Student Judicial Court
Associated Students of
the University of New Mexico

Senators Steve Aguilar, Jr., and
Grant Nichols on behalf of ASUNM

VS.

Simon Goldfine, in his capacity
as Attorney General of ASUNM

NOTICE OF SUMMARY OF COMPLAINT

On the 8th day of September, 2000, the above named Defendant Simon Goldfine, ASUNM AG, at the address or organization of: the Associated Students of the University of New Mexico.

Phone Number: (505) 277-5528.

Summary of Complaint: See Attachment

Summary of Evidence:

Exhibit 1- Interpretation of AG, Aug. 23, 2000
Exhibit 2- Interpretation of AG, Aug. 30, 2000
Exhibit 3- ASUNM Constitution pgs. 10 & 11
Exhibit 4- Pg. 177, Understanding English Grammar
Exhibit 5- E-mail Affidavit of Prof. Lynne Beene

List of Witnesses: (Please provide address and phone number.)

ASUNM Sen. Aguilar
ASUNM Sen. Aragon
ASUNM Sen. Cook
ASUNM Sen. duPlessis
ASUNM Sen. Fossett
ASUNM Sen. Nichols
ASUNM Sen. Pacheco
Debbie Morris, Director of Student Activities
Lynne Beene, Professor of English, UNM
Julie White, Instructor of English, UNM
Matt Winburn, Brian Coulton and Ashlee Othick

On the 8th day of Sept., 2000, I the undersigned filed the above Complaint.

______________________ Signature of Plaintiff

______________________ Date Signed

Received in the ASUNM Court on: ______ day of ____________, ________.

Clerk of the Court: ________

COMPLAINT AGAINST THE ATTORNEY GENERAL OF THE ASSOCIATED STUDENTS OF THE UNIVERSITY OF NEW MEXICO (TO BE ATTACHED TO STUDENT JUDICIAL COURT OF THE ASSOCIATED STUDENTS OF THE UNIVERSITY OF NEW MEXICO COMPLAINT FORM)

COMES NOW Complainants Senators Steve Aguilar, Jr., and Grant Nichols, on behalf of Senators of the Associated Students of the University of New Mexico (hereby referred to as ASUNM), on September 8, 2000 for their cause of action against Simon Goldfine in his capacity as the Attorney General of ASUNM (hereby referred to as AG). Let it be known that the formal date of the recognition of conflict was made on Wednesday, August 30, 2000 at 6 p.m., setting the official deadline for the filing of a complaint at 5 p.m. on Thursday, September 14, 2000.

The Complainants are asking the court to please review the following complaint and to examine all aspects from both sides of the issues that will be laid out over the following pages before determining the outcome of this matter. The Complainants would like to reassure the court that the topics being discussed began and will continue to exist on a purely professional level. In no way are the actions being taken by the Complainants personally or maliciously directed at AG Simon Goldfine.

Summary of Events

On or before Tuesday, August 22, 2000, Senator Brett Nunn resigned his ASUNM senatorial seat, leaving a vacancy in the senate. On Wednesday, August 23, 2000, Senator Ray Rivera also vacated his senatorial seat, leaving a second vacancy in the senate.

ASUNM Vice President Chris Mansfield, unclear as to how to proceed filling the vacant seats, wrote an e-mail to the ASUNM AG, Simon Goldfine, asking for his assistance in helping fill the two vacancies. The question VP Mansfield posed was this:

> "We had a senator who was going into his second term resign...Does his replacement come from the person next in line from his election, or from this past election in which he was not a part of?"

In response to VP Mansfield's inquiry, AG Goldfine issued the first of two interpretations (hereby referred to as Complainants' Exhibit 1):

> "Article VII, Section 4 of the ASUNM Constitution addresses Senate Vacancies. It says, 'In the event of a vacancy in the Senate, the candidates receiving the next highest number of votes

from the general election for that session shall fill the vacancy.' The words, 'that session' lend a great deal of ambiguity to the section. It is not clear whether 'that session' indicates the session in which the Senator resigned or the session in which the Senator ran for office.

Because neither choice is expressly the correct answer, I am basing my decision on fairness. After consulting the Constitution and By-Laws of ASUNM I have concluded that the vacancy should be filled by the candidate receiving the next-highest number of votes from the election in which the resigning Senator ran. This is because the resigning Senator did not run against the candidate from the most recent election. Allowing the candidate from the last election to assume office would be skewing the results that the voters gave.

