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February 1, 2010

**VIA HAND DELIVERY**

Joseph H. Orlando, Clerk  
 Appellate Division  
 Superior Court of New Jersey  
 Hughes Justice Complex  
 25 West Market Street  
 Trenton, New Jersey 08625

**Re: Committee to Recall Robert Menendez v. Nina Wells, Secretary of State, et al.**  
**Appellate Docket No. A-2254-09T1**

Dear Sir:

Per the Order of the Hon. Jack M. Sabatino, J.A.D., dated January 14, 2010, directing that Appellant serve the Office of United States Senator Robert Menendez, the Appellant's application above, and further directing Senator Menendez to file and serve papers in response thereto, the undersigned encloses the following for filing in the above-referenced matter on behalf of United States Senator Robert Menendez:

1. An original and four (4) copies of brief on behalf of United States Senator Robert Menendez in response to Appellant's application;
2. An original plus four (4) copies of a Notice of Motion to Admit Marc E. Elias, Esq. as counsel for United States Senator Robert Menendez *Pro Hac Vice*;
3. Certification of Angelo J. Genova, Esq. in support thereof;
4. Certification of Marc E. Elias in support thereof; and
5. Certification of Service.

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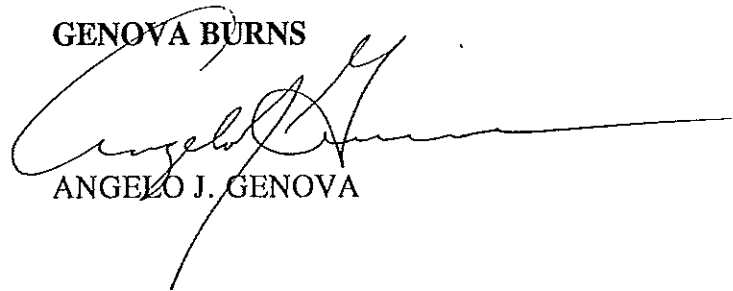
Joseph H. Orlando, Clerk  
Appellate Division  
February 1, 2010  
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Please file the original documents and return a set of copies stamped "filed" to this office in the self-addressed stamped envelope enclosed for your convenience.

Thank you for your attention to this matter.

Very truly yours,

**GENOVA BURNS**

A handwritten signature in black ink, appearing to read "Angelo J. Genova", written over the printed name below.

ANGELO J. GENOVA

AJG:sb  
Enclosures

- c: Robert F. Giles, Director (w/enc.)(via e-mail & hand-delivery)  
Donna Kelly, Assistant Attorney General (w/enc.)(via e-mail & hand-delivery)  
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Hon. Ronald B. Graves, J.A.D. (via hand-delivery)  
Hon. Jack M. Sabatino, J.A.D. (via hand-delivery)

THE COMMITTEE TO RECALL  
ROBERT MENENDEZ FROM THE  
OFFICE OF U.S. SENATOR,

Appellant,

V.

NINA MITCHELL WELLS, ESQ.,  
SECRETARY OF STATE, ET AL.,

Respondents.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No.: A-2254-09T1

Civil Action

ON APPEAL FROM THE FINAL  
DETERMINATION OF THE DIVISION  
OF ELECTIONS, SECRETARY OF  
STATE DATED JANUARY 11, 2010

---

BRIEF ON BEHALF OF UNITED STATES  
SENATOR ROBERT MENENDEZ, RESPONDENT

---

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PRELIMINARY STATEMENT

Upon the direction of the Superior Court of New Jersey, Appellate Division, Senator Robert Menendez ("Respondent") submits this brief in opposition to the Motion for Emergent Relief of the Committee to Recall Robert Menendez for the Office of U.S. Senator (the "Recall Committee").

The U.S. Constitution reserves to the United States Senate the exclusive power to expel, seat, and determine the qualifications of its own members. Accordingly, New Jersey has no authority to recall a U.S. Senator despite the provisions of its constitution and statutes. The Recall Committee offers no argument to the contrary, and yet, asks this Court to order an unconstitutional petition process and recall election at great burden and expense to the State. The Court should not indulge such an unwarranted request and should uphold the determination of the State of New Jersey Department of State not to certify the Recall Committee's petition.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

On November 7, 2006, Respondent was elected to represent New Jersey in the U.S. Senate. Pursuant to federal statute, 2 U.S.C. § 1a (2010), the State accordingly presented the Senate with a certification to the following effect:

State of New Jersey  
Certificate of Election for Six-Year Term

To the President of the Senate of the United States:

This is to certify that on the 7th day of November, 2006, Robert Menendez, was duly chosen by the qualified electors of the State of New Jersey, a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, 2007.

