

SUPREME COURT
CASE DOCKET
CASE NO. S-1-SC-39617

The Board of Regents v. Cedric D. Page

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Location: **Supreme Court**
Filed on: **10/21/2022**

CASE INFORMATION




Case Type: **Original Proceeding - Mixed Writs**
Case Status: **11/17/2022 Briefing**

PARTY INFORMATION

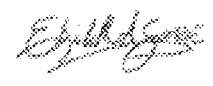
Petitioner	The Board of Regents of the New Mexico Military Institute	<i>Attorneys</i> Wiggins, Lorna M. Retained 505-764-8400(W) Wiggins, Williams & Wiggins, P.C. P.O. Box 1308 Albuquerque, NM 87103 Williams, Patricia Greene Retained 505-764-8400(W) Wiggins, Williams & Wiggins, P.C. P.O. Box 1308 Albuquerque, NM 87103
Respondent	Page, Cedric D., PhD	DelBene, Kaitlyn Elizabeth Retained 505-989-6206(W) Jones, Snead, Wertheim & Clifford, P.A. P.O. Box 2228 Santa Fe, NM 87504

DATE	EVENTS & ORDERS OF THE COURT	INDEX
10/21/2022	 OPN: Petition Filed By: Petitioner The Board of Regents of the New Mexico Military Institute <i>Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent</i>	
10/21/2022	 Exhibits Filed <i>Attached to petition</i>	
10/21/2022	 NTC: Notice of Non-Conforming Pleading To Party: Petitioner The Board of Regents of the New Mexico Military Institute <i>Verfieid Petition for Emergency</i>	
10/26/2022	 Amended Pleading Filed By: Petitioner The Board of Regents of the New Mexico Military Institute <i>Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected)</i>	
10/26/2022	 Exhibits Filed <i>attached to Petition</i>	

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11/14/2022	 Entry of Appearance On Behalf Of: Respondent Page, Cedric D., PhD <i>Entry of Appearance</i>
11/14/2022	 NTC: Notice of Unavailability Filed By: Respondent Page, Cedric D., PhD <i>Notice of Non-Availability</i>
11/15/2022	 Miscellaneous Pleading Filed By: Petitioner The Board of Regents of the New Mexico Military Institute <i>Supplemental Exhibit in Support of the Verified Complaint And/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected)</i>
11/15/2022	 Supplemental Exhibits Filed
11/17/2022	 ORD: Setting Briefing Schedule/Identifying Issues to Brief
11/21/2022	 NTC: Notice of Unavailability Filed By: Attorney DelBene, Kaitlyn Elizabeth <i>Amended Notice of Non-Availability</i>
11/28/2022	 NTC: Notice of Unavailability Filed By: Attorney Wiggins, Lorna M. <i>Notice of Unavailability</i>
12/05/2022	 Other Briefs Filed By: Respondent Page, Cedric D., PhD <i>Brief Regarding Jurisdiction in Quo Warranto</i>
12/05/2022	 Other Briefs Filed By: Petitioner The Board of Regents of the New Mexico Military Institute <i>Brief Addressing the Jurisdiction of the Supreme Court</i>

DATE	FINANCIAL INFORMATION		
	Petitioner The Board of Regents of the New Mexico Military Institute		
	Total Charges		125.00
	Total Payments and Credits		125.00
	Balance Due as of 12/06/2022		0.00
10/27/2022	Charge	Petitioner The Board of Regents of the New Mexico Military Institute	125.00
10/27/2022	Mail Payment	Receipt # SUP-2022-00869 Petitioner The Board of Regents of the New Mexico Military Institute	(125.00)



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

S-1-SC-39617

Petitioner,

v.

No.

CEDRIC D. PAGE, PhD,

Respondent.

**VERIFIED PETITION FOR EMERGENCY WRIT
FOR THE REMOVAL OF CEDRIC D. PAGE, PhD AS A REGENT FROM
THE BOARD OF REGENTS OF NEW MEXICO MILITARY INSTITUTE**

WIGGINS, WILLIAMS & WIGGINS

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TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES..... 4

I. GROUNDS FOR THE PETITION..... 1

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED 10

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE..... 11

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . . PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES..... 12

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME..... 12

VI. EMERGENCY CONSIDERATION 12

VII. OPINION, ORDERS AND TRANSCRIPTS..... 13

CERTIFICATE OF SERVICE..... 14

ATTACHMENTS:

- Exhibit 1: October 10, 2022 Notice to Dr. Page
- Exhibit 2: October 5, 2022 letter from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez
- Exhibit 3: Notification to Dr. Page
- Exhibit 4: Response from Dr. Page

Exhibit 5: Transcript of Minutes containing motion (to be supplemented) from
Audio Recording, 7-12-22 and Audio Recording, 9-29-22

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NMSA 1978, § 14-2-1 5

Constitutional Provisions

N.M. Const. art. XII, § 13 8, 9, 10, 11

The Board of Regents of the New Mexico Military Institute (“BOR”) respectfully requests this Court issue a writ and hold the constitutionally required hearing to effect the removal of Respondent Cedric D. Page, PhD (“Dr. Page”) from membership as a Regent of the New Mexico Military Institute (“NMMI”) for incompetence, neglect of duty and/or malfeasance in office as a Regent.

I. GROUNDS FOR THE PETITION

1. NMMI was established in 1891 as a public military junior college in Roswell, New Mexico. NMMI enrolls nearly 1,000 cadets at the junior college and high school levels each year from forty-five states, two United States territories (Puerto Rico and American Samoa) and thirty-five foreign nations.

2. Major General Jerry Grizzle, Ph.D., United States Army (Retired) (“MG Grizzle”), became the nineteenth President/Superintendent of NMMI on July 1, 2009 and continues to serve in that role. He is the senior most member of NMMI’s administration and reports to the BOR.

3. NMMI is a constitutionally created institution with a five-member BOR who are appointed by the Governor and confirmed by the Senate. The BOR has in effect a Board of Regents Policy Manual that governs its work. The BOR also relies on Robert’s Rules of Order to conduct its business. BOR Policy Manual § 6.7.4

4. Dr. Page was appointed by the Governor, confirmed by the Senate and took his oath of office as a NMMI Regent on April 26, 2019. Dr. Page attended

multiple orientation and training sessions facilitated by NMMI staff and counsel on the duties of a Regent, including a Regent's fiduciary duties. Dr. Page was also trained on various state sunshine laws that apply to NMMI, such as the Open Meetings Act and Inspection of Public Records Act ("IPRA"). In addition, at the time he took his oath of office, NMMI provided Dr. Page with handbook which contained, among other things, the Governmental Conduct Act Compliance Guide, New Mexico Inspection of Records Act Compliance Guide, the Open Meetings Notice Resolution, the New Mexico Open Meetings Act Compliance Guide and the BOR Policy Manual. *See* BOR Policy Manual § 6.2.4

5. At a duly scheduled regular meeting of the BOR on July 12, 2022, which was a hybrid meeting with attendees participating in person and via Zoom, Dr. Page discussed MG Grizzle's evaluation process and criteria and then asked whether there was anyone from "personnel" present who could answer whether anyone on "staff" lived at an address he read into the record.

6. MG Grizzle stated that that the address was his address.

7. Dr. Page then said "he received" an IPRA request for his prior employment records from UNM-Los Alamos "from that address" so he "just wanted to know if there was anybody on staff" at that address. Dr. Page also identified the request as "request number 2176."

8. MG Grizzle sent the IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

9. Dr. Page subsequently said that it was "unusual for a subordinate to make a request from a Regent," and noted that Regents are "vetted." *See* Audio Recording, 7-12-22, at approximately 14:30. Dr. Page's comments immediately followed his discussions of MG Grizzle's evaluation and concluded with his noting that if a record should be made of the request, so be it.

10. Counsel for the BOR pointed out that "every citizen of the state has a right to request public records" and that the reason for an IPRA request need not be disclosed.

11. The BOR did not engage in further discussion of Dr. Page's conduct at the July 12, 2022 meeting. As noted below, it scheduled a later special meeting with an agenda item to discuss in an executive session the propriety of Dr. Page's comments.

12. Various NMMI employees and others who attended the July 12, 2022 BOR meeting reported that they believed Dr. Page's comments were an orchestrated effort to discredit MG Grizzle by intimating that he engaged in an illegal act and that those comments were designed by Dr. Page to be misleading.

13. The comments from Dr. Page occurred during the public portion of a regularly scheduled meeting of the BOR. Dr. Page's question about who lived at the identified address and his statements that it was he who had received the IPRA request and that it was unusual when a subordinate requested information of his supervisor was wrong on many levels: first, it was clear that Dr. Page had seen or had a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number; second, there was no reason to begin the discussion by asking who lived at the address when Dr. Page was aware of the answer to that question; and third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request.

14. Dr. Page did not receive the IPRA request; it was addressed to UNM-Los Alamos, Dr. Page's prior employer. In fact, there was no reason why he should have been in the possession of that request. While Dr. Page's possession of the request was not improper, it demonstrates that Dr. Page was prepared to make his comment in the public part of the open meeting and his question about who resided at the address contained on the IPRA request was disingenuous at minimum and an effort to cause those in attendance to wonder whether there was something wrong with the request by MG Grizzle.

15. The President/Superintendent of NMMI works for the entire BOR. Dr. Page was not the exclusive supervisor of MG Grizzle which demonstrates that

he misunderstood the nature of the relationship between a Regent and an employee of the institution.

16. It was not in any way improper for a citizen of New Mexico to request public records concerning his/her/their supervisor's prior employment history but yet the statements of Dr. Page in an open meeting cast aspersions at MG Grizzle for his IPRA request. IPRA allows for any citizen of the State to request a public record without stating a reason, as Counsel pointed out at the meeting. *See* NMSA 1978, § 14-2-1 ("Every person has a right to inspect public records of this state except:" for certain limited exceptions, not relevant here).

17. Dr. Page's statements were made during the public portion of the BOR meeting in front of numerous attendees.

18. MG Grizzle had no obligation to offer any defense of his actions at the BOR meeting, particularly because requesting public records is a right reserved to all citizens of the State. The request was sent using MG Grizzle's home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

19. After that meeting and in response to Dr. Page's conduct, members of the BOR met twice in Special Meetings, on August 22 and September 6, 2022, to discuss MG Grizzle's response to Dr. Page's conduct and behavior and MG Grizzle's assertion of claims under the New Mexico Whistleblower Act, IPRA and

the New Mexico Human Rights Act. The discussions of Dr. Page's conduct occurred during sessions that were closed in accordance with the Open Meetings Act "threatened and pending litigation" exception to public meetings. Dr. Page attended both Special Meetings and fully participated in over five hours of BOR discussions.

20. Without disclosing the substance of the closed sessions, Dr. Page was encouraged by members of the BOR to seek out MG Grizzle to discuss his comments and to rectify any misunderstanding that may have been occasioned by Dr. Page's comments. Dr. Page did not respond to these efforts. Dr. Page never discussed his comments with MG Grizzle or made any attempt to reach common ground or prevent a rift from growing between the NMMI administration and the BOR.

21. On September 29, 2022, a Special Meeting was convened to address the BOR's response to Dr. Page's comments and conduct during and following the July 12, 2022 meeting. At the September 29, 2022 meeting, the following motion was made, seconded and discussed:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President's prior approval.

Audio Recording, 9-29-22, at approximately 5:30. Dr. Page was given the opportunity to make statements about the proposed motion.

Dr. Page made the following statement at that time:

I just want to refer to the key values for the Institute and I understand fully that the Board supports and is committed to these key values. They're available in our Board Policy Manual; values about knowledge, our commitment to pursue and to share knowledge about how we operate as a Board and how we are informed about the laws that pertain to us. I understand that we committed to integrity and integrity with regard to students and faculty and staff of the Institute. Uh, we are committed to service – the services that we expect of our students at the institute – uh – we provide that opportunity through their academic programs and their leadership programs. And lastly, we have a commitment to responsibility and responsibility to the students and their families, to the citizens and taxpayers of New Mexico. So as the Board when we abide by all of these, that leads to a better sense of public confidence in the Institute as a place where families will want to send their young people. So as a Board, I think we are all working towards the same end and objective, if we are committed to those values and – you know- the Honor Code sums it all up. The Honor Code at my first institute of higher learning and at my last military posting has the same Honor Code as we have at New Mexico Military Institute. So, as the Board members make their decision, I want you to keep in mind that key values that we all committed to when we signed on to provide policy guidance and leadership for the Institute along with certainly the administration that carries out the day-to-day functions of the Institute.

Id. at 20:56.

22. The BOR voted to approve this motion on 3-2 vote. See id.

23. New Mexico Constitution in relevant part, provides:

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). The Board of Regents Policy Manual echoes this provision. BOR Policy Manual 5.1.

24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 1**.

28. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

29. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR "under such rules as it may promulgate."

30. When questioned about the procedure the BOR has followed in effecting Dr. Page's removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should

be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 2**.

31. When Dr. Page was given notice that he would be permitted to attend Board of Regents' meetings as a member of the public and would not be permitted to participate in executive sessions, Dr. Page's response was not to deny the facts surrounding the basis for his exclusion or the basis for the vote to begin the process for his removal, but to threaten the Board with criminal prosecution. **Exhibit 3 (Notification to Dr. Page) and Exhibit 4 (Response from Dr. Page)**.

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. N.M. Const. art. XII, § 13 provides that “[t]he supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

2. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” *Id.* The BOR requests that this Court hold a hearing to satisfying this requirement.

3. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle's right to pursue that request,

failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR
PROPER TO SEEK THE WRIT IN THE SUPREME COURT
IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE
TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page's actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requestor is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . .
PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS
BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMMI. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VI. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

VI. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

VII. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in transcribed minutes to be supplemented and identified as **Exhibit 5** to this Petition.
2. The instructions given to Dr. Page and members of the administration are attached as **Exhibit 1**.
3. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as **Exhibit 2**.
4. The October 17, 2022 Notification to Dr. Page is attached as **Exhibit 3**.
5. The October 19, 2022 Response from Dr. Page is attached as **Exhibit 4**.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

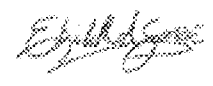
I HEREBY CERTIFY that on October 21, 2022 a true and correct copy of foregoing Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute was served upon Respondent by mail at 84 Canada Del Rancho, Santa Fe, New Mexico 87508 and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins



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TABLE OF CONTENTS

TABLE OF CONTENTS 2

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19. After that meeting and in response to Dr. Page's conduct, members of the BOR met twice in Special Meetings, on August 22 and September 6, 2022, to discuss MG Grizzle's response to Dr. Page's conduct and behavior and MG Grizzle's assertion of claims under the New Mexico Whistleblower Act, IPRA and

the New Mexico Human Rights Act. The discussions of Dr. Page's conduct occurred during sessions that were closed in accordance with the Open Meetings Act "threatened and pending litigation" exception to public meetings. Dr. Page attended both Special Meetings and fully participated in over five hours of BOR discussions.

20. Without disclosing the substance of the closed sessions, Dr. Page was encouraged by members of the BOR to seek out MG Grizzle to discuss his comments and to rectify any misunderstanding that may have been occasioned by Dr. Page's comments. Dr. Page did not respond to these efforts. Dr. Page never discussed his comments with MG Grizzle or made any attempt to reach common ground or prevent a rift from growing between the NMMI administration and the BOR.

21. On September 29, 2022, a Special Meeting was convened to address the BOR's response to Dr. Page's comments and conduct during and following the July 12, 2022 meeting. At the September 29, 2022 meeting, the following motion was made, seconded and discussed:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President's prior approval.

Audio Recording, 9-29-22, at approximately 5:30. Dr. Page was given the opportunity to make statements about the proposed motion.

Dr. Page made the following statement at that time:

I just want to refer to the key values for the Institute and I understand fully that the Board supports and is committed to these key values. They're available in our Board Policy Manual; values about knowledge, our commitment to pursue and to share knowledge about how we operate as a Board and how we are informed about the laws that pertain to us. I understand that we committed to integrity and integrity with regard to students and faculty and staff of the Institute. Uh, we are committed to service – the services that we expect of our students at the institute – uh – we provide that opportunity through their academic programs and their leadership programs. And lastly, we have a commitment to responsibility and responsibility to the students and their families, to the citizens and taxpayers of New Mexico. So as the Board when we abide by all of these, that leads to a better sense of public confidence in the Institute as a place where families will want to send their young people. So as a Board, I think we are all working towards the same end and objective, if we are committed to those values and – you know- the Honor Code sums it all up. The Honor Code at my first institute of higher learning and at my last military posting has the same Honor Code as we have at New Mexico Military Institute. So, as the Board members make their decision, I want you to keep in mind that key values that we all committed to when we signed on to provide policy guidance and leadership for the Institute along with certainly the administration that carries out the day-to-day functions of the Institute.

Id. at 20:56.

22. The BOR voted to approve this motion on 3-2 vote. See id.

23. New Mexico Constitution in relevant part, provides:

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). The Board of Regents Policy Manual echoes this provision. BOR Policy Manual 5.1.

24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 1**.

28. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

29. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR "under such rules as it may promulgate."

30. When questioned about the procedure the BOR has followed in effecting Dr. Page's removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should

be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 2**.

31. When Dr. Page was given notice that he would be permitted to attend Board of Regents' meetings as a member of the public and would not be permitted to participate in executive sessions, Dr. Page's response was not to deny the facts surrounding the basis for his exclusion or the basis for the vote to begin the process for his removal, but to threaten the Board with criminal prosecution. **Exhibit 3 (Notification to Dr. Page) and Exhibit 4 (Response from Dr. Page)**.

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. N.M. Const. art. XII, § 13 provides that “[t]he supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

2. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” *Id.* The BOR requests that this Court hold a hearing to satisfying this requirement.

3. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle's right to pursue that request,

failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR
PROPER TO SEEK THE WRIT IN THE SUPREME COURT
IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE
TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page's actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requestor is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . .
PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS
BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMMI. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VI. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

VI. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

VII. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in transcribed minutes to be supplemented and identified as **Exhibit 5** to this Petition.
2. The instructions given to Dr. Page and members of the administration are attached as **Exhibit 1**.
3. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as **Exhibit 2**.
4. The October 17, 2022 Notification to Dr. Page is attached as **Exhibit 3**.
5. The October 19, 2022 Response from Dr. Page is attached as **Exhibit 4**.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 21, 2022 a true and correct copy of foregoing Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute was served upon Respondent by mail at 84 Canada Del Rancho, Santa Fe, New Mexico 87508 and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS

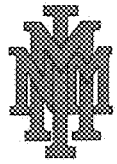
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Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins



NEW MEXICO MILITARY INSTITUTE
Governing Board of Regents
101 West College Boulevard
Roswell, New Mexico 88201-5173



October 10, 2022

MEMORANDUM

To: Regent Cedric D. Page
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: President Bradford Christmas

Date: October 10, 2022

Subject: Interim Instructions Regarding Removal of Cedric D. Page
as NMMI Regent

As you know, the Board of Regents voted on September 29, 2022 to begin the process to remove Cedric D. Page, PhD from the New Mexico Military Institute Board of Regents. The Constitution of the State of New Mexico governs the removal process. Regent Page will not be removed officially from the Board until that process is concluded and the Court makes its determination.

In accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim, Regent Page will be removed from his committee assignments and will have no duties as Vice Chair of the Board. He may attend Board of Regents meetings and listen to the deliberations. He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on items considered by the Board. He will not be able to participate in executive sessions.

With regard to Staff, Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events. Once the constitutional process is completed, Regents and Staff will receive further instruction.

cc: MG Jerry Grizzle
COL David West

NEW MEXICO
HIGHER EDUCATION
DEPARTMENT

Fostering Student Success from Cradle to Career



Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary

VIA ELECTRONIC MESSAGE

October 5, 2022

Chairman Bradford Christmas
Board of Regents
New Mexico Military Institute
101 W. College Boulevard
Roswell, NM 88201

Dear Chairman Christmas:

It was brought to my attention that at the September 29, 2022, meeting of the Board of Regents of the New Mexico Military Institute, the board voted three-to-two to advise Regent Cedric Page that the board intends to proceed with his removal as a regent.

The motion read, "...a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact New Mexico Military Institute employees or attend NMMI or Board functions without the president's prior approval."

Pursuant to Article VII, Section 13 of the Constitution of New Mexico as well as Section 5.1 of the New Mexico Military Institute's Board of Regents Policy Manual, the Supreme Court of the State of New Mexico has exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

If you have any questions, please contact Peter Kovnat, General Counsel of the New Mexico Higher Education Department, at Peter.Kovnat@hed.nm.gov.

Sincerely,

Stephanie M. Rodriguez
Cabinet Secretary

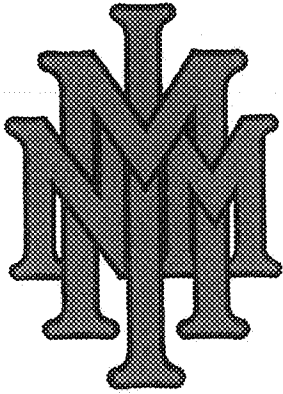
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HIGHER EDUCATION
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Fostering Student Success from Cradle to Career



*Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary*

CC: Holly Agajanian, Chief General Counsel, Office of the Governor
Melissa Salazar, Director of Boards and Commissions, Office of the Governor
Major General Jerry Grizzle, Ph.D., Superintendent and President, New Mexico Military Institute
Regent Harold Alan Edmonson, Jr., New Mexico Military Institute
Regent John Garcia, New Mexico Military Institute
Regent Cedric Page, Ph.D., New Mexico Military Institute
Regent Maria Christina Montoya, New Mexico Military Institute



NEW MEXICO MILITARY INSTITUTE

Governing Board of Regents

101 West College Boulevard
Roswell, New Mexico 88201-5173

October 17, 2022

Cedric D. Page, PhD
84 Canada Del Rancho
Santa Fe, NM 87508

NMMI Regents

Dear Dr. Page:

Enclosed is a copy of the final version of the Petition for Removal. Please understand that NMMI is prepared to file the Petition should you elect not to resign your position as Regent by signing the enclosed resignation letter, or a resignation letter you prepare and sign. If you resign your Regent position, NMMI will not pursue further action. In addition, I understand MG Grizzle will not pursue any personal action against you. Kindly let us know your position no later than October 27, 2022. If we do not hear from you by that date, a Petition will be filed.

Very truly yours,

New Mexico Military Institute

A handwritten signature in cursive script, reading "Bradford Christmas", written over a horizontal line.

Bradford Christmas
Board of Regents President

Enclosures:
Resignation
Writ

CC:
File
Regents
L. Wiggins

Dear Regent Christmas,

I am resigning my position as Regent of New Mexico Military Institute, effective October 26, 2022.

Very truly yours,

Cedric D. Page, PhD

cc: Honorable Michelle Lujan Grisham

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No.

CEDRIC D. PAGE, PhD,

Respondent.