I am aware that recent practice has dictated a different decision. In the past, the next-highest vote winner from the last election was given the Senate seat. However, I believe such a decision to be erroneous and unjust.

Much of this section of the Constitution is unclear. I respectfully suggest that the Steering and Rules Committee review the language from Article VII, Section 4 and even change it so as to avoid similar questions about succession in the future."

On August 29, 2000, VP Mansfield again e-mailed AG Goldfine and asked for a re-assessment of his original interpretation after learning about inconsistencies between AG Goldfine's original interpretation and the ASUNM Constitution and past precedence. On August 30, 2000, AG Goldfine made the following interpretation (hereby referred to as Complainants' Exhibit 2):

"On August 29, 2000, you e-mailed me requesting that I clarify my decision regarding Senate vacancies because the said decision was in conflict with one made by a previous Attorney General.

You cited this conflict with respect to the resignation you submitted in order to become Vice President.

After considering the Constitution and By-Laws of ASUNM and my own previous decision, I have concluded that my interpretation was lawful and fair. I stand by the opinion I rendered originally, that stated, '…the vacancy should be filled by the candidate receiving the next-highest number of votes from the election in which the resigning Senator ran.'

I know there is concern that this ruling is in conflict with previous ones and opposes precedent. I would like to reassure the concerned parties that this decision in no way affects decisions previously rendered. Those decisions, being unopposed and accepted at the time, were law. My judgment only affects future cases in which Senate vacancies must be filled.

As in my first opinion, I strongly recommend that the Steering and Rules Committee revamp this passage. A reworking of this law would be helpful in avoiding similar confusion in the future. As always, I am available for any questions you have or clarification you need."

The Complainants in this matter believe that the interpretation of the AG of ASUNM is erroneous and unjust, not only to the parties involved, but to the students of the University of New Mexico as well. It is the contention of the Complainants that the vacant senate seats should be filled with candidates running in the general election for the current session in which the Senate seat was vacated. If the general elections for the current session have not yet been held at the time of the vacancy, then the candidates should come from the most recent election. Based on Complainants' Exhibits 1 and 2, Complainants contest the interpretation of the AG of ASUNM based on the following

premises directly related to and in support of the previously said contention of the Complainants:

1. The AG's entire argument is based entirely on hearsay and his interpretation should be dismissed as such.
2. The language of the ASUNM Constitution is neither unclear nor ambiguous.
3. Past precedence was either completely ignored on this issue, or it was never a factor in the formation of the interpretation.

Premise 1. The AG's entire argument is based entirely on hearsay and his interpretation should be dismissed as such.

In Complainants' Exhibit 1, AG Goldfine states his position on why he believes the vacant Senate positions should be filled with individuals from the election in which the candidate originally ran:

> "I have concluded that the vacancy should be filled by the candidate receiving the next-highest number of votes from the election in which the resigning Senator ran. This is because the resigning senator did not run against the candidate from the most recent election. Allowing the candidate from the last election to assume office would be skewing the results that the voters gave."

The Complainants can see the point that AG Goldfine is making. It is true that the candidates from the most recent election did not run against the resigning Senators. In the eyes of some, it may not seem fair that someone who did not run against the resigning Senators should get a position, while those who ran against the resigning Senators should be denied a position on the Senate. Yet, this argument is pure speculation and should be treated as hearsay.

However, for a moment the Complainants will play the "what if…" game. It is true that the spring candidates did not run against Sen. Nunn and Sen. Rivera, but "what if…" Sen. Nunn and Sen. Rivera had run in the spring election? Would Sen. Nunn and Sen. Rivera have been elected? Maybe not, raising another question, what makes the losing candidates from last fall more qualified for the vacant senate positions then the losing candidates from this past spring? How does a governing body determine which candidates are more qualified than other to fill the position? What if Sen. Nunn and Sen. Rivera, both beating out candidates from the fall elections, were to run against the candidates who ran for office in the spring elections and lose? Would that make the candidates whom AG Goldfine suggests should fill the vacancies even less qualified in the eyes of the students of UNM, further "skewing" the results that the voters gave?

There are endless possibilities to the number of "what if…" questions that we can ask ourselves, but this would only add to the confusion of the issue at hand. The point of exhibiting all the possible "what if…" questions is to show that AG Goldfine's entire argument is completely speculative, it should be treated as hearsay, and it should not factor into the Court's decision on this issue.

