

ENDORSED  
First Judicial District Court

FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

SEP 08 2006  
Santa Fe, Rio Arriba &  
Los Alamos Counties  
PO BOX 2288  
Santa Fe, NM 87404-2288

THE DEMOCRATIC PARTY OF NEW MEXICO and  
JOHN V. WERTHEIM, in his capacity as Chairman of the party,

Plaintiffs,

D101CV200602017

v.

JEFF ARMIJO and  
REBECCA VIGIL-GIRON (Nominal Defendant),  
in her capacity as Secretary of State of New Mexico,

Defendants.

**Complaint for Declaratory Judgment To Declare Lawful the Removal of Jeff  
Armijo's Name From the 2006 General Election Ballot for Auditor**

COMES NOW Plaintiffs the Democratic Party of New Mexico and John V.  
Wertheim, in his capacity as Chairman of the party, by through their undersigned  
attorneys and state their complaint as follows:

1. This Court has subject matter jurisdiction over this matter pursuant to the  
Declaratory Judgment Act (NMSA 1978, §§ 44-6-1 through 44-6-10) because a highly  
publicized and actual controversy exists among the parties in which Jeff Armijo and his  
attorney, Paul Kienzle, have publicly stated the intention to file a lawsuit against the  
Secretary of State to countermand her decision to remove Mr. Armijo's name from the  
general election ballot as the Democratic Party's candidate for state auditor and in which  
Mr. Kienzle has stated his belief that the holding of an election to fill the auditor vacancy  
at the Democratic Party's State Central Committee meeting scheduled for September 9,  
tomorrow, would be "illegal."

2. The Democratic Party of New Mexico is a major political party with its principal place of business at 1301 San Pedro NE, Albuquerque, New Mexico. Statute authorizes the Democratic Party's state central committee to fill vacancies on the general election ballot for many offices, including state auditor.

3. John V. Wertheim is a registered Democrat residing at 1709 Sigma Chi Rd. NE, Albuquerque, New Mexico. Mr. Wertheim serves as Chairman of the Democratic Party of New Mexico. Also, Mr. Wertheim cast his vote on behalf of Jeff Armijo for state auditor in the June 2006 Primary Election.

4. Rebecca Vigil-Giron is Secretary of State of New Mexico and, as such, is the chief elections officer. Venue is proper in the County of Santa Fe because the secretary of state is a party.

5. Jeff Armijo handily won the Democratic Party's nomination for state auditor in the June 2006 Primary Election. He resides at 4937 Marna Lynn Ave, NW, Albuquerque, NM 87114.

6. During Mr. Armijo's primary campaign, no allegations of sexual misconduct against Jeff Armijo had yet surfaced publicly.

7. On or about August 22, 2006, information about allegations of sexual misconduct against Mr. Armijo began to surface publicly, beginning with discussion of the issue on a popular political blog written by Joe Monahan. In the ensuing few days, reporting from major news outlets confirmed the existence of police reports alleging that Jeff Armijo made unwanted and physically aggressive sexual advances toward two young women. One police report dates from 2003 and the second, from the first week of August 2006.

8. On August 22, Wertheim and the party executive director had telephone conversations with Mr. Armijo. These conversations led Mr. Wertheim to issue the following statement on behalf of the party: "The Democratic Party of New Mexico does not comment on unsubstantiated and unattributed rumors in the blogosphere, but we affirm what we know to be true: that Jeff Armijo will be the next Auditor of the State of New Mexico. Jeff Armijo is actively campaigning and his campaign is one of ensuring trust and confidence in the financial integrity of state government."

9. In the days following August 22, the media reported detailed information about the allegations of sexual misconduct against Mr. Armijo, including information about the two police reports. A full blown political scandal ensued.

10. In the evening of August 28, after a party meeting in Artesia, N.M., Mr. Armijo and Mr. Wertheim met in person at a local restaurant where they had a lengthy conversation. They had talked over the telephone throughout the day. Mr. Armijo seemed emotionally upset about the scandal brewing over his candidacy. He expressed worry over what the publicity might mean in the event he faced indictment. He said something to the effect of "I'm sorry, Mr. Chairman. I've let everyone down." Mr. Armijo also stated his desire to meet with Governor Richardson the next day and said that he had requested such a meeting.

11. During the conversation, Wertheim and Armijo discussed two political options. Either Mr. Armijo would withdraw his candidacy or he would remain in the race but appear in front of the state central committee to defend himself publicly against the allegations and attempt to put them to rest. Wertheim informed Armijo that a state central committee meeting would be called for September 9 to handle regular business.

If Mr. Armijo chose to withdraw, then Wertheim said he would add filling the vacancy for state auditor to the call to the meeting. Wertheim and Armijo also discussed that the statutory deadline for filling vacancies as September 12, 2006.