VERIFIED PETITION FOR EMERGENCY WRIT
FOR THE REMOVAL OF CEDRIC D. PAGE, PhD AS A REGENT FROM
THE BOARD OF REGENTS OF NEW MEXICO MILITARY INSTITUTE

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
I. GROUND FOR THE PETITION	1
II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED.....	10
III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE	10
IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST ... PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES	11
V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME	12
VI. EMERGENCY CONSIDERATION	12
VII. OPINION, ORDERS AND TRANSCRIPTS.....	12
CERTIFICATE OF SERVICE	14

ATTACHMENTS:

Exhibit 1: October 10, 2022 Notice to Dr. Page

Exhibit 2: October 5, 2022 letter from New Mexico Higher Education Department
Cabinet Secretary Stephanie M. Rodriguez

Exhibit 3: Minutes containing motion

Audio Recording, 7-12-22

Audio Recording, 9-29-22

TABLE OF AUTHORITIES

Statutes

NMSA 1978, § 14-2-1..... 5

Constitutional Provisions

N.M. Const. art. XII, § 13 8, 9, 10, 11

multiple orientation and training sessions facilitated by NMMI staff and counsel on the duties of a Regent, including a Regent's fiduciary duties. Dr. Page was also trained on various state sunshine laws that apply to NMMI, such as the Open Meetings Act and Inspection of Public Records Act ("IPRA"). In addition, at the time he took his oath of office, NMMI provided Dr. Page with handbook which contained, among other things, the Governmental Conduct Act Compliance Guide, New Mexico Inspection of Records Act Compliance Guide, the Open Meetings Notice Resolution, the New Mexico Open Meetings Act Compliance Guide and the BOR Policy Manual. *See* BOR Policy Manual § 6.2.4

5. At a duly scheduled regular meeting of the BOR on July 12, 2022, which was a hybrid meeting with attendees participating in person and via Zoom, Dr. Page discussed MG Grizzle's evaluation process and criteria and then asked whether there was anyone from "personnel" present who could answer whether anyone on "staff" lived at an address he read into the record.

6. MG Grizzle stated that that the address was his address.

7. Dr. Page then said "he received" an IPRA request for his prior employment records from UNM-Los Alamos "from that address" so he "just wanted to know if there was anybody on staff" at that address. Dr. Page also identified the request as "request number 2176."

8. MG Grizzle sent the IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

9. Dr. Page subsequently said that it was "unusual for a subordinate to make a request from a Regent," and noted that Regents are "vetted." *See* Audio Recording, 7-12-22, at approximately 14:30. Dr. Page's comments immediately followed his discussions of MG Grizzle's evaluation and concluded with his noting that if a record should be made of the request, so be it.

10. Counsel for the BOR pointed out that "every citizen of the state has a right to request public records" and that the reason for an IPRA request need not be disclosed.

11. The BOR did not engage in further discussion of Dr. Page's conduct at the July 12, 2022 meeting. As noted below, it scheduled a later special meeting with an agenda item to discuss in an executive session the propriety of Dr. Page's comments.

12. Various NMMI employees and others who attended the July 12, 2022 BOR meeting reported that they believed Dr. Page's comments were an orchestrated effort to discredit MG Grizzle by intimating that he engaged in an illegal act and that those comments were designed by Dr. Page to be misleading.

13. The comments from Dr. Page occurred during the public portion of a regularly scheduled meeting of the BOR. Dr. Page's question about who lived at the identified address and his statements that it was he who had received the IPRA request and that it was unusual when a subordinate requested information of his supervisor was wrong on many levels: first, it was clear that Dr. Page had seen or had a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number; second, there was no reason to begin the discussion by asking who lived at the address when Dr. Page was aware of the answer to that question; and third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request.

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24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 1**.

28. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

29. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR "under such rules as it may promulgate."

30. When questioned about the procedure the BOR has followed in effecting Dr. Page's removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should

be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 2**.

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. N.M. Const. art. XII, § 13 provides that “[t]he supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

2. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” *Id.* The BOR requests that this Court hold a hearing to satisfying this requirement.

3. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle’s right to pursue that request, failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page’s actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request

public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requester is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . .
PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMMI. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VI. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

VI. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

VII. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in the minutes attached as **Exhibit 3** to this Petition.

2. The relevant tape recordings are being logged with the Court clerk concurrently with the filing of this Petition.

3. The instructions given to Dr. Page and members of the administration are attached as Exhibit 1.

4. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as Exhibit 2.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October __, 2022 a true and correct copy of foregoing Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute was served upon Respondent by mail at _____ and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS

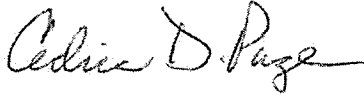
A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins

MEMORANDUM FOR THE RECORD

To: Regent Bradford Christmas
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: Regent and Vice President Cedric D. Page, PhD. 
Date: October 19, 2022

Subject: Response to Memorandum entitled "Interim Instructions Regarding Removal of Cedric D. Page as NMMI Regent dated October 10, 2022."

Regent Christmas, as stated in the NMMI Board of Regents Policy Manual:

"Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950, November 4, 1986, and November 8, 1994.)"

In your memorandum, dated October 10, 2022, you state:

"...in accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim...He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on times considered by the Board. He will not be able to participate in executive sessions...Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events."

In your memorandum, you fail to cite or reference any specific policy within the BOR Manual, adopted Robert's Rules, or any legal or statutory authority for that matter as the source of authority to impose these restrictions as interim measures while the Board pursues an attempt to remove me from office through the Supreme Court or New Mexico. In fact, no such authority exists.

As such, these instructions have no legal effect. The instructions are unenforceable and invalid.

No individual Regent nor the Board acting on a resolution they passed has authority to unilaterally remove or restrict, whether constructively or officially, a duly appointed and confirmed Regent from the Board from carrying out the duties of the office to which they were appointed and confirmed. That authority rests solely with the Supreme Court of New Mexico.

As a duly appointed and confirmed Regent, I have the authority to discharge the duties of my office without willful interference.

Be advised of the criminal statutes pertaining to interference with public officials with regard to the educational process of any public or private school, particularly with acts that would disrupt, impair, interfere with or obstruct. NM Stat § 30-20-13 (2018) Interference with members of staff, public officials or the general public; trespass; damage to property; misdemeanors; penalties., Section D, states:

"No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

As a Regent of NMMI, your instructions and actions could be regarded as willfully interfering with my ability, as a public official, from carrying out my lawful mission and duties as a Regent without legal authority. As a Regent and hence, public official, my duties are statutory and a part of the mission, processes, procedures or functions of NMMI.

Also, your actions could be regarded as inciting others, both fellow Regents and NMMI staff, to take actions that could constitute unlawful and criminal interference with a public official, in violation of the criminal statute 30-20-13 and thus exposing fellow Regents and staff to criminal liability if they willfully participate in actions based on your instructions that are unsupported by any legal authority.

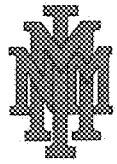
Absent my removal by a final decision from the Supreme Court, I shall continue to fully discharge the duties of the office to which I was appointed. Unlawful interference may be referred to the appropriate State law enforcement authorities. In addition, be advised that any unlawful acts, including criminal violations perpetrated in and through official acts by you and/or fellow Regents may be grounds for an allegation of malfeasance in office and ultimately be grounds for removal by the Supreme Court of New Mexico.

cc: Holly Agajanian, Chief General Counsel to the Governor, State of New Mexico
Hector Balderas, Attorney General, State of New Mexico
Stephanie M. Rodriguez, Secretary for Higher Education Department, State of New Mexico
Peter Kovnat, Counsel for Higher Education Department, State of New Mexico
President/Superintendent Jerry Grizzle, New Mexico Military Institute
COL David West, Chief of Staff, New Mexico Military Institute

**TRANSCRIPT OF MINUTES TAKEN FROM
AUDIO RECORDING 7-12-22 and AUDIO RECORDING 9-29-22**



NEW MEXICO MILITARY INSTITUTE
Governing Board of Regents
101 West College Boulevard
Roswell, New Mexico 88201-5173



October 10, 2022

MEMORANDUM

To: Regent Cedric D. Page
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: President Bradford Christmas

Date: October 10, 2022

Subject: Interim Instructions Regarding Removal of Cedric D. Page
as NMMI Regent

As you know, the Board of Regents voted on September 29, 2022 to begin the process to remove Cedric D. Page, PhD from the New Mexico Military Institute Board of Regents. The Constitution of the State of New Mexico governs the removal process. Regent Page will not be removed officially from the Board until that process is concluded and the Court makes its determination.

In accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim, Regent Page will be removed from his committee assignments and will have no duties as Vice Chair of the Board. He may attend Board of Regents meetings and listen to the deliberations. He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on items considered by the Board. He will not be able to participate in executive sessions.

With regard to Staff, Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events. Once the constitutional process is completed, Regents and Staff will receive further instruction.

cc: MG Jerry Grizzle
COL David West

NEW MEXICO
HIGHER EDUCATION
DEPARTMENT

Fostering Student Success from Cradle to Career



Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary

VIA ELECTRONIC MESSAGE

October 5, 2022

Chairman Bradford Christmas
Board of Regents
New Mexico Military Institute
101 W. College Boulevard
Roswell, NM 88201

Dear Chairman Christmas:

It was brought to my attention that at the September 29, 2022, meeting of the Board of Regents of the New Mexico Military Institute, the board voted three-to-two to advise Regent Cedric Page that the board intends to proceed with his removal as a regent.

The motion read, "...a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact New Mexico Military Institute employees or attend NMMI or Board functions without the president's prior approval."

Pursuant to Article VII, Section 13 of the Constitution of New Mexico as well as Section 5.1 of the New Mexico Military Institute's Board of Regents Policy Manual, the Supreme Court of the State of New Mexico has exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

If you have any questions, please contact Peter Kovnat, General Counsel of the New Mexico Higher Education Department, at Peter.Kovnat@hed.nm.gov.

Sincerely,

A handwritten signature in black ink that reads "Stephanie M. Rodriguez". The signature is written in a cursive, flowing style.

Stephanie M. Rodriguez
Cabinet Secretary

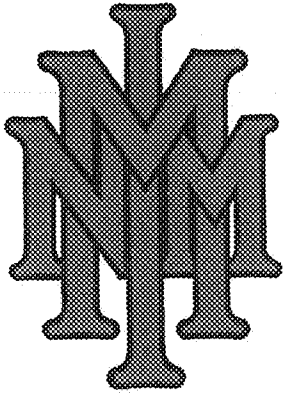
**NEW MEXICO
HIGHER EDUCATION
DEPARTMENT**

Fostering Student Success from Cradle to Career



*Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary*

CC: Holly Agajanian, Chief General Counsel, Office of the Governor
Melissa Salazar, Director of Boards and Commissions, Office of the Governor
Major General Jerry Grizzle, Ph.D., Superintendent and President, New Mexico Military Institute
Regent Harold Alan Edmonson, Jr., New Mexico Military Institute
Regent John Garcia, New Mexico Military Institute
Regent Cedric Page, Ph.D., New Mexico Military Institute
Regent Maria Christina Montoya, New Mexico Military Institute



NEW MEXICO MILITARY INSTITUTE

Governing Board of Regents

101 West College Boulevard
Roswell, New Mexico 88201-5173

October 17, 2022

Cedric D. Page, PhD
84 Canada Del Rancho
Santa Fe, NM 87508

NMMI Regents

Dear Dr. Page:

Enclosed is a copy of the final version of the Petition for Removal. Please understand that NMMI is prepared to file the Petition should you elect not to resign your position as Regent by signing the enclosed resignation letter, or a resignation letter you prepare and sign. If you resign your Regent position, NMMI will not pursue further action. In addition, I understand MG Grizzle will not pursue any personal action against you. Kindly let us know your position no later than October 27, 2022. If we do not hear from you by that date, a Petition will be filed.

Very truly yours,

New Mexico Military Institute

Bradford Christmas
Board of Regents President

Enclosures:
Resignation
Writ

CC:
File
Regents
L. Wiggins

Dear Regent Christmas,

I am resigning my position as Regent of New Mexico Military Institute, effective October 26, 2022.

Very truly yours,

Cedric D. Page, PhD

cc: Honorable Michelle Lujan Grisham

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No.

CEDRIC D. PAGE, PhD,

Respondent.

VERIFIED PETITION FOR EMERGENCY WRIT
FOR THE REMOVAL OF CEDRIC D. PAGE, PhD AS A REGENT FROM
THE BOARD OF REGENTS OF NEW MEXICO MILITARY INSTITUTE

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
I. GROUNDS FOR THE PETITION	1
II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED.....	10
III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE	10
IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST ... PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES	11
V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME	12
VI. EMERGENCY CONSIDERATION	12
VII. OPINION, ORDERS AND TRANSCRIPTS.....	12
CERTIFICATE OF SERVICE	14

ATTACHMENTS:

Exhibit 1: October 10, 2022 Notice to Dr. Page

Exhibit 2: October 5, 2022 letter from New Mexico Higher Education Department
Cabinet Secretary Stephanie M. Rodriguez

Exhibit 3: Minutes containing motion

Audio Recording, 7-12-22

Audio Recording, 9-29-22

TABLE OF AUTHORITIES

Statutes

NMSA 1978, § 14-2-1..... 5

Constitutional Provisions

N.M. Const. art. XII, § 13 8, 9, 10, 11

The Board of Regents of the New Mexico Military Institute (“BOR”) respectfully requests this Court issue a writ and hold the constitutionally required hearing to effect the removal of Respondent Cedric D. Page, PhD (“Dr. Page”) from membership as a Regent of the New Mexico Military Institute (“NMMI”) for incompetence, neglect of duty and/or malfeasance in office as a Regent.

I. GROUNDS FOR THE PETITION

1. NMMI was established in 1891 as a public military junior college in Roswell, New Mexico. NMMI enrolls nearly 1,000 cadets at the junior college and high school levels each year from forty-five states, two United States territories (Puerto Rico and American Samoa) and thirty-five foreign nations.

2. Major General Jerry Grizzle, Ph.D., United States Army (Retired) (“MG Grizzle”), became the nineteenth President/Superintendent of NMMI on July 1, 2009 and continues to serve in that role. He is the senior most member of NMMI’s administration and reports to the BOR.

3. NMMI is a constitutionally created institution with a five-member BOR who are appointed by the Governor and confirmed by the Senate. The BOR has in effect a Board of Regents Policy Manual that governs its work. The BOR also relies on Robert’s Rules of Order to conduct its business. BOR Policy Manual § 6.7.4

4. Dr. Page was appointed by the Governor, confirmed by the Senate and took his oath of office as a NMMI Regent on April 26, 2019. Dr. Page attended

multiple orientation and training sessions facilitated by NMMI staff and counsel on the duties of a Regent, including a Regent's fiduciary duties. Dr. Page was also trained on various state sunshine laws that apply to NMMI, such as the Open Meetings Act and Inspection of Public Records Act ("IPRA"). In addition, at the time he took his oath of office, NMMI provided Dr. Page with handbook which contained, among other things, the Governmental Conduct Act Compliance Guide, New Mexico Inspection of Records Act Compliance Guide, the Open Meetings Notice Resolution, the New Mexico Open Meetings Act Compliance Guide and the BOR Policy Manual. *See* BOR Policy Manual § 6.2.4

5. At a duly scheduled regular meeting of the BOR on July 12, 2022, which was a hybrid meeting with attendees participating in person and via Zoom, Dr. Page discussed MG Grizzle's evaluation process and criteria and then asked whether there was anyone from "personnel" present who could answer whether anyone on "staff" lived at an address he read into the record.

6. MG Grizzle stated that that the address was his address.

7. Dr. Page then said "he received" an IPRA request for his prior employment records from UNM-Los Alamos "from that address" so he "just wanted to know if there was anybody on staff" at that address. Dr. Page also identified the request as "request number 2176."

8. MG Grizzle sent the IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

9. Dr. Page subsequently said that it was "unusual for a subordinate to make a request from a Regent," and noted that Regents are "vetted." *See* Audio Recording, 7-12-22, at approximately 14:30. Dr. Page's comments immediately followed his discussions of MG Grizzle's evaluation and concluded with his noting that if a record should be made of the request, so be it.

10. Counsel for the BOR pointed out that "every citizen of the state has a right to request public records" and that the reason for an IPRA request need not be disclosed.

11. The BOR did not engage in further discussion of Dr. Page's conduct at the July 12, 2022 meeting. As noted below, it scheduled a later special meeting with an agenda item to discuss in an executive session the propriety of Dr. Page's comments.

12. Various NMMI employees and others who attended the July 12, 2022 BOR meeting reported that they believed Dr. Page's comments were an orchestrated effort to discredit MG Grizzle by intimating that he engaged in an illegal act and that those comments were designed by Dr. Page to be misleading.

13. The comments from Dr. Page occurred during the public portion of a regularly scheduled meeting of the BOR. Dr. Page's question about who lived at the identified address and his statements that it was he who had received the IPRA request and that it was unusual when a subordinate requested information of his supervisor was wrong on many levels: first, it was clear that Dr. Page had seen or had a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number; second, there was no reason to begin the discussion by asking who lived at the address when Dr. Page was aware of the answer to that question; and third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request.

14. Dr. Page did not receive the IPRA request; it was addressed to UNM-Los Alamos, Dr. Page's prior employer. In fact, there was no reason why he should have been in the possession of that request. While Dr. Page's possession of the request was not improper, it demonstrates that Dr. Page was prepared to make his comment in the public part of the open meeting and his question about who resided at the address contained on the IPRA request was disingenuous at minimum and an effort to cause those in attendance to wonder whether there was something wrong with the request by MG Grizzle.

15. The President/Superintendent of NMMI works for the entire BOR. Dr. Page was not the exclusive supervisor of MG Grizzle which demonstrates that

he misunderstood the nature of the relationship between a Regent and an employee of the institution.

16. It was not in any way improper for a citizen of New Mexico to request public records concerning his/her/their supervisor's prior employment history but yet the statements of Dr. Page in an open meeting cast aspersions at MG Grizzle for his IPRA request. IPRA allows for any citizen of the State to request a public record without stating a reason, as Counsel pointed out at the meeting. *See* NMSA 1978, § 14-2-1 ("Every person has a right to inspect public records of this state except." for certain limited exceptions, not relevant here).

17. Dr. Page's statements were made during the public portion of the BOR meeting in front of numerous attendees.

18. MG Grizzle had no obligation to offer any defense of his actions at the BOR meeting, particularly because requesting public records is a right reserved to all citizens of the State. The request was sent using MG Grizzle's home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

19. After that meeting and in response to Dr. Page's conduct, members of the BOR met twice in Special Meetings, on August 22 and September 6, 2022, to discuss MG Grizzle's response to Dr. Page's conduct and behavior and MG Grizzle's assertion of claims under the New Mexico Whistleblower Act, IPRA and

the New Mexico Human Rights Act. The discussions of Dr. Page's conduct occurred during sessions that were closed in accordance with the Open Meetings Act "threatened and pending litigation" exception to public meetings. Dr. Page attended both Special Meetings and fully participated in over five hours of BOR discussions.

20. Without disclosing the substance of the closed sessions, Dr. Page was encouraged by members of the BOR to seek out MG Grizzle to discuss his comments and to rectify any misunderstanding that may have been occasioned by Dr. Page's comments. Dr. Page did not respond to these efforts. Dr. Page never discussed his comments with MG Grizzle or made any attempt to reach common ground or prevent a rift from growing between the NMMI administration and the BOR.

21. On September 29, 2022, a Special Meeting was convened to address the BOR's response to Dr. Page's comments and conduct during and following the July 12, 2022 meeting. At the September 29, 2022 meeting, the following motion was made, seconded and discussed:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President's prior approval.

Audio Recording, 9-29-22, at approximately 5:30. Dr. Page was given the opportunity to make statements about the proposed motion.

Dr. Page made the following statement at that time:

I just want to refer to the key values for the Institute and I understand fully that the Board supports and is committed to these key values. They're available in our Board Policy Manual; values about knowledge, our commitment to pursue and to share knowledge about how we operate as a Board and how we are informed about the laws that pertain to us. I understand that we committed to integrity and integrity with regard to students and faculty and staff of the Institute. Uh, we are committed to service – the services that we expect of our students at the institute – uh – we provide that opportunity through their academic programs and their leadership programs. And lastly, we have a commitment to responsibility and responsibility to the students and their families, to the citizens and taxpayers of New Mexico. So as the Board when we abide by all of these, that leads to a better sense of public confidence in the Institute as a place where families will want to send their young people. So as a Board, I think we are all working towards the same end and objective, if we are committed to those values and – you know- the Honor Code sums it all up. The Honor Code at my first institute of higher learning and at my last military posting has the same Honor Code as we have at New Mexico Military Institute. So, as the Board members make their decision, I want you to keep in mind that key values that we all committed to when we signed on to provide policy guidance and leadership for the Institute along with certainly the administration that carries out the day-to-day functions of the Institute.

Id. at 20:56.

22. The BOR voted to approve this motion on 3-2 vote. See id.

23. New Mexico Constitution in relevant part, provides:

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). The Board of Regents Policy Manual echoes this provision. BOR Policy Manual 5.1.

24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 1**.

28. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

29. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR "under such rules as it may promulgate."

30. When questioned about the procedure the BOR has followed in effecting Dr. Page's removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should

be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 2**.

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. N.M. Const. art. XII, § 13 provides that “[t]he supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

2. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” *Id.* The BOR requests that this Court hold a hearing to satisfying this requirement.

3. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle’s right to pursue that request, failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page’s actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request

public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requester is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . . PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMMI. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VI. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

VI. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

VII. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in the minutes attached as **Exhibit 3** to this Petition.

2. The relevant tape recordings are being logged with the Court clerk concurrently with the filing of this Petition.

3. The instructions given to Dr. Page and members of the administration are attached as Exhibit 1.

4. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as Exhibit 2.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October __, 2022 a true and correct copy of foregoing Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute was served upon Respondent by mail at _____ and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS

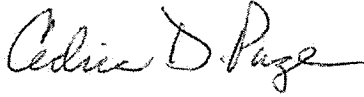
A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins

MEMORANDUM FOR THE RECORD

To: Regent Bradford Christmas
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: Regent and Vice President Cedric D. Page, PhD. 

Date: October 19, 2022

Subject: Response to Memorandum entitled "Interim Instructions Regarding Removal of Cedric D. Page as NMMI Regent dated October 10, 2022."

Regent Christmas, as stated in the NMMI Board of Regents Policy Manual:

"Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950, November 4, 1986, and November 8, 1994.)"

In your memorandum, dated October 10, 2022, you state:

"...in accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim...He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on times considered by the Board. He will not be able to participate in executive sessions...Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events."

In your memorandum, you fail to cite or reference any specific policy within the BOR Manual, adopted Robert's Rules, or any legal or statutory authority for that matter as the source of authority to impose these restrictions as interim measures while the Board pursues an attempt to remove me from office through the Supreme Court or New Mexico. In fact, no such authority exists.

As such, these instructions have no legal effect. The instructions are unenforceable and invalid.

No individual Regent nor the Board acting on a resolution they passed has authority to unilaterally remove or restrict, whether constructively or officially, a duly appointed and confirmed Regent from the Board from carrying out the duties of the office to which they were appointed and confirmed. That authority rests solely with the Supreme Court of New Mexico.

As a duly appointed and confirmed Regent, I have the authority to discharge the duties of my office without willful interference.

Be advised of the criminal statutes pertaining to interference with public officials with regard to the educational process of any public or private school, particularly with acts that would disrupt, impair, interfere with or obstruct. NM Stat § 30-20-13 (2018) Interference with members of staff, public officials or the general public; trespass; damage to property; misdemeanors; penalties., Section D, states:

"No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

As a Regent of NMMI, your instructions and actions could be regarded as willfully interfering with my ability, as a public official, from carrying out my lawful mission and duties as a Regent without legal authority. As a Regent and hence, public official, my duties are statutory and a part of the mission, processes, procedures or functions of NMMI.

