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REPORT OF INVESTIGATION

FILE NO: OIG I18-101

DATE: August 25, 2017

SUBJECT: Alleged Campaign Finance Fraud: Campaign of Mr. Javier Benavidez

STATUS: Closed

INVESTIGATORS: Peter Pacheco, JoVonne O'Connell and David T. Harper

DAVID T. HARPER, INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL

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File	1

Executive Summary

The Office of the Inspector General (OIG) for the City of Albuquerque (CABQ), NM, conducted an investigation at the direction of the Board of Ethics (BOE), into the allegations that a Candidate for City Council violated City Charter Articles and City Clerk Regulations as it pertained to obtaining public financing.

The approach to this investigation was to interview each complainant, Stella Padilla, Carlos McMahan, the City Clerk, Natalie Howard, as many registered voters from two categories, as time and circumstances would allow, and to obtain a legal opinion regarding City legislation, rules and regulations pertaining to City elections and ethics, from John Dubois, Assistant City Attorney, who is the OIG legal advisor. The investigation culminated with an interview of the candidate, which allowed him to provide his perspective and information he believed relevant and important to the investigation, as well as respond to specific questions. The two categories of registered voters included some individuals who provided affidavits to McMahan and some randomly selected registered voters who contributed funds and signed the City contribution receipt forms, but did not provide affidavits to McMahan. The latter came from a randomly generated list from the pool of 355 voters who contributed funds and signed contribution receipt forms, but were not in the group of voters who provided affidavits.

Ideally, 100% of the registered voters who contributed funds and signed the contribution receipt form would have been interviewed, but due to the limited resources of the OIG and imposed time constraints, this was not possible. Forty registered voters were interviewed – 22 from the group who provided affidavits and 18 from the remaining voters who did not provide affidavits (randomly selected).

The investigation disclosed there were instances in which there was required information missing from the contributor's copy of the contribution receipt form and in some of those instances, the information was on the City Clerk's copy of the form (white copy). Some registered voters indicated that they did not contribute all or a portion of the required \$5.

The report concludes with the OIG emphasizing important observations made during the investigative process, such as the fact that the Candidate acknowledged there were violations of relevant governing laws and regulations, but that he was unaware and did not direct the activity that was in violation of the laws and regulations. The Assistant City Attorney also provided a legal opinion that took into consideration the government laws and regulations, as applied to the alleged violations, and frequently indicated that "it is an undecided legal question" with the important point being that it is upon BOE of Ethics to determine if there was a violation of law after hearing argument from both sides.

Finally, it's important to emphasize that this investigation was accomplished with minimal resources in a time constrained environment, which prevented a more thorough investigation.

INTRODUCTION:

On, August 1, 2017, the Office of Inspector General (OIG) received a letter from the Chair, Board of Ethics (BOE), directing the OIG to conduct an investigation of allegations made in a complaint received from Ms. Stella Padilla. Furthermore, the letter directed the OIG to quickly complete this investigation, with a request to have the completed Report of Investigation submitted to the BOE no later than August 25, 2017. The BOE directed the investigation scope to cover the allegations within the complaint, which is addressed in the background section below.

BACKGROUND:

Stella Padilla and Carlos McMahon filed a complaint with the City Board of Ethics, alleging that Javier Benavidez, Candidate for City Council District 1, had engaged in campaign public finance fraud, by violating New Mexico perjury laws, Open and Ethical Election Code of the City Charter, Election Code of the City Charter, and the Regulations of the Albuquerque City Clerk for Open and Ethical Elections Code, and possibly violating the requirement to register and report measure finance committee contributions and expenditures, contrary to multiple provisions of the Code of Ethics, the City Charter and the applicable reporting regulations.

City Charter Article XIII, Election Code, Article XVI, Open and Ethical Elections Code, and the 2011 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code, are applicable to this matter and the election process.

SCOPE AND METHODOLOGY

The OIG investigation focused on the allegations asserted by the complainants in their complaint, per direction from the Chairperson, BOE. These included the issues described in the background section above.

The methodology consisted of interviewing the complainants, the City Clerk, registered voters who contributed funds and signed contribution receipt forms, the candidate, reviewing relevant documents, such as the affidavits and contribution receipt forms, and obtaining a legal opinion of the relevant City ordinances, rules and regulations.

The following activities were conducted as part of the investigative process:

- Interview of the City Clerk
- Interviews of the Complainants
- Interviews of Campaign Representatives
- Interview of Registered Voters who signed affidavits and contribution forms
- Interviews of randomly selected Registered Voters who did not submit affidavits
- Legal review of pertinent City ordinances, rules and regulations relevant to the allegations in the complaint
- Interview of the Candidate

CITY CLERK’S RELEVANT ELECTION ORDINANCES, RULES AND REGULATIONS:

A review of relevant City laws and regulations was conducted; pertinent sections of these documents are listed below under the appropriate section.

Article XIII: Election Code:

Section 2, Definitions for terms used in this report:

Candidate: Any individual who has (1) obtained a nominating petition from the City Clerk pursuant to Section 4(c) 1. D. of this Election Code for the office of Mayor or Councilor, (2) filed an affidavit on a form approved by the City Clerk, stating that he or she is a candidate for either the office of Mayor or City Councilor or (3) filed as a candidate for elected office as required by law, whichever first occurs.

Contributions: 1. Monies, loans, debts incurred, obligations incurred, property in-kind, including the use thereof, or commercial or professional services:

A. Incurred or received by a candidate, the candidate's treasurer, the Candidate Finance Committee, or a member thereof on behalf of the candidate, or by a Measure Finance Committee or a member thereof on behalf of the Committee. For the purposes of this Subsection, a debt or obligation shall be considered incurred at the time authorization is given or contract made for the debt or obligation.

Measure Finance Committee: A political committee or any person or combination of two or more persons acting jointly in aid of or in opposition to the effort of anyone seeking to have their name placed on the ballot for city office, a petition to place a measure on the ballot pursuant to Article III of this Charter, voter approval or disapproval of one or more measures on the ballot and/or the election to, or recall from, office of one or more candidates for office when such person or people have accepted contributions in excess of \$250 or make expenditures in excess of \$250 for any of the purposes listed heretofore.

Section 9, Rules and Regulations:

The Board shall promulgate reasonable Rules and Regulations for its conduct and in aid of interpretation and enforcement of this Election Code, and amend such Rules and Regulations as it may, from time to time, deem advisable; provided, that amendments to said Rules and Regulations shall not be made by the Board during the ninety days preceding an election.

Article XVI: Open and Ethical Elections Code:

Section 3, Definitions for terms used in this report:

Qualifying Contribution: A donation of \$5.00 in the form of cash, check, debit card, credit card or money order payable to the Fund in support of an Applicant Candidate that:

- (1) for the Mayoral race is made by a registered City voter and for a Council race is made by a registered City voter residing in the district in which the Applicant Candidate desires to represent;
- (2) is made during the designated Qualifying Period and obtained through efforts made with the knowledge and approval of the Applicant Candidate;
- (3) 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, one copy of which is attached to the list of contributors and sent to the City Clerk; and
- (4) identifies which Applicant Candidate the City resident supports.

Qualifying Period: For Council candidates, from May 1 through May 31.

Seed Money: A contribution in support of an Applicant Candidate of no more than \$100 per Person, except for the Applicant Candidate who can contribute up to \$500.00, raised for the primary purpose of enabling Applicant Candidates to collect Qualifying Contributions and petition signatures the aggregate amount of which may not exceed 10% of the applicable spending limit.

Section 5, Qualifying Contributions:

An Applicant Candidate for Council shall obtain Qualifying Contributions from a minimum of 1% of the City voters registered in the district that the Applicant Candidate desires to represent.

No payment, gift or anything of value shall be given in exchange for a Qualifying Contribution.