Premise 2. The language of the ASUNM Constitution is neither unclear nor ambiguous.

The language of the ASUNM Constitution is at the heart of the dispute in this matter. In Complainants' Exhibit 1, AG Goldfine states that:

> "The words, 'that session' lend a great deal of ambiguity to the section. It is not clear whether 'that session' indicates the session in which the Senator resigned or the session in which the Senator ran for office."

Complainants' Exhibit 3 is page 10 and 11 of the ASUNM Constitution, in particular, Election Procedures, Article VII, Section 4, which states:

> "In the event of a vacancy in the Senate, the candidates receiving the next highest number of votes from the general election for that session shall fill that vacancy."

It is the contention of AG Goldfine that the phrase "that session" directly refers to the session in which the candidates originally ran. From a strictly grammatical standpoint, this interpretation is extremely erroneous. The phrase, "that session," in this context, is a demonstrative pronoun, meaning the phrase directly refers to the nominal (subject of the sentence) that it renames or modifies. Please refer to Complainants' Exhibit 4 for further clarification of this rule. Complainants' Exhibit 4 is the highlighted passage on page 177 from

the book, Understanding English Grammar, 5th Edition, by Martha Kolln and Robert Funk.

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In Complainants' Exhibit 4, a clear-cut explanation for the usage of the word "that" as the predicating pronoun in a sentence is explained. The example given is extremely similar to the passage that is in question from the ASUNM Constitution. It is as follows:

> "This is the house that Jack built."
> This *that* differs from the expletive in important ways:

1. It's a pronoun, so it has an antecedent-a nominal that it refers to or renames. In this example, the antecedent of *that* is "the house"; in other words, "Jack built the house." The antecedent of the relative pronoun is *always* the headword of the noun phrase that contains the relative clause. And remember that's where relative clauses are found: in noun phrases as post-noun modifiers."

If we break down the sentence in question in the ASUNM Constitution, it would be similar to the example given in the book.

The nominal phrase (or subject/noun phrase) says, "In the event of a vacancy in the Senate." The relative pronoun in the predicating, or supporting, pronoun portion of the sentence says, "from the general election for that session." As is the rule explained by Martha Kolln in Complainants' Exhibit 4, the antecedent, or the nominal subject of the sentence, of the relative pronoun is ALWAYS the

headword of the noun phrase that contains the relative clause. This explanation means that the words "that session" directly modify or rename the nominal phrase, or subject of the sentence, which is the vacancy in the Senate.

Complainants' Exhibit 5 is the e-mail correspondence between the Complainants and UNM Professor of English Lynne Dianne Beene, dated Monday, Sept. 4, 2000. Professor Beene is an expert in the field of grammar and the Complainants respectfully request that Prof. Beene be treated as an expert witness.

Prof. Beene was provided with the facts of the case, as shown at the end of Complainants' Exhibit 5, and made the following conclusions:

> "There's little confusion with the wording of the ruling. The replacement should come from the next highest vote-getter for the session in which the senator resigned. The phrase "from the general election for that session" grammatically refers to the "votes" that "candidates" receive in present time: "receiving" is a present participle modifying "candidates," thus strongly suggesting current session."

Prof. Beene further reinforces the fact that AG Goldfine has misinterpreted the ASUNM Constitution. In no grammatical way can the phrase "that session" be interpreted to refer to as the session in which the candidates originally ran. Had this been the intention of the seated senate when this Constitutional amendment

was originally enacted in 1993, the authors would have expressly said "from the session in which the senators originally ran."

Premise 3. Past precedence was either completely ignored, or it was never a serious factor in the formation of the interpretation.

In this case, AG Goldfine states in Complainants' Exhibit 1 that:

> "I am aware that recent practice has dictated a different decision. In the past, the next-highest vote winner from the last election was given the Senate seat. However, I believe such a decision to be erroneous and unjust."

In Complainants' Exhibit 2, AG Goldfine states that,

> "I know there is concern that this ruling is in conflict with previous ones and opposes precedent. I would like to reassure the concerned parties that this decision in no way affects decisions previously rendered. Those decisions, being unopposed and accepted at the time, were law. My judgment only affects future cases in which Senate vacancies must be filled."

Both of these statements display the Defendant's decision to move against past precedence. In Complainants' Exhibit 1, AG Goldfine says that, "recent practice has dictated a different decision." He is referring to the spring elections in which VP Mansfield resigned his senate seat to take office as the newly elected ASUNM VP. The candidate who finished as number 11 on the official ballot was John Probasco, and Probasco became Mansfield's eventual successor.