Also, your actions could be regarded as inciting others, both fellow Regents and NMMI staff, to take actions that could constitute unlawful and criminal interference with a public official, in violation of the criminal statute 30-20-13 and thus exposing fellow Regents and staff to criminal liability if they willfully participate in actions based on your instructions that are unsupported by any legal authority.

Absent my removal by a final decision from the Supreme Court, I shall continue to fully discharge the duties of the office to which I was appointed. Unlawful interference may be referred to the appropriate State law enforcement authorities. In addition, be advised that any unlawful acts, including criminal violations perpetrated in and through official acts by you and/or fellow Regents may be grounds for an allegation of malfeasance in office and ultimately be grounds for removal by the Supreme Court of New Mexico.

cc: Holly Agajanian, Chief General Counsel to the Governor, State of New Mexico
Hector Balderas, Attorney General, State of New Mexico
Stephanie M. Rodriguez, Secretary for Higher Education Department, State of New Mexico
Peter Kovnat, Counsel for Higher Education Department, State of New Mexico
President/Superintendent Jerry Grizzle, New Mexico Military Institute
COL David West, Chief of Staff, New Mexico Military Institute

**TRANSCRIPT OF MINUTES TAKEN FROM
AUDIO RECORDING 7-12-22 and AUDIO RECORDING 9-29-22**

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2
3 **October 21, 2022**

4 **NO. S-1-SC-39617**

5
6 **THE BOARD OF REGENTS OF THE**
7 **NEW MEXICO MILITARY INSTITUTE,**

8
9 Petitioner,

10
11 v.

12
13 **CEDRIC D. PAGE, PHD,**

14
15 Respondent.

16
17 **NOTICE OF NON-CONFORMING PLEADING**

18 You are notified that Verified Petition for Emergency Writ, filed on October
19 21, 2022, does not conform with certain requirements under the Rules of Appellate

20 Procedure as noted below:

- 21 Margins error. *See* Rule 12-305(B)(2) NMRA.
22 Pagination error. *See* Rule 12-305(B)(3) NMRA.
23 Signature block error. *See* Rule 12-305(B)(5) NMRA.
24 Type style or typeface error. *See* Rule 12-305(D) NMRA.
25 Line-spacing error. *See* Rule 12-305(E) NMRA.
26 Caption error. *See* Rule 12-305(F) NMRA; *see also* Rule 12-305(H)
27 NMRA for captions in appeals under the Children's Code.
28 Cover page error. *See* Rule 12-305(G) NMRA.
29 Failure to indicate the position of other parties to the motion under Rule
30 12-309(C) NMRA.
31 Missing or incomplete Statement of Compliance. *See* Rule 12-318(G)
32 NMRA (Applying to Briefs); Rule 12-502(E) NMRA (Applying to
33 Petition for Writ of Certiorari); Rule 12-503(G) NMRA (Applying to
34 Petition for Writ of Error); or Rule 12-504(H) NMRA (Applying to

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Extraordinary Writ Petition).

- Untimely pleading filed without Motion to Accept as Timely Filed.
- Pleading in excess of applicable length limitations without Motion to Exceed Length Limitations.
- Required attachments missing.
- Unauthorized attachments to brief. *See* Rule 12-318(F)(4) NMRA.
- Missing or Incomplete Certificate of Service. *See* Rule 12-307(E), 12-307.1(H), or 12-307.2(D)(4) NMRA.
- Other: Failure to Comply with the requirements of Rule 12-604 NMRA.

To correct the above-noted deficiencies, you must file a conformed pleading with the Supreme Court within two (2) days of the date of this notice.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 21st day of October, 2022.

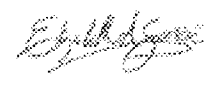
Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.

Myrae Vigil

Clerk of the Supreme Court
of the State of New Mexico

By *Myrae Vigil*
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

**VERIFIED COMPLAINT AND/OR PETITION IN OUO WARRANTO
TO REMOVE DR. CEDRIC PAGE AS A REGENT OF THE
NEW MEXICO MILITARY INSTITUTE (CORRECTED)**

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Lorna M. Wiggins

Patricia G. Williams

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TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iv

I. JURISDICTION1

II. PARTIES2

III. FACTS SUPPORTING THE COMPLAINT3

IV. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED.....13

V. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE 14

VI. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . . PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES15

VII. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME15

VIII. STATEMENT OF THE RELIEF SOUGHT..... 15

IX. EMERGENCY CONSIDERATION.....15

X. OPINION, ORDERS AND TRANSCRIPTS.....16

CERTIFICATE OF SERVICE17

ATTACHMENTS:

Exhibit 1: BOR Policy Manual Excerpts

Exhibit 2: October 10, 2022 Notice to Dr. Page

Exhibit 3: October 5, 2022 letter from New Mexico Higher Education Department
Cabinet Secretary Stephanie M. Rodriguez

Exhibit 4: October 17, 2022 Notification to Dr. Page

Exhibit 5: October 19, 2022 Response from Dr. Page

Exhibit 6: Transcript of Minutes containing motion (to be supplemented) from
Audio Recording, 7-12-22 and

Audio Recording, 9-29-22

TABLE OF AUTHORITIES

New Mexico State Court Cases

State Judicial Standards Com'n v. Espinosa, 2003-NMSC-017, 134 N.M. 59, 73
P.3d 1972

Statutes

NMSA 1978, § 14-2-17
NMSA 1978, § 44-3-11, 2
NMSA 1978, § 44-3-41, 2

Constitutional Provisions

N.M. Const. art. VI, § 31
N.M. Const. art. XII, § 13 1, 2, 10, 12, 13, 15

Rules

Rule 12-504 NMRA.....1, 12
Rule 12-604 NMRA.....12

The Board of Regents of the New Mexico Military Institute (“BOR”) respectfully requests this Court issue a writ of quo warranto and hold the constitutionally required hearing to effect the removal of Respondent Cedric D. Page, PhD (“Dr. Page”) from membership as a Regent of the New Mexico Military Institute (“NMMI”) for incompetence, neglect of duty and/or malfeasance in office as a Regent. This corrected complaint is filed pursuant to N.M. Const. art. VI, § 3, N.M. Const. art. XII, § 13, NMSA 1978, Section 44-3-1, NMSA 1978, Section 44-3-4 and Rule 12-504 NMRA.

I. JURISDICTION

1. N.M. Const. art. VI, § 3 provides that “The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions, and shall have a superintending control over all inferior courts; it shall also have power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same.”

2. N.M. Const. art. XII, § 13(E) provides that “Members of the board [of Regents] shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The Supreme Court of the State of New Mexico is hereby given exclusive original

jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

3. Pursuant to NMSA 1978, Section 44-3-1 “The remedies heretofore obtainable by writ of quo warranto and by proceedings by information in the nature of quo warranto shall be commenced by the filing of a complaint as in other civil actions”

4. Pursuant to NMSA 1978, Section 44-3-4,

An action may be brought . . . upon the complaint of any private person, against the parties offending in the following cases:

A. when any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state; or

5. An action for a writ of quo warranto may be brought “when any person shall usurp, intrude into or unlawfully hold or exercise any public office....” State Judicial Standards Com’n v. Espinosa, 2003-NMSC-017, ¶ 4, 134 N.M. 59, 73 P.3d 197 (*citing* NMSA 1978, § 44-3-4(A) (1919)).

II. PARTIES

1. NMMI is a duly constituted educational institution under the New Mexico Constitution which is controlled and managed by the BOR. N.M. Const. art. XII, § 13(A).

2. Dr. Page was appointed to the BOR by the Governor on April 26, 2019 and confirmed by the Senate. On September 29, 2022, by a majority vote of the Regents, the BOR elected to pursue his removal due to his incompetence, neglect of duty and malfeasance in his office as a Regent. Dr. Page has declined the request that he resign his position, necessitating this proceeding in quo warranto.

III. FACTS SUPPORTING THE COMPLAINT

1. NMMI was established in 1891 as a public military junior college in Roswell, New Mexico. NMMI enrolls nearly 1,000 cadets at the junior college and high school levels each year from forty-five states, two United States territories (Puerto Rico and American Samoa) and thirty-five foreign nations.

2. Major General Jerry Grizzle, Ph.D., United States Army (Retired) (“MG Grizzle”), became the nineteenth President/Superintendent of NMMI on July 1, 2009 and continues to serve in that role. He is the senior most member of NMMI’s administration and reports to the BOR.

3. The BOR has in effect a Board of Regents Policy Manual that governs its work. The BOR also relies on Robert’s Rules of Order to conduct its business. BOR Policy Manual § 6.7.4 attached hereto as **Exhibit 1**.

4. Dr. Page attended multiple orientation and training sessions facilitated by NMMI staff and counsel on the duties of a Regent, including a Regent’s fiduciary duties. Dr. Page was also trained on various state sunshine laws that apply to NMMI,

such as the Open Meetings Act and Inspection of Public Records Act (“IPRA”). In addition, at the time he took his oath of office, NMMI provided Dr. Page with a handbook which contained, among other things, the Governmental Conduct Act Compliance Guide, New Mexico Inspection of Records Act Compliance Guide, the Open Meetings Notice Resolution, the New Mexico Open Meetings Act Compliance Guide and the BOR Policy Manual. *See Exhibit 1*, BOR Policy Manual § 6.2.4.

5. At a duly scheduled regular meeting of the BOR on July 12, 2022, which was a hybrid meeting with attendees participating in person and via Zoom, Dr. Page discussed MG Grizzle’s evaluation process and criteria and then asked whether there was anyone from “personnel” present who could answer whether anyone on “staff” lived at an address he read into the record.

6. MG Grizzle stated that that the address was his address.

7. Dr. Page then said “he received” an IPRA request for his prior employment records from UNM-Los Alamos “from that address” so he “just wanted to know if there was anybody on staff” at that address. Dr. Page also identified the request as “request number 2176.”

8. MG Grizzle sent the IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page’s prior employer and not to Dr. Page.

9. Dr. Page subsequently said that it was “unusual for a subordinate to make a request from a Regent,” and noted that Regents are “vetted.” *See* Audio Recording, 7-12-22, at approximately 14:30. Dr. Page’s comments immediately followed his discussions of MG Grizzle’s evaluation and concluded with his noting that if a record should be made of the request, so be it.

10. Counsel for the BOR pointed out that “every citizen of the state has a right to request public records” and that the reason for an IPRA request need not be disclosed.

11. The BOR did not engage in further discussion of Dr. Page’s conduct at the July 12, 2022 meeting. As noted below, it scheduled a later special meeting with an agenda item to discuss in an executive session the propriety of Dr. Page’s comments.

12. Various NMMI employees and others who attended the July 12, 2022 BOR meeting reported that they believed Dr. Page’s comments were an orchestrated effort to discredit MG Grizzle by intimating that he engaged in an illegal act and that those comments were designed by Dr. Page to be misleading.

13. The comments from Dr. Page occurred during the public portion of a regularly scheduled meeting of the BOR. Dr. Page’s question about who lived at the identified address and his statements that it was he who had received the IPRA request and that it was unusual when a subordinate requested information of his

supervisor was wrong on many levels: first, it was clear that Dr. Page had seen or had a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number; second, there was no reason to begin the discussion by asking who lived at the address when Dr. Page was aware of the answer to that question; and third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request.

14. Dr. Page did not receive the IPRA request; it was addressed to UNM-Los Alamos, Dr. Page's prior employer. In fact, there was no reason why he should have been in the possession of that request. While Dr. Page's possession of the request was not improper, it demonstrates that Dr. Page was prepared to make his comment in the public part of the open meeting and his question about who resided at the address contained on the IPRA request was disingenuous at minimum, because IPRA Request Number 2176 is sent to MG Grizzle from the listed address, and an effort to cause those in attendance to wonder whether there was something wrong with the request by MG Grizzle.

15. The President/Superintendent of NMMI works for the entire BOR. Dr. Page was not the exclusive supervisor of MG Grizzle which demonstrates that he misunderstood the nature of the relationship between a Regent and an employee of the institution.

16. It was not in any way improper for a citizen of New Mexico to request public records concerning his/her/their supervisor's prior employment history but yet the statements of Dr. Page in an open meeting cast aspersions at MG Grizzle for his IPRA request. IPRA allows for any citizen of the State to request a public record without stating a reason, as Counsel pointed out at the meeting. *See* NMSA 1978, § 14-2-1 ("Every person has a right to inspect public records of this state except:" for certain limited exceptions, not relevant here).

17. Dr. Page's statements were made during the public portion of the BOR meeting in front of numerous attendees.

18. MG Grizzle had no obligation to offer any defense of his actions at the BOR meeting, particularly because requesting public records is a right reserved to all citizens of the State. The request was sent using MG Grizzle's home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

19. After that meeting and in response to Dr. Page's conduct, members of the BOR met twice in Special Meetings, on August 22 and September 6, 2022, to discuss MG Grizzle's response to Dr. Page's conduct and behavior and MG Grizzle's assertion of claims under the New Mexico Whistleblower Act, IPRA and the New Mexico Human Rights Act. The discussions of Dr. Page's conduct occurred during sessions that were closed in accordance with the Open Meetings Act

“threatened and pending litigation” exception to public meetings. Dr. Page attended both Special Meetings and fully participated in over five hours of BOR discussions.

20. Without disclosing the substance of the closed sessions, Dr. Page was encouraged by members of the BOR to seek out MG Grizzle to discuss his comments and to rectify any misunderstanding that may have been occasioned by Dr. Page’s comments. Dr. Page did not respond to these efforts. Dr. Page never discussed his comments with MG Grizzle or made any attempt to reach common ground or prevent a rift from growing between the NMMI administration and the BOR.

21. On September 29, 2022, a Special Meeting was convened to address the BOR’s response to Dr. Page’s comments and conduct during and following the July 12, 2022 meeting. At the September 29, 2022 meeting, the following motion was made, seconded and discussed:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President’s prior approval.

Audio Recording, 9-29-22, at approximately 5:30. Dr. Page was given the opportunity to make statements about the proposed motion.

Dr. Page made the following statement at that time:

I just want to refer to the key values for the Institute and I understand fully that the Board supports and is committed to these key values. They're available in our Board Policy Manual; values about knowledge, our commitment to pursue and to share knowledge about how we operate as a Board and how we are informed about the laws that pertain to us. I understand that we committed to integrity and integrity with regard to students and faculty and staff of the Institute. Uh, we are committed to service – the services that we expect of our students at the institute – uh – we provide that opportunity through their academic programs and their leadership programs. And lastly, we have a commitment to responsibility and responsibility to the students and their families, to the citizens and taxpayers of New Mexico. So as the Board when we abide by all of these, that leads to a better sense of public confidence in the Institute as a place where families will want to send their young people. So as a Board, I think we are all working towards the same end and objective, if we are committed to those values and – you know- the Honor Code sums it all up. The Honor Code at my first institute of higher learning and at my last military posting has the same Honor Code as we have at New Mexico Military Institute. So, as the Board members make their decision, I want you to keep in mind that key values that we all committed to when we signed on to provide policy guidance and leadership for the Institute along with certainly the administration that carries out the day-to-day functions of the Institute.

Id. at 20:56.

22. The BOR voted to approve this motion on 3-2 vote. See id.

23. New Mexico Constitution in relevant part provides:

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). The Board of Regents Policy Manual echoes this provision. **Exhibit 1**, BOR Policy Manual 5.1.

24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 2.**

28. On October 21, 2022, the BOR filed a "Verified Petition for Emergency Writ" before this Court requesting that the Court hold a hearing prior to the removal of Dr. Page.

29. This Verified Petition was filed pursuant to Supreme Court rule which provides:

(1) Extraordinary writ proceedings in the exercise of the Supreme Court's original jurisdiction shall be initiated by filing with the Supreme Court clerk a verified petition of the party seeking the writ. Subject to the provisions of Rule 12-304 NMRA and Rule 23-114 NMRA, the appropriate docket fee shall accompany the petition. As used in this rule, a "verified petition" is one that contains a statement under oath that the signer has read the petition and that the statements contained in the petition are true and correct to the best of the signer's knowledge, information, and belief. The statement under oath need not be

notarized. The petition shall set forth the following: . . . (which were provided in the petition).

Rule 12-504 NMRA.

30. The Clerk of the Supreme Court gave a Notice of Non-Conforming Pleading related to the Verified Petition, citing Rule 12-604 NMRA, which provides:

A. Scope. This rule governs all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute.

B. Filing of charges. Charges alleging specific facts constituting one or more constitutional or statutory grounds for removal will be entertained by the Court on presentment by the governor, the attorney general, or any regularly empaneled grand jury. Any such grand jury presentment shall be immediately certified to the Court by the district court clerk where such presentment is filed.

Rule 12-604 NMRA.

31. Application of Rule 12-604 was improper because the Board did not issue any charges, which are a prerequisite to proceeding under Rule 12-604.

32. There is no conflict between Rules 12-504 and 12-604 because only Rule 12-504 is applicable to an extraordinary writ such as one for quo warranto.

33. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

34. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR “under such rules as it may promulgate.”

35. When questioned about the procedure the BOR has followed in effecting Dr. Page’s removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 3**.

36. When Dr. Page was given notice that he would be permitted to attend BOR’s meetings as a member of the public and would not be permitted to participate in executive sessions, Dr. Page’s response was not to deny the facts surrounding the basis for his exclusion or the basis for the vote to begin the process for his removal, but to threaten the BOR with criminal prosecution. **Exhibit 4** (Notification to Dr. Page) and **Exhibit 5** (Response from Dr. Page).

IV. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” N.M. Const. art. XII, § 13. The BOR requests that this Court hold a hearing to satisfy this requirement.

2. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle's right to pursue that request, failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

V. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page's actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requestor is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle and chill the rights of a citizen to file IPRA requests. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

VI. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . . PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

VII. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMML. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VIII. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

IX. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members

of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

X. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in the transcript of the minutes attached as **Exhibit 6** to this Petition.

2. The relevant tape recordings are being logged with the Court clerk concurrently with the filing of this Petition.

3. The instructions given to Dr. Page and members of the administration are attached as **Exhibit 2**.

4. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as **Exhibit 3**.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 26, 2022 a true and correct copy of foregoing Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected) was served upon Dr. Page by mail at 84 Canada Del Rancho, Santa Fe, NM 87508 and upon the Attorney General by facsimile, No. (505) 318-1050. An endorsed copy of the Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute filed on October 21, 2022 was also served upon Dr. Page on this date.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF Mora)

Bradford Christmas, being first duly sworn, upon oath, deposes and says he is the President of the Board of Regents of New Mexico Military Institute, has read the foregoing Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of The New Mexico Military Institute and knows the content thereof, and the statements contained therein are true and correct to the best of his knowledge and belief.


Bradford Christmas

Signed and sworn to before me on this 26th day of October, 2022, by Bradford Christmas.




Notary Public

NMMI
Board
of
Regents
Policy
Manual

2021

1 Precedence

Federal, State and Local law shall have precedence over any policy contained herein or associated with this Policy Document. No policy set herein or associated with the NMMI BOR Policy Manual shall be construed to avert Federal, State or local law.

2 Foreword

In 1891, Captain Joseph C. and Mabel Lea invited Robert S. Goss to start a military school similar to the school Goss directed in Fort Worth, Texas. In September, Goss Military Institute opened its doors to twenty-eight pupils. Struggling as a result of poor management and insufficient funds, Goss Military Institute had to close its doors in 1895. An appropriations bill passed by the territorial legislature and a generous donation by a resident philanthropist, J. J. Hagerman, of a forty-acre plot of land on North Hill helped reopen the doors of New Mexico Military Institute in its present location on September 6, 1898. The school provided then eight years of academic work and the cadets were organized into two companies. After the Institute inaugurated the junior college in 1915, the school offered four years of high school (NCA accredited, 1917) and two years of college work (NCA accredited, 1938). After experimentation with a four-year college in the fifties, NMMI returned to its high school and junior college program.

3 Vision (rev. 01232018a)

The New Mexico Military Institute is a globally recognized secondary and post-secondary learning institution for young men and women that instills excellence in leadership, academics, and physical development within a structured environment empowering students to thrive in a dynamic world.

4 Mission

"To educate, train, and prepare young men and women to be leaders capable of critical thinking and sound analysis, leaders who possess uncompromising character and leaders able to meet challenging physical demands"

5 Legal Authorities

5.1 New Mexico State Constitution

5.1.1 Article XII - Education

Sec. 2. [Permanent school fund.]

The permanent school fund of the state shall consist of the proceeds of sales of Sections Two, Sixteen, Thirty-Two and Thirty-Six in each township of the state, or the lands selected in lieu thereof; the proceeds of sales of all lands that have been or may hereafter be granted to the state not otherwise appropriated by the terms and conditions of the grant; such portion of the proceeds of sales of land of the United States within the state as has been or may be granted by congress; all earnings, including interest, dividends and capital gains from investment of the permanent school fund; also all other grants, gifts and devises made to the state, the purpose of which is not otherwise specified. (As amended November 5, 1996.)

Sec. 3. [Control of constitutional educational institutions; use of state land proceeds and other educational funds.]

The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.

Sec. 11. [State educational institutions.]

The university of New Mexico, at Albuquerque; the New Mexico state university, near Las Cruces, formerly known as New Mexico college of agriculture and mechanic arts; the New Mexico highlands university, at Las Vegas, formerly known as New Mexico normal university; the western New Mexico university, at Silver City, formerly known as New Mexico western college and New Mexico normal school; the eastern New Mexico university, at Portales, formerly known as eastern New Mexico normal school; the New Mexico institute of mining and technology, at Socorro, formerly known as New Mexico school of mines; **the New Mexico military institute, at Roswell, formerly known as New Mexico military institute**; the New Mexico school for the blind and visually impaired, at Alamogordo, formerly known as New Mexico school for the visually handicapped; the New Mexico school for the deaf, at Santa Fe, formerly known as New Mexico asylum for the deaf and dumb; the northern New Mexico state school, at El Rito, formerly known as Spanish-American school; **are hereby confirmed as state educational institutions.** All lands, together with the natural products thereof and the money proceeds of any of the lands and products, held in trust for the institutions, respectively, under their former names, and all properties heretofore granted to, or owned by, or which may hereafter be granted or conveyed to, the institutions respectively, under their former names, shall, in like manner as heretofore, be held in trust for, or owned by or be considered granted to, the institutions individually under their names as hereinabove adopted and confirmed. The appropriations made and which may hereafter be made to the state by the United States for agriculture and mechanical colleges and experiment stations in connection therewith shall be paid to the New Mexico state university, formerly known as New Mexico college of agriculture and mechanic arts. (As repealed and reenacted November 8, 1960; as amended November 3, 1964; November 2, 2004.)

Sec. 13. [Board of regents for educational institutions.]

The legislature shall provide for the control and management of each of said institutions, except the university of New Mexico, by a board of regents for each institution, consisting of five members, four of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the institution and no more than three of whom at the time of their appointment shall be members of the same political party; provided, however, that the student body member provision in this section shall not apply to the New Mexico school for the deaf, **the New Mexico military institute**, the northern New Mexico state school or the New Mexico school for the visually handicapped, **and for each of those four institutions all five members of the board of regents shall be qualified electors of the state of New Mexico.** The governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents for each of said institutions. The terms of said nonstudent members shall be for six years, provided that of the five first appointed the terms of two shall be for two years, the terms for two shall be for four years, and the term of one shall be for six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on each eligible institution's board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the institution. In making the list, the president of the institution shall give due consideration to the recommendations of the student body president of the institution.