Section 9, Candidate Reporting Requirements:

- The Clerk shall publish guidelines outlining permissible campaign-related Expenditures.
- Applicant Candidates shall file Qualifying Contributions with the Clerk during the Qualifying Period according to procedures developed by the Clerk. In developing these procedures, the Clerk shall use existing campaign reporting procedures and deadlines whenever practical.
- Participating Candidates shall also report Expenditures according to the campaign reporting requirements specified in the Election Code.

2011 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code:

Part A, Definitions:

Contribution: In addition to the definitions in City Charter Article XIII, Section 2(g), contributions also include in-Kind Contributions.

In-Kind Contribution: Goods or services, other than money, having a monetary value that does not exceed more than five percent of the annual salary for such office being sought at the time of filing the Declaration of Candidacy, but does not include the value of personal services volunteered by individuals.

Qualifying Contribution: A donation of exactly \$5.00 to the Fund in support of an Applicant Candidate and given pursuant to the Code and these Regulations. A qualifying Contribution is not a prohibited contribution pursuant to Article XIII Section 4 (f) of the City Charter. Qualifying contributions in the form of checks or money orders shall contain the name of the Qualifying Candidate on the face of the check or money order. The City Clerk will provide the exact number of Qualifying Contributions needed for qualification as a Participating Candidate to candidates within three days of the candidate filing their declaration.

Qualifying Period: The timeframe in which an Applicant Candidate must receive Qualifying Contributions from a minimum of 1% of applicable registered City voters.

Seed Money: Cumulative contributions received by an Applicant Candidate of no more than \$100 per person and \$500 of the Applicant Candidate's own money raised for the primary purpose of enabling the Applicant Candidate to collect Qualifying Contributions and petition signatures. Seed Money may not exceed 10% of the applicable spending limit and may be raised only during the Exploratory and Qualifying Periods.

Part C, Qualifying Period and Qualifying Contributions:

Timeframe: For City Council candidates, the Qualifying Period is May 1st through May 31st of the year in which a City Council election is held. The Qualifying Period is the only time during which a candidate may solicit and receive Qualifying Contributions. Solicitation and collection of Qualifying Contributions during any other timeframe may result in a finding of violations by the Board of Ethics.

Determining the Required Number of Qualifying Contributions: The City Clerk shall calculate the number of qualifying contributions required for Applicant Candidates based upon the number of registered voters within the City of Albuquerque as shown on the voter registration rolls of the New Mexico Secretary of State and the Bernalillo County Clerk. For City Council candidates, the number is based upon the number of registered voters within the applicable district as of April 15th of the year in which the election for the City Council position is held.

The Qualifying Contribution Books: The City Clerk shall provide Applicant Candidates with the Qualifying Contribution form books ("Books") containing either 10 or 25 receipts. Applicant Candidates shall submit all Qualifying Contributions with the Books, containing the information of the corresponding contributors. The Books are pre-printed and all receipts contain the necessary

notices to the contributor, except for the name of the Applicant Candidate, which candidates and their representatives must fill in after receiving the Books from the City Clerk.

Applicant Candidates shall obtain Books from only the Office of the City Clerk and sign an Acknowledgement for the number of Books receives each and every time Books are provided to the campaign. Candidates shall not remove pages from the Books except to provide receipts to contributors which is the pink form. At the end of the Qualifying Period Applicant Candidates shall return all Books to the Office of the City Clerk regardless of whether they are used or unused. The City Clerk will accept partially used Books but will not provide campaigns with partially used Books.

Soliciting and Accepting Qualifying Contributions: Applicant Candidates and their representatives may solicit and accept Qualifying Contributions from all applicable City registered voters. Applicant Candidates and their agents shall solicit contributions in person and may not solicit contributions by mail, telephone or other medium. Applicant Candidates are responsible for assuring that the receipts are fully and correctly filled out, including signatures and that information is legible. The City Clerk will not certify Qualifying Contributions toward the required number of Qualified Contributions necessary to qualify and Applicant Candidate as a Participating Candidate which do not meet the requirements of this paragraph.

The Date the Qualifying Contribution Was Received: The date the contribution was received must be on or after the Applicant Candidate filed his or her Declaration of Intent within the Qualifying Period. The date the contribution was received by the Qualifying Candidate or his/her representatives as stated in the contribution book shall be the date attributed to the contribution in the Book, regardless of the date written on the check or money order.

The Name and Residential Address of the Contributor: The contributor must provide the same name and physical residential address as shown on the contributor's New Mexico Secretary of State's voter registration rolls. It is the responsibility of the individual soliciting the contribution to inform the contributor. A post office box address does not meet the requirements of the Code.

REVIEW OF STATE OF NEW MEXICO ELECTION LAWS:

New Mexico Statutes Annotated Chapter 3, pertains to municipal elections. A review of the statute disclosed there was not any language that pertained to publically financed municipal elections, to include required processes for such financing.

INTERVIEWS:

The OIG spoke with various individuals to determine the facts surrounding the alleged violations.

City Clerk:

Natalie Howard
City of Albuquerque

Interviewer: David T. Harper, Inspector General

On August 11, 2017, a meeting was held with Ms. Natalie Howard, City Clerk, City of Albuquerque, for the purpose of discussing applicable City law pertaining to City elections and requirements of candidates to receive public financing.

She advised that the full “Rules and Regulations” pertaining to City elections is available on the City Clerk’s website. Article XVI, Open & Ethical Elections Code, is the main ordinance for publically financing campaigns.

She advised that candidates need five hundred signatures to qualify to be placed on the ballot to be considered as a City Councilor.

She said that with regard to required processes involved in the accountability of collected signatures and contributions for City Council candidates seeking public financing, the “2011 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code,” are applicable.

She said that a form is required to be submitted by the candidates when obtaining contributions and signatures of registered voters. There are three copies of the receipt form, with the white copy (original) going to the Clerk’s Office, the yellow copy is provided to the candidate and the third copy, which is pink, is provided to the voter.

She said that her staff is involved in the tabulation and calculation of the contributions and signatures on the receipt forms. The forms are in books with 10 or 25 forms in each book. Each of the books submitted by the campaigns is numbered. The contributions are added with the requirement that the final amount meets the required amount for the total number of forms for each book. (Note: For example, a book with 10 forms should have \$50.)

She said that Tina Gurule is the Assistant City Clerk, and that her entire staff was involved in the verification of receipts process. This process included ensuring that contributing voters resided in Council District 1. She said that if a voter moved from one address to another address in District 1, then that was acceptable; however, if a resident moved from a different District and did not register to vote after relocating to District 1, then that person’s contribution and signature could not be accepted. Only two contribution receipts with voter signatures were rejected based upon address discrepancies.

Howard advised that with regard to funds accountability, the City Treasury Department representative normally is present when funds are counted and issues receipts for the funds. The

funds are then deposited at the City Treasurer's office. She said that Yolanda L. Barreras and Rachel A. Rodarte, City Treasurer's Office, assisted with the funds process.

Complainants:

Ms. Stella Padilla
Albuquerque, NM 87104

Interviewers:

Harper
JoVonne O'Connell, Investigator

On August 11, 2017, Ms. Stella Ann Padilla was interviewed with her attorney, Patrick Rogers, present at the law offices of Patrick Rogers, Albuquerque, NM, regarding her allegations against Benavidez, Candidate for City Council, District 1. She provided the following information:

She advised that she lives in Council District 2.

She said that she learned about the issues in her complaint from McMahon, who played an audio recording for her of his interaction with two representatives of Benavidez' campaign representatives. She first met McMahon when she was running for the Mayor of the City of Albuquerque, in approximately January 2017. She described her relationship as an "acquaintance" initially where they would exchange greetings. She met McMahon at the office of former Bernalillo County Clerk, Ms. Maggie Toulouse Houser. She shared with McMahon her intent to run for Mayor for the City of Albuquerque. Eventually, their relationship evolved and they became closer – it was then that McMahon shared the audio recording of the interaction with the campaign representatives for Benavidez.