By the Governor:

Given, under my hand and the Great Seal of the State of New Jersey, this 11th day of December, two thousand and six.

Jon Corzine,  
Governor.

153 Cong. Rec. S3 (daily ed. Jan. 4, 2007). The Senate found that the certificate "contain[ed] all the essential requirements," and the Vice President administered the "oath prescribed by law" on January 4, 2007. Id. at S1, S4. Respondent then "subscribed to the oath in the Official Oath Book" and was officially seated. Id. at S4. As Respondent's six year term in the U.S. Senate began on January 4, 2007, it is set to end on January 3, 2013. See U.S. Const. amend. XX, § 1.

#### LEGAL ARGUMENT

##### POINT I

AS THE U.S. CONSTITUTION RESERVES TO THE UNITED STATES SENATE THE POWER TO EXPEL AND DETERMINE THE QUALIFICATIONS OF ITS OWN MEMBERS, NEW JERSEY HAS NO AUTHORITY TO RECALL A U.S. SENATOR.

The U.S. Constitution does not provide the right to recall Members of Congress. Because the Constitution grants Congress exclusive power over seating and expelling its Members, no such



right exists. Tellingly, "[n]o United States Senator or Member of the House of Representatives has ever been recalled in the history of the United States." La. Atty. Gen. Op. No. 09-0051 at 2 (March 2, 2009).

Article 1, Section 3 of the Constitution establishes that the term of a U.S. Senator is "six years" and sets forth the qualifications for entering the Senate: "No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen." U.S. Const. art. 1, § 3. Section 5 of Article 3 then grants the Senate the authority to "judge ... the elections ... and qualifications of its own members" and "with the concurrence of two thirds, expel a member." Id. at § 5. These qualifications and powers are exclusive. Courts have uniformly held that "the Constitution ... establish[ed] fixed qualifications" and Congress has the sole power over the seating of its Members. U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 793, 798 (1995) (collecting cases); Barry v. United States, 279 U.S. 597, 614 (1929) (stating "that the power conferred upon the Senate is to Judge of the elections, returns, and qualifications of its 'members' ... and the full right accorded to participate in the businesses of the Senate, [is] a matter within the discretion of the Senate."); De Vesa v. Dorsey, 134

N.J. 420, 446 (1993) (Handler, J., concurring in part and dissenting in part) (recognizing that "the United States Constitution contain[s] a textual commitment of the issue [of being seated in Congress] to the House in article I, section five, which empowers the House to 'be the Judge of the Qualifications of its own Members.'" (internal citation omitted)).<sup>1</sup> The states do not have the ability to place additional "qualifications" on Members of Congress. See Thornton, supra, 514 U.S. at 798-99.

Specifically, the "power of recall ... [was] denied to the States when [the Framers] specified the terms of Members of Congress." Id. at 890 (Thomas, J., dissenting). "[O]nce the representatives chosen by the people of each State assemble in Congress, they form a national body and are beyond the control of the individual States until the next election." Id. at 858. As discussed in the majority opinion, "[t]he Framers feared that the diverse interests of the States would undermine the National Legislature, and thus they adopted provisions intended to

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<sup>1</sup> See also Burchell v. State Bd. of Election Com'rs, 68 S.W.2d 427, 428 (Ky. 1934) (ruling that the "jurisdiction to determine the right of a Representative in Congress to a seat is vested exclusively in the House of Representatives...."); State v. Selvig, 212 N.W. 604, 604 (Minn. 1927) ("[Article 1, Section 5] gives the House of Representatives exclusive jurisdiction to determine whether the respondent is or is not disqualified from becoming a member of that body."); Keogh v. Horner, 8 F. Supp. 933, 935 (N.D. Ill. 1934) ("the power of the respective Houses of Congress with reference to the qualifications and legality of the election of its members is supreme.").