...

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950, November 4, 1986, and November 8, 1994.)

5.2 New Mexico State Statute

5.2.1 Chapter 21 State and Private Education Institutions

Article 1 General Provisions Relating to State Educational Institutions

21-1-1. State institutions; admission requirements to be established by boards of regents. (1997). (1997)

- A. The respective boards of regents of ... the New Mexico military institute at Roswell shall determine and fix the standard of requirements for admission to their respective institutions.
- B. In determining the standard of requirements for admission to their respective institutions, boards of regents shall not require a student who has completed the requirements of a home-based or non-public school educational program, and who has submitted test scores that otherwise qualify him for admission to that institution, to obtain or submit proof of having obtained a general education

From the Constitution of the State of New Mexico, Article XII, Section 13: “The legislature shall provide for the control and management of each of said institutions except the university of New Mexico, by a board of regents for each institution, consisting of five members, four of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the institution and no more than three of whom at the time of their appointment shall be members of the same political party; provided, however, that the student body member provision in this section shall not apply to the New Mexico school for the deaf, the New Mexico military institute, the northern New Mexico state school or the New Mexico school for the visually handicapped, and for each of those four institutions all five members of the board of regents shall be qualified electors of the state of New Mexico.”

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950 and November 4, 1986.)

6.2 Structure of the Board of Regents

6.2.1 Appointment of Members

The Board of Regents is composed of five members who are appointed by the Governor of New Mexico, with the consent of the Senate, for staggered terms of six years.

6.2.2 Officers (rev. 02212017a)

At the March Board of Regents meeting or next meeting following if there is no scheduled March meeting the Board of Regents will elect a President, Vice-President, and Secretary. The President presides at all meetings of the Board. When the President of the Board is absent, the Board of Regents hereby appoints the Vice-President to serve as President pro tem. In the event of a vacancy of an office by a Board member, the Board shall agree to convene at the next appropriate time to elect a member to fill the vacancy.

6.2.3 (rev. 01232018b)

Members of the Board are not remunerated for their services. They are, however, eligible for travel reimbursement, pursuant to the School's travel reimbursement policies. (See, NMMI Accounting and Business Policies, and Procedures Manual, **section 9.01** Business Travel Policies, Advances and Reimbursement.)

6.2.4 Orientation of New Members

When a new member is appointed to the Board, the member will receive copies of the Regents' Policy Manual, the Operations and Procedure Manual, the Cadet Blue Book, and the Faculty Handbook, and a compilation of other NMMI publications. The President/Superintendent will arrange an orientation session for newly appointed Regents.

Three of the five members of the Board shall constitute a quorum for the transaction of business.

6.7.4 Conduct of Meetings

Parliamentary procedure shall be governed by the most current revision of Roberts' Rules of Order, except that New Mexico law or other applicable Regents' policies will govern if there is a conflict with Roberts' Rules of Order.

6.7.5 Compliance with the Americans with Disabilities Act.

In addition to the information specified above, all notices shall include the following language:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend a meeting of the Board of Regents, please contact the Office of Public Affairs at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Office of Public Affairs if an accessible format is needed.

6.7.6 References

Structure: New Mexico Constitution, art. XII, § 13; §§ 21-1-13, 21-7-5, 21-7-6, NMSA 1978.

Meetings: NMSA 1978 §§ 21-1-14, 21-7-5, 21-7-12; Open Meetings Act, § 10-15-1, et seq., NMSA 1978.

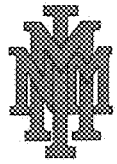
7 Policy Declarations

In providing guidance to the President/Superintendent, the Board of Regents has reaffirmed the following long-standing policy declarations:

1. New Mexico Military Institute is primarily an academic institution operating within a conducive military environment.
2. The junior college curriculum is designed to prepare cadets for transfer to four-year colleges and universities. An Associate of Arts or Science degree is awarded to qualified graduates.
3. The high school curriculum is designed for those cadets planning to pursue a college course of study after graduation.
4. In order to receive the full benefit of the NMMI program, High School cadets are strongly encouraged to complete the Junior College program.
5. Members of the staff and faculty are selected for their professional qualifications and their willingness to work in a program that is both academic and military.
6. Integrity is the cornerstone of New Mexico Military Institute. Every effort is made to instill integrity through living the honor code, education, and example. Staff and Faculty of NMMI are expected by the Board of Regents to represent the NMMI honor code and standards of integrity, honesty and commitment to those standards.



NEW MEXICO MILITARY INSTITUTE
Governing Board of Regents
101 West College Boulevard
Roswell, New Mexico 88201-5173



October 10, 2022

MEMORANDUM

To: Regent Cedric D. Page
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: President Bradford Christmas

Date: October 10, 2022

Subject: Interim Instructions Regarding Removal of Cedric D. Page
as NMMI Regent

As you know, the Board of Regents voted on September 29, 2022 to begin the process to remove Cedric D. Page, PhD from the New Mexico Military Institute Board of Regents. The Constitution of the State of New Mexico governs the removal process. Regent Page will not be removed officially from the Board until that process is concluded and the Court makes its determination.

In accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim, Regent Page will be removed from his committee assignments and will have no duties as Vice Chair of the Board. He may attend Board of Regents meetings and listen to the deliberations. He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on items considered by the Board. He will not be able to participate in executive sessions.

With regard to Staff, Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events. Once the constitutional process is completed, Regents and Staff will receive further instruction.

cc: MG Jerry Grizzle
COL David West

NEW MEXICO
HIGHER EDUCATION
DEPARTMENT

Fostering Student Success from Cradle to Career



Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary

VIA ELECTRONIC MESSAGE

October 5, 2022

Chairman Bradford Christmas
Board of Regents
New Mexico Military Institute
101 W. College Boulevard
Roswell, NM 88201

Dear Chairman Christmas:

It was brought to my attention that at the September 29, 2022, meeting of the Board of Regents of the New Mexico Military Institute, the board voted three-to-two to advise Regent Cedric Page that the board intends to proceed with his removal as a regent.

The motion read, "...a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact New Mexico Military Institute employees or attend NMMI or Board functions without the president's prior approval."

Pursuant to Article VII, Section 13 of the Constitution of New Mexico as well as Section 5.1 of the New Mexico Military Institute's Board of Regents Policy Manual, the Supreme Court of the State of New Mexico has exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

If you have any questions, please contact Peter Kovnat, General Counsel of the New Mexico Higher Education Department, at Peter.Kovnat@hed.nm.gov.

Sincerely,

A handwritten signature in black ink that reads "Stephanie M. Rodriguez". The signature is written in a cursive, flowing style.

Stephanie M. Rodriguez
Cabinet Secretary

2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100
Phone: 505-476-8400
www.hed.state.nm.us

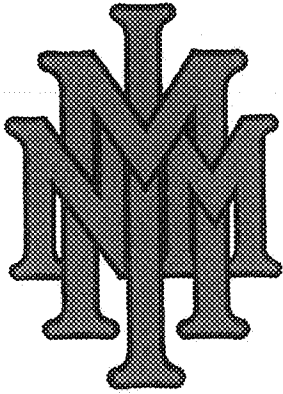
**NEW MEXICO
HIGHER EDUCATION
DEPARTMENT**

Fostering Student Success from Cradle to Career



*Michelle Lujan Grisham, Governor
Stephanie M. Rodriguez, Cabinet Secretary
Patricia Trujillo, Deputy Secretary*

CC: Holly Agajanian, Chief General Counsel, Office of the Governor
Melissa Salazar, Director of Boards and Commissions, Office of the Governor
Major General Jerry Grizzle, Ph.D., Superintendent and President, New Mexico Military Institute
Regent Harold Alan Edmonson, Jr., New Mexico Military Institute
Regent John Garcia, New Mexico Military Institute
Regent Cedric Page, Ph.D., New Mexico Military Institute
Regent Maria Christina Montoya, New Mexico Military Institute



NEW MEXICO MILITARY INSTITUTE

Governing Board of Regents

101 West College Boulevard
Roswell, New Mexico 88201-5173

October 17, 2022

Cedric D. Page, PhD
84 Canada Del Rancho
Santa Fe, NM 87508

NMMI Regents

Dear Dr. Page:

Enclosed is a copy of the final version of the Petition for Removal. Please understand that NMMI is prepared to file the Petition should you elect not to resign your position as Regent by signing the enclosed resignation letter, or a resignation letter you prepare and sign. If you resign your Regent position, NMMI will not pursue further action. In addition, I understand MG Grizzle will not pursue any personal action against you. Kindly let us know your position no later than October 27, 2022. If we do not hear from you by that date, a Petition will be filed.

Very truly yours,

New Mexico Military Institute

A handwritten signature in cursive script, reading 'Bradford Christmas', written over a horizontal line.

Bradford Christmas
Board of Regents President

Enclosures:
Resignation
Writ

CC:
File
Regents
L. Wiggins

Dear Regent Christmas,

I am resigning my position as Regent of New Mexico Military Institute, effective October 26, 2022.

Very truly yours,

Cedric D. Page, PhD

cc: Honorable Michelle Lujan Grisham

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No.

CEDRIC D. PAGE, PhD,

Respondent.

VERIFIED PETITION FOR EMERGENCY WRIT
FOR THE REMOVAL OF CEDRIC D. PAGE, PhD AS A REGENT FROM
THE BOARD OF REGENTS OF NEW MEXICO MILITARY INSTITUTE

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
I. GROUNDS FOR THE PETITION	1
II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED.....	10
III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE	10
IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST ... PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES	11
V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME	12
VI. EMERGENCY CONSIDERATION	12
VII. OPINION, ORDERS AND TRANSCRIPTS.....	12
CERTIFICATE OF SERVICE	14

ATTACHMENTS:

Exhibit 1: October 10, 2022 Notice to Dr. Page

Exhibit 2: October 5, 2022 letter from New Mexico Higher Education Department
Cabinet Secretary Stephanie M. Rodriguez

Exhibit 3: Minutes containing motion

Audio Recording, 7-12-22

Audio Recording, 9-29-22

TABLE OF AUTHORITIES

Statutes

NMSA 1978, § 14-2-1..... 5

Constitutional Provisions

N.M. Const. art. XII, § 13 8, 9, 10, 11

multiple orientation and training sessions facilitated by NMMI staff and counsel on the duties of a Regent, including a Regent's fiduciary duties. Dr. Page was also trained on various state sunshine laws that apply to NMMI, such as the Open Meetings Act and Inspection of Public Records Act ("IPRA"). In addition, at the time he took his oath of office, NMMI provided Dr. Page with handbook which contained, among other things, the Governmental Conduct Act Compliance Guide, New Mexico Inspection of Records Act Compliance Guide, the Open Meetings Notice Resolution, the New Mexico Open Meetings Act Compliance Guide and the BOR Policy Manual. *See* BOR Policy Manual § 6.2.4

5. At a duly scheduled regular meeting of the BOR on July 12, 2022, which was a hybrid meeting with attendees participating in person and via Zoom, Dr. Page discussed MG Grizzle's evaluation process and criteria and then asked whether there was anyone from "personnel" present who could answer whether anyone on "staff" lived at an address he read into the record.

6. MG Grizzle stated that that the address was his address.

7. Dr. Page then said "he received" an IPRA request for his prior employment records from UNM-Los Alamos "from that address" so he "just wanted to know if there was anybody on staff" at that address. Dr. Page also identified the request as "request number 2176."

8. MG Grizzle sent the IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

9. Dr. Page subsequently said that it was "unusual for a subordinate to make a request from a Regent," and noted that Regents are "vetted." *See* Audio Recording, 7-12-22, at approximately 14:30. Dr. Page's comments immediately followed his discussions of MG Grizzle's evaluation and concluded with his noting that if a record should be made of the request, so be it.

10. Counsel for the BOR pointed out that "every citizen of the state has a right to request public records" and that the reason for an IPRA request need not be disclosed.

11. The BOR did not engage in further discussion of Dr. Page's conduct at the July 12, 2022 meeting. As noted below, it scheduled a later special meeting with an agenda item to discuss in an executive session the propriety of Dr. Page's comments.

12. Various NMMI employees and others who attended the July 12, 2022 BOR meeting reported that they believed Dr. Page's comments were an orchestrated effort to discredit MG Grizzle by intimating that he engaged in an illegal act and that those comments were designed by Dr. Page to be misleading.

13. The comments from Dr. Page occurred during the public portion of a regularly scheduled meeting of the BOR. Dr. Page's question about who lived at the identified address and his statements that it was he who had received the IPRA request and that it was unusual when a subordinate requested information of his supervisor was wrong on many levels: first, it was clear that Dr. Page had seen or had a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number; second, there was no reason to begin the discussion by asking who lived at the address when Dr. Page was aware of the answer to that question; and third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request.

14. Dr. Page did not receive the IPRA request; it was addressed to UNM-Los Alamos, Dr. Page's prior employer. In fact, there was no reason why he should have been in the possession of that request. While Dr. Page's possession of the request was not improper, it demonstrates that Dr. Page was prepared to make his comment in the public part of the open meeting and his question about who resided at the address contained on the IPRA request was disingenuous at minimum and an effort to cause those in attendance to wonder whether there was something wrong with the request by MG Grizzle.

15. The President/Superintendent of NMMI works for the entire BOR. Dr. Page was not the exclusive supervisor of MG Grizzle which demonstrates that

he misunderstood the nature of the relationship between a Regent and an employee of the institution.

16. It was not in any way improper for a citizen of New Mexico to request public records concerning his/her/their supervisor's prior employment history but yet the statements of Dr. Page in an open meeting cast aspersions at MG Grizzle for his IPRA request. IPRA allows for any citizen of the State to request a public record without stating a reason, as Counsel pointed out at the meeting. *See* NMSA 1978, § 14-2-1 ("Every person has a right to inspect public records of this state except." for certain limited exceptions, not relevant here).

17. Dr. Page's statements were made during the public portion of the BOR meeting in front of numerous attendees.

18. MG Grizzle had no obligation to offer any defense of his actions at the BOR meeting, particularly because requesting public records is a right reserved to all citizens of the State. The request was sent using MG Grizzle's home address and on his personal stationery; the request was addressed to Dr. Page's prior employer and not to Dr. Page.

19. After that meeting and in response to Dr. Page's conduct, members of the BOR met twice in Special Meetings, on August 22 and September 6, 2022, to discuss MG Grizzle's response to Dr. Page's conduct and behavior and MG Grizzle's assertion of claims under the New Mexico Whistleblower Act, IPRA and

the New Mexico Human Rights Act. The discussions of Dr. Page's conduct occurred during sessions that were closed in accordance with the Open Meetings Act "threatened and pending litigation" exception to public meetings. Dr. Page attended both Special Meetings and fully participated in over five hours of BOR discussions.

20. Without disclosing the substance of the closed sessions, Dr. Page was encouraged by members of the BOR to seek out MG Grizzle to discuss his comments and to rectify any misunderstanding that may have been occasioned by Dr. Page's comments. Dr. Page did not respond to these efforts. Dr. Page never discussed his comments with MG Grizzle or made any attempt to reach common ground or prevent a rift from growing between the NMMI administration and the BOR.

21. On September 29, 2022, a Special Meeting was convened to address the BOR's response to Dr. Page's comments and conduct during and following the July 12, 2022 meeting. At the September 29, 2022 meeting, the following motion was made, seconded and discussed:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual, that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President's prior approval.

Audio Recording, 9-29-22, at approximately 5:30. Dr. Page was given the opportunity to make statements about the proposed motion.

Dr. Page made the following statement at that time:

I just want to refer to the key values for the Institute and I understand fully that the Board supports and is committed to these key values. They're available in our Board Policy Manual; values about knowledge, our commitment to pursue and to share knowledge about how we operate as a Board and how we are informed about the laws that pertain to us. I understand that we committed to integrity and integrity with regard to students and faculty and staff of the Institute. Uh, we are committed to service – the services that we expect of our students at the institute – uh – we provide that opportunity through their academic programs and their leadership programs. And lastly, we have a commitment to responsibility and responsibility to the students and their families, to the citizens and taxpayers of New Mexico. So as the Board when we abide by all of these, that leads to a better sense of public confidence in the Institute as a place where families will want to send their young people. So as a Board, I think we are all working towards the same end and objective, if we are committed to those values and – you know- the Honor Code sums it all up. The Honor Code at my first institute of higher learning and at my last military posting has the same Honor Code as we have at New Mexico Military Institute. So, as the Board members make their decision, I want you to keep in mind that key values that we all committed to when we signed on to provide policy guidance and leadership for the Institute along with certainly the administration that carries out the day-to-day functions of the Institute.

Id. at 20:56.

22. The BOR voted to approve this motion on 3-2 vote. See id.

23. New Mexico Constitution in relevant part, provides:

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). The Board of Regents Policy Manual echoes this provision. BOR Policy Manual 5.1.

24. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent.

25. There are adequate grounds to support the BOR conclusion; Dr. Page addressed the matter during an open meeting that was attended by NMMI staff and the public, he represented the IPRA request was directed at him even though it was not addressed to him and he was not, in fact, asked to produce records, the request was addressed to his prior employer and it sought to inspect records. In addition, Dr. Page questioned a "subordinate's" ability to ask about a supervisor, Dr. Page's, prior employers. Dr. Page was not MG Grizzle's employer or his sole supervisor and even if he were, any citizen may request inspection of any public record. Dr. Page addressed the IPRA request in the public meeting, rather than reviewing the applicable law himself or seeking an opinion from NMMI counsel regarding whether such a request was proper under the law. In short, it was wholly inappropriate for Dr. Page to question what MG Grizzle was seeking with his IPRA request, particularly in an open meeting, and to imply any wrongdoing on MG Grizzle's part.

26. At the September 29, 2022 Special Meeting, after the motion passed, MG Grizzle was recognized by the BOR President, Bradford Christmas, and given the opportunity to address Dr. Page's comments and conduct. MG Grizzle stated that Dr. Page's actions were unprofessional, particularly where he addressed the matter during a public meeting with the public attending.

27. After the September 29, 2022 Special Meeting, President Christmas gave notice to the BOR, Dr. Page and NMMI administration that Dr. Page was permitted to attend future BOR's meeting as a member of the public, pending this proceeding. A copy of the notice given to Dr. Page is attached to this Petition as **Exhibit 1**.

28. As stated in N.M. Const. art. XII, § 13, this Court has exclusive jurisdiction over the removal of a Regent. By passing the motion to begin the process of removing Dr. Page as a Regent, this Court has been vested with exclusive jurisdiction.

29. According to N.M. Const. art. XII, § 13, the Supreme Court of the State of New Mexico is given exclusive original jurisdiction over proceedings to remove members of the BOR "under such rules as it may promulgate."

30. When questioned about the procedure the BOR has followed in effecting Dr. Page's removal, the secretary of the New Mexico Higher Education Department confirmed that this Court was the final arbitrator and the petition should

be addressed to this Court. *See* letter dated October 5, 2022 from New Mexico Higher Education Department Cabinet Secretary Stephanie M. Rodriguez, attached to this Petition as **Exhibit 2**.

II. THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS BASED

1. N.M. Const. art. XII, § 13 provides that “[t]he supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final.”

2. Pursuant to this provision, “no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member.” *Id.* The BOR requests that this Court hold a hearing to satisfying this requirement.

3. The BOR concluded that the actions of Dr. Page in addressing the IPRA request in a public meeting, questioning MG Grizzle’s right to pursue that request, failing to later discuss his comments privately with MG Grizzle and failing to take steps to rectify the matter constituted grounds for his removal.

III. THE CIRCUMSTANCES MAKING IT NECESSARY OR PROPER TO SEEK THE WRIT IN THE SUPREME COURT IF THE PETITION MIGHT LAWFULLY HAVE BEEN MADE TO SOME OTHER COURT IN THE FIRST INSTANCE

1. The BOR determined that Dr. Page’s actions were unprofessional and improper and not befitting a Regent. Any citizen of the State has the right to request

public records and should not be questioned about that request. Whether the requestor is a Major General of an educational institution or any other person, the requestor has the absolute right to seek public records for any or no reason. That a requester is a "subordinate" makes no difference. Dr. Page did not have the right to question MG Grizzle about why he was seeking the information yet he did so, in an open setting, meant to call into question the professionalism of MG Grizzle. When requested to do so, Dr. Page did not make overtures to mend the rift his actions created between him, as a Regent, and the President/Superintendent of NMMI, thereby demonstrating his lack of conscience and integrity for his acts.

2. Because the Supreme Court is vested with exclusive jurisdiction over the removal of a Regent pursuant to N.M. Const. art. XII, § 13, it is only this Court which is empowered to address this petition.

IV. THE NAME OR NAMES OF THE REAL PARTIES IN INTEREST . . .
PURPORTING TO ACT IN THE DISCHARGE OF OFFICIAL DUTIES

1. The BOR is the real party in interest. The BOR voted, as a board, to initiate the process to remove Dr. Page as a Regent. The BOR was discharging its official duties when a motion was made to remove Dr. Page from the BOR. The motion was made in open session, voted upon and passed.

V. THE GROUND OR GROUNDS ON WHICH THE PETITION IS BASED, AND THE FACTS AND LAW SUPPORTING THE SAME

1. As stated above, Dr. Page was appointed by the Governor and confirmed by the Senate to serve as a Regent of NMMI. The grounds upon which this Petition is based are set forth in paragraphs 2 through 28, above, and are incorporated as if set forth fully herein.

VI. STATEMENT OF THE RELIEF SOUGHT

1. The specific relief sought by the BOR is for this Court to confirm the removal of Dr. Page from the BOR based upon the undisputable verified material facts set forth herein or schedule a hearing at which Dr. Page can appear and respond.

VI. EMERGENCY CONSIDERATION

1. This Petition should be accorded treatment as an emergency. The BOR has issued a statement to Dr. Page that he is not permitted to have access to members of NMMI while this process is proceeding. A new member of the BOR should be appointed which cannot happen until this process is concluded. This leaves the BOR with a four-person membership, which could result in tie votes.

VII. OPINION, ORDERS AND TRANSCRIPTS

1. The motion voted on is contained in the minutes attached as **Exhibit 3** to this Petition.

2. The relevant tape recordings are being logged with the Court clerk concurrently with the filing of this Petition.

3. The instructions given to Dr. Page and members of the administration are attached as Exhibit 1.

4. The October 5, 2022 letter from Cabinet Secretary Rodriguez is attached as Exhibit 2.

WIGGINS, WILLIAMS & WIGGINS

A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute

1803 Rio Grande Blvd., N.W. (87104)

P.O. Box 1308

Albuquerque, New Mexico 87103-1308

(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October __, 2022 a true and correct copy of foregoing Verified Petition for Emergency Writ for the Removal of Cedric D. Page, PhD as a Regent from the Board of Regents of New Mexico Military Institute was served upon Respondent by mail at _____ and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS

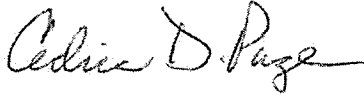
A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins

MEMORANDUM FOR THE RECORD

To: Regent Bradford Christmas
Regent Maria Christina Montoya
Regent Harold Alan Edmonson, Jr.
Regent John Garcia

From: Regent and Vice President Cedric D. Page, PhD. 
Date: October 19, 2022

Subject: Response to Memorandum entitled "Interim Instructions Regarding Removal of Cedric D. Page as NMMI Regent dated October 10, 2022."