Padilla said that based on the content of the recording, she contacted Rogers to file a complaint with the City of Albuquerque Board of Ethics. She recalled Mr. McMahon informing her that the representatives asked himself and his son for a five dollar contribution. She recalled this occurred in approximately June 2017, when Mr. McMahon reviewed petitions in the Mayor's race. She recalled the petitions also included those for Mr. Timothy Keller, Secretary of State for the State of New Mexico, who was also a candidate for Mayor.

Mr. Carlos McMahon (formerly Carlos Villanueva)
Albuquerque, NM 87120

Interviewers:

Harper
O'Connell

On August 12, 2017, McMahon was interviewed telephonically (he was in Ohio), with his attorney, Rogers, also on the phone, regarding the allegations involving the campaign of Benavidez for Mayor, City of Albuquerque. McMahon provided the following information:

McMahon advised that he has a current private investigator's license, issued by the State of New Mexico. He said that he is also a licensed notary public, licensed by the State of New Mexico.

McMahon advised he is on travel in Ohio, visiting family, and then will be traveling to Ireland, so was not available to be interviewed in-person.

He first became aware of the activities by the Benavidez Campaign that he asserts were fraudulent, when two Benavidez Campaign representatives, Daniel Ohiri and Diane Velasquez Torres came to his residence in City Council District 1, in May 2017. He said that his son, Alexander McMahon (formerly Alexander Villanueva), was in his front yard when Ohiri and Velasquez Torres came to his home. He said that the representatives attempted to obtain his son's signature and a \$5 contribution for the Benavidez Campaign. The representatives said they represented the Benavidez Campaign. Mr. McMahon recalled that one of the representatives asked if he would be willing to contribute between \$1 and \$5 to the campaign. He informed the representatives that he did not have \$5 and wouldn't get paid until "the third." He said that he wondered if the representatives were soliciting other members of the community for five dollar contributions. He said that after his son was initially contacted by the representatives and came inside the house, he decided to audio record the conversation with the representatives and take pictures of them, therefore when he went outside and engaged in a conversation with them, he was recording that conversation.

McMahon said he is familiar the rules and has been doing election fraud investigations for years. He knew that \$5.00 contributions were required. He chose to pursue an investigation on that day on his own. He believed the campaign representatives may have attempted these same actions from other members of the community. He canvassed a portion of his neighborhood and contacted five or six other residents who had the same experience. He described the campaign actions as "systemic." He recalled telling other residents about his concern over the issue and they expressed concern. The residents he spoke to had copies of the contribution forms. He spoke to other residents in the community located between 60th St and 68th St, who also had similar experiences. He recalled a total of eight citizens in the community experienced the same actions by the Benavidez Campaign. He said that he contacted residents typically after 5:30pm on weekdays and between 10am and 7pm on weekend days.

McMahon advised that he first met Padilla when he and his son were at the Bernalillo County Clerk's office. He said they exchanged contact information. He didn't see her again for many months. He said that Padilla reached out to him when she was running for Mayor for the City of Albuquerque, but he was not able to assist her at that time. He was eventually contacted again by Padilla during her mayoral campaign to review ballot qualifying documents. During the time that he was auditing the documents for Padilla, he told her about the situation involving the Benavidez Campaign, which he believed involved "fraud, waste and abuse." He said that she expressed she was "100% in it with him."

(He said that he has met City Councilor Ken Sanchez, but described his relationship as being acquainted and professional, but were not related.)

He said that he wasn't a member of his neighborhood association, but did attend meetings to observe at times. He did have significant contact with community residents on the dates that he obtained signed affidavits.

McMahon said it was his decision to seek affidavits from community residents. He said it was later in the investigation when he decided to seek legal representation – he recalled this to be in

June 2017. He recalled obtaining approximately 30 affidavits, but spoke to about 50 – 60 residents, so about half of the residents provided affidavits.

He said he obtained the list of contributors from the Albuquerque City Clerk's Office. He also obtained copies of the contribution forms. He looked for anomalies which were not in higher income neighborhoods. His efforts also focused on looking at the information on the bottom of the contribution forms, for instance, where someone wrote "\$1, \$3, etc." He also looked at "clusters" on the same day. He said he visited the Bernalillo County Clerk's Office to view signatures of voters on voter's registration forms to compare to the signatures on contribution forms.

Campaign Representatives:

Jose C. Lopez

Interviewer:
O'Connell

On August 23, 2017, Lopez was telephonically interviewed and confirmed that he was a representative for Benavidez in collecting campaign contribution forms and \$5 donations. Regarding his relationship to Benavidez, Lopez stated that Benavidez is a high school friend of his son's. Lopez stated that he did not attend any training and was not aware of any training, adding that he has done this before. He commented that he is politically involved and did this four years ago and eight years ago. Lopez stated that the campaign contribution form had to be completed and signed by the individual at the time of the visit. He added that the donation had to be \$5; it could not be less and it could not be more, and it had to be collected at the time the contribution form was completed. Lopez stated that everyone who he spoke to was his neighbors, but he did not help anyone or write any personal information for anyone; everybody filled out and signed the form themselves.

Lopez admitted that he did put in the five dollars for some of his neighbors. He explained that he was under the impression that as long as \$50 was turned in with the book, then that was all that mattered. Lopez also admitted that he signed some of the forms later and not always at the time individuals completed and signed the form. He indicated that he was unaware that he could not do this, until recently. He believed that it was Councilor Ken Sanchez that pointed out to him that he could not sign the forms later.

Lopez admitted that he is supporting Councilor Sanchez and is a volunteer for him, as well as for Benavidez. However, he stated that he gave full disclosure to both candidates, Councilor Sanchez that he was helping Benavidez and informing Benavidez that he was helping Councilor Sanchez.

When asked if he was ever approached by McMahan, Lopez stated that he actually confronted McMahan at his neighbor's house. He explained that his neighbor, Bernadette Trujillo, contacted him because she was afraid, because McMahan kept bothering her at her home. Lopez stated that he immediately went out and recognized McMahan right away, because he knows him. Lopez stated he asked McMahan what he was doing and asked why he was doing this. When McMahan explained his purpose, Lopez stated that he told McMahan that he knows him (Lopez) better than this and that he would not be doing anything shady. Lopez stated that

McMahon responded by saying something along the lines of he's "doing what he has to do." Mr. Lopez stated that he also asked McMahon "who hired you?" to which McMahon replied that Rogers hired him.

Daniel Ohiri

Interviewers:

Peter Pacheco, Investigator

On August 17, 2017, Ohiri was interviewed and confirmed that he was a representative for collecting five dollar contribution forms for Benavidez. When asked if there was any training, Ohiri stated that there was training at the Nexus Brewery located on Coors Blvd NW (Albuquerque) for representatives. They were given a clip board with a script regarding what to say when asking for contributions and signatures. The petition was to be signed first and then they could ask if the person wanted to sign the contribution form and give five dollars. Ohiri stated they were told that they could not give more than five dollars when receiving the contribution, but that it could be less than five dollars. He stated that they would have to note the amount, one to five dollars, on the contribution form regarding how much they received. When asked who told him this, Ohiri stated a "male" and the lead volunteer told them. Ohiri stated that they were told to say if the money could be given later that another group could come over and get it. When asked if they could tell the contributor that they (representative) could provide the money, Ohiri stated that was not in the script. Ohiri said that he canvassed the area with Velasquez Torres.

Jamie Phillips

Interviewer:

Pacheco

On August 22, 2017, Phillips was telephonically interviewed and confirmed that he was a representative for collecting contribution forms for Benavidez. Regarding his relationship with Benavidez, Phillips stated that he knew him from a previous job and he liked what his platform was about. Phillips stated that he did not attend any training because he had done this before. He stated that five dollars had to be collected before a contribution form could be signed. He stated that everyone filled out their personal information and signed the form. He did not write any personal information for anyone.