minimize the possibility of state interference with federal elections." Id. at 808. While it was introduced, "the Framers[] deci[ded] to reject a proposal allowing for States to recall their own representatives...." Id. at 810, n. 20.<sup>2</sup> The Constitution establishes that a Senator's term is for six years and only the Senate has the power to force a living Senator out prematurely. As the Supreme Court ruled in Burton v. U.S., a Senator's seat can "only become vacant by his death, or by expiration of his term of office, or by some direct action on the part of the Senate in the exercise of its constitutional powers." 202 U.S. 344, 369 (1906) (ruling that a criminal statute could not operate to remove a Senator from office without further action by the Senate).

Nor is the power to recall reserved to the states under the Tenth Amendment. The Tenth Amendment provides: "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states

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<sup>2</sup>See also 1 Max Farrand, The Records of the Federal Convention of 1787 20, 217 (1911); H.R. Doc. No. 398, at 113, 192 (1927). Alexander Hamilton expressed the concern that, with the right to recall, there would be no balance between the power of the States and the federal government. Id. at 746 ("Congress, by being annually elected, and subject to recall, will ever come with the prejudices of their States rather than the good of the union. ... Where are the checks? None.") In contrasting how the new Congress would operate in comparison with the government under the Articles of Confederation, Elbridge Gerry, a delegate from Massachusetts, recognized that Senators "are not subject to recall." Id. at 536.

respectively, or to the people." U.S. Const. amend. X. However, the only powers "reserved" to the states are those which they previously possessed: "the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the Constitution does not delegate to them...." A.C.L.U. v. Hudson, 352 N.J. Super. 44, 87 (App. Div. 2002) (internal citation omitted). The Supreme Court has recognized that "electing representatives to the National Legislature was a new right, arising from the Constitution itself." U.S. Term Limits, supra, 514 U.S. at 805. Accordingly, "powers over the election of federal officers had to be delegated to, rather than reserved by, the States." Id. at 804. Despite the provisions of its constitution and statutes, New Jersey simply has no authority to recall a U.S. Senator.

Indeed, there is no serious argument that states have the ability to recall Members of Congress. Many Attorneys General, legal scholars, and Congressional authorities agree that

states do not have this power.<sup>3</sup> Not surprisingly, therefore, nowhere in their brief does the Recall Committee counter the Secretary of State's basic contention that "election of a Member

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<sup>3</sup> See, e.g., La. Atty. Gen. Op. No. 09-0051 (Mar. 2, 2009) ("[U]nseating a member of the House of Representatives appears to be exclusively reserved to the House under Section 5 of Article I of the United States Constitution and any Louisiana laws allowing for the recall of elected officials are inapplicable to members of Congress."); 1978 Nev. Atty. Gen. Op. 14 (June 8, 1978) (finding that "there is nothing in the United States Constitution which gives the states the authority to enact laws for the removal of senators and representatives prior to the end of the terms for which they were elected.... [O]nly the United States Senate or the House of Representatives can remove its own members...."); House Committee on Standards of Official Conduct, Policy of the House of Representatives with respect to Actions by Members Convicted of Certain Crimes, H. Rep. 94-76, 94th Cong., 1st. Sess. 2 (1975) (stating "Members of Congress are not subject to recall."); Committee on Rules and Administration, U.S. Senate, Senate Election Law Guidebook, Sen. 109-10, 109th Cong. 1st. Sess. 294 (2006) (concluding that "making a United States Senator ... subject to removal by a state recall election would constitute an additional qualification for office, which the states do not have the constitutional authority to enact."); Joseph F. Zimmerman, The Recall: Tribunal of the People, 31 (Praeger Publishers 1997) ("It is clear ... that the recall cannot be employed against a member of the U.S. Congress without a U.S. constitutional amendment authorizing the recall."); Thomas E. Cronin, Direct Democracy: The Politics of Initiative, Referendum, and Recall, 42 (Harvard Univ. Press 1989) (quoting Luther Martin who made the following report to the Maryland Legislature after the Constitutional Convention: "States cannot recall [Senators]." (emphasis in original)); Jefferson B. Fordham, The Utah Recall Proposal, 1976 Utah. L. Rev. 29, 34 (1976) ("Beyond question, the Federal Constitution is controlling; [it] leave[s] no room for state regulation. Thus, the [recall] measure, if adopted, would be an abortive—a legally ineffective—attempt to control something beyond state competence."); Christopher Terravona, The Constitutional Life of Legislative Instructions in America, 84 NY L. Rev. 1331, 1331 (Nov. 2009) ("the right to recall representatives [was] a threat that was eliminated by the U.S. Constitution, which did not explicitly provide such authority.").