Regent Christmas, as stated in the NMMI Board of Regents Policy Manual:

"Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final. (As amended September 20, 1949, effective January 1, 1950, November 4, 1986, and November 8, 1994.)"

In your memorandum, dated October 10, 2022, you state:

"...in accordance with the Board's Policy Manual and Robert's Rules and these instructions, during the interim...He will not be recognized by me during any portion of the meeting agenda and Board of Regents members will not entertain comments from him. He will not be permitted to vote as a Board member on times considered by the Board. He will not be able to participate in executive sessions...Regent Page will be treated as a member of the public. Any requests for information will be handled pursuant to IPRA. He will need my prior approval before attending any other NMMI or Board of Regents events."

In your memorandum, you fail to cite or reference any specific policy within the BOR Manual, adopted Robert's Rules, or any legal or statutory authority for that matter as the source of authority to impose these restrictions as interim measures while the Board pursues an attempt to remove me from office through the Supreme Court or New Mexico. In fact, no such authority exists.

As such, these instructions have no legal effect. The instructions are unenforceable and invalid.

No individual Regent nor the Board acting on a resolution they passed has authority to unilaterally remove or restrict, whether constructively or officially, a duly appointed and confirmed Regent from the Board from carrying out the duties of the office to which they were appointed and confirmed. That authority rests solely with the Supreme Court of New Mexico.

As a duly appointed and confirmed Regent, I have the authority to discharge the duties of my office without willful interference.

Be advised of the criminal statutes pertaining to interference with public officials with regard to the educational process of any public or private school, particularly with acts that would disrupt, impair, interfere with or obstruct. NM Stat § 30-20-13 (2018) Interference with members of staff, public officials or the general public; trespass; damage to property; misdemeanors; penalties., Section D, states:

"No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

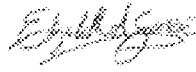
As a Regent of NMMI, your instructions and actions could be regarded as willfully interfering with my ability, as a public official, from carrying out my lawful mission and duties as a Regent without legal authority. As a Regent and hence, public official, my duties are statutory and a part of the mission, processes, procedures or functions of NMMI.

Also, your actions could be regarded as inciting others, both fellow Regents and NMMI staff, to take actions that could constitute unlawful and criminal interference with a public official, in violation of the criminal statute 30-20-13 and thus exposing fellow Regents and staff to criminal liability if they willfully participate in actions based on your instructions that are unsupported by any legal authority.

Absent my removal by a final decision from the Supreme Court, I shall continue to fully discharge the duties of the office to which I was appointed. Unlawful interference may be referred to the appropriate State law enforcement authorities. In addition, be advised that any unlawful acts, including criminal violations perpetrated in and through official acts by you and/or fellow Regents may be grounds for an allegation of malfeasance in office and ultimately be grounds for removal by the Supreme Court of New Mexico.

cc: Holly Agajanian, Chief General Counsel to the Governor, State of New Mexico
Hector Balderas, Attorney General, State of New Mexico
Stephanie M. Rodriguez, Secretary for Higher Education Department, State of New Mexico
Peter Kovnat, Counsel for Higher Education Department, State of New Mexico
President/Superintendent Jerry Grizzle, New Mexico Military Institute
COL David West, Chief of Staff, New Mexico Military Institute

**TRANSCRIPT OF MINUTES TAKEN FROM
AUDIO RECORDING 7-12-22 and AUDIO RECORDING 9-29-22**



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

ENTRY OF APPEARANCE

COMES NOW the law firm of JONES, SNEAD, WERTHEIM & CLIFFORD, P.A., by
KAITLYN DELBENE, and enters its appearance on behalf of Respondent CEDRIC D. PAGE.

Respectfully submitted,

JONES, SNEAD, WERTHEIM
& CLIFFORD, P.A.
Attorneys for Respondent Cedric D. Page, PhD

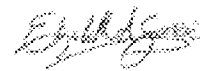
By: /s/Kaitlyn DelBene

JERRY TODD WERTHEIM
KAITLYN DELBENE
Post Office Box 2228
Santa Fe, New Mexico 87504-2228
(505) 982-0011

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, the foregoing was filed electronically and served through the Odyssey File & Serve System, which effected electronic service upon all parties of record..

/s/Kaitlyn DelBene
KAITLYN DELBENE



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

**SUPPLEMENTAL EXHIBIT IN SUPPORT OF THE VERIFIED
COMPLAINT AND/OR PETITION IN QUO WARRANTO
TO REMOVE DR. CEDRIC PAGE AS A REGENT OF THE
NEW MEXICO MILITARY INSTITUTE (CORRECTED)**

The Board of Regents of the New Mexico Military Institute files the following supplemental exhibit as indicated in its Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected) as referenced in the complaint at pages 5, 8, 9 and 16:

Exhibit 6: Transcript of Minutes from:

Audio Recording, 7-12-22; and

Audio Recording, 9-29-22.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins
Patricia G. Williams

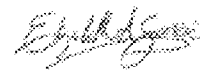
Attorneys for Board of Regents of the New
Mexico Military Institute
1803 Rio Grande Blvd., N.W. (87104)
P.O. Box 1308
Albuquerque, New Mexico 87103-1308
(505) 764-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 15, 2022 a true and correct copy of foregoing Supplemental Exhibit in Support of the Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected) was served upon counsel for Dr. Page through the Court's e-file and serve system and upon the Attorney General by facsimile, No. (505) 318-1050.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By /s/ Lorna M. Wiggins
Lorna M. Wiggins



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

NOTICE OF NON-AVAILABILITY

Respondent Cedric D. Page, PhD, respectfully notifies the Court that he will be out of the country and unavailable from November 15, 2022, through December 6, 2022.

Jerry Todd Wertheim and Kaitlyn DelBene, counsel for Respondent, respectfully notify the Court that they will be in trial and unavailable from December 5, 2022, through December 9, 2022.

Respectfully submitted,

JONES, SNEAD, WERTHEIM
& CLIFFORD, P.A.
Attorneys for Respondent Cedric D. Page, PhD

By: /s/Kaitlyn DelBene

JERRY TODD WERTHEIM
KAITLYN DELBENE
Post Office Box 2228
Santa Fe, New Mexico 87504-2228
(505) 982-0011

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, the foregoing was filed electronically and served through the Odyssey File & Serve System, which effected electronic service upon all parties of record..

/s/Kaitlyn DelBene
KAITLYN DELBENE

TRANSCRIPT OF NMMI BOARD MEETING

TRANSCRIBED BY: MICHELE M. TRUJILLO
NEW MEXICO CCR #226
CUMBRE COURT REPORTING SERVICES, LLP
2019 Galisteo Street, Suite A-1
Santa Fe, New Mexico 87505

CUMBRE COURT REPORTING
cumbrecourt@comcast.net

1 (Unintelligible dialogue.)

2 REGENT PAGE: -- history, that's all
3 important for us to hear. But we're dealing with
4 some important issues here with this position, and I
5 would -- and I'll just add, in terms of how we
6 proceed, how we move forward.

7 As Lorna suggested, we go into Executive
8 Session. Now everybody is looking at the clock,
9 because we've got to go to lunch, and so forth and so
10 on. Maybe we can set up an Executive Session, a
11 Special Meeting, go into Executive Session, to
12 discuss the process of bringing on board this
13 position. Whether it's a permanent position, whether
14 it's a temporary position, we've got some options
15 there.

16 I have some options I'd like to present to
17 the board in terms of carrying the --

18 PRESIDENT CHRISTMAS: In the letter that
19 you shared with us, you referenced this
20 document, 1978 Board (unintelligible), State of New
21 Mexico, which has nothing to do with an internal
22 auditor. It has everything to do with 1978. It was
23 determined that every state institution would have an
24 external auditor, which we are in full compliance
25 with.

1 So all of the references you had in the
2 letter you sent to the Board referenced an external
3 audit function, and we are in full compliance of
4 that.

5 So let's make sure, when we start talking
6 about this, that we compare apples to apples, oranges
7 to oranges, that we're talking about the internal
8 audit function that we are looking at, and I don't
9 want to interrupt it or confuse it with some other
10 document.

11 (Phone chimes.)

12 REGENT PAGE: And I have referenced the
13 Institute of Internal Auditors, procedures, policies,
14 in that letter.

15 PRESIDENT CHRISTMAS: You did, but you --

16 UNIDENTIFIED SPEAKER: If you on the board
17 received that letter, I know I didn't get any
18 response to it. So I assume that there was some
19 concurrence with what I addressed in the letter to
20 the Board.

21 PRESIDENT CHRISTMAS: That's assuming that
22 we read it.

23 REGENT PAGE: Well, I assume that you read
24 it.

25 PRESIDENT CHRISTMAS: I read it.

1 REGENT PAGE: Yeah, you read it. Whether
2 you agreed with it or not is another question. I
3 responded to all of the roadblocks that were thrown
4 in our way to educate ourselves about the internal
5 audit function.

6 We could have carried that out on the 13th
7 of June, but apparently that was too close with some
8 other functions that were important for folks to get
9 to and attend (unintelligible).

10 So that's all I have to say. And I think
11 we go back to our counsel's recommendation that this
12 issue be continued in Executive Session at a future
13 meeting. If it's not on your agenda, you can't go
14 into Executive Session today.

15 UNIDENTIFIED MALE SPEAKER: I don't think
16 she said that we need to go into Executive Session.
17 She just stated, to clarify, that if we were going to
18 be discussing credentials and (unintelligible)
19 specific credentials, we need to (unintelligible).

20 MS. WIGGINS: That is correct.

21 REGENT PAGE: Thank you.

22 MS. WIGGINS: Yes. Dr. Page, with all due
23 respect, it is absolutely the case, since the agenda
24 specifically has as an action item the internal
25 auditor position, that notice has been given to the

1 public, and you could dissolve into Executive Session
2 right now and then move back in the Open Session to
3 take action.

4 I also want to be clear, though, that the
5 Board could approve the selection and hiring of the
6 specific candidate and be compliant with 6.3.8.

7 PRESIDENT CHRISTMAS: Absolutely, totally
8 comply.

9 All right. Any Board questions?

10 REGENT MONTOYA: With the exception of --
11 I'm sorry -- with the exception of requiring the
12 endorsement of the Audit Committee, is that correct,
13 since I do -- I do not endorse this, and I was not
14 asked to meet about this prior to this meeting. We
15 haven't met about this in some time.

16 PRESIDENT CHRISTMAS: Okay. I will now
17 call for questions.

18 Let's bring this to a vote. The motion
19 on -- the motion on the question (unintelligible) --
20 (Feedback interference on Zoom.)

21 REGENT PAGE: Will you please state the
22 question?

23 PRESIDENT CHRISTMAS: The question is the
24 initial motion to vote and to end discussion for
25 that.

1 UNIDENTIFIED MALE SPEAKER: The motion
2 that's on the floor, Mr. President, is to approve of
3 the hiring of this individual as the internal
4 auditor. That was the motion you made.

5 PRESIDENT CHRISTMAS: Correct.

6 UNIDENTIFIED MALE SPEAKER: And that motion
7 was seconded?

8 UNIDENTIFIED MALE SPEAKER: It was
9 seconded, yes.

10 PRESIDENT CHRISTMAS: Since it was
11 seconded, we'll move to the vote.

12 Dr. Page?

13 REGENT PAGE: No.

14 PRESIDENT CHRISTMAS: Regent Montoya?

15 REGENT MONTOYA: No.

16 PRESIDENT CHRISTMAS: Regent Edmondson?

17 REGENT EDMONDSON: Yes.

18 PRESIDENT CHRISTMAS: Regent Garcia?

19 UNIDENTIFIED MALE SPEAKER: I can't -- hang
20 on.

21 Regent -- hang on. We'll try it again.

22 It's just this --

23 (Feedback interference on Zoom.)

24 UNIDENTIFIED MALE SPEAKER: Go ahead.

25 Regent Garcia?

1 REGENT GARCIA: Yes.

2 PRESIDENT CHRISTMAS: That motion passes.

3 So, therefore, we will vote on the motion. I'll
4 restate the motion, just --

5 UNIDENTIFIED MALE SPEAKER: That was the
6 vote on the motion.

7 PRESIDENT CHRISTMAS: (Unintelligible).

8 (Feedback on Zoom continues.)

9 UNIDENTIFIED MALE SPEAKER: No, there was
10 a -- the motion was made. The motion was seconded to
11 hire this individual.

12 PRESIDENT CHRISTMAS: All right. So the
13 motion passes.

14 UNIDENTIFIED MALE SPEAKER: Yeah.

15 UNIDENTIFIED MALE SPEAKER: Are the
16 individuals present to discuss the (unintelligible)
17 position?

18 (Zoom interference continues.)

19 (Unintelligible dialogue.)

20 PRESIDENT CHRISTMAS: (Unintelligible).

21 She ain't here.

22 The Board (unintelligible) before NMMI
23 employed her legally about a month ago.

24 (Unintelligible) has terminated this (unintelligible)
25 position, and so I assume that now we, as the Board

1 of Regents, do assume this employee from
2 (unintelligible).

3 REGENT PAGE: The minutes will reflect that
4 I, as a regent, did not accept this action. Perhaps,
5 at the next meeting, we discuss that.

6 REGENT MONTOYA: I am a no vote.

7 UNIDENTIFIED MALE SPEAKER: Thank you.

8 PRESIDENT CHRISTMAS: We've got a no vote.
9 We have three yes votes and two no votes.

10 All right. Item number four -- number
11 five, message from the Board.

12 Regent Garcia?

13 REGENT GARCIA: Yes.

14 (Interference on Zoom continues.)

15 PRESIDENT CHRISTMAS: Anything you want to
16 bring forth?

17 REGENT GARCIA: I have nothing to add.

18 (Interference on Zoom continues.)

19 PRESIDENT CHRISTMAS: Regent Edmondson?

20 REGENT EDMONDSON: No, sir.

21 PRESIDENT CHRISTMAS: Regent Montoya?

22 REGENT MONTOYA: I do.

23 PRESIDENT CHRISTMAS: Bring it.

24 REGENT MONTOYA: Okay.

25 PRESIDENT CHRISTMAS: And then please give

1 us just a few minutes, and the reason that
2 (unintelligible). Okay. The reason is that we have
3 a function as a foundation for our presence at 12:00.
4 So we're not worried about lunch.

5 Regent Montoya, go ahead. Excuse me for
6 interrupting.

7 REGENT MONTOYA: President Christmas, now
8 I'd like to address your undated letter, the
9 confidential memorandum, which was both inappropriate
10 and without merit.

11 We are regents appointed by the Governor of
12 the State of New Mexico and confirmed by the Senate.
13 We are not subordinate nor subject to your
14 supervision. We serve at the pleasure of the
15 Governor of the State of New Mexico -- and the State
16 of New Mexico.

17 The tone and character of your letter
18 implied it is within your scope of duty, as the
19 President of the Board, to formally caution, attempt
20 to admonish, or otherwise level the accusations in
21 the context of a supervising or managing official as
22 implied by affixing the original signature blocks to
23 the letter.

24 Furthermore, it is entirely inappropriate
25 for you to interfere with or attempt to intimidate

1 any of us in discharging our duties as regents.

2 I serve on the Academic Affairs, Cadet
3 Life, Finance, and Audit committees. Please be
4 reminded of Section 6.6.1 of the Board of Regents
5 Policy Manual, which explicitly states that such
6 duties and functions of the standing committees shall
7 include at least gathering information, conferring
8 with members of the administration, faculty, staff,
9 cadet body, and public on topics within the
10 committee's duties.

11 It is disappointing to see a lack of focus
12 on what falls within your purview to act on your duty
13 to help facilitate training, orientation,
14 information, and guidance to our Board as a team in
15 good faith and alignment with the Board Manual and
16 the New Mexico State Constitution.

17 Instead, this past year that I've been on
18 the Board has been spent with attempts to
19 inappropriately filter information to the Board and
20 undermine our role as regents.

21 Also, your efforts to delegitimize and
22 marginalize me as a member of the Finance and
23 Internal Audit Committee by purposefully excluding my
24 participation, hindering access to information needed
25 to perform my duties effectively, and admonishing the

1 asking of questions related to a vote has greatly
2 eroded my confidence in you as our Board President.

3 I'm a proud NMMI graduate, as are many of
4 you, and a parent of a cadet, with all
5 responsibilities that come with being a parent of a
6 cadet attending the Institute, and with all of the
7 responsibilities that come with being a parent of a
8 cadet attending the Institute, consistent with the
9 Government Conduct Act and Regent Code of Conduct and
10 Conflicts of Interest Policy, as described in
11 Section 6.5 of the Board of Regents Manual.

12 Since you consistently bring this up, I
13 will thus respond as a Regent and parent of a cadet.
14 I hope that you, in speaking for this Board of
15 Regent, along with the administration, faculty and
16 staff, including contractors, are prepared to either
17 admit to and protect the Institute through a
18 team-based, solution-focused approach aimed at
19 addressing systemic issues negatively affecting the
20 corps of cadets and contrary to the NMMI values or
21 speak as to why my cadet is being targeted.

22 You are entitled to your own personal
23 opinion and may disagree with the manner in which I
24 discharge my duties and oath of office. However, I
25 will not tolerate attempts to intimidate and

1 interfere with our lawful and fiduciary duties as
2 required by the state law.

3 Thank you.

4 PRESIDENT CHRISTMAS: It should be noted,
5 Regent Montoya, number one, I wrote the letter
6 because they lied to me. This is an honor school,
7 and that is not the first time. The rest of it, I
8 will take up with you while I'm in person. I'll be
9 glad to.

10 As far as your cadet, I never said a word,
11 bad, good, or otherwise, about your cadet. I've met
12 her twice in my life. I have no opinion, whatsoever.
13 I wish her well. As a parent, I wish you well.

14 What I do find offensive is that you
15 take -- part of the problem, you have taken things
16 from your cadet to the staff. That's not your role.
17 You've been asked to stay in your lane. You don't do
18 that.

19 But I understand you have (unintelligible).
20 This will be one of the things I will be bringing
21 forth, that no regent in the future should be a
22 regent if they have a cadet, because it's a conflict
23 of interest.

24 You stated that you're an advocate for the
25 corps. Your position -- you have to decide,

1 yourself, do you want to be a regent? Do you want to
2 be an advocate for the corps? I understand a parent.
3 I have no problems with that. But you don't use
4 innuendo, influence, questions, thought, anything, to
5 go back and tell staff based on what your cadet has
6 said or other cadets.

7 And so, you know, I hear your comments. I
8 hope you'll hear mine. I have not set out to attack
9 you personally. You have caused tremendous problems
10 in this school by some of your actions. But, again,
11 we're address that at a later date, you and I. And
12 why don't I just leave it at that, because we could
13 get very personal right here.

14 Anybody else?

15 REGENT PAGE: Yes.

16 PRESIDENT CHRISTMAS: Regent Page.

17 REGENT PAGE: Okay. I'll report out on the
18 Academic Affairs Committee. We had a very thorough
19 and detailed meeting with Colonel Griego last week,
20 updating us on the status of the math program, the
21 reincarnation of a math program that is fair to all
22 of the students coming to this institution.

23 We are very pleased with the progress. We
24 know more needs to be made, and we, as a committee,
25 encourage them to continue along the track that we

1 decided to make some changes in the academics
2 program, starting with the math and start looking at
3 the other departments here.

4 I'd also like to request that our next
5 meeting, that it's a Special Meeting, that we have an
6 Executive Session to address personnel matters, and
7 that personnel matter will be the annual review and
8 recent evaluation of the President's and
9 Superintendent's performance.

10 All institutions that we are aware of go
11 through this process. We have not done that yet this
12 year. So I think that next meeting, Special Meeting,
13 Regular Meeting in October, that we go into
14 Executive Session and talk about the process for
15 evaluating, and include the President and
16 Superintendent in that process so that everyone has
17 the opportunity to input the factors that we should
18 be evaluating the performance on.

19 There are a number of other issues in
20 Executive Session that we probably need to deal with,
21 and one of the others is a review of our Board of
22 Regents policies. I think our counsel alluded to
23 that, and we need to just review those, make sure
24 they are current and up-to-date. I don't have an
25 idea of when they were last reviewed thoroughly, but

1 we need to go through that process.

2 I also had a question of: Is anyone here
3 from Personnel? Is Barbara on here?

4 UNIDENTIFIED FEMALE SPEAKER: I am.
5 (Unintelligible) is on the call as well.

6 REGENT PAGE: Oh, okay. All right.

7 Is there anyone on staff who lives
8 at 5061 Bright Sky Road?

9 UNIDENTIFIED FEMALE SPEAKER: I have no
10 idea.

11 MAJOR GENERAL GRIZZLE: That's my house.

12 REGENT PAGE: Okay. Well, I received an
13 IPRA request from that address from the General --
14 from President Griego, asking about my prior
15 employment. So I just wanted to know if there was
16 anybody on staff --

17 UNIDENTIFIED FEMALE SPEAKER: I don't know
18 everybody's address.

19 REGENT PAGE: Yeah, that does put you in
20 the request, Request Number 2176. So, if that needs
21 to go into the record, so be it.

22 This (unintelligible) was unusual, for a
23 subordinate to make a request of a regent. Regents
24 are vetted by the Governor's Office. Regents are
25 vetted by the State Senate. Why would an employee of

1 the Institution need to know about the contract or
2 contracts that the regent held at a particular
3 institution --

4 UNIDENTIFIED MALE SPEAKER: Warnings.

5 REGENT PAGE: -- in term of the evaluation
6 criteria?

7 UNIDENTIFIED MALE SPEAKER: Warnings.

8 REGENT PAGE: This is also any evaluations
9 and any bonus or incentive criteria.

10 UNIDENTIFIED MALE SPEAKER: Okay.

11 REGENT PAGE: -- that was available. So --

12 PRESIDENT CHRISTMAS: Ms. Wiggins has her
13 hand up.

14 MS. WIGGINS: Thank you.

15 I wanted to point out that, under the
16 Inspection of Public Records Act, every person in the
17 state has a right to inspect public records unless
18 they are excepted or protected from an inspection,
19 and the entity responding to an IPRA request does not
20 have the right to ask the purpose or to speculate as
21 to the purpose.

22 So I just wanted to make sure that our
23 record was clear as to what the obligations are and
24 the rights of someone seeking to inspect a record.
25 But it is considered a public record.

1 Thank you.

2 REGENT PAGE: Thank you. No response is
3 requested by me. I want the record to show that. I
4 just wanted to bring that to the attention of the
5 Board, that this request was made in February
6 of 2020.

7 Thank you.

8 PRESIDENT CHRISTMAS: Item number six.
9 General Grizzle.

10 MAJOR GENERAL GRIZZLE: I just have one
11 request of the Board, and that is, if you are
12 contacted by a parent, that you would direct them
13 here. You really just don't have the information in
14 any aspect, whether it's academic, athletics, the
15 corps, to be able to answer a parent effectively, and
16 it just creates problems when you attempt to do that.

17 So, please, refer them here and let us be
18 able to respond to the parent. With the stroke of a
19 key, we can look up anything and absolutely
20 everything about a cadet, from records, to GPA, to
21 what they're doing in the infirmary, what they're
22 doing in the corps. There's nothing that we can't
23 look up with a keystroke when we're talking to a
24 parent that you simply don't have that access.