Phillip stated that the acting headquarters to return the completed forms and funds was Nexus Brewery on Coors Blvd NW. He stated that Jeff (did not know last name) or Julie Fitzsimmons were there to collect them from him.

Barbara Grothus

Interviewer:

Pacheco

On August 23, 2017, Grothus was telephonically interviewed and confirmed that she was a representative for collecting the contribution forms for Benavidez. Regarding her relationship with Benavidez, Grothus stated she has known him for a long time and supports his campaign.

Regarding training, Grothus stated if there was any, she did not attend. She has worked four or five campaigns in the past and knows how to fill out the form.

Regarding the five dollar donation, Grothus stated people may not always have the funds, so the representative contributes the funds and the registered voter reimburses the representative at a later date. She said she did not think it was a “big deal” to provide the five dollar donation, and if she had, then she would never have done it. Grothus stated that as many times as she read and filled out the form, she never thought it was an offense.

Grothus stated that she was approached by McMahon and was told he would take her name off the complaint if she would sign an affidavit saying that the campaign condoned and encouraged this. Grothus stated no one at the campaign condoned or encouraged this. She stated she would never sign a false statement, and would tell the truth. She said she has an email track with information regarding McMahon. Grothus stated that McMahon tried telling her terrible things about Benavidez -- they spoke on the phone for more than 70 minutes. Grothus stated she did convey all this to Benavidez.

When asked if she would provide five dollars if a person did not have the money, she stated no, but she did go to a house one night and a woman (not further identified) gave her extra money. The next house she went to the person said that he would like to sign the contribution receipt form, but he did not have five dollars. She told the man that his neighbor gave her an extra five dollars and she did not think it would matter. When asked if this was the only time this occurred, she stated yes. Grothus believed public financing is very important and thought this was a “witch hunt.”

Miguel Gomez

Interviewer:
Pacheco

On August 23, 2017, Gomez was telephonically interviewed and confirmed that he was a representative for collecting contribution forms for Benavidez. Regarding his relationship with Benavidez, he stated that he is a friend and has known him for 15 years. Regarding training, Gomez stated there may have been training, but he started collecting contributions later on and was familiar with the process. He said he was told five dollars had to be collected, that was his understanding, per individual. When asked if the form had to be completed at time of collection, Gomez stated that was correct. When asked if he helped fill out the contribution forms, he said in some cases he would help fill them out, but the contributor signed the form. Gomez stated that he did not provide any money on behalf of a contributor, but he did but in five dollars for himself.

Teresa Brito-Asenap

Interviewer:
Pacheco

On August 25, 2017, Ms. Brito-Asenap was telephonically interviewed and confirmed that she was a representative for collecting five dollar contributions and the required contribution receipt forms for the Benavidez campaign. Regarding her relationship to Benavidez, she stated that she

knows him through community organizing. Regarding training, Brito-Asenap stated that training was offered, but she could not attend due to health issues. She stated that her understanding was that five dollars was the contribution.

When asked if the form had to be completed filled out at time of collection, Brito-Asenap stated that it was her understanding to collect five dollars from each contributor who signed the contribution receipt forms. She said that the contributors had to be registered voters who resided in Council District 1. She said that in most cases, she followed the required procedure.

She said she had an old friend from high school who she tried to visit twice, but then they had a telephonic conversation where he gave her permission to sign the contribution receipt form on his behalf and also make the five dollar contribution on his behalf. She said he would reimburse her the next time he saw her. Brito-Asenap stated that she thought this was an acceptable practice because she had his permission. She did not notate the form that she had signed for him.

She also did a similar thing for her former sister-in-law, Christina Garcia and Garcia's son, Jared Brito. Again, she obtained permission from each of them before completing the form and contributing the funds. She was reimbursed by both of them.

Finally, she said she did the same thing for a colleague, Josephine Deleon and her husband, Richard Torres, as they were in the process of moving. They also reimbursed her for the contributions.

She said that she never inquired with the campaign if contributing funds and completing the contribution receipt form on someone else's behalf was acceptable. She also did not believe Benavidez was aware of what she did until she called him.

Brito-Asenap stated that Garcia called her and said that McMahan had visited her (Garcia) and that she let him know what she did. She never thought there was anything wrong with doing it because in every case she had permission from the qualified voter. She said there was no conversation with Benavidez until Garcia called her. Brito-Asenap stated that she did not sign for anyone when she was visiting registered voters' residences.

Registered Voters:

The OIG interviewed two categories of registered voters who were contacted by the Benavidez' campaign volunteers. The first category included voters who either submitted affidavits to McMahan, or whose names were on contribution receipt forms included as exhibits in the complaint. The second category came from a randomly generated list of registered voters from the pool of 355 voters who did not provide an affidavit to McMahan. Questions that were posed to the voters included:

1. "Did you contribute \$5.00 to the campaign?"
2. "Did you sign the contribution receipt form?"

Note: Depending on individual circumstances, some voters provided additional information that is included in the interview summaries below.

Registered Voters whose names appeared in Exhibits (Either provided an affidavit or alleged discrepancy with contribution receipt forms):

Patricio Rojas

Interviewers:

Pacheco

O'Connell

On August 21, Rojas was interviewed and confirmed that the signature on the contribution form was his, but that someone else had filled out the rest of the form. Rojas stated that he did not feel pressured to sign the contribution form; however, he did not have any cash on him that day. He stated that he did not give the five dollars and that a woman (not further identified) collecting the signatures said "Don't worry about it." The woman asked if he supported the candidate, to which he replied "sure." He was not told that the funds would be provided on his behalf.

Rojas stated that he had lived at the address for four years and that he is registered as a voter at the address.

Rojas stated that McMahan and his son (Alexander McMahan) came to his residence and identified himself as a private investigator, and had questions about the form. He stated that McMahan respectful, and he provided a signed affidavit to McMahan. He confirmed it was his signature on the affidavit, and said he did not feel pressured to sign it and that he did not put any information on the affidavit.

Debra A. Lujan

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Lujan was interviewed and stated an unidentified woman came by her residence and asked if she would be willing to sign a contribution form and give five dollars for Benavidez. Lujan told the woman that she only had three dollars. The woman said that she would provide the remaining funds, but would have to return because she needed to get the form from another person who was also canvassing the area. The woman later returned and Lujan signed the contribution form and contributed three dollars. She recalled signing the form, though one of the copies did not have her signature on it.

She said she has lived at the address for 25 years and is registered as a voter at the address. She did not feel pressured by to contribute the funds or sign the contribution receipt form.

When asked if McMahan had reached out to her, she said he and his son did contact her. She also said that McMahan is a cousin of her deceased husband. She recalled McMahan saying that Councilor Sanchez was his relative. Lujan stated that Councilor Sanchez was related to her deceased husband. McMahan told her that one of the copies of the contribution form did not have her information or signature. She stated that the woman who collected the contribution forms may have taken the pink copy.

(Note: The unidentified woman was Velasquez Torres according to the contribution form.)

Rudy Mora

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Mora was interviewed and stated that a young African-American man and a woman came by and spoke with about obtaining a contribution for the Benavidez campaign. Mora confirmed that he signed the contribution receipt form and contributed five dollars. While he did not put his name and address on the form, he recognized his signature on the form. He said both individuals were polite.

Mora stated that McMahan, who claimed to be a private investigator and unidentified woman, visited his residence. They told him that "something wasn't right" and they were investigating the contribution. Mora stated that after talking to McMahan he thought the five dollars that he contributed would be for the Benavidez campaign, and therefore had the impression that the collecting of money was for something else. For that reason, he provided an affidavit to McMahan.