of the United States Senate is a matter of exclusive jurisdiction of federal authority." (Pa011). While the Recall Committee provides general truths regarding the "freedom of speech," the "right to petition," and the "right to assembly," none of the constitutional cases it relies on concern the right to recall an elected official. (Pb16-18). These are fundamentally different matters. The Recall Committee does not cite a single authority for the proposition that the First Amendment to the U.S. Constitution encompasses the right to recall.<sup>4</sup> While the citizens of New Jersey are unquestionably free to assemble, speak their minds, and petition their government, they are not entitled to state action certifying their activities in violation of the U.S. Constitution.

## POINT II

### THE COURT HAS THE AUTHORITY AND NOW IS THE PROPER TIME TO DECIDE THE CONSTITUTIONAL ISSUES PRESENTED IN THIS CASE.

In various ways, the Recall Committees asks the Court to set all constitutional issues aside in order to grant its requested relief. But the Court must assess the validity of a recall if it is going to compel the State to engage in one. To do otherwise would be to neglect its proper role at a substantial burden and expense to the State.

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<sup>4</sup> For this reason, the Recall Committee's brief reference to "content-based restrictions" is inapposite. (Pb17).

The Recall Committee first seems to claim that the Court should not consider the constitutionality of recalling a U.S. Senator because the case is not yet ripe. (Pb13). This argument turns justiciability on its head. The Recall Committee relies on a case concerning a request for "declaratory relief" which requires that "the plaintiff [must] prove his tangible interest in obtaining a judgment" when appealing to a court for guidance. Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 301 (App. Div. 2005). Here, the Recall Committee is the plaintiff; it is the party that initiated this lawsuit and it is the party asking for a tangible remedy. Regardless, there is no question that the issues in this case are now properly before the Court. The Recall Committee seeks review of a "final agency action," the question of whether the State has the authority to recall a U.S. Senator is "purely a legal one," additional facts would not clarify the legal issues, and there is an actual "controversy" between the parties. Abbott Laboratories v. Gardner, 387 U.S. 136, 140, 149 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99 (1977) (discussing what makes a dispute ripe for review.) Fundamentally, the Recall Committee seeks to compel the State to engage in recall proceedings while the State believes it has no authority to do so. To resolve this controversy, to determine whether the Recall Committee is entitled to its requested

relief, the Court must determine whether it is constitutional for the State to recall a U.S. Senator.

Next, the Recall Committee asks the Court to enforce New Jersey's recall statutes even if the underlying provision of the New Jersey Constitution is void. (Pb16-17). It wants the Court to wait until after the State has conducted a recall election to decide whether it was constitutional to hold the election in the first place. (Pb13-14). Yet, if a law is unconstitutional, its implementing provisions are unconstitutional as well. As the Superior Court of New Jersey, Appellate Division recently observed, "[i]t is axiomatic that plaintiff cannot claim a right that stems from the enforcement of the Ordinance if the legislation itself is unconstitutional." Urrutia v. Elizabeth, 2009 WL 2913947 at \*1 (App. Div., Sept. 14, 2009). To enforce the recall statute without assessing its constitutionality would require the Court to abdicate its role: "it is the imperative duty of the courts to condemn that which contravenes the constitution." Wilentz v. Hendrickson, 133 N.J. Eq. 447, 458 (1953). Ultimately, "[t]he constitutional issues will not disappear, and to postpone deciding them would accomplish nothing." Thorstad v. Gregoire, 841 F. Supp 1068, 1074 (W.D. Wash. 1994) (ruling that Washington's federal term limits were unconstitutional prior to the election).