25 We're still dealing with a parent which

1 started from a comment made last April, and that has
2 resulted in (unintelligible) and in claims to the
3 HED, and on and on and on. We're still dealing with
4 it. And so, please, just refer any inquiries
5 directly to you from a parent to us. That's all, all
6 I ask for. That's all.

7 PRESIDENT CHRISTMAS: And this should go
8 beyond a parent's request. For a recent example, a
9 contractor contact -- contacted a regent about a
10 complaint that (unintelligible), and it was referred
11 to me, at least. I sent it to General Grizzle, and
12 it was the end of the story.

13 The guy realized he was wrong. It wasn't
14 going anywhere. He was trying to use the regent for
15 his own personal benefit, if you will, and it didn't
16 work. So, there again, that -- please do that, per
17 request.

18 UNIDENTIFIED MALE SPEAKER: On that issue,
19 I -- I'll -- I just talked with you, Colonel Griego.
20 I was contacted by a parent about his student, and I
21 referred them back to you to deal with it. So I made
22 no commitments to address it from a Board perspective
23 but back to you, Phil. I appreciate you handling it
24 the way you have.

25 UNIDENTIFIED SPEAKER: Yeah. Now, it was a

1 very cordial conversation between us and, you know,
2 just pointing out those kind of things. Again,
3 (unintelligible) after that, multiple tasks, and
4 they'll be -- they'll be fine. I mean, that's the
5 goal. The goal is to get them graduated, so --

6 PRESIDENT CHRISTMAS: All right. Item
7 seven, a motion to adjourn.

8 REGENT PAGE: All right. One last question
9 before we get to that motion.

10 PRESIDENT CHRISTMAS: Question.

11 REGENT PAGE: Are we going to set a
12 Special Meeting to address some of the issues?

13 PRESIDENT CHRISTMAS: Well, I'll get with
14 you on that. I'll send out a blurb so everybody can
15 check their calendars to make sure they have time
16 available, so -- in the near future. Would that be
17 okay?

18 REGENT PAGE: How soon will that be? "Near
19 future," I want it to be before the October meeting.

20 PRESIDENT CHRISTMAS: You'll have -- you'll
21 have something from me in the next couple of weeks.
22 So everybody can check their calendar at that time
23 and --

24 Is there any more?

25 UNIDENTIFIED MALE SPEAKER:

1 (Unintelligible), right?

2 UNIDENTIFIED MALE SPEAKER: Yeah.

3 REGENT PAGE: Give us some dates and times.
4 Whether we have it virtually or here or someplace
5 else, I hope you'll be specific in terms of that next
6 meeting to address some of these very important issues.

7 PRESIDENT CHRISTMAS: Okay.

8 All right. I will entertain a motion to
9 adjourn.

10 UNIDENTIFIED MALE SPEAKER: I'll
11 (unintelligible) a motion to adjourn.

12 PRESIDENT CHRISTMAS: All in favor?

13 UNIDENTIFIED MALE SPEAKER: Aye.

14 UNIDENTIFIED FEMALE SPEAKER: Aye.

15 UNIDENTIFIED MALE SPEAKER: Aye.

16 PRESIDENT CHRISTMAS: Opposed?

17 UNIDENTIFIED MALE SPEAKER: John. John is
18 opposed.

19 PRESIDENT CHRISTMAS: Regent Garcia, thank
20 you very much for joining us.

21 REGENT GARCIA: Thank you for having me.

22 PRESIDENT CHRISTMAS: The foundation's
23 meeting is over, and I --

24 (Recording ends.)

25

1 IN RE: NMMI BOARD MEETING

2
3 REPORTER'S CERTIFICATE

4 I, MICHELE M. TRUJILLO, CCR #226, DO HEREBY
5 CERTIFY that I did, in stenographic shorthand,
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10 I FURTHER CERTIFY that I am neither
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13 attorneys in this matter, and that I have no
14 interest whatsoever in the final disposition of this
15 matter.

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18 MICHELE M. TRUJILLO
19 New Mexico CCR #226
20 License Expires: 12/31/2022

TRANSCRIPT OF NMMI BOARD MEETING
SEPTEMBER 29, 2022

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1 (Unintelligible dialogue.)

2 UNIDENTIFIED FEMALE SPEAKER: And it's
3 working.

4 PRESIDENT CHRISTMAS: Okay. Great.
5 Hello, Regent Garcia.

6 REGENT GARCIA: How do you doing, sir?

7 PRESIDENT CHRISTMAS: How are you today,
8 sir?

9 REGENT GARCIA: It looked like I got on
10 okay.

11 (Laughter.)

12 UNIDENTIFIED SPEAKER: That's good. Not
13 us.

14 REGENT GARCIA: That's an accomplishment
15 here.

16 PRSIDENT CHRISTMAS: I told David, we're
17 going to miss the echo.

18 REGENT GARCIA: Yeah. Well, looks like
19 it's coming out pretty good right now.

20 PRSIDENT CHRISTMAS: Are you in Santa Fe,
21 or what part of the world are you in?

22 REGENT GARCIA: No, I'm in Albuquerque.

23 PRESIDENT CHRISTMAS: Okay.

24 REGENT GARCIA: We teleworked a bit today,
25 so I'm at my home office.

1 PRESIDENT CHRISTMAS: Okay. Great.
2 We have a couple more minutes, and then --
3 REGENT GARCIA: Okay.
4 UNIDENTIFIED SPEAKER: (Unintelligible) you
5 don't have a quorum.
6 REGENT MONTOYA: Hi. Sorry. That took me
7 a moment.
8 PRESIDENT CHRISTMAS: Regent Edmondson,
9 welcome.
10 REGENT EDMONDSON: Yes, sir. How is
11 everybody doing?
12 PRESIDENT CHRISTMAS: Well, we're working
13 on the echo, first. You know, we're trying to create
14 one, because I know you guys are going through
15 withdrawal.
16 UNIDENTIFIED MALE SPEAKER: (Unintelligible)
17 sounds better.
18 (Unintelligible dialogue.)
19 PRESIDENT CHRISTMAS: All right. I'm
20 showing 1600 hours, so would you all join me for the
21 Pledge of Allegiance.
22 (Pledge of Allegiance recited.)
23 PRESIDENT CHRISTMAS: Thank you.
24 Okay. Roll call. Regent Page?
25 (No audible response.)

1 PRESIDENT CHRISTMAS: Regent Garcia?
2 REGENT GARCIA: Here.
3 PRESIDENT CHRISTMAS: Ms. Montoya?
4 MS. MONTOYA: Here.
5 PRESIDENT CHRISTMAS: Regent Edmondson?
6 REGENT EDMONDSON: Present.
7 PRESIDENT CHRISTMAS: And President
8 Christmas.
9 Okay. Approval of the agenda, is there a
10 motion?
11 REGENT GARCIA: I'll make a motion to
12 approve the agenda.
13 PRESIDENT CHRISTMAS: Hear a second?
14 MR. GARCIA: Regent Garcia.
15 UNIDENTIFIED SPEAKER: I'll second that.
16 PRESIDENT CHRISTMAS: All right. All in
17 favor, aye?
18 UNIDENTIFIED MALE SPEAKER: Aye.
19 UNIDENTIFIED MALE SPEAKER: Aye.
20 REGENT MONTOYA: Aye.
21 PRESIDENT CHRISTMAS: Opposed?
22 None? Okay.
23 The first item on today's agenda is an
24 action pertaining to Regent Page during and following
25 the July 12, 2022, Board of Regents meeting. We will

1 now entertain a motion to give a formal notice that
2 the Board intends to proceed with removing him from
3 his position as regent for incompetence and neglect
4 of duty and malfeasance, and further, at Section 5.1
5 of the previous Policy Manual, that should
6 Regent Page should elect not to resign his position,
7 a date be set for hearing on his removal and, in that
8 interim, he'd be instructed not to contact any NMMI
9 employees or to attend NMMI board meetings or
10 functions without the President's prior approval.

11 Is there such a motion?

12 UNIDENTIFIED SPEAKER: I'll make a motion
13 to move forward with the process of removing
14 Dr. Page.

15 PRESIDENT CHRISTMAS: A second?

16 UNIDENTIFIED SPEAKER: You sit here silent.

17 REGENT GARCIA: Sir, is this for -- is this
18 up for discussion, or is this a motion to be made?

19 PRESIDENT CHRISTMAS: This is a motion to
20 be made and moved, and it needs a second.

21 REGENT GARCIA: I'll make a second.
22 Garcia.

23 PRESIDENT CHRISTMAS: Okay. The motion is
24 seconded. The movement is seconded. Pardon me.

25 We can have discussion. Regent Garcia,

1 comments?

2 MR. GARCIA: Yeah, I thought we had some
3 choices to make, but the recommendation is for
4 removal from the board?

5 PRESIDENT CHRISTMAS: Yes, sir.

6 REGENT GARCIA: Okay. I think you have a
7 hand up from Dr. Page.

8 PRESIDENT CHRISTMAS: I see
9 (unintelligible).

10 Regent Page, comments?

11 REGENT PAGE: Does the chair recognize me?

12 PRESIDENT CHRISTMAS: Sir.

13 REGENT PAGE: I would request in writing
14 the motion that President Christmas just made. Can
15 you put that out as an email attachment, where we can
16 read it? You were not very clear as you read it,
17 President Christmas.

18 PRESIDENT CHRISTMAS: I'd be glad to read
19 it again.

20 REGENT PAGE: No, we need a written copy of
21 it.

22 PRESIDENT CHRISTMAS: Okay. I'll see if we
23 can't get that done during the course of the meeting.
24 All right. Regent Page comments?

25 REGENT PAGE: I have a couple comments.

1 Yeah, as Regent Garcia suggested in our
2 closed session, in our Executive Session -- the last
3 two meetings, we discussed issues relating to
4 comments that I made on July 12th. Now I see in this
5 motion you are including actions or conduct following
6 the July 12th meeting. Would you care to specify
7 those as we await the written motion that you're
8 making?

9 PRESIDENT CHRISTMAS: The action, very
10 simply, sir, is to remove you from the Board.

11 REGENT PAGE: No, no. If you read the
12 agenda, it says "conduct during and following the
13 July 12th meeting." I'm asking: What conduct
14 following the July 12th meeting is this motion
15 referring to?

16 PRESIDENT CHRISTMAS: Irregular conduct at
17 the July 12th meeting.

18 REGENT PAGE: I'm sorry. I didn't quite
19 hear you.

20 PRESIDENT CHRISTMAS: Do you have a phone
21 there?

22 REGENT PAGE: Yeah. The question is: What
23 conduct following the July 12th meeting?

24 PRESIDENT CHRISTMAS: No, you don't have
25 the floor right now, Regent Page.

1 Regent Edmondson, we're good to go.
2 Did we lose him?
3 UNIDENTIFIED SPEAKER: No, he's here.
4 REGENT EDMONDSON: I'm here.
5 PRESIDENT CHRISTMAS: Okay.
6 Can you hear me better now? I can get a
7 little closer to the microphone. Did you have a
8 comment, sir?

9 REGENT EDMONDSON: No, sir. I don't.
10 PRESIDENT CHRISTMAS: Okay. All right.
11 Back to you, Regent Page. Do you have
12 another comment?

13 REGENT PAGE: Yes. I'm asking for a verbal
14 articulation of the conduct following the
15 July 12th, 2022, meeting that this motion alludes to.

16 PRESIDENT CHRISTMAS: Well, in Executive
17 Session, you acknowledged your conduct, sir.

18 REGENT PAGE: What I'm asking, so that we
19 could be clear on what we're asked to vote on, is:
20 What conduct are you referring to after July 12th?
21 Is that not clear?

22 PRESIDENT CHRISTMAS: What we're being
23 asked to vote on today -- and I'll read this again.
24 "Motion to give Regent Page formal notice that the
25 Board intends to proceed with removing him from his

1 position as regent for incompetence, neglect of duty,
2 and malfeasance and, further, to remove him in
3 accordance with Section 5.1 of the Board of Regents
4 Policy Manual that, should Regent Page not resign his
5 position, a hearing will be set on hearing of his
6 removal and that, in the interim, he be instructed
7 not to contact NMMI employees or (unintelligible) of
8 NMMI or Board function without President's prior
9 approval."

10 That is the motion that has been moved and
11 seconded, sir.

12 REGENT PAGE: I didn't hear that last part.
13 Who is it that Regent Page is not supposed to
14 contact?

15 PRESIDENT CHRISTMAS: NMMI employees or
16 attend NMMI or Board functions without the Board
17 President's prior approval.

18 REGENT PAGE: Employees or Board functions.
19 Without prior approval from whom, Regent Christmas?

20 PRESIDENT CHRISTMAS: From me, sir.

21 REGENT PAGE: I'm sorry?

22 PRESIDENT CHRISTMAS: The approval would
23 come from me.

24 REGENT PAGE: Oh, so there would not be a
25 vote of the Board to affirm that prohibition. Is

1 that what I understand?

2 PRESIDENT CHRISTMAS: This is the motion in
3 front of us.

4 REGENT PAGE: Oh, well, we don't have a
5 written copy of it in front of us.

6 Do we?

7 UNIDENTIFIED SPEAKER: I can send it to
8 them.

9 REGENT PAGE: Can you put it up on screen,
10 or can you email it to us?

11 PRESIDENT CHRISTMAS: We'll see if we can't
12 get that emailed out here, momentarily.

13 REGENT PAGE: So do I still have the floor?

14 PRESIDENT CHRISTMAS: Go ahead.

15 REGENT PAGE: Yeah, just a couple of
16 questions. In terms of this motion, it, as
17 Regent Garcia suggested, comes out of a discussion
18 during Executive Session, and there were other
19 options in terms of addressing my alleged
20 behavior/conduct on July 12th.

21 I'm wondering how the Board was not allowed
22 to debate that any further and come to some decision
23 about what action they were going to take moving
24 forward through this, through this motion that you
25 have made.

1 PRESIDENT CHRISTMAS: Well, here we are
2 right now.

3 REGENT PAGE: Yeah, we can hear you.

4 I don't hear you -- I can't hear you right
5 now.

6 PRESIDENT CHRISTMAS: You can't. Can you
7 hear me now?

8 REGENT PAGE: Yeah, we can hear you.

9 PRESIDENT CHRISTMAS: Regent Garcia, can
10 you hear me?

11 REGENT GARCIA: Yeah, I can hear you.

12 PRESIDENT CHRISTMAS: Okay.

13 REGENT PAGE: Do you want to articulate,
14 President Christmas, the actions that were discussed
15 at the meeting on our last Board meeting?

16 UNIDENTIFIED SPEAKER: Those were done in
17 Executive Session, correct? So those are not for
18 discussion in public forum.

19 PRESIDENT CHRISTMAS: No, they're not up
20 for discussion. They are privileged.

21 We're waiting while -- we've sent the
22 motion to term, to pipe out the email out so
23 everybody can have it in front of them.

24 REGENT PAGE: While we're waiting for that
25 document, do you want to articulate,

1 President Christmas, this process for a hearing?

2 PRESIDENT CHRISTMAS: I'll let Lorna
3 Wiggins, our attorney, go through that process.

4 Ms. Wiggins, are you on?

5 MS. WIGGINS: I am. Thank you. Good
6 afternoon.

7 As you-all will recall, the New Mexico
8 Military Institute Board of Regents Policy Manual, at
9 Section 5.1, references removal of a member of the
10 Board of Regents, and it quotes the State
11 Constitution, which provides, in part, "No removal
12 shall be made without notice of hearing and an
13 opportunity to be heard, having first been given to
14 such member. The Supreme Court of the State of
15 New Mexico is hereby given exclusive original
16 jurisdiction over proceedings to remove members of
17 the Board under such rules as it may promulgate."

18 The rules that have been promulgated
19 relating to removal of a regent are set forth, we
20 believe, in 12-504, which is the provision that
21 addresses extraordinary writs from the Supreme Court.

22 And when a writ is required from the
23 Supreme Court, it requires a party to file a verified
24 petition which sets out, among other things, why it
25 is we believe the Supreme Court has jurisdiction; the

1 circumstances that make a writ necessary and proper;
2 the identity of the parties involved; and the grounds
3 upon which the petition is based, including a
4 recitation of the facts and the law, if any, that
5 supports the petition. It also asks that the
6 petitioner set off -- set out, rather, the relief
7 that is sought.

8 After the writ is filed, the respondents,
9 or the real parties in interest, or the
10 Attorney General may file a response to the petition.
11 If the Court determines that there's no basis for the
12 petition, then it may be summarily denied.

13 Otherwise, the Court can ask the parties to
14 submit supplemental briefs as to whatever issues the
15 Court deems relevant and helpful to the Court in
16 sorting out the process, and at the end of the day,
17 the petition is either granted or other relief is
18 then decided and ordered by the Supreme Court.

19 PRESIDENT CHRISTMAS: You should have the
20 email momentarily. Please advise me when you get it.

21 REGENT PAGE: There seems to be some
22 contradiction in that memo. The memo refers to my
23 option to resign or not to resign and then next
24 steps.

25 PRESIDENT CHRISTMAS: But it says we will

1 move forward if you don't resign, sir.

2 REGENT PAGE: Correct. I understand that.

3 PRESIDENT CHRISTMAS: That is the motion.

4 Comment from anybody else? Everybody got
5 it?

6 UNIDENTIFIED MALE SPEAKER: I don't have
7 it. I don't see it anywhere.

8 REGENT MONTOYA: And I don't, either.

9 PRESIDENT CHRISTMAS: Okay.

10 (Unintelligible dialogue.)

11 UNIDENTIFIED SPEAKER: I don't know why
12 they don't have it.

13 (Unintelligible dialogue.)

14 UNIDENTIFIED SPEAKER: I sent it to them
15 using the Regents tab that we use to send them
16 everything.

17 PRESIDENT CHRISTMAS: Can you send it to
18 me, and then I can --

19 UNIDENTIFIED SPEAKER: Okay. I've got it
20 now.

21 PRESIDENT CHRISTMAS: Regent Montoya, do
22 you have it yet?

23 REGENT MONTOYA: I've received it.

24 PRESIDENT CHRISTMAS: Does anybody have any
25 further questions?

1 All right. In that case, we'll proceed to
2 the roll call vote.

3 Dr. Page?

4 REGENT PAGE: Oh. No.

5 PRESIDENT CHRISTMAS: Regent Garcia?

6 REGENT GARCIA: No further questions.

7 PRESIDENT CHRISTMAS: We're proceeding to
8 the vote, sir, for the motion for the incident.

9 REGENT PAGE: If I could interrupt before
10 we complete the vote, I have -- President Christmas?

11 PRESIDENT CHRISTMAS: I'm listening.

12 REGENT PAGE: Okay. I just want to refer
13 to the key values for the Institute, and I understand
14 fully that the Board supports and is committed to
15 those key values. They're available in our Board
16 Policy Manual, the values about knowledge, our
17 commitment to pursue and share knowledge about how we
18 operate as a board, how we are informed through --
19 about the laws that pertain to us.

20 I understand that we are committed to
21 integrity, and integrity with regard to the students,
22 the faculty and staff of the Institute. We are
23 committed to service, the service that we expect of
24 our students at the Institute. We provide that
25 opportunity through their academic programs, their

1 leadership programs.

2 And, lastly, we have a responsibility to
3 responsibility, responsibility to the students and
4 their families, to the citizens and taxpayers of
5 New Mexico.

6 So, as the Board, when we abide by all of
7 these, that leads to a better sense of public
8 confidence in the Institute as a place where families
9 will want to send their young people.

10 So, as a Board, I think we are all working
11 toward the same end and objective if we're committed
12 to those values, and, you know, the Honor Code sums
13 it all up. The Honor Code at my first institute of
14 higher learning and my last military posting has the
15 same Honor Code as we have at New Mexico Military
16 Institute. So --

17 PRESIDENT CHRISTMAS: Let's go
18 (unintelligible).

19 REGENT GARCIA: So as you all -- as the
20 Board members make their decisions, I want you to
21 keep in mind the key values that we all committed to
22 when we signed on to provide policy, guidance, and
23 leadership for the Institute, along with, certainly,
24 the administration that carries out the day-to-day
25 functions at the Institute.

1 PRESIDENT CHRISTMAS: Okay. We're getting
2 away from the motion.

3 So, Regent Garcia, how do you vote, sir?

4 REGENT GARCIA: Say that again, sir?

5 PRESIDENT CHRISTMAS: We're voting on the
6 motion in front of us.

7 REGENT GARCIA: Okay.

8 PRESIDENT CHRISTMAS: Did you just -- did
9 you receive it?

10 REGENT GARCIA: Yeah, I did.

11 PRESIDENT CHRISTMAS: Okay.

12 REGENT GARCIA: I don't have a problem with
13 it.

14 PRESIDENT CHRISTMAS: Okay.

15 UNIDENTIFIED SPEAKER: Sir --

16 PRESIDENT CHRISTMAS: Regent Montoya?

17 UNIDENTIFIED SPEAKER: Sir, for clarity, is
18 that a yea or a nay?

19 Yes or no, sir?

20 REGENT GARCIA: Yea.

21 PRESIDENT CHRISTMAS: Okay. Thank you.

22 Regent Montoya?

23 REGENT MONTOYA: No.

24 PRESIDENT CHRISTMAS: Regent Edmondson?

25 Do we still have him?

1 REGENT EDMONDSON: Yes.

2 PRESIDENT CHRISTMAS: Okay. And you're a
3 nay, and I will vote yes. So the vote does pass.
4 All right. Based upon that --

5 MAJOR GENERAL GRIZZLE: I'm not a part
6 of --

7 PRESIDENT CHRISTMAS: Major Grizzle, sir.

8 MAJOR GENERAL GRIZZLE: I'm sorry. I'm not
9 a part of this, but, Regent Page, based on what you
10 just said and what you said on July 12th, I just
11 cannot be quiet any longer. What you did that day
12 was one of the most unprofessional, unethical things
13 I have ever seen and was the victim of your comments,
14 and then the comments you just made are absolutely
15 incredible, to think you would say those things after
16 what you did that day.

17 There were 30 people in this room who heard
18 you. There were at least that many on the Zoom. The
19 people in this room are -- now have no desire to
20 equate and work with you because of that, and for you
21 to talk about ethical leadership behavior is
22 incredible.

23 I'm sorry. I will shut up now, but I am
24 just amazed that you would make those comments after
25 what you did. And you have yet to even, in my

1 opinion, take responsibility for your action. You
2 have not attempted to call me. You have not
3 attempted to apologize. Nothing. And for you to
4 make those comments, it's absolutely incredible that
5 you would say that and insinuate that you act in that
6 manner.

7 I'm sorry, and I'll be quiet.

8 REGENT PAGE: Well, based on the motion
9 that was passed, I can't address you. But, you
10 know -- you can't be addressed in those
11 (unintelligible), and as far as --

12 PRESIDENT CHRISTMAS: Regent Page, a motion
13 has passed. We'll go on at this time.

14 Regent Page, you are hereby relieved of all
15 committee assignments. You were sequestered, as
16 noted in the motion, about contacting NMMI or its
17 employees. Ms. Wiggins will explain all the
18 ramifications of what you can and can't do, as far as
19 your actions are concerned, momentarily.

20 You will not be allowed to sit on the
21 Board, vote, or serve as a regent, and the motion
22 will -- has been made and approved to go forth with
23 your legal removal from this Board of Regents.