Christina M. Garcia

Interviewers:

Pacheco

O'Connell

On August 21, 2017, Garcia was interviewed and stated that she and Teresa Brito-Asenap, campaign representative, had been trying to meet so that Garcia could complete the contribution form for Benavidez. Garcia stated that Brito-Asenap is her former sister-in-law and Aunt to Jared Brito. (Note: Brito who was also on a complaint exhibit and lives at the same address.) She said that she has known Brito-Asenap for 30 years. Garcia stated that since they were always missing each other, she gave Brito-Asenap permission over the phone to complete the contribution form and sign it on her behalf. She said that Brito-Asenap also provided the five dollars, but she later reimbursed her.

Garcia stated that she has lived at the same address for 25 years and was a registered voter at that address. Jared Brito was not at home at the time of interview, but Garcia stated he had given permission over the phone for Brito-Asenap to complete the contribution receipt form and contribute five dollars which would eventually be reimbursed.

Garcia stated that "Carlos Padilla" (McMahan) and another unidentified male came to her house and asked questions about the contribution receipt forms that she and Brito completed. In response to a question regarding whether McMahan identified himself as "Villanueva" or "McMahan," she said he identified himself as Carlos Padilla, and that he was a private investigator for the City (Albuquerque), but never showed his identification.

McMahan wanted Garcia to provide an affidavit and sign it. She stated that at one point McMahan leaned into her and said if she did not sign the affidavit form the police would come to

her residence. Garcia stated the McMahon was “pushy” and “wanted answers.” She stated she was hesitant to sign the affidavit, but did.

Garcia was shown a transcript of a recording between herself and McMahon. She stated she had seen it, but did not know that she was being recorded at the time.

Garcia stated that as McMahon was leaving her residence, she walked outside and asked to see his identification. He showed her his private investigator identification, and then she said the identification had the name “Carlos Villanueva.” She then told him that it was not his name and he responded by taking off his hat and telling her that it was him, but that he was changing his name.

Michael Fenstermacher

Interviewers:

Pacheco

O’Connell

On August 18, 2017, Fenstermacher was interviewed and confirmed that he and his wife, Jennifer Fenstermacher, had signed the contribution receipt form and had given five dollars each as a contribution for the Benavidez campaign. Mr. Fenstermacher stated that they were at Nexus Brewery on Coors Blvd NW, where there was a table with people collecting the five dollar contributions and the required contribution receipt forms.

Hoang Phan

Interviewers:

Pacheco

O’Connell

On August 21, 2017, Phan was interviewed and confirmed that he signed the contribution receipt form and gave a five dollar contribution for the Benavidez campaign. Phan said he has lived at the same address for 21 years and is a registered voter at the address. He stated that he has never met McMahon. (Exhibit asserted signatures did not match)

Terri Nikole Baca

Interviewers:

Pacheco

O’Connell

On August 18, 2017, Baca was interviewed and confirmed that she signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign. Baca recalled that two unidentified women, who represented the Benavidez Campaign, visited her residence, but she did not recall their names. She never met McMahon. (Exhibit asserted representative’s signature had discrepancies.)

Amjad Choudhry

Interviewers:

Pacheco

O'Connell

On August 14, 2017, Choudhry was interviewed and confirmed that on May 27, 2017, he filled out a campaign contribution receipt form for the Benavidez campaign. He stated an unidentified woman and "kid" visited house to solicit the contribution. He said he did not feel pressured to provide the contribution or to complete the form, which he completed in its entirety. Choudhry indicated he was told that he could donate anywhere from one to five dollars, and that anything would help. He donated one dollar and stated the woman did not mention anything about her providing the remaining funds on his behalf.

Choudhry confirmed that McMahon visited his home with an unidentified woman. He said McMahon identified himself as a private investigator and advised Choudhry that the City of Albuquerque gave the "other guy" \$40,000, which was wrong, because the contributions should have been five dollars or nothing at all.

Choudhry stated McMahon was very aggressive and that he felt pressured to sign the affidavit form that was presented to him. Choudhry stated that McMahon even left and later returned so that he could show Choudhry public records that he had retrieved. Choudhry believed McMahon showed him Benavidez' criminal record for the purpose of persuading him to sign the affidavit. Choudhry stated he became suspicious believed that McMahon just wanted a signature.

Andres Leroy Sedillo

Interviewers:

Pacheco

O'Connell

On August 14, 2017, Sedillo was interviewed and stated that he did not remember signing the contribution receipt form for the Benavidez campaign on May 24, 2017. He indicated his memory was not good, so he could not remember if he paid the five dollar contribution. He stated that he knew the representative, Brito-Asenap, from school -- she was a classmate. Sedillo was asked about the affidavit form, which was notarized by McMahon (Carlos Villanueva). When reviewing the form, Sedillo stated he did not fill out the affidavit form. He also stated that the writing and signature were similar, but were not his. Sedillo confirmed that he sometimes goes by "Andy" and sometimes goes by "Andres."

Kelly Lopez

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Lopez was interviewed and verified that he has lived at his address for approximately the past six and one half years and is a registered voter at this address. He confirmed that on May 26, 2017, he filled out and signed a campaign contribution receipt form

for the Benavidez campaign. However, Mr. Lopez stated he did not pay the five dollar contribution. He stated that on that date he was sitting outside and an unidentified woman visited his home and asked if he would sign the form. He added that he did not feel pressured at all to sign the form or to contribute the five dollars. Lopez said the woman did not say she would provide the five dollars on his behalf.

Lopez confirmed that McMahon visited his home with another unidentified man and that they were walking down the block. Lopez stated that McMahon identified himself as a private investigator and stated that he had 10 years' experience in this line of work. Lopez stated that McMahon explained that he was looking into a scam related to campaign contributions and forms, and that it was against the law to collect five dollars. Lopez stated he did not feel pressured into signing the affidavit form.

Randy Varela

Interviewers:
Pacheco
O'Connell

On August 15, 2017, Varela was interviewed and verified that he has lived at his address for approximately the past 52 years. He confirmed that on May 17, 2017, he filled out and signed a campaign contribution form for the Benavidez campaign. He stated that he did not feel pressured in any way to sign the form, as it was his neighbor, Jose C. Lopez who came by and asked him to sign the contribution receipt fund. He stated he did not give the five dollar contribution and explained that he told Lopez that he did not have any money. Varela indicated that Lopez said that was not a problem and that Lopez would provide the five dollars.

Varela confirmed that McMahon visited his home and respectfully requested that he submit the affidavit.

Bernadette Trujillo

Interviewers:
Pacheco
O'Connell

On August 15, 2017, Trujillo was interviewed and confirmed that on May 24, 2017, she filled out and signed a campaign contribution receipt form for the Benavidez campaign. She stated the representative, Jose C. Lopez, is her neighbor and he just asked her to sign the form. She stated she did not feel pressured in any way to sign the form. Trujillo stated she did not give the five dollar contribution and indicated that Lopez told her that he could provide the five dollars on her behalf.

Trujillo confirmed that McMahon visited her home approximately six or seven times and would "bang" on her door and call her name loudly. In addition, Trujillo stated that McMahon always came with another unidentified male. She said it scared both her and her daughter, especially since some of the times her daughter (unidentified) was home alone. Trujillo said she had to end up getting her husband and Lopez involved. She said she finally signed the affidavit to get McMahon to stop visiting her home.

Sandra Ledesma-Metcalf

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Ledesma-Metcalf was interviewed and verified her address and indicated she was a registered voter at her current address. She confirmed that on May 26, 2017, she filled out and signed a campaign contribution receipt form for the Benavidez campaign. Ledesma-Metcalf stated she did not feel pressured to sign this form, and explained that an unidentified woman went to her house and was "easy-going" and casual. She further explained that the woman informed her that any amount could be contributed and that just a signature was needed to get Benavidez on the ballot. Ms. Ledesma-Metcalf commented that she believed in the voting process, so she signed the form. She further explained that she never carries cash and was unable to make a contribution.