The Recall Committee does not simply seek the right to speak. It wants the State to expend substantial resources to certify and oversee an unconstitutional recall process and election. While the Recall Committee imagines that no constitutional issue would arise until the conclusion of such proceedings, the Supreme Court has recognized "the importance of deciding a challenge to the constitutionality of an election law before it takes effect." Thorstad, supra, 841 F. Supp. at 1074, citing Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 300, n. 12 (1979) ("Justiciability in such cases depends not so much on the fact of past injury but on the prospect of its occurrence in an impending or future election."). As in Thorstad, to put off the constitutional issues presented in this case would "inflict uncertainty on the parties and the public" and risk that a recall would take place before full judicial review could be completed. Id. Especially because there is no serious dispute regarding the State's inability to recall a U.S. Senator, the Court should address all of the constitutional issues now.

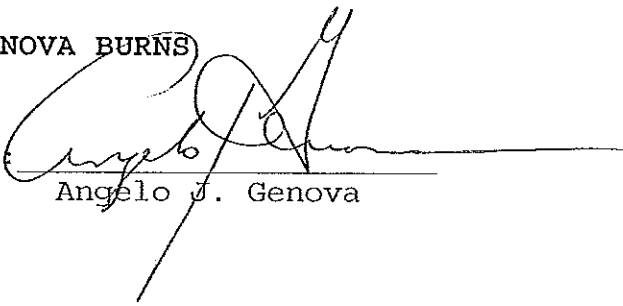
CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court uphold the final determination of the Secretary of State and deny the Recall Committee's appeal in its entirety.

Respectfully submitted,

GENOVA BURNS

BY:

  
Angelo J. Genova

Dated: February 1, 2010

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No.: A-2254-09T1

COMMITTEE TO RECALL  
ROBERT MENENDEZ,

Plaintiff/Appellant,

v.

NINA WELLS, SECRETARY OF STATE,  
ET AL.

Defendants/Respondent.

CIVIL ACTION

ON APPEAL FROM: Final Agency  
Action by the Secretary of  
State, Department of State,  
State of New Jersey

SAT BELOW: Hon. Nina  
Mitchell Wells, Esq. and  
Robert F. Giles, Director  
Division of Elections,  
Director of the Division of  
Purchase and Property

NOTICE OF MOTION TO ADMIT  
MARC ERIK ELIAS, ESQ. AS  
COUNSEL PRO HAC VICE

TO: Robert F. Giles  
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PLEASE TAKE NOTICE that, on a date and time to be determined by the Court, the undersigned attorneys for United States Senator Robert Menendez, will move before the above named Court pursuant to R. 1:21-2 for an Order admitting Marc Erik Elias, Esq. as counsel *pro hac vice* in this matter.

PLEASE TAKE FURTHER NOTICE that, in support thereof, the undersigned shall rely upon the Certifications of Angelo J. Genova, Esq. and Marc Erik Elias, Esq., submitted herewith.

GENOVA BURNS  
Attorneys for Senator  
Robert Menendez

BY: 

ANGELO J. GENOVA

Dated: February 1, 2010

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No.: A-2254-09T1

COMMITTEE TO RECALL  
ROBERT MENENDEZ,

Plaintiff/Appellant,

v.

NINA WELLS, SECRETARY OF STATE,  
ET AL.

Defendants/Respondent.

CIVIL ACTION

ON APPEAL FROM: Final Agency  
Action by the Secretary of  
State, Department of State,  
State of New Jersey

SAT BELOW: Hon. Nina  
Mitchell Wells, Esq.,  
Secretary of State, and  
Robert F. Giles, Director  
Division of Elections

CERTIFICATION OF ANGELO J.  
GENOVA, ESQ. IN SUPPORT OF  
THE PRO HAC VICE ADMISSION OF  
MARC E. ELIAS, ESQ.