24 I believe and it is believed that, if left
25 unchecked, your actions would cause grave harm,

1 irreparably, to NMMI, to the Board of Regents,
2 Major General Grizzle, and the NMMI staff.

3 Sir, there is an old adage. When in a deep
4 hole of your own making, stop digging. There are no
5 other options at this junction. And I believe that
6 the Board of Regents are aware and the staff and the
7 attendees of the meeting in question did observe this
8 offensive behavior by a regent, and I personally
9 apologize to Major General Grizzle and to all of the
10 employees, who are wonderful, at NMMI for having to
11 endure this mess.

12 NMMI is a wonderful place, and I -- beyond
13 this, I think there is no further action for this
14 meeting, and the next meeting is at 0800,
15 October 21st, 2022, and I'll entertain a motion to
16 adjourn.

17 UNIDENTIFIED MALE: I'll make a motion to
18 adjourn.

19 PRESIDENT CHRISTMAS: Thank you, sir.
20 You're muted, Mr. Edmondson. I believe
21 you're saying "second"?

22 REGENT EDMONDSON: I'll second that motion.

23 PRESIDENT CHRISTMAS: All right. All in
24 favor, aye?

25 UNIDENTIFIED SPEAKER: Aye.

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UNIDENTIFIED SPEAKER: Aye.

UNIDENTIFIED SPEAKER: Aye.

PRESIDENT CHRISTMAS: Opposed?

The motion -- the meeting is adjourned,
ladies and gentlemen. I regret this action, having
to take this action. Have a great day.

(Audio of meeting concludes.)

1 IN RE: NMMI

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REPORTER'S CERTIFICATE

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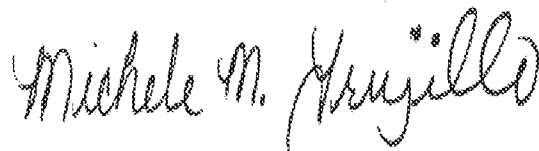
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I, MICHELE M. TRUJILLO, CCR #226, DO HEREBY
CERTIFY that I did, in stenographic shorthand,
transcribe the audiotaped proceedings set forth
herein, and the foregoing pages are a true accurate
transcription to the best of my ability. The
tape/digital media was of FAIR/POOR quality.

I FURTHER CERTIFY that I am neither
employed by nor related to nor contracted with
(unless excepted by the rules) any of the parties or
attorneys in this matter, and that I have no
interest whatsoever in the final disposition of this
matter.



MICHELE M. TRUJILLO
New Mexico CCR #226
License Expires: 12/31/2022

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

November 17, 2022

NO. S-1-SC-39617

**THE BOARD OF REGENTS OF THE
NEW MEXICO MILITARY INSTITUTE,**

Petitioner,

v.

CEDRIC D. PAGE, PHD,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon verified complaint and/or petition in quo warranto to remove Dr. Cedric Page as a regent of the New Mexico Military Institute;

WHEREAS, Petitioner seeks removal of Respondent from the Board of Regents of the New Mexico Military Institute under Article 12, Section 13 of the New Mexico Constitution, which vests this Court with original jurisdiction over proceedings to remove members of boards of regents “for incompetence, neglect of duty or malfeasance in office . . . under such rules as [the Court] may promulgate”;

WHEREAS, Rule 12-604 NMRA of our Rules of Appellate Procedure “governs all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute”;

1 WHEREAS, although the current rule does not specify to which public
2 officials it applies, the predecessor to Rule 12-604 NMRA established a procedure
3 governing actions invoking the Court’s jurisdiction over proceedings to remove
4 members of board of regents under Article 12, Section 13. *See* NMSA 1953, § 21-
5 2-1(26) (1951) (attached to this order as Exhibit A);

6 WHEREAS, Petitioner filed its “corrected” petition under Rule 12-504
7 NMRA, invoking the Court’s original jurisdiction over quo warranto proceedings
8 under Article Six, Section 3 (“The supreme court shall have original jurisdiction in
9 quo warranto and mandamus against all state officers, boards and commissions,
10 and shall have a superintending control over all inferior courts[.]”), and seeking
11 removal of Respondent under Article 12, Section 13 of the New Mexico
12 Constitution for alleged incompetence, neglect of duty, or malfeasance in office;
13 and

14 WHEREAS, the Court having considered the foregoing and being
15 sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil,
16 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
17 concurring.

18 NOW, THEREFORE, IT IS ORDERED that the parties shall file briefs
19 addressing, as a threshold matter, whether Article 12, Section 13 of the New
20 Mexico Constitution and Rule 12-604 NMRA foreclose this Court from exercising

1 jurisdiction in quo warranto over proceedings to remove a member of a board of
2 regents for incompetence, neglect of duty, or malfeasance of office under Article
3 12, Section 13;

4 IT IS FURTHER ORDERED that the parties shall file simultaneous briefs,
5 which shall be timely if filed **on or before December 5, 2022**; no reply briefs shall
6 be permitted.

7 IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 17th day of November, 2022.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By *Lynette Romero Cordova*
Chief Deputy Clerk of Court

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Lynette Romero Cordova
Chief Deputy Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

AMENDED NOTICE OF NON-AVAILABILITY

Respondent Cedric D. Page, PhD, respectfully notifies the Court that he will be out of the country and **unavailable** from November 15, 2022, through December 6, 2022.

Counsel for Respondent, respectfully notify the Court that a previous conflict has been resolved, and that they are **available** from December 5, 2022, through December 9, 2022.

Counsel for Respondent respectfully notify the Court that they will be in trial and **unavailable** from December 19, 2022, through December 23, 2022.

Respectfully submitted,

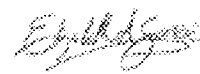
JONES, SNEAD, WERTHEIM
& CLIFFORD, P.A.
Attorneys for Respondent Cedric D. Page, PhD

By: /s/Kaitlyn DelBene
JERRY TODD WERTHEIM
KAITLYN DELBENE
Post Office Box 2228
Santa Fe, New Mexico 87504-2228
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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022, the foregoing was filed electronically and served through the Odyssey File & Serve System, which effected electronic service upon all parties of record.

/s/Kaitlyn DelBene
KAITLYN DELBENE



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

NOTICE OF UNAVAILABILITY

As of the filing of this Notice, the undersigned counsel for The Board of Regents of the New Mexico Military Institute are unavailable on the following dates through January 30, 2023:

- November 28 through December 8, 2022 – Lorna M. Wiggins will be out of the country.
- December 19-30, 2022 – Patricia G. Williams and Lorna M. Wiggins are in trial. The case is number one on the trial docket, Case No. D-202-CV-2019-00811.
- January 10-11, 2023 – Patricia G. Williams and Lorna M. Wiggins are in an arbitration, FMCS Case No. 22054-5766.
- January 20, 2023 – Patricia G. Williams will be attending a deposition, and Lorna M. Wiggins will be in an EEOC mediation, Charge #543-2022-00614.

Counsel for The Board of Regents of the New Mexico Military Institute respectfully request the Court or opposing counsel not schedule any hearings, trial or other settings in this matter during the aforementioned dates.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Filed

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

Patricia G. Williams

Attorneys for Board of Regents of the New
Mexico Military Institute
1803 Rio Grande Blvd., N.W. (87104)
P.O. Box 1308
Albuquerque, New Mexico 87103-1308
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 28, 2022 a true and correct copy of foregoing was served upon counsel for Dr. Page through the Court's e-file and serve system.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By /s/ Lorna M. Wiggins

Lorna M. Wiggins

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

BRIEF REGARDING JURISDICTION IN QUO WARRANTO

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TABLE OF CONTENTS

I. BACKGROUND..... 1

II. PETITION TO REMOVE A MEMBER OF A BOARD OF REGENTS FOR GROUNDS IN N.M. CONST. ART. XII, § 13 MUST FOLLOW PROCEDURE OUTLINED IN RULE 12-604 NMRA; QUO WARRANTO ACTION IS NOT AVAILABLE..... 2

 A. Rule 12-604 Governs Removal of Members of Boards of Regents Pursuant to N.M. Const. art. XII, § 13..... 2

 B. Quo Warranto Jurisdiction Is Foreclosed Because Quo Warranto Is Not the Appropriate Mechanism for Removal of a Regent Due to Incompetence, Neglect of Duty or Malfeasance in Office..... 7

III. CONCLUSION.....13

CERTIFICATE OF SERVICE.....15

TABLE OF AUTHORITIES

Cases - New Mexico

Dietz v. Hughes, 1935-NMSC-055, 39 N.M. 349 3

Granito v. Grace, 1952-NMSC-088, 56 N.M. 652 3

Lopez ex rel. Lopez v. Barreras, 1966-NMSC-209, 77 N.M. 52..... 8

Rodgers v. City of Loving, 1977-NMCA-132, 91 N.M. 306 4

State ex rel. New Mexico Judicial Standards Comm'n v. Espinosa,
2003-NMSC-017, 134 N.M. 59 10

State ex rel. State Hwy. Comm'n v. City of Aztec, 1967-NMSC-046,
77 N.M. 524 8

State ex rel. White v. Clevenger, 1961-NMSC-109, 69 N.M. 64 12

State v. Cleve, 1999-NMSC-017, 127 N.M. 240 9

State v. Thompson, 1933-NMSC-021, 37 N.M. 229 3

Statutes

NMSA 1978, § 12-2A-10(A) (1997) 8

NMSA 1978, § 12-2A-14 (1997) 3

NMSA 1953, § 21-2-1(26) (1951) 4

NMSA 1978, § 44-3-4(A) (1919) 10, 11

Constitutional Provisions

NM Const. art. V, § 14..... 4

NM Const. art. VI, § 3	1, 9
NM Const. art. XII, § 13.....	1, 2, 7, 9
NM Const. art. XII, § 13(E)	1, 2, 3, 4, 6, 7, 13, 14

Rules

Rule 12-504 NMRA	1, 2
Rule 12-604 NMRA	passim
Rule 12-604(A) NMRA.....	4
Rule 12-604(B) NMRA.....	7, 13

Pursuant to this Court’s Order of November 17, 2022, Respondent Cedric D. Page, PhD, submits this brief regarding jurisdiction in the current action. Specifically, the Court has asked the parties to file briefs addressing whether Article XII, §13 of the New Mexico Constitution and Rule 12-604 NMRA foreclose this Court from exercising jurisdiction in quo warranto over proceedings to remove a member of a board of regents for alleged incompetence, neglect of duty, or malfeasance of office under Article XII, § 13. The answer to the question is yes. Article XII, § 13 and Rule 12-604 foreclose the Petitioner from deploying quo warranto in this case.

I. BACKGROUND

Petitioner in this case seeks the removal of Respondent from the Board of Regents of the New Mexico Military Institute (“NMMI”). In its Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of the New Mexico Military Institute (Corrected) (“Complaint”), Petitioner cites both Article XII, § 13(E) and Article VI, § 3 of the New Mexico Constitution, as well as corresponding Rules 12-604 and 12-504 NMRA, respectively. Petitioner asserts that “[t]here is no conflict between Rules 12-504 and 12-604,” **[Compl. 12]**,

and attempts to proceed with a Rule 12-504 quo warranto action when such is foreclosed by the more specific proceeding to remove a regent provided by Rule 12-604.

II. PETITION TO REMOVE A MEMBER OF A BOARD OF REGENTS FOR GROUNDS IN N.M. CONST. ART. XII, § 13 MUST FOLLOW PROCEDURE OUTLINED IN RULE 12-604 NMRA; QUO WARRANTO ACTION IS NOT AVAILABLE

In this case, Petitioner has invoked two constitutional provisions to support its action. In its attempt to remove Respondent from the NMMI Board, Petitioner asks this Court to exercise its jurisdiction by heeding the grounds for removal in Article XII, § 13(E) of the New Mexico Constitution, but not its corresponding procedure in Rule 12-604, as suits Petitioner's cause. The Court should decline to address Petitioner's Complaint because it is foreclosed from exercising jurisdiction in quo warranto to remove a member of a board of regents for incompetence, neglect of duty, or malfeasance of office, and the procedures of Rule 12-604 must govern any such removal proceeding.

A. Rule 12-604 Governs Removal of Members of Boards of Regents Pursuant to N.M. Const. art. XII, § 13

Article XII, § 13(E) of the New Mexico Constitution gives this

Court exclusive original jurisdiction over proceedings to remove members of the NMMI Board of Regents “under such rules as [the Court] may promulgate.” This Court has accordingly promulgated Rule 12-604 NMRA, formerly Supreme Court Rule 26, to govern the procedure for an Article XII, § 13(E) removal proceeding.

“A statute or rule that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute or rule and not a new enactment to the extent that it contains substantially the same language as the previous statute or rule.” NMSA 1978, § 12-2A-14 (1997). *See also Granito v. Grace*, 1952-NMSC-088, ¶ 11, 56 N.M. 652 (“[I]n amending the section in substantially the same language as that contained in the original enactment, it amounts to a continuation of the same statute and not a new enactment”) (citations omitted); *Dietz v. Hughes*, 1935-NMSC-055, ¶ 8, 39 N.M. 349 (where statute was reenacted “in substantially the same language in which originally phrased,” finding that the new statute was “merely a continuation of the former” and “[n]o specific repeal of [the former statute] ever took place”) (citation omitted); *State v. Thompson*, 1933-NMSC-021, ¶ 6, 37 N.M. 229 (holding that a statute “being re-enacted in the same

language as originally adopted, is deemed merely a continuation thereof”) (citations omitted); *Rodgers v. City of Loving*, 1977-NMCA-132, ¶ 13, 91 N.M. 306 (where a newly enacted statute “continued the policy” of a repealed statute, holding that “if the substance of the previous statute is continued in the new one, it will be regarded as an extension of the old statute”).

In this case, as observed by the Court in its Order, former statute NMSA 1953, Sec. 21-2-1(26) (1951) [**11-17-22 Ord., Attach.**] was the predecessor to Rule 12-604. The former statute established a procedure governing actions invoking the Court’s jurisdiction over proceedings to remove members of boards of regents under Article XII, § 13(E) of the New Mexico Constitution, as well as highway commissioners under Article V, § 14. Current Rule 12-604 does not specify to which public officials it applies, stating instead that it governs “all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute.” Rule 12-604(A), NMRA (emphasis added). Regarding the filing of charges, the current rule requires charges “alleging specific facts constituting one or more constitutional or statutory grounds for removal,” whereas the former

statute specifically required charges “of incompetence, neglect of duty, or malfeasance in office, with proper specifications.” This change was also presumably made to reflect the broadening of the scope of the rule to *all* removal proceedings over which this Court has jurisdiction, some of which may require different grounds for removal.

Apart from the changes *broadening* the scope of its application, the current rule, effective for all cases pending or filed on or after December 31, 2016, remains substantially the same as the former rule and contains only insubstantial differences in language from the 1951 statutes. Headings have been added to the subsections, and there are some small changes to language not affecting meaning, presumably for clarity or succinctness. For example, the following changes have been made:

- “by the clerk of the district court” has been changed to “by the district court clerk”;
- “by the attorney general unless he should decline to act or the governor, in the case of presentment by him, shall request the designation of another attorney” has been changed to “by the attorney general unless the attorney general shall decline to act,

except that the governor, in case of presentment by the governor, may request the designation of another attorney”;

- “the Rules of Civil Practice and Procedure in the district courts...including compulsory attendance of witnesses, examination of witnesses, the admissibility of evidence and the amendment of pleadings” has been changed to “the Rules of Civil Procedure for the District Courts and the Rules of Evidence.”

The procedure outlined in the current rule is identical to that provided by the original.

Given the substantial similarity of the language and identical similarity of the procedure, Rule 12-604 is a continuation of former Supreme Court Rule 26 (the 1951 statute). The rule clearly continues to encompass members of boards of regents in the category of “public officials” to which its removal procedures apply, the scope of the rule having only been *broadened* in its current form. This Court has “exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate” pursuant to Article XII, § 13(E) of the New Mexico Constitution, and Rule 12-604 is the rule that has been promulgated to govern such proceedings. “Members of the

board shall not be removed except for incompetence, neglect of duty or malfeasance in office.” NM Const. art. XII, § 13(E). These are the constitutional grounds for removal and must be specifically alleged pursuant to Rule 12-604(B).

B. Quo Warranto Jurisdiction Is Foreclosed Because Quo Warranto Is Not the Appropriate Mechanism for Removal of a Regent Due to Incompetence, Neglect of Duty or Malfeasance in Office

Because Rule 12-604 governs the proceeding, as described in Section II.A, above, that rule creates the exclusive method for removal and forecloses the exercise of jurisdiction in quo warranto in a proceeding such as this—to remove a member of a board of regents under Article XII, § 13. Petitioner cannot invoke the original jurisdiction of this Court under Article XII, § 13 and then ignore the mandatory procedures of the rule promulgated under a special grant in that same constitutional provision. A comparison of the substantive law buttresses this conclusion. Quo warranto is the incorrect legal mechanism to accomplish a removal for incompetence, neglect of duty, or malfeasance of office.

This Court has recognized that “usual principles governing the construction of statutes apply also to the interpretation of

constitutions.” *State ex rel. State Hwy. Comm'n v. City of Aztec*, 1967-NMSC-046, ¶¶ 9-10, 77 N.M. 524 (further noting that in determining whether to apply a given rule of construction, “we bear in mind that it is but a rule of construction and consideration must be given to the purpose and scope of the constitutional provision involved”).

Regarding general and specific statutes, “If statutes appear to conflict, they must be construed, if possible, to give effect to each.” NMSA 1978, § 12-2A-10(A) (1997). If the conflict between the statutes is irreconcilable, “the later-enacted statute governs. However, an earlier-enacted specific, special or local statute prevails over a later-enacted general statute unless the context of the later-enacted statute indicates otherwise.” *Id.* Additionally, this Court has held:

Conflicts between general and specific statutes are resolved by giving effect to the specific statute.... A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it.

The specific statute is considered an exception to or qualification of the general statute.

Lopez ex rel. Lopez v. Barreras, 1966-NMSC-209, ¶¶ 12-13, 77 N.M. 52 (internal quotation marks and citations omitted). The primary goal of

the general/specific statute rule is to determine legislative intent in the context of potentially conflicting laws. *See State v. Cleve*, 1999-NMSC-017, ¶ 32, 127 N.M. 240 (applying the general/specific rule of construction, concluding that “New Mexico's other laws specifically governing hunting and fishing irreconcilably conflict with [New Mexico statute criminalizing cruelty to animals] and that behavior contemplated by the Legislature's authorization of hunting and fishing is excepted from the general proscription against cruelty to animals”).

Article VI, § 3 of the New Mexico Constitution provides, “The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions.”

Petitioners have cited this jurisdiction as well as the Court’s jurisdiction under Art. XII, § 13, creating a potential conflict between the two and a question as to which rules should govern the instant action. An analysis of the purpose of quo warranto reveals that these two constitutional provisions may indeed be construed to give effect to each. They serve distinct purposes, and quo warranto is not the appropriate remedy in this matter.

New Mexico statute provides rules for who may bring an action for quo warranto, and under what circumstances, including “when any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state.” NMSA 1978, § 44-3-4(A) (1919). This is the ground for quo warranto cited by Petitioner in its Complaint. **[Compl. 2]** Petitioner also cites *State ex rel. New Mexico Judicial Standards Comm'n v. Espinosa*, but in that case the facts were entirely different than those alleged here, and the Court even questioned whether quo warranto was the most appropriate writ. 2003-NMSC-017, ¶ 4, 134 N.M. 59 (where petitioners sought to stop the Governor from removing the six lay members of the Judicial Standards Commission and replacing them with new gubernatorial appointees, opining that petitioners’ claim “[could] validly be raised under an action in quo warranto” and observing that “[e]ven if a different writ would be more appropriate, this Court ultimately needs to decide whether the Governor has the authority to remove sitting members of the Commission before their terms expire. The writ, if

granted, would preclude Respondents from taking positions on the Commission”).

Much more germane to the current case, this Court has interpreted the phrase “unlawfully hold or exercise,” in a previous version of Section 44-3-4(A). Because this Court’s interpretation as articulated here is so important to question presented in this Court’s order, we quote extensively:

The question for determination, in the first instance, is whether quo warranto is a proper remedy to test the illegality of acts or misconduct of an officer as grounds for removal from office.

Appellee strenuously urges that this case... was brought and tried as one in quo warranto, both upon his own information and upon the complaint of private persons, and asserts that “the basis of the action is an unlawful exercise of the office of director, that is, the doing of acts contrary to the purposes for which the corporation was formed * * *” and that quo warranto is a proper remedy to test whether a corporate director may be removed for alleged misconduct in office. No contention is made that the directors were not lawfully appointed or elected, nor that they were entitled to assume the office of director. The gist of the complaint is that because of alleged acts of misconduct as directors they should be removed from office and other directors appointed by the court to administer the trust. The term employed in the statute, “unlawfully hold or exercise * * any office * * * in a corporation * *” refers to the right of one to act as an officer and not to the acts of the officer in the discharge of his duties, where such acts do not ipso facto operate as, or amount to a forfeiture of the office. The right or title of the directors to the office in the corporation in the first instance is not questioned. It is only contended that because of their misconduct in the exercise of the

office, they should be removed. Misconduct of an officer does not of itself amount to a forfeiture of the office. **An officer rightfully in office can only be removed for misconduct in a proper proceeding.** The word, “exercise” as used in the statute has long had a definite and established meaning and as there used is the equivalent of “usurp” but includes the actual executing of the office so usurped. By quo warranto, the respondent is called upon to show by what authority he claims to exercise the office.

Quo warranto is **not a proper remedy to test the legality of the acts of an officer or his misconduct in office,** nor to compel, restrain, or obtain a review of such acts unless they amount to a forfeiture of the office, where neither the title to the office nor the right to a franchise is involved.

Acts of misconduct by an officer, even for which he may be subject to **removal in a proper proceeding,** do not necessarily and ipso facto operate as a forfeiture of the office so as to permit quo warranto to test his right to the office.

State ex rel. White v. Clevenger, 1961-NMSC-109, 69 N.M. 64 (emphasis added) (citations omitted).

In this case, Petitioner has attempted the same, incorrect use of the writ of quo warranto as the petitioners in *Clevenger*. Petitioner has not questioned the authority by which Respondent exercises his position as member of the NMMI Board of Regents. Petitioner states, “Dr. Page was appointed to the BOR by the Governor on April 26, 2019 and confirmed by the Senate.” **[Compl. 3]** Nowhere in its complaint does Petitioner question the validity of this appointment. Rather,

Petitioner's attempt to remove Respondent is explicitly based on Respondent's alleged "incompetence, neglect of duty and malfeasance in his office as a Regent." **[Compl. 3]** The "proper proceeding" for such a removal, pursuant to Article XII, § 13(E) of the New Mexico Constitution, is governed by Rule 12-604, as explained in Section II.A, above.

III. CONCLUSION

Because Petitioner has alleged incompetence, neglect of duty and malfeasance in office as the ground for removal of Respondent from his position as a Regent, rather than questioned Respondent's authority to hold the position, this Court is foreclosed from exercising jurisdiction over the action in quo warranto. The matter must be decided pursuant to the Court's jurisdiction under Article XII, § 13(E) of the New Mexico Constitution and the procedures required by Rule 12-604 NMRA.

