

August 15, 2019

Transmitted via e-mail to: Dylan.Lange@state.nm.us

Hon. Maggie Toulouse Oliver
Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, New Mexico 87501

Proposed Amendments to Campaign Finance Rule

Dear Madame Secretary:

We are writing in response to your request for comments on the proposed amendments to New Mexico's campaign finance rule that were published in the New Mexico Register on July 16, 2019.

We have reviewed the comments on the proposed amendments that were submitted to you yesterday by the Campaign Legal Center (CLC). We endorse CLC's comments and we support all of their suggestions for possible modifications to the proposed amendments. In addition, we urge you to give special consideration to two of their suggestions.

The first of these is CLC's proposal concerning the treatment of legislative caucus committees in the subsection of the rule that defines a "coordinated expenditure" (§1.10.13.7(H) NMAC). In Part I.B. of its letter to the secretary, CLC suggests that this subsection should include an explicit statement to the effect that legislative caucus committees will be treated as agents of political parties for purposes of applying the provision that includes certain political expenditures in the definition of "coordinated expenditure" when they are made in concert with a candidate, a campaign committee, a political party or an "agent or representative" of any of these entities (§1-19-26(I)(2) NMSA 1978; see §1.10.13.7(H) NMAC).

As CLC shows in its letter, treating legislative caucus committees as agents of political parties is, first of all, fully justified under the governing statute and the rule, both of which expressly define a legislative caucus committee as "a political committee established by the members of a political party in a chamber of the legislature" (§1-19-26(O) NMSA 1978 and §1.10.13.7(S) NMAC); emphasis added). Moreover, as CLC has also demonstrated, it is critically necessary, in order to avoid easy evasion of the contribution limits that the statute imposes on legislative caucus committees (see §1-19-34.7(C) NMSA 1978), to treat these committees as agents of political parties in determining when an otherwise independent expenditure will be treated as a "coordinated expenditure" under the rule. If a person could coordinate their spending with such an entity without having the expenditure treated as a "coordinated expenditure," anyone who had 'maxed out' their contributions to a particular legislative caucus committee could nevertheless continue making unlimited donations to the committee in the form of political expenditures carried out under its direction. For these reasons, we strongly support CLC's suggestion to insert into the rule a provision stating that, in applying the rule's definition of a "coordinated expenditure," a legislative caucus committee will be treated as an agent of the political party by whose members it was formed.

If the secretary is inclined to accept this suggestion, there would be many ways to implement it; but probably the easiest would be to insert an additional five words into a slightly reworded definition of "coordinated expenditure." The first item on the list of "suggested technical corrections" that we submitted to you yesterday was a proposal that this definition in the rule should be revised to more precisely track the language of the corresponding definition in the statute (§1-19-26(I) NMSA 1978). If this were done, a reference to legislative caucus committees could easily be inserted at the end of the definition, the last part of which would then read "... or any agent or representative of a candidate, campaign committee or political party, including a legislative caucus committee."

The other part of CLC's comments to which we would invite your particular attention is their suggestion, in Part II. of their letter, to add a new subsection to §1.10.13.11 of the rule spelling out in detail the specific circumstances that will justify treating a contribution as having been "earmarked or made in response to a solicitation to fund independent expenditures" within the meaning of this section and §1-19-27.3(C) NMSA 1978. For the reasons described in CLC's letter, we believe that adoption of their proposed additional subsection would add considerable clarity to the reporting requirements of §1.10.13.11 and would help forestall potential efforts to evade those requirements through "wink and nod" communications that try to disguise the true purpose for which a contribution is being made or received. Finally, as CLC points out, their suggested addition would also help effectuate the aims of the newly adopted Subsection B of §1-19-34.3 NMSA 1978, which provides that:

"No person shall make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures or the true recipients of the expenditures."

We applaud the secretary's effort, through this rulemaking, to clarify and improve the enforceability of the newly revised Campaign Reporting Act. We believe that both of these goals would be further advanced by adoption of the suggestions that CLC has made for refinements in the draft rule, particularly the two proposals that we have emphasized in this letter.

Thank you for your consideration of these suggestions.

Respectfully submitted,

COMMON CAUSE NEW MEXICO

/s/

Heather Ferguson, Executive Director
James Harrington, State Board Chair