I, ANGELO J. GENOVA, ESQ., upon my oath and according law,  
do hereby certify as follows:

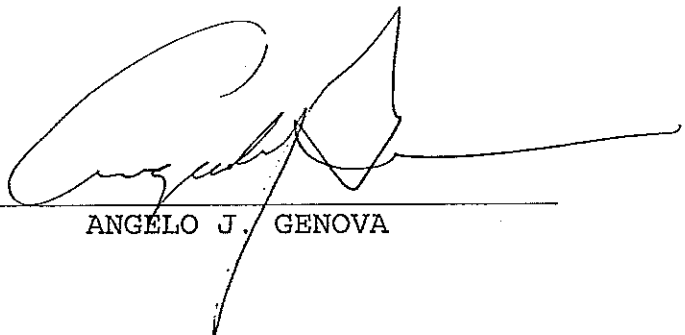
1. I am an attorney-at-law of the State of New Jersey  
with an office located at 494 Broad Street, Newark, New Jersey,  
07102. I am admitted to the Bar of the State of New Jersey  
(1980), New York (1979) and Pennsylvania (2007). I am also  
admitted to the Bar of the United States District Courts for the  
District of New Jersey, the Southern District of New York, the  
Eastern District of New York, the Second and Third Circuit Court  
of Appeals and the United States Supreme Court.

2. This Certification is submitted in support of United States Senator Robert Menendez's Motion to admit Marc E. Elias, Esq., *pro hac vice*, pursuant to R. 1:21-2.

3. United States Senator Robert Menendez has specifically requested that Marc E. Elias, Esq. enter an appearance as counsel in this matter.

4. I respectfully request that the Court admit Marc E. Elias, *pro hac vice*, for the purpose of appearing, participating, and representing Senator Menendez and his campaign committee in this matter. This request is based on my knowledge and information that the instant case involves an area of law in which Mr. Elias is eminently qualified to appear.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



ANGELO J. GENOVA

Dated: February 1, 2010

GENOVA, BURNS  
494 Broad Street  
Newark, New Jersey 07102  
Telephone (973) 533-0777  
Attorneys for United States Senator  
Robert Menendez

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No.: A-2254-09T1

COMMITTEE TO RECALL  
ROBERT MENENDEZ,

Plaintiff/Appellant,

v.

NINA WELLS, SECRETARY OF STATE,  
ET AL.

Defendants/Respondent.

CIVIL ACTION

ON APPEAL FROM: Final Agency  
Action by the Secretary of  
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SAT BELOW: Hon. Nina  
Mitchell Wells, Esq.,  
Secretary of State, and  
Robert F. Giles, Director  
Division of Elections

CERTIFICATION OF MARC ERIK  
ELIAS, ESQ. IN SUPPORT OF  
ADMISSION PRO HAC VICE

I, Marc E. Elias, Esq., hereby certify to this Court as follows:

1. I am a partner at the law firm of Perkins Coie, LLP, 607 Fourteenth Street, N.W., Washington, D.C. 20005, and am counsel to United States Senator Robert Menendez in this matter. As such, I have personal knowledge of the facts and proceedings related herein. I make this Certification in support of Senator Menendez's motion for my admission *pro hac vice* in this matter.

2. I am a 1993 graduate of the Duke University School of Law; I hold a Masters of Arts Degree in Political Science from Duke (1993) and am a 1990 graduate of Hamilton College.

3. I was first admitted to the Bar of the District of Columbia in 1993. I am in good standing of the D.C. Bar and there is no disciplinary action against me, nor has there ever been.

4. I will be associated in the handling of this matter with attorneys from Genova, Burns & Vernioia, who are qualified to practice in New Jersey pursuant to R. 1:21-1, and are admitted to practice before this court, and upon whom service may be had in all matters connected with this legal proceeding, or any disciplinary matter, with the same effect as if personally made on me within the State of New Jersey.

5. Unless permitted to withdraw sooner or by order of this court, I will continue to represent Senator Menendez in this matter until the final determination thereof, and that with reference to all matters incident to this proceeding, I agree that I shall subject myself to the jurisdiction of the Court of New Jersey in any manner arising out of my conduct in such proceedings and I agree to be bound by the Code of Professional Responsibility applicable to New Jersey lawyers and interpretation thereof by the New Jersey courts.

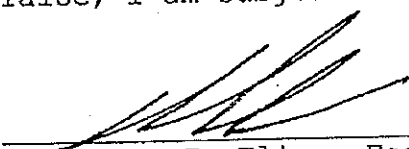
6. I will submit the required fee to the New Jersey Supreme Court's Fund for Client Protection within seven (7) days of the date of my admission *pro hac vice*.



7. Senator Robert Menendez has requested that I appear in, and assist in, the appeal of this matter on his behalf. The granting of the motion for my admission *pro hac vice* will not result in any delay in the handling of this matter.