12. After Mr. Wertheim informed Mr. Armijo that he would be soon issuing a call to the state central committee for a meeting on September 9, 2006, the two men parted company.

13. Pursuant to legal mandate, the party keeps its "Rules of the Democratic Party of the State of New Mexico" (hereafter "Democratic Party Rules") on file with the Office of Secretary of State. A true and correct copy of the Democratic Party Rules currently on file with the secretary are attached here as Ex. A and incorporated by reference.

14. Rule 4-3 of the Democratic Party Rules requires that meetings of the state central committee "shall be upon the call of the Chairperson. . . ." The call must give timely notice to all committee members, shall be mailed to each member and "shall specify the time, place and purposes of the meeting." (emphasis supplied.)

15. On August 29, the day after their conversation in Artesia, Jeff Armijo called John Wertheim on the telephone to ask directions to Governor Richardson's office in Albuquerque, where he apparently had a scheduled appointment with the Governor. Mr. Armijo's tone seemed much less stressed than the day before, and the brief exchange between Wertheim and Armijo was amicable.

16. Later on August 29 and after Jeff Armijo's meeting with Governor Richardson, he issued a written statement to the public and media, a true and correct copy of which is attached here as Exhibit B and incorporated by reference.

Jeff Armijo's August 29 written statement evidences his intent on that day to officially withdraw his name from the general election ballot for state auditor.

17. Other evidence further corroborates the fact that Jeff Armijo intended to officially withdraw his name from the general election ballot on August 29. This evidence includes but is not limited to the following:

A. Jeff Armijo and his father visited Democratic headquarters in Albuquerque shortly after meeting with the Governor and shortly after Mr. Armijo's statement was received via email by Executive Director Matt Farrauto. After concluding a cell phone call outside of the headquarters, Mr. Armijo entered the Democratic headquarters. Mr. Armijo and Mr. Farrauto embraced and Mr. Armijo shook the hands of other Party staff, saying something to the effect of "sorry I let you down." Mr. Armijo and the Party staff had a discussion about the process for filling the vacancy on the General Election ballot, which included Mr. Armijo's questions about where he could obtain a list of State Central Committee members. Party staff demonstrated to Mr. Armijo how and where he could find the list of State Central Committee members on the Democratic Party of New Mexico website, [www.nmdemocrats.org](http://www.nmdemocrats.org). In the process of showing Mr. Armijo where to find the list, it became obvious that Mr. Armijo's statement of withdrawal had been posted as the featured item on the Party's website homepage. Mr. Farrauto offered, "we have your statement posted on our website," and Mr. Armijo, acknowledging that fact, said something to the effect of "oh, you got it and it is up already."

B. Numerous newspaper stories and television newcasts characterized Mr. Armijo's August 29 statement as a withdrawal from the state auditor's race and described the party's procedures for filling the vacancy. Mr. Armijo never attempted to correct these characterizations and descriptions.

18. On August 30, John Wertheim in his capacity as chairman of the party issued a call to the state central committee to meet on Saturday, September 9, a copy of which is attached here and incorporated by reference as Exhibit C.

19. At all relevant times, the Democratic Party and Wertheim reasonably relied on Mr. Armijo's August 29 statement and other evidence of his intent to withdraw and acted to their detriment by, among other things issuing the call to the September 9 meeting.

20. The Secretary of State has removed Mr. Armijo's name from the General Election ballot, creating a vacancy on the ballot.

21. The Secretary of State was correct to remove Mr. Armijo from the ballot because, among other reasons, reasonable minds cannot differ as to Mr. Armijo's withdrawal of his candidacy on August 29.

22. Among other reasons, Jeff Armijo's withdrawal on August 29 became irrevocable because the Chairman Wertheim and the Democratic Party had already acted in detrimental reliance upon it as of August 30. This detrimental reliance arose in the attempt to fulfill duties mandated by statute.

23. Mr. Armijo is estopped or otherwise barred by principles of equity from challenging the removal of his name from the ballot and from questioning the legality of


the September 9 central committee meeting or any election to fill the auditor vacancy held therein.

24. Mr. Armijo is also barred by his failure to exhaust administrative remedies through the party's Judicial Council from challenging the removal of his name from the ballot and from questioning the legality of the September 9 central committee meeting or any election to fill the auditor vacancy held therein.

WHEREFORE, plaintiff asks this Court to declare that the Secretary of State properly removed Jeff Armijo from the general election ballot; that the winner of the September 9<sup>th</sup> Democratic party meeting for purposes of selecting a new candidate for State Auditor is properly placed on the general election ballot; and for other and further relief as the Court deems proper.

Respectfully submitted,

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& WENTWORTH, P.A.  
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