Respondent notes that, when Rule 12-604 is applied, Petitioner's action is foreclosed in this case. The rule provides that the Court will only entertain charges "on presentment by the governor, the attorney general, or any regularly empaneled grand jury." Rule 12-604(B). No such charges have been filed against Respondent. Rule 12-604 also

includes the procedural requirements for the constitutionally-required “notice of hearing and an opportunity to be heard,” NM Const. art. XII, § 13(E), including provisions on service on the accused, answer by the accused, failure to appear, rules applicable at trial, and finality of the judgment. Petitioner requests that this Court “hold a hearing to satisfy this [notice and opportunity to be heard] requirement,” **[Compl. 13]**, while at the same time asking the Court to disregard its own rule promulgated to govern such a hearing. The lack of charges does not foreclose the Court from enforcing its own rule; rather, the lack of charges required by the rule forecloses Petitioner’s case.

Respectfully submitted,

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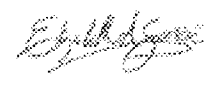
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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2022, the foregoing was filed electronically and served through the Odyssey File & Serve System, which effected electronic service upon all parties of record.

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE BOARD OF REGENTS OF THE NEW
MEXICO MILITARY INSTITUTE,

Petitioner,

v.

No. S-1-SC-39617

CEDRIC D. PAGE, PhD,

Respondent.

**BRIEF ADDRESSING THE JURISDICTION OF
THE SUPREME COURT**

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. JURISDICTION OF THIS COURT 4

IV. POINTS AND AUTHORITIES 6

 A. RULES OF STATUTORY CONSTRUCTION 7

 B. RULE 12-604 IS NOT APPLICABLE 10

 C. RULE 12-504 IS APPLICABLE 12

V. CONCLUSION 15

CERTIFICATE OF SERVICE 16

TABLE OF AUTHORITIES

New Mexico State Court Cases

<u>Aguilera v. Board of Educ. of Hatch Valley</u> , 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587	11
<u>Clark v. Mitchell</u> , 2016-NMSC-005, 363 P.3d 1213.....	14
<u>Johnson v. N.M. Oil Conservation Comm’n</u> , 1999–NMSC–021, 127 N.M. 120, 978 P.2d 327	8
<u>Resolution Trust Corp. v. Binford</u> , 1992-NMSC-068, 114 N.M. 560, 844 P.2d 810	11
<u>Roark v. Farmers Group, Inc.</u> , 2007–NMCA–074, 142 N.M. 59, 162 P.3d 896	9
<u>State ex rel. Anaya v. McBride</u> , 1975-NMSC-032, 88 N.M. 244, 539 P.2d 1006	14
<u>State v. Javier M.</u> , 2001-NMSC-030, 131 N.M. 1, 33 P.3d 1	12
<u>State v. Johnson</u> , 2009–NMSC–049, 147 N.M. 177, 218 P.3d 863	8
<u>State v. Kerby</u> , 2001-NMCA-019, 130 N.M. 454, 25 P.3d 904.....	7, 13
<u>State v. Moya</u> , 2007-NMSC-027, 141 N.M. 817, 161 P.3d 862	12
<u>State v. Ramos-Arenas</u> , 2012-NMCA-117, 290 P.3d 733.....	12
<u>State v. Steven B.</u> , 2004–NMCA–086, 136 N.M. 111, 94 P.3d 854.....	9
<u>State v. Torres</u> , 2012-NMCA-26, 272 P.3d 689	9
<u>Truong v. Allstate Ins. Co.</u> , 2010–NMSC–009, 147 N.M. 583, 227 P.3d 73	8
<u>Wasko v. N.M. Dep’t of Labor</u> , 1994-NMSC-076, 118 N.M. 82, 879 P.2d 83.....	11
<u>Wood v. State Educ. Ret. Bd.</u> , 2011-NMCA-020, 149 N.M. 455, 250 P.3d 881	8

Federal Court Cases

<u>Genesee Cnty. Employees’ Ret. System v. Thornburg Mortg. Sec. Trust</u> 2006-3, 825 F.Supp.2d 1082 (D. N.M. 2011)	11
<u>Hazardous Waste Treatment Council v. U.S.E.P.A.</u> , 861 F.2d 270, 28 Env’t. Rep. Cas. (BNA) 1305, 19 Env’tl. L. Rep. 20059 (D.C. Cir. 1988)	11

Lummi Tribe of the Lummi Reservation v. United States, 112 Fed. Cl. 353
(2013).....11

State Court Cases Other Jurisdictions

People ex rel. H., 74 P.3d 494 (Colo. App. 2003).....11

Statutes

NMSA 1978, § 12-2A-19 (1997)8
NMSA 1978, § 38-1-1 (1933).....8
NMSA 1978, § 44-3-4 (1919)..... 5, 10, 13, 14

Constitutional Provisions

N.M. Const. art. VI, § 3 1, 4, 6, 7, 9, 13, 15
N.M. Const. art. XII, § 13 1, 5, 6, 9, 12, 15

Rules

Rule 12-504 NMRA..... 1, 5, 6, 9, 10, 13, 14, 15
Rule 12-604 NMRA..... 1, 5, 6, 7, 10, 11, 12, 13, 15
Rule 12-604 NMRA (1941, as amended through 1953).....5
Rule 26 of former Supreme Court Rules 10, 12

I. INTRODUCTION

This Brief addresses the issue identified by this Court in its November 17, 2022 Order requesting that the parties file briefs concerning whether Article XII, Section 13 of the New Mexico Constitution and Rule 12-604 NMRA foreclose this Court from exercising jurisdiction in the quo warranto petition filed, pursuant to Article VI, Section 3 of the New Mexico Constitution, by the Board of Regents (“BOR”) of the New Mexico Military Institute (“NMMI”).

In its petition in quo warranto, the BOR seeks to remove Respondent Cedric Page, PhD (“Dr. Page”) as a regent on the Board for incompetence, neglect of duty or malfeasance in office. The position of the BOR is that this Court has the exclusive and original authority under New Mexico Constitution Article VI, Section 3 in quo warranto for removal of a regent without a charge having first been filed by a law enforcement agency; Art. XII, § 13 of the Constitution is not applicable to the removal of Dr. Page as a regent because this removal is not pursuant to a filed charge. This Court requested briefing by the parties as to the applicability of Rule 12-604, as amended, to eliminate the Court’s authority over boards of regents to remove members of those boards. The BOR’s position is that Rule 12-604 is not relevant because this petition is a petition for a writ of quo warranto governed by Rule 12-504 NMRA, not a removal from office under Rule 12-604.

II. STATEMENT OF FACTS

This case had at its genesis, Dr. Page's behavior at a BOR meeting during which he demanded that the attendees at a BOR meeting identify who lived at a certain address. This demand was made during the open session attended by the public. Major General Jerry Grizzle, President/Superintendent of NMMI, stated that the address was his. Dr. Page then said "he received" an IPRA request for his prior employment records from UNM-Los Alamos "from that address" so he "just wanted to know if there was anybody on staff" at that address. Dr. Page also identified the request as "request number 2176." MG Grizzle sent his IPRA request using his home address and on his personal stationery; the request was addressed to Dr. Page's prior employer as is appropriate under the law and not to Dr. Page.

Dr. Page subsequently said that it was "unusual for a subordinate to make a request from a Regent," and noted that Regents are "vetted." *See* Transcript of Audio Recording, 7-12-22, at 15:22-25, attached as Exhibit 6 to the Supplemental Exhibit in support of the Petition for Quo Warranto. Dr. Page's comments immediately followed his discussions of MG Grizzle's evaluation and concluded with Dr. Page noting that if a record should be made of the request, so be it. Counsel for the BOR pointed out that "every citizen of the state has a right to request public records" and that the reason for an IPRA request need not be disclosed.

The comments and demand from Dr. Page demonstrated that, despite the relevant training provided for BOR members, he was unaware of or ignored the reasons and process for requesting a public record: first, it was clear that Dr. Page had seen or was in possession of a copy of the IPRA request which contained MG Grizzle's address because he identified the request by number, and while this is not improper, his knowledge of the request number demonstrated that he was aware of the records request sent to his former employer; second, there was no reason to begin the public discussion by asking who lived at the address when Dr. Page was well aware of the answer to that question; third, that MG Grizzle was a "subordinate" was irrelevant to an IPRA request and MG Grizzle was not in fact Dr. Page's "subordinate," because MG Grizzle works for the entire BOR; fourth, Dr. Page did not receive the IPRA request; it was addressed to UNM-Los Alamos, Dr. Page's prior employer; fifth, the manner in which Dr. Page began the discussion evidenced his ignorance that any person could request public records from any government employee; and sixth, the manner in which Dr. Page introduced the topic evidenced his intent to intimidate MG Grizzle.

On September 29, 2022, a special meeting of the BOR approved the following motion:

... a motion to give Regent Page formal notice that the Board intends to proceed with removing him from his position as Regent for incompetence, neglect of duty and malfeasance and to further move, in accordance with Section 5.1 of the Board of Regents Policy Manual,

that should Regent Page not elect to resign his position, a date be set for a hearing on his removal and that in the interim, he be instructed not to contact NMMI employees or attend NMMI or Board functions without the President's prior approval.

Exhibit 6, Transcript of Audio Recording, 9-29-22, at 8:24-9:9. The majority of the BOR concluded that Dr. Page's actions in questioning MG Grizzle about his filing of the IPRA request constituted incompetence, neglect of duty and malfeasance in his office as a Regent. To effect this approved motion to remove Dr. Page from the BOR, a Verified Complaint and/or Petition in Quo Warranto to Remove Dr. Cedric Page as a Regent of The New Mexico Military Institute was filed in this Court.

III. JURISDICTION OF THIS COURT

The relevant portions of the New Mexico Constitution provide:

The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions, and shall have a superintending control over all inferior courts; it shall also have power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same. Such writs may be issued by direction of the court, or by any justice thereof. . . .

N.M. Const. art. VI, § 3.

The New Mexico Constitution further provides:

Members of the board [of Regents] shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board

under such rules as it may promulgate, and its decision in connection with such matters shall be final.

N.M. Const. art. XII, § 13(E). This Court has jurisdiction in quo warranto to address:

when any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state; or,

NMSA 1978, Section 44-3-4(A) (1919). Any private person can bring an action in quo warranto. *Id.*

Rule 12-504(A) NMRA provides:

Scope of rule. This rule governs the procedure for the issuance of all writs in the exercise of the Supreme Court's original jurisdiction except for writs of certiorari to the Court of Appeals under Rule 12-502 NMRA and the district courts under Rule 12-501 NMRA, and writs of error under Rule 12-503 NMRA.

Rule 12-604(A), provides:

Scope. This rule governs all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute.

This rule as formulated in 1941 and 1953 originally stated:

Any proceeding to remove a highway commissioner or a member of a board of regents in pursuance of the jurisdiction conferred on this court by the Constitution shall be governed by this rule.

Rule 12-604 NMRA (1941, as amended through 1953). The Rule was amended to eliminate the reference to commissioners and regents. The Court, in its order dated November 17, 2022, instructed the parties to address whether it has jurisdiction to

consider removing Dr. Page as a regent given the changes in Rule 12-604 after 1953. By eliminating the applicability to highway commissioners and regents, the changed rule is intended to be applicable to the removal of all incumbents from their offices not solely commissioners or regents.

The BOR's position is that Rule 12-604 is irrelevant because this proceeding is brought pursuant to Article VI, Section 3 of the New Mexico Constitution requesting a writ of quo warranto. Rule 12-604 is applicable to proceedings where a charge initiates the removal proceeding, seeking removal pursuant to Art. XII, § 13. Rule 12-504 governs this proceeding where no charge was issued, under Art. VI, Section 3.

IV. POINTS AND AUTHORITIES

The current Rule 12-604 eliminates the specific inclusion that the rule is applicable solely to the removal of commissioners and regents. By eliminating the specific reference to commissioners and regents making the rule applicable to removal of all public officials who are subject to the jurisdiction of the Supreme Court for their removal, it is not clear what the Court intended to accomplish since the applicability to commissioners and regent was already established under the prior versions of Rule 12-604. The Rule, as it was constituted in 1941 and 1953 unambiguously provided that the Rule was applicable to removal of commissioners and regents from their posts. If the intent in amending the rule was to make the rule

applicable to commissioners and regents as well as all public officials, there was no reason to amend the rule because the rule already provided for its applicability to those officials.

Rule 12-604 is applicable only when charges are filed against a public official to remove her/her/them from public office. *See* Rule 12-604(B) (“Charges alleging specific facts constituting one or more constitutional or statutory grounds for removal will be entertained by the Court . . .”). Applicability of any version of Rule 12-604 is unwarranted: The action in this case began with a motion expressing the intent of the BOR to remove Dr. Page from his seat as a regent. No charges were filed by any law enforcement agency or with a court or any other authority, *see, e.g., State v. Kerby*, 2001-NMCA-019, ¶ 15, 130 N.M. 454, 25 P.3d 904 (“Defendant argues that the prosecutor improperly circumvented the six-month rule contained in Rule 6-506(D) by dismissing the charges in magistrate court and filing the identical charges in district court”); rather, the BOR determined that under the provisions of the Constitution, the correct way to remove a regent from a board was to seek intervention by this Court under Article VI, Section 3 of the New Mexico Constitution which is applicable to a writ of quo warranto.

A. RULES OF STATUTORY CONSTRUCTION

The courts have repeatedly stated that the guiding principle in statutory construction requires that the wording of the statute be consulted in an attempt to

apply “the plain meaning rule, recognizing that when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” Truong v. Allstate Ins. Co., 2010–NMSC–009, ¶ 37, 147 N.M. 583, 227 P.3d 73 (alteration omitted) (internal quotation marks and citation omitted); State v. Johnson, 2009–NMSC–049, ¶ 10, 147 N.M. 177, 218 P.3d 863 (“The primary indicator of legislative intent is the plain language of the statute.”). Unless the enacting authority expresses a contrary intent, the statutory words should be given “their ordinary meaning,” and the Court is prohibited from reading “into a statute ... language which is not there, particularly if it makes sense as written.” Johnson v. N.M. Oil Conservation Comm’n, 1999–NMSC–021, ¶ 27, 127 N.M. 120, 978 P.2d 327 (internal quotation marks and citation omitted). The Legislature itself has codified the plain meaning rule in the Uniform Statute and Rule Construction Act: “The text of a statute or rule is the primary, essential source of its meaning.” NMSA 1978, § 12–2A–19 (1997); *see also* Wood v. State Educ. Ret. Bd., 2011–NMCA–020, ¶ 12, 149 N.M. 455, 250 P.3d 881.

NMSA 1978, Section 38-1-1 (1933) vests this Court with the authority to issue rules to “regulate pleading, practice and procedure in judicial proceedings in all courts of New Mexico for the purpose of simplifying and promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant.” Courts have applied the rules

concerning statutory interpretation to those rules. *See State v. Torres*, 2012-NMCA-26, ¶12, 272 P.3d 689 (““We apply the same rules of construction to procedural rules adopted by the Supreme Court as we do to statutes.” *State v. Miller*, 2008-NMCA-048, ¶ 11, 143 N.M. 777, 182 P.3d 158”).

According to those rules, the overarching goal of the interpreting court is to determine the underlying intent of the drafters. *Roark v. Farmers Group, Inc.*, 2007-NMCA-074, ¶ 50, 142 N.M. 59, 162 P.3d 896. The Court addresses the plain language of the rule. *See State v. Steven B.*, 2004-NMCA-086, ¶ 15, 136 N.M. 111, 94 P.3d 854 (“Our starting point is the plain language of the statute.”).

The constitutional provisions are clear and unambiguous: Article XII, Section 13 of the New Mexico Constitution provides that this Court is given original jurisdiction over the removal of a regent upon filing of charges for “incompetence, neglect of duty or malfeasance in office.” Art. XII, § 13(E). This Court is also given original jurisdiction over the writ of quo warranto, pursuant to Article VI, Section 3 of the New Mexico Constitution to issue “writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same.” The BOR invoked the power of the Supreme Court to exercise its jurisdiction and control over the boards of regents through a writ of quo warranto.

This Court enacted rules to guide its processes. Rule 12-504 is applicable to extraordinary writs and requires that a verified petition to be filed in this Court,

stating the basis for the writ. Rule 12-604 is applicable to removal of public officials, and requires that “charges alleging specific facts constituting one or more constitutional or statutory grounds for removal will be entertained by the Court on presentment by the governor, the attorney general, or any regularly empaneled grand jury.” *Id.* To support jurisdiction under Art. XII, § 13, “incompetence, neglect of duty or malfeasance in office” must be demonstrated. Rule 12-504 requires an assertion that the person named is usurping, intruding into or unlawfully holding or exercising any public office. NMSA 1978, § 44-3-4.

B. RULE 12-604 IS NOT APPLICABLE

The Court requested briefing on whether the Court had jurisdiction given Rule 12-604 which requires “the governor, the attorney general, or any regularly empaneled grand jury” to file “charges” before the Court. The Court, in its order, provided versions of Rule 12-604 which have been superseded. The relevant clause in those prior versions, Rule 26(1), was limited to proceedings to remove highway commissioners and boards of regents members from their offices. The current version dispenses with the limit of the Court’s power to remove only commissioners and regents and governs “all proceedings for removal of public officials where jurisdiction is conferred on the Supreme Court by the constitution or by statute.”

Addressing the issue presented by the Court in its order dated November 17, 2022, the amendment to Rule 12-604 to eliminate applicability to solely

commissioners and regents and make that Rule applicable to “all proceedings for removal of public officials,” *id.* when a statute is amended and words are omitted, courts presume the legislature intended the statute to have a meaning different from the one it had before amendment. *See* Hazardous Waste Treatment Council v. U.S.E.P.A., 861 F.2d 270, 28 Env’t. Rep. Cas. (BNA) 1305, 19 Env’t. L. Rep. 20059 (D.C. Cir. 1988); Lummi Tribe of the Lummi Reservation v. United States, 112 Fed. Cl. 353 (2013); Spence v. Mendoza, 993 F. Supp. 785 (E.D. Cal. 1998); People ex rel. H., 74 P.3d 494 (Colo. App. 2003); *see* Genesee Cnty. Employees’ Ret. System v. Thornburg Mortg. Sec. Trust 2006-3, 825 F.Supp.2d 1082 (D. N.M. 2011) (When interpreting a statute, a court may consider “a settled judicial construction in another jurisdiction as of the time a statute or rule is borrowed from the other jurisdiction,” or “a judicial construction of the same or similar statute or rule of this or another state”).

Normally, when the Legislature or the Court amends a statute, the presumption is that the authority intends to change existing law. Wasko v. N.M. Dep’t of Labor, 1994-NMSC-076, ¶ 9, 118 N.M. 82, 879 P.2d 83. “[A]n amendment may clarify existing law, rather than change the law, if the statute was ambiguous or unclear prior to the amendment.” *id.*; accord Resolution Trust Corp. v. Binford, 1992-NMSC-068, ¶ 19, 114 N.M. 560, 844 P.2d 810; Aguilera v. Board of Educ. of Hatch Valley, 2006-NMSC-015, ¶ 19, 139 N.M. 330, 132 P.3d 587. In this case,

Rule 26 was not ambiguous: it clearly stated that “Any proceeding to remove a highway commissioner or a member of a board of regents,” was governed by this rule. The amendment did not clear up any ambiguity.

The updated rule, Rule 12-604, applies to all proceedings for removal of public officials. A public official is encompassed as “any elected or appointed officer of the state or any of its political subdivisions.” State v. Ramos-Arenas, 2012-NMCA-117, ¶ 11, 290 P.3d 733; *see* State v. Moya, 2007-NMSC-027, ¶ 9, 141 N.M. 817, 161 P.3d 862; State v. Javier M., 2001-NMSC-030, ¶ 32, 131 N.M. 1, 33 P.3d 1. The current amendment is more comprehensive, applying the procedures outlined in the rule to all public officials, not solely commissioners or regents.

The Court need not address this issue because Rule 12-604 is not implicated in this case. The case was begun with the BOR approving a motion to exclude Dr. Page from the Board: no charges were filed, no law enforcement agency was involved. Moreover, nothing in the law required charges be filed prior to an action to remove a regent.

C. RULE 12-504 IS APPLICABLE

This case was initially filed citing Article XII, Section 13 of the New Mexico Constitution as its jurisdictional basis. The Court Clerk rejected that filing relying on 12-604, and the case was refiled by the BOR as a petition for a writ of quo warranto asserting that Dr. Page was usurping his office, under Article VI, Section

3 of the New Mexico Constitution which was more appropriate given the nature of the proceedings before the BOR. There were no “charges” filed because the BOR is not a law enforcement agency which typically files “charges.” Rather, the BOR, in an effort to protect its responsibilities, sought to exclude a disruptive member, without filing “charges” and voting to approve a motion for Dr. Page’s removal from the BOR. *See Kerby*, 2001-NMCA-019, ¶ 15.

Rule 12-604 is inapplicable to this case: this case presents a request for the Court to issue a writ of quo warranto to prevent usurpation or intrusion into any public office by any person. NMSA 1978, § 44-3-4. Rule 12-504, applicable to writs, requires filing of a verified petition before this Court, which is what is presented in this case. The applicability of Rule 12-604 is not germane: this case requests that the Court issue a writ of quo warranto under Article VI, Section 3 of the New Mexico Constitution, not a removal after filing “charges.”

Quo warranto is appropriate when any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state. NMSA 1978, § 44-3-4(A). Quo warranto has long been recognized under New Mexico law as an appropriate vehicle to “ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment,” *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16, 88 N.M. 244,

539 P.2d 1006, and this conclusion is without any active fault or wrongdoing on the office holder's part. *See Clark v. Mitchell*, 2016-NMSC-005, ¶¶ 8-9, 363 P.3d 1213 (stating the principle in entertaining but rejecting a private petitioner's claim that the respondent district judge was not constitutionally authorized to be appointed to the district court following his nonretention in the previous general election); *see* NMSA 1978, § 44-3-4(A) (authorizing an action for a writ of quo warranto "when any person shall usurp, intrude into or unlawfully hold or exercise any public office ... within this state").

The majority of the members of the BOR decided that Dr. Page was intruding on the rights of those members and usurping his appointive position by his behavior including improperly questioning and attempting to intimidate or embarrass MG Grizzle about his IPRA request during a public meeting. The BOR invoked its right under Rule 12-504 to remove Dr. Page from the BOR. Whether that position has merit is not at issue here. That is the goal of the hearing promised in the Rules.

There is no authority for depriving a person or entity entitled to petition for a writ of quo warranto if another option is available, such as the filing of a charge by the governor or attorney general or a grand jury. The BOR was well within its rights to pursue removal of Dr. Page proceeding in quo warranto.

V. CONCLUSION

Whether Rule 12-604 prevents this Court from considering this action is irrelevant: this case is brought pursuant to Article VI, Section 3 of the New Mexico Constitution, not Article XII, Section 13 of the New Mexico Constitution. Rule 12-604 is not applicable; Rule 12-504 governs this proceeding. The BOR respectfully requests that the Court determine that it has jurisdiction under Article VI, Section 3 of the New Mexico Constitution and Rule 12-504 and proceed with the remaining requirements in Rule 12-504.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2022 a true and correct copy of foregoing was served upon counsel for Dr. Page and upon the Attorney General's office through the Court's e-file and serve system.

WIGGINS, WILLIAMS & WIGGINS

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By /s/ Lorna M. Wiggins
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