Ledesma-Metcalf confirmed that McMahan visited her home. She stated that McMahan was by himself and identified himself as a private investigator. Ledesma-Metcalf stated that McMahan explained that he was looking into fraudulent activity. She stated she did not feel pressured into signing the affidavit form.

Kathleen Battaglia

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Battaglia was interviewed and confirmed that on May 15, 2017, she filled out and signed a campaign contribution form for the Benavidez campaign. She confirmed that she also made the five dollar contribution to Teresa Brito. She stated she did not feel pressured to sign the form and did not feel pressured to donate five dollars, as she knew Teresa Brito. Battaglia confirmed that McMahan visited her home. She recalled McMahan being alone and stated that he was very nice and she did not feel pressured by him. Battaglia stated she was not asked to sign an affidavit.

Randy Torres

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Torres was interviewed and verified that he lived at the same address for the past 24 years. He confirmed that on May 26, 2017, he filled out and signed a campaign contribution receipt form for the Benavidez campaign. Torres stated he did not feel pressured to sign the contribution form and was told by the representative that the five dollar contribution was not needed.

Torres confirmed that McMahon visited his home to obtain an affidavit. He stated he did not feel pressured by McMahon to sign the affidavit.

Lamberto Braza

Interviewers:

Pacheco

O'Connell

On August 21, 2017, Braza was interviewed and verified that he has lived at his current address for approximately one year. He confirmed that on May 21, 2017, he filled out and signed a campaign contribution receipt form for the Benavidez campaign. Braza stated he did not feel pressured to sign the form, but that he informed the unidentified woman who visited his home that he was not going to donate any money. He indicated that the woman said that was fine and told him that other individuals donate more than the five dollars, so that extra would cover him.

Braza confirmed that McMahon visited his home. He stated that McMahon was with another unidentified man. McMahon identified himself as a private investigator and explained that he was looking into the campaign contributions and forms. Braza stated he did not feel pressured into signing the affidavit form.

Hugh H. Felsted

Carla M. Felsted

Interviewers:

Pacheco

O'Connell

On August 16, 2017, both Hugh H. Felsted and Carla M. Felsted were interviewed. They both advised that they signed the contribution receipt forms and gave five dollars each as a contribution for the Benavidez campaign. They said no one else had visited their home to ask about their contribution.

Charles Evan

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Evan was interviewed at his home, but he could not remember giving a contribution for the Benavidez campaign. He recalled giving five dollars to Armijo, his neighbor, who was running for the Home Owners Association board. Evans thought the money was for that purpose and could not at the time remember signing anything for Benavidez, even after showing him the contribution receipt form.

That same evening Evans called OIG and stated that after speaking with his wife he recalled that Armijo did ask if he would give five dollars to help get Benavidez on the ballot. Evans stated that he is not supporting anybody, but for Armijo he would help to get him on the ballot. Evans

stated that he did not know Benavidez, and reiterated that he was not supporting anybody, but would help him get on the ballot. He confirmed his signature on the form.

Erik Enriquez

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Enriquez was interviewed and confirmed that he signed the contribution form and gave the five dollar contribution for the Benavidez campaign. Enriquez confirmed he is a registered voter at his address. Enriquez stated that McMahon visited his home to speak with his wife (not identified) about her contribution. Enriquez's wife was not home at the time of the interview.

Jeffrey Alcalde

Interviewers:

Pacheco

O'Connell

On August 21, 2017, Alcalde was interviewed and confirmed that he signed the contribution form and gave the five dollar contribution for the Benavidez campaign. Alcalde stated that Traci Cadigan was the volunteer who came to his residence. He confirmed that he is a registered voter at the address. Alcalde stated that he has not spoken to any other investigator.

Justin Cernik

Interviewers:

Pacheco

O'Connell

On August 17, 2017, an attempt was made to interview Sylviana Diaz-Douville at her residence, but her son, Cernik, answered the door. Cernik stated that Diaz-Douville was not home. Cernik stated that he witnessed his mother sign the contribution receipt form and give the five dollar contribution.

Francisca K. Gonzales

Interviewer:

Pacheco

On August 21, 2017, Gonzales was telephonically interviewed and confirmed that she signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign. Gonzales also stated that her husband, Matthew M. Bazan, and her daughter, Mercedes Gonzales-Bazan, also signed the contribution receipt forms and gave the five dollar contributions. All three contribution receipt forms were confirmed as being accepted. McMahon did not speak with her.

Ohiri

On August 17, 2017, Ohiri was interviewed and confirmed that he signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign. He paid via check. Ohiri was also a representative for the Benavidez campaign.

Joanne Valles

Interviewers:
Pacheco
O'Connell

On August 17, 2017, Valles was interviewed and confirmed that she signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign. Valles stated that Benavidez was the person she spoke to regarding the contribution.

Alice Wilmot

Interviewers:
Pacheco
O'Connell

On August 17, 2017 Alice Wilmot, wife of Terry Wilmot, answered the door of her residence and stated that Mr. Wilmot was not home. An explanation was given Ms. Wilmot regarding the visit. After the discussion, a copy of the five dollar contribution receipt form and a business card was given to Ms. Wilmot to show to her husband so that he could call the office later with his response.

Mr. Wilmot called and confirmed he signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign.

Carlos Contreras

Interviewers:
Pacheco
O'Connell

On August 21, 2017, Contreras was interviewed and confirmed that he signed the contribution receipt form and gave the five dollar contribution for the Benavidez campaign. Contreras stated that three to four unidentified individuals have visited his home to ask questions about his contribution, but he never provided them with any information.

James Fisk

Interviewers:
Pacheco

On August 24, 2017, Fisk was telephonically interviewed and stated that he and his wife, Mary Lou Fisk signed the contribution receipt form and gave the five dollar contribution for the

Benavidez campaign. He stated that the unidentified woman who was soliciting the contributions was polite. He and his wife have lived at their resident for 25 years and are registered voters at the address. No one else came to their home.

Randomly Selected Registered Voters from Pool of 355:

Arturo Gonzales

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Gonzales was interviewed and verified that he has lived at his current address for approximately 40 years. He confirmed that on May 22, 2017, he filled out and signed a campaign contribution receipt form for the Benavidez campaign. Gonzales stated there was one unidentified man who visited his home to get signatures and donations. He did not feel pressured by the individual to sign the form or to make the five dollar donation. He confirmed that he did give a five dollar donation, but did not have an additional five dollars for his wife to contribute. His wife, Dulcinea Gonzales, also signed a form. He indicated he was told that the additional five dollars would be provided on behalf of his wife.

Gonzales confirmed that McMahan visited his home with an unidentified woman, and advised him that Benavidez was lying on the campaign forms, and as a result was getting \$40,000.

Gonzales stated he did not feel pressured to sign the affidavit form, but commented he thought things were "kind of weird" because McMahan went to his home three different times. For this reason, he indicated on his affidavit form "wife sick, do not bother."

Dulcinea Gonzales

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Gonzales was interviewed and confirmed that on May 22, 2017, she filled out and signed a campaign contribution receipt form for the Benavidez campaign. She stated that she filled out the form inside the house and did not talk to the campaign representative; only her husband, Arturo Gonzales, talked to the representative. Ms. Gonzales indicated that she did not have the five dollars for the contribution, but was informed that it would be provided on her behalf.

Ms. Gonzales signed the affidavit for McMahan, but also indicated on the form that she was on oxygen and did not want to be bothered, so wrote "do not come back."

Lucille Saiz

Interviewers:

Pacheco

O'Connell

On August 15, 2017, Saiz was interviewed and verified that she has lived at the current address for approximately the past 18 years and was a registered voter at the address. She confirmed that on May 17, 2017, her neighbor, Jose C. Lopez, visited her and asked if she would fill out and sign a campaign contribution receipt form for the Benavidez campaign. Saiz stated she did not feel pressured, and that Lopez assisted her in completing the form. She stated that she did not contribute the five dollars, as Lopez told her that he would provide it on her behalf. She seemed very concerned and stated that she did not want to get Lopez in trouble.

