

**STATE EX REL. CRUZ V. ARMIJO, 1936-NMSC-072, 41 N.M. 44, 63 P.2d 1041 (S. Ct. 1936)**

**STATE ex rel. CRUZ**

**vs.**

**ARMIJO**

No. 4275

SUPREME COURT OF NEW MEXICO

1936-NMSC-072, 41 N.M. 44, 63 P.2d 1041

December 24, 1936

Original prohibition proceeding by the State, on the relation of B. F. Cruz, against the Honorable Luis E. Armijo, judge of the district court of the Fourth judicial district of the state of New Mexico, sitting within and for Mora County, state of New Mexico.

**COUNSEL**

M. E. Noble, of Las Vegas, and E. R. Cooper, of Mora, for relator.

H. E. Blattman, of Las Vegas, for respondent.

**JUDGES**

Sadler, Chief Justice. Hudspeth, Bickley, and Zinn, JJ., concur. Brice, J., did not participate.

**AUTHOR: SADLER**

**OPINION**

{\*44} {1} In this case an alternative writ of prohibition was granted at the instance of B. F. Cruz, as county chairman of Mora {\*45} county, New Mex., for one of the dominant political parties, to restrain the respondent pending final hearing herein from further proceeding in cause No. 3732 on the civil docket of the district court in said county, entitled "In the Matter of the Application of Mrs. Phillip N. Sanchez and Maximinio R. Valdez for a recount of the votes cast at the general election held on November 3, 1936, in Precincts 5, 9, 14, and 22."

{2} Petitioners for recount on the face of the returns were the successful candidates for the offices of school superintendent and treasurer of said county and received certificates of election. The candidates opposing them for such offices having filed a

petition for recount affecting certain other precincts (see State ex rel. Gandert v. Armijo, 41 N.M. 38, 63 P.2d 1037, this day decided), the present petitioners prayed a recount of the votes for such offices in the above numbered precincts.

{3} Upon filing the petition for recount, petitioners presented same to Hon. Luis E. Armijo, judge of the Fourth judicial district, the respondent herein, who, finding the same sufficient and the security adequate, signed an order directing said recount and fixing November 21, 1936, at 10 o'clock a. m., at the county courthouse in Mora, New Mex., as the time and place for conducting the same. Said order also directed the summoning of the election officials of the precincts involved.

{4} Thereupon Matias Zamora and Benjamin Gandert, as the candidates opposing petitioners for the respective offices involved, and B. F. Cruz, as county chairman aforesaid of Mora county, upon who by direction of the statute notice of the recount was required to be served, filed in said proceeding their separate affidavits of disqualification pursuant to the provisions of Laws 1933, c. 184. Respondent having announced in open court that he deemed said affidavits ineffective and would proceed in the matter, the said B. F. Cruz, as relator, sought in this court and was awarded alternative writ of prohibition, as aforesaid. The matter is now before us upon the writ and amended answer thereto. The facts are admitted. We are called upon to determine only legal questions arising therefrom.

{5} Since every decisive question presented by respondent has been resolved against him upon similar facts in the case of State ex rel. Roman A. Romero v. Armijo, Judge, 41 N.M. 40, 63 P.2d 1039, this day decided, upon the authority of that decision the alternative writ heretofore issued herein will be made permanent.

It is so ordered.