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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 **Petitioner,**

17 **vs.**

18 **Sonia Cuello, in her capacity as the City**
19 **Clerk of the City of San Luis, Arizona,**

20 **Respondent,**

21 **and**

22 **Alejandrina Cabrera, a candidate for**
23 **elected office,**

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

Case No. S1400CV201101582

Div. V

Hon. John N. Nelson

JUDGMENT AND ORDERS

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

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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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