-013, 129 N.M. 63, 2 P.3d 264 (1999) (interpreting N.M. Const. art. II, § 15's double jeopardy clause regarding civil forfeitures); *State v. Gomez*, 1997-NMSC-006, 122 N.M. 777, 932 P.2d 1 (interpreting N.M. Const. art. II, § 10; holding that state must show exigent circumstances to justify warrantless search of automobile); *State v. Breit*, 1996-NMSC-067, 122 N.M. 655, 930 P.2d 792 (interpreting N.M. Const. art. II, § 15's double jeopardy clause); *Campos v. State*, 117 N.M. 155, 870 P.2d 117 (1994) (interpreting N.M. Const. art. II, § 10 regarding warrantless arrests); *State v. Attaway*, 117 N.M. 141, 870 P.2d 103 (1994) (interpreting N.M. Const. art. II, § 10 regarding knock-and-announce rule for entry to execute warrant); *State v. Gutierrez*, 116 N.M. 431, 863 P.2d 1052 (1993) (interpreting N.M. Const. art. II, § 10 regarding warrant guarantees of the New Mexico Constitution); and *State v. Cordova*, 109 N.M. 211, 784 P.2d 30 (1989) (interpreting N.M. Const. art. II, § 10; holding that New Mexico would retain two-pronged test for probable cause

established). New Mexico courts have consistently interpreted the New Mexico Constitution as independent of the U.S. Constitution and have held that the New Mexico Constitution provides broader protection than federal law. See, e.g., *Fawcett*, 114 N.M. at 545-47, 843 P.2d at 847-49.

6. New Mexico courts have historically given the highest regard to free speech under the New Mexico Constitution. Despite New Mexico's comparatively short history as a state, New Mexico Courts have developed a rich and independent approach to constitutional free speech jurisprudence. While not addressed as regularly as the nuances of N.M. Const. art. II, §10, (search and seizure law), the importance of the free speech clause of the New Mexico Constitution is distinct and firmly rooted in our state's law. Within the first decade of statehood this Court relied primarily upon N.M. Const. art. II, §17, to invalidate a statute that criminalized “incit[ing] or attempt[ing] to incite revolution or opposition to such organized government.” *State v. Diamond*, 1921-NMSC-099, 27 N.M. 477, 202 P. 988. This Court's historical reliance on N.M. Const. art. II, §17 is particularly significant when contrasted with the U.S. Supreme Court's contemporaneous decisions under the First Amendment. See, e.g., *Gitlow v. New York*, 268 U.S. 652 (1925) (upholding New York statute defining criminal “anarchy” and prohibiting its “advocacy”).

7. In 1937, in holding that damages could not be recovered from the publishers of a newspaper for harm occasioned by reading a negligently published false report of the death of the reader's parent, the New Mexico Supreme Court stated:

“The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals...”

Curry v. Journal Pub. Co., 1937-NMSC-023, ¶ 33, 41 N.M. 318, 68 P.2d 168, overruled on other grounds by *Ramirez v. Armstrong*, 1983-NMSC-104, 100 N.M. 538, 673 P.2d 822.

8. Decades later, New Mexico’s protection of free speech and free expression has not been lessened in any manner. The aforementioned cases paved the way for the New Mexico to interpret the free speech clause of its constitution more expansively and ensure the protection of political expression and speech under law. New Mexico courts strengthened its view of the primacy of free speech in *Twohig v. Blackmer*, 1996-NMSC-023, 121 N.M. 746, 918 P.2d 332. Echoing Justice William J. Brennan's sentiments in *State Constitutions and the Protection of Individual Rights*, 90 Harvad L. Rev., regarding the primacy of free speech protections, the Court in *Twohig* said:

By its terms, Article II, Section 17 protects the right of each person to disseminate his or her ideas on any number of subjects and prohibits legislation that restricts the right of free speech. Although Article II, Section 17 expressly prohibits only the legislature from abridging freedom of speech, “there is no reason why the courts [should] be given greater power” in this regard. Therefore, the gag order issued by the trial court is subject to constitutional scrutiny.

Id. at 12 (internal citations omitted). The protections of N.M. Const. art. II, § 17, and particularly a court's infringement on that right, establishes that the expansive

approach to free speech should be extended to all areas of political life. It is clear that even as far back as 1921, New Mexico appellate courts have given “preferred status” to free speech rights. *Andrews v. Stallings*, 1995-NMCA-015, 119 N.M. 478, 892 P.2d 611 (Standing for the proposition that the Constitution contemplates a bias in favor of free speech particularly if the speech is a matter of public concern), citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990).

9. Baca’s Complaint targets Ms. Hampton’s political associations, alleging that “Bex Hampton is well known as an organizer with the Party for Socialism for Liberation,” even though no evidence has been presented to support this contention. Regardless of its veracity, Ms. Hampton’s political affiliations are irrelevant and Baca’s ‘guilt by association’ is a clear violation of her right to free expression and free speech. Mr. Baca’s use of the City Charter and Ethics Code to punish Ms. Hampton for her political beliefs is a clear violation of the Amendment I to the U.S. Constitution and Sec. 17, Article II of the New Mexico Constitution.

10. The Charter of the City of Albuquerque, to the extent invoked in the Complaint, is facially unconstitutional as applied to Ms. Hampton. Any sanction awarded against her violates the U.S. Constitution, the First Amendment, the Equal Protection Clause, and the Due Process Clause, and the corresponding provisions of the New Mexico Constitution. Any discipline and punishment of Ms. Hampton would not be narrowly tailored to the compelling state interest required under New Mexico law to restrict or limit Ms. Hampton’s constitutional right to free speech and free expression. The New Mexico Constitution and U.S. Constitution require strict

application of the highest constitutional scrutiny of speech and expression regulation, including the City of Albuquerque Board of Ethics and City Charter. Baca's Complaint cannot meet the standards of strict scrutiny and should be dismissed in its entirety as an attempt to limit, restrict and punish Ms. Hampton's exercise of her constitutionally protected free speech and free expression pursuant to Amendment I to the U.S. Constitution and Sec. 17, Article II of the New Mexico Constitution.

III. CONCLUSION

Respondent Rebecca Hampton respectfully requests dismissal with prejudice of the Complaint filed by Joaquin Baca in its entirety, on the basis of failure to name a proper party, and, in the alternative, pursuant to Amendment I to the U.S. Constitution, Sec. 17, Article II of the New Mexico Constitution, and New Mexico law cited herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of November 2021 a true and correct copy of the foregoing was sent via email to the Albuquerque City Clerk (ewatson@cabq.com), and contemporaneously served the Board of Ethics and Campaign Practices (aschultz@rodey.com), and to the following parties *pro se* via U.S. Mail:

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Complainant *Pro Se*

By: /s/ Nicholas J. Rimmer
Nicholas J. Rimmer