8. There is no trial date presently scheduled in this matter.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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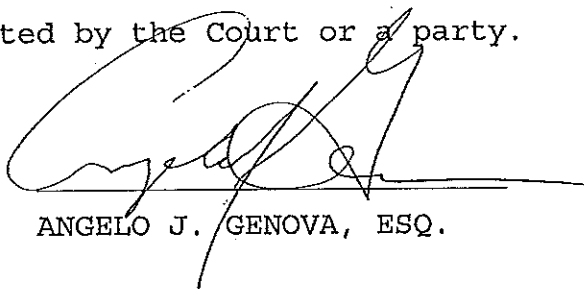
Marc E. Elias, Esq.

Dated: February 1, 2010

2105\002\Elias Pro hac vice certification.DOC

CERTIFICATION PURSUANT TO RULE 1:4-4(c)

I, Angelo J. Genova, Esq., do hereby certify with respect to the facsimile signature of Marc E. Elias, Esq. contained in the preceding Certification that: (a) Mr. Elias acknowledged the genuineness of the signature; and (b) a copy of the Certification with his original signature affixed thereto will be filed with the Court if requested by the Court or a party.



ANGELO J. GENOVA, ESQ.

Dated: February 1, 2010

GENOVA BURNS  
494 Broad Street  
Newark, New Jersey 07102  
Telephone (973) 533-0777  
Attorneys for United States Senator  
Robert Menendez

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO.: A-2254-09T1

COMMITTEE TO RECALL  
ROBERT MENENDEZ,

Plaintiff/Appellant,

v.

NINA WELLS, SECRETARY OF STATE,  
ET AL.

Defendants/Respondent.

CIVIL ACTION

ON APPEAL FROM: Final Agency  
Action by the Secretary of  
State, Department of State,  
State of New Jersey

SAT BELOW: Hon. Nina Mitchell  
Wells, Esq., Secretary of  
State, and Robert F. Giles,  
Director, Division of  
Elections

CERTIFICATION OF SERVICE

I, Sue Brennan, upon my oath and according law, do hereby  
certify as follows:

1. I am a legal secretary employed with the firm of  
Genova, Burns, attorneys for State Senator Robert Menendez in  
the above referenced matter.

2. On this date, February 1, 2010, I caused to be  
forwarded to the Clerk of the Superior Court, Appellate  
Division, for filing, via hand delivery, an original and four  
(4) copies of a brief in response to Plaintiff/Appellant on  
behalf of United States Senator Robert Menendez per the Court's  
Order of January 14, 2010, and an original plus four (4) copies  
of a Notice of Motion to Admit Marc E. Elias, Esq. as counsel

for United States Senator Robert Menendez Pro Hac Vice;  
Certification of Angelo J. Genova, Esq. in support thereof; and  
Certification of Marc E. Elias, Esq. in support thereof.

3. In addition, on this date, I caused one set of copies  
of each of the foregoing papers to be served, via hand delivery,  
upon:

Robert F. Giles  
Director, Department of State  
Division of Elections  
P.O. Box 304  
225 West State Street  
Trenton, NJ 08625-0304

Donna Kelly, Esq., Assistant Attorney General  
Office of the Attorney General  
Division of Law  
Hughes Justice Complex  
P.O. Box 080  
25 West Market Street  
Trenton, New Jersey 08625

Marge Hunter, Case Manager  
Appellate Division  
State of New Jersey  
25 W. Market Street, P.O. Box 006  
Trenton, New Jersey 08625

Daniel P. Silberstein, Esq.  
Daniel P. Siberstein, P.C.  
Attorneys at Law  
136 Central Avenue  
Clark, New Jersey 07066

Richard T. Luzzi, Esq.  
Oller & Luzzi, LLC  
35 Green Pond Road  
Rockaway, New Jersey 07866

4. I have simultaneously caused to be served upon the Chambers of the Hon. Edwin H. Stern, P.J.A.D., Hon. Ronald B. Graves, J.A.D. and the Hon. Jack M. Sabatino, J.A.D., via hand delivery, a copy of the aforesaid brief and Notice of Motion with accompanying certifications.

5. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

  
Sue Brennan

Dated: February 1, 2010