AG Goldfine believes that this decision was "erroneous and unjust". However, the decision to place Probasco into the seat vacated by Mansfield was based entirely on precedence. The Complainants in this matter sought outside legal advice on this matter from Gilbert Arrazolo, a local attorney who practices in Albuquerque. In conversations with Arrazolo regarding this matter, he states that:

> "Precedence is what the entire legal system of this country is based upon. Any judge that goes against precedence as blatantly as the AG did in this case would have his or her decision overturned by the appeals court almost immediately. You just don't do something like that unless the precedence is abjectly unconstitutional, at which point the Supreme Court of the United States would have to intervene, not the justices or any of the parties involved."

Another facet of this argument is the fact that AG Goldfine either did not know the extent of the precedence on this issue, or he chose to leave it out of his interpretation. Debbie Morris, the director of Student Activities at UNM, discussed the past precedence on this issue with the Complainants, saying:

> "The original amendment in question was written and enacted by the ASUNM senate in 1993. Since then it, was amended twice in 1997 to clear up some unnecessary words, but it has pretty much stayed the same. The words in question were there back then and they are the same as they are today. This is the first instance that someone (AG Goldfine) has interpreted the reading of Article VII,

> section 4, in this manner…. past precedence has dictated that the senators filling the vacancies come from the most recent election…this is the first time that anyone has broached this subject, but in the past it was not done this way…I would estimate that since 1993, we have averaged one senate vacancy per session (semester). Of course, some sessions have had two or even three vacancies, and some have had none, but the average is one per semester, and this is the first time that this has been done this way."

Ms. Morris's statement shows that dating back to 1993, when the amendment was first created, the way that vacancies were handled was to go to the most recent election to fill the vacancies. This also shows that the authors of the amendment intended for the rule to be interpreted as it has been for the last seven years, not as AG Goldfine has interpreted it, or else the authors themselves would not have gone to the most recent election to fill vacancies in the senate.

Summary of Complaint

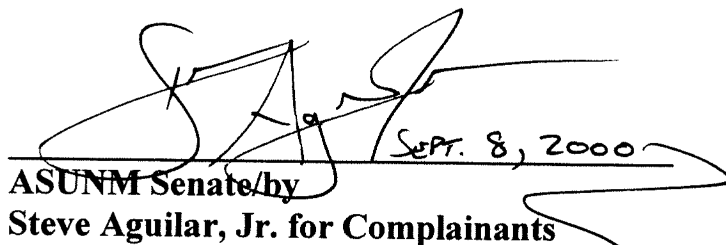
AG Goldfine has not provided a single item of hard-core evidence regarding the foundation for his decision in this matter. On two separate occasions he had the opportunity to explain why he made his interpretation, and to provide evidence to back up his contention. Instead, AG Goldfine has stuck by his claim that the candidates that should fill the vacancy in the Senate should come from the election in which the resigning candidates originally ran. He has

based his entire argument on a theoretical premise to try to support his "belief" that a decision to fill the vacant Senate seats with candidates from the most recent election is "erroneous and unjust."

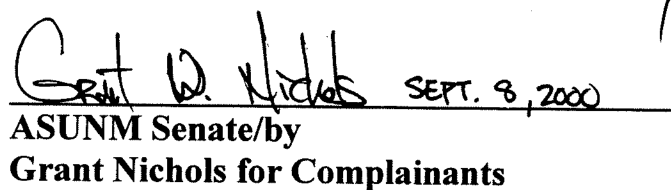
In addition, AG Goldfine cannot make the assessment he has made based on a loophole in the wording of the ASUNM Constitution. The Complainants have shown through the systematic breakdown of the sentence in question and through the testimony of Prof. Beene, that the language of the ASUNM Constitution, Article VII, Section 4, is not only consistent with, but in support of the Complainants' contention that vacant seats on the Senate must be filled with candidates from the most recent election. Expert testimony reinforces this fact and past precedence mandates it.

The Complainants are asking that the interpretation of AG Goldfine be overturned, and that candidates from the most recent election, the spring 2000 election, fill the vacancies that have resulted from the departure of Sen. Nunn and Sen. Rivera., remaining consistent with past precedent and ASUNM Constitutional law

Respectfully submitted on this day, September 8, 2000



ASUNM Senate/by
Steve Aguilar, Jr. for Complainants



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