Joseph M. Chavez

Interviewers:

Pacheco

O'Connell

On August 16, 2017, Chavez was interviewed and confirmed that on May 10, 2017, he filled out and signed a campaign contribution form for the Benavidez campaign. He confirmed that he also made the five dollar contribution to the campaign representative, Eric Griego, and commented that he may have given an additional five dollar contribution for his wife (not further identified). Chavez stated he did not feel pressured to sign the form and did not feel pressured to donate the money, explaining that Griego is one of his friends and Griego was helping out Benavidez. Chavez did not recall having ever been visited by McMahon.

John Giddings

Interviewers:

Pacheco

O'Connell

On August 16, 2017, Giddings was interviewed and confirmed that on May 10, 2017, he filled out and signed a campaign contribution receipt form for the Benavidez campaign. He confirmed that he also made the five dollar contribution to campaign volunteer, Griego. Giddings stated he did not feel pressured to sign the form and did not feel pressured to donate the money, explaining that Griego is his wife's (not further identified) nephew. Giddings did not recall having ever been visited by McMahon.

Larry Buelow

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Larry Buelow was interviewed regarding his wife, Ellen Buelow's campaign contribution, since she was not at home during the visit. He confirmed that on May 15, 2017, she filled out and signed a campaign contribution receipt form for the Benavidez campaign. He confirmed that it was Ellen Buelow's handwriting and signature on the campaign contribution receipt form. Mr. Buelow stated that Benevidez visited their home and solicited the campaign contribution. He said his wife contributed five dollars. Mr. Buelow did not recall McMahon ever visiting their home.

Ronnie Wallace

Interviewers:

Pacheco

O'Connell

On August 21, 2017, Wallace was telephonically interviewed and verified that he has lived at his current residence for approximately the past 30 years and is a registered voter at the address. He confirmed that on May 22, 2017, he filled out and signed a campaign contribution receipt form for the Benavidez campaign. He confirmed that he also made the five dollar contribution.

Wallace believed it was Benavidez who visited his home. Wallace stated he did not feel pressured to sign the form or to donate the five dollars. He described the man as being very friendly and nice and indicated that he even took the man to some of his neighbors' houses.

Wallace confirmed that McMahon visited his home. He believed that McMahon may have identified himself as a private investigator and had another man (unidentified) with him. Wallace stated that he did not complete an affidavit form, and said he did not feel pressured or intimidated by McMahon; however, he commented that he got the impression that McMahon did not want to believe him. Wallace reiterated that he voluntarily signed the contribution form and provided the five dollars.

John Chavez

Interviewers:

Pacheco

O'Connell

On August 16, 2017, Chavez was interviewed and confirmed his current address. He stated that he definitely provided the five dollars and signed the campaign contribution receipt form for the Benavidez campaign. He also said that his wife, Llona M. Chavez, did as well. Chavez stated that the representative, Chris Chavez, was his son.

Chavez verified that McMahon also visited his house; but did not know who McMahon was working for. Chavez stated that McMahon did not have him sign an affidavit.

Katherine Santistevan

Interviewers:

Pacheco

O'Connell

On August 16, 2017, Santistevan was interviewed and recalled that an unidentified man with his "baby son" in a stroller went to her house. She initially thought it was Benavidez, but then recalled it was James Phillips. She stated that she provided a five dollar contribution and signed the contribution receipt form. She stated that Benavidez also visited her home after this, but she had already made the contribution. She did not receive a visit from McMahon.

Carlos Ortega

Interviewers:

Pacheco

O'Connell

On August 16, 2017, Ortega was interviewed and stated that not only did his wife, Dolores Espinosa de Ortega, sign a campaign contribution receipt form for the Benavides campaign, but he did as well. He added that he also made the five dollar donation. Mr. Ortega stated that he and his wife knew the representative, Francesca Blueher, as she was a friend of theirs. He did not recall having ever been visited by McMahan.

Dolores Espinosa de Ortega

Interviewers:

Pacheco

O'Connell

On August 17, 2017, Espinosa de Ortega was interviewed and verified that she signed the campaign contribution receipt form for the Benavidez campaign and contributed five dollars. She also said that the representative, Blueher, was her's and her husband's (Carlos Ortega) friend, and that both Espinosa de Ortega and her husband were supportive of the candidate. Espinosa de Ortega stated she was never visited by McMahan.

Carlos Medrano

Interviewers:

Pacheco

O'Connell

On August 18, 2017, Medrano was interviewed and confirmed that he did complete and sign the campaign contribution receipt form for the Benavidez campaign, as well as contribute five dollars. He stated that he and his wife (not further identified) were out somewhere and the Benavidez campaign had a table set up for soliciting contributions, and that is where they made contributions. Medrano did not recall having ever been visited by McMahan.

Note: The purpose of the two groups was to provide an opportunity to be unbiased and objective in the investigative process.

Candidate:

Mr. Javier Benavidez
Albuquerque, NM 87120

Interviewers:
Harper

On August 22, 2017, Benavidez was interviewed with his attorneys, Molly Schmidt Nowara and David H. Urias, present, regarding his involvement in campaign finance fraud, as alleged by Padilla and McMahon. Benavidez provided the following information:

Benavidez said he was familiar with the City Charter, Ordinances, Rules and Regulations pertaining to the criteria for obtaining public financing.

He said his understanding of the rules for qualifying public financing included the requirement to obtain 381 signatures (1% of registered City voters in City Council District 1) and an accompanying five dollar donation.

Mr. Benavidez said that training was provided to the volunteers that would be collecting the five dollar contribution receipt forms and signatures from registered voters in his District. He said that volunteers were instructed to collect five dollars from each registered voter who signed the contribution receipt forms. He commented that the volunteers were experienced.

He realized that some volunteers did not collect the required five dollars and that some volunteers did not ensure all required information was included in the contribution forms at the time that the registered voters were contacted and signed the forms. He advised that the City Clerk, Howard, provided him with an opportunity to later attest to the authenticity of the contribution forms by completing the missing information. He believed this occurred about three times.

He said that volunteers were not told that they could contribute their own funds to make up the difference between what voters contributed and five dollar requirement, if a voter did not have the full five dollar contribution. He realized there may have been mistakes made in how the volunteers handled this, but it was not at his direction. He provided an example: He said that Jose C. Lopez was a volunteer for both his campaign and Councilor Kenneth Sanchez' campaign. Lopez maintained two sets of books for each campaign and may have contributed funds to make up the difference in what was collected from a voter and what was required. He thought this might have happened on two occasions.

He said that a script was provided to the volunteers to be used in their solicitation of signatures and contributions from registered voters.

While he was not initially aware, he later learned after the complaint was filed that Diane Velasquez Torres and Daniel Ohiri visited McMahon's residence and solicited contributions and signatures from McMahon and his son. He affirmed that he did not inform Velasquez Torres and Ohiri that it was acceptable to solicit signatures and then contribute the funds if the voter did not have the money. He said that if they did contribute funds, then it would have to be considered "seed money" and reported.

Mr. Benavidez said he disagrees with McMahon’s assertion in Exhibit 33D, of his Declaration, a true and accurate transcript of his conversation with a voter, who confirmed that Benavidez was present and participating in the effort to obtain signatures on the qualifying five dollars form without the required five dollar donation from the voter. He stated this was not true.

He also disagreed with McMahon’s assertion in his declaration (page 1 of Declaration, para 7), that Benavidez’ campaign “regularly, improperly, and illegally filled in names, signed forms, and added” your name and campaign information “ to the official forms after the forms were provided to voters. McMahon stated Exhibit 1A is an example – lacks signature of Benavidez’s campaign, the date and candidate’s name. Exhibit 1B is the form that was submitted to the Clerk, which has this information. Benavidez emphasized what he previously said regarding the City Clerk permitting him to provide the missing information from the forms.

Benavidez also responded to McMahon’s assertion on Page 3, Paragraph 9, of his Declaration, in which he claims that the forms were signed by someone other than the voter, based on the appearance of the signatures. Benavidez said that he would never have instructed volunteers to sign for the contributor, but was aware that this did occur on approximately four occasions, in which the volunteer signed on behalf of a family member or friend.

Page 4, Paragraph 16, of McMahon’s Declaration, referred to transcripts of conversations with people “who have acknowledged they did not contribute the required five dollars or they did not sign the form.” Benavidez said that he only became aware of this after he read it in the complaint. He said that in general, he never instructed volunteers to forego the collection of the required five dollar contribution or to sign the form for the registered voter.

Benavidez said that he disagreed with Rogers who asserted in an August 18, 2017, email to the BOE Chair, that “Mr. Benavidez collected some of these fraudulent forms himself and signed (falsely) as the Representative confirming the \$5 contribution and he was present at some of the instances where his Representatives falsely signed the forms.” He said that was not an accurate statement.

OFFICE OF THE CITY ATTORNEY LEGAL REVIEW:

Mr. John Dubois provided a legal review of the language within the City’s Rules, Regulations and Ordinances that pertain to campaign financing for City Council candidates, based upon questions from the OIG. That review follows:

Regarding whether there is any rule or regulation stating that the contribution receipt form has to be signed at the contributor’s home by the representative at the time that representative is collecting the contribution, Mr. Dubois advised that the primary authority for the collection of qualifying contributions are the following Charter provisions (see also the attachment ‘Campaign Finance City Charter Provisions’):

City Charter Art. XVI

...

Section 3

...

(P) **QUALIFYING CONTRIBUTION.** A donation of \$5.00 in the form of cash, check, debit card, credit card or money order payable to the Fund in support of an Applicant Candidate that:

(1) for the Mayoral race is made by a registered City voter and for a Council race is made by a registered City voter residing in the district in which the Applicant Candidate desires to represent;

(2) is made during the designated Qualifying Period and obtained through efforts made with the knowledge and approval of the Applicant Candidate;

(3) 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, one copy of which is attached to the list of contributors and sent to the City Clerk; and

(4) identifies which Applicant Candidate the City resident supports.

...

(Q) **QUALIFYING PERIOD.**

(1) For Mayoral candidates, from February 16 through March 31; and

(2) For Council candidates, from May 1 through May 31.

...

Section 5. QUALIFYING CONTRIBUTIONS.

(A) An Applicant Candidate for Mayor shall obtain Qualifying Contributions from a minimum of 1% of registered City voters.

(B) An Applicant Candidate for Council shall obtain Qualifying Contributions from a minimum of 1% of the City voters registered in the district that the Applicant Candidate desires to represent.

(C) No payment, gift or anything of value shall be given in exchange for a Qualifying Contribution.

...

Section 9. CANDIDATE REPORTING REQUIREMENTS

(A) The Clerk shall publish guidelines outlining permissible campaign-related Expenditures.

(B) Applicant Candidates shall file Qualifying Contributions with the Clerk during the Qualifying Period according to procedures developed by the Clerk. In developing these procedures, the Clerk shall use existing campaign reporting procedures and deadlines whenever practical.

(C) Participating Candidates shall also report Expenditures according to the campaign reporting requirements specified in the Election Code.

The City Clerk regulations on the subject of qualifying contributions begin on page 6 of the attachment 'City Clerk Regulations re Open and Ethical Elections Code' (hereinafter 'Clerk Regulations'). The regulations require or infer that:

1. The actual contributor must sign the form. See Section 3(P)(3) of Article XVI of the Charter. It is an undecided legal question whether anyone other than a legal guardian could sign on behalf of the contributor, e.g. for convenience when a spouse who is home gets verbal permission to sign and make the contribution on behalf of the other spouse.

2. The original solicitation of the qualifying contribution must be in person, regardless of the propriety of or means used by circulators to follow up and obtain a complete or balance of the required \$5.00 contribution. See Clerk Regulations, Part C, Section 5.

3. The Charter requires the entire \$5.00 qualifying contribution to be made by the contributor himself or herself, as the Charter clearly states in Section 5(C) of Article XVI that the contribution cannot be a gift or loan or barter between the candidate or representative and the contributor. But it is an undecided legal question whether a contributor can authorize anyone else to pay the contribution on behalf of the registered voter for convenience at time of signature, e.g. a spouse or friend present who provides the \$5.00 as a gift or as a personal loan to the contributor.

4. The qualifying contribution from the registered voter must be made within the qualifying period, whether it or not it is obtained at the time of signature. See Section 3(Q) of Article XVI of the Charter.

5. The qualifying contribution form itself must indicate the exact date the contribution was collected, i.e. the date on the form must be the date that the Contributor's \$5.00 donation was received pursuant to Part C, Section 5(a) of the City Clerk Regulations. The Charter and the Clerk Regulations require at a minimum that all dates of full or partial payments and amounts collected to be noted somewhere on the contributor form prior to submission of the entire contribution book to the City Clerk. It is an undecided legal question whether partial payments may be collected at dates different than the original date of the contributor's signature.

The Qualifying \$5 Contribution Receipt form of the City Clerk has a signature lines for "Representative Collecting Contribution" that indicate the representative's name should be printed and a signature given. Clerk Regulations, Part C, Section 5, clearly indicate that the candidate is responsible for making sure that "the receipts are fully and correctly filled out, including signatures." Neither the Charter nor the Clerk Regulations explicitly address the issue of the timing of the signature, just its accuracy. Therefore there does not appear to be any requirement that the form must be signed at the contributor's home by the representative at the time that representative is collecting the contribution.

Regarding whether there is any language stating that the full \$5 has to be submitted at the time the \$5 Contribution Form is signed by the contributor, or can the contributor pay the \$5 at a later time, Mr. Dubois advised:

It is an undecided legal question as to whether the qualifying contribution must be collected at the exact same time of the in person solicitation and signature of the contributor. It is clear, however, that the qualifying contribution from the registered voter must be made within the qualifying period, whether it or not it is obtained at the time of signature. See Section 3 (Q) of Article XVI of the Charter.

Observations:

It is important to be mindful that this was an administrative investigation, so no witnesses were under oath when providing their information.

1. Complainants asserted that there were instances when signatures did not always appear to be the registered voters' signatures; however, the City Clerk advised that the verification process does not include handwriting examination, and so this was not a factor considered during the verification process.
2. Complainants asserted that there were instances when data on the contributors copy (pink) of the contribution receipt form was missing, but was present on the City Clerk's copy (white form); however, the Candidate asserted that he was permitted by the City Clerk to attest to the authenticity of such contribution forms by annotating the missing data on the forms, to include the name of the candidate in the upper right portion of the form.
3. Candidate acknowledged that some of the represents provided funds on behalf of registered voters, but affirmed that he did not instruct them to do this and was not aware of the practice until after the fact.

Comments:

The OIG's role in this matter has been to review the complaint, interview the Complainants, the City Clerk, witnesses, the Candidate, and to review pertinent documents, and to obtain a legal opinion related to the application of the relevant governing City Charter Articles, City Clerk's Office Regulations, and the alleged violations of law and regulations.

The OIG does not take a position on the credibility of the Complainants, the Candidate or any of the witnesses, nor the veracity or truthfulness of the information provided.

The OIG is an independent office of the City government, and it is essential to remain objective and unbiased throughout the investigative process. This was a paramount concern throughout the investigation. The OIG remains available to the BOE to address any questions or requests for additional information that board may have.