

COMMON CAUSE NEW MEXICO  
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LIST OF SUGGESTED TECHNICAL CORRECTIONS IN THE SECRETARY OF STATE'S DRAFT CAMPAIGN FINANCE RULE PUBLISHED IN THE NEW MEXICO REGISTER ON JULY 16, 2019

Page 2, §1.10.13.7(H). The language in the second and third lines of the first paragraph of this subsection, following the words "concert with," reflects a departure from the corresponding statutory language (§1-19-26(I)(2) NMSA) and introduces an ambiguity into the list of entities with which coordination will transform an otherwise independent expenditure into a "coordinated expenditure." We suggest that the rule should instead follow the exact statutory language, which is "... concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party for the purpose of."

Page 4, §1.10.13.7(X). The reference to "Subsection K" of Section 1-19-26 NMSA 1978 is an apparent mistake. The term "person" is defined in Subsection P, not K, of that statute.

Pages 4-5, §1.10.13.8(A). The proposal to strike the words "or filing a declaration of candidacy" from the current version of the rule would create a discrepancy, for which there does not seem to be any justification, between this paragraph and paragraph B of this same section. We suggest that the brackets and strikethroughs around the quoted words should be removed.

Page 6, §1.10.13.10. In the last line before the heading of Subsection A, entitled "Registration," the reference to "1.10.13.11" should be included in the brackets and strikethroughs.

Page 6, §1.10.13.10(A)(1)(d). Section 5 of SB 3 repealed the paragraph of the former §1-19-26.1 NMSA that required political committees to include in their registration document the name of "any connected or associated organization or entity." We think this requirement should therefore also be deleted from the rules by placing brackets and strikethroughs around this paragraph and renumbering the succeeding paragraphs accordingly.

Page 7, §1.10.13.10(D). In the first line of the underlined language, the word “are” should be “is.”

Page 8, §1.10.13.11(A)(1). In the first line, the second occurrence of the word “of” should be “or.”

Page 8, §1.10.13.11(A)(1). There is a discrepancy between the language of this paragraph and the language of the statute that it is meant to implement. The statute, §1-19-27.3(A)(1) NMSA, provides that a report must be filed within three days of making an independent expenditure by any person whose total spending has exceeded “one thousand dollars (\$1,000) in a non-statewide election or three thousand dollars (\$3,000) in a statewide election.” The proposed rule is evidently intended to restate this requirement but replaces the statutory references to “a non-statewide election” and “a statewide election” with the undefined terms “a non-statewide race(s) or ballot measure(s)” and “a statewide race(s) or ballot measure(s).” Although this change might not make any practical difference, we think the safer course would be to stick with the statutory language and not to employ new terminology that might invite speculation about the reason for its adoption.

Page 8, §1.10.13.11(B). The opening phrase of this subsection reflects another departure from the statutory language. The corresponding section of the statute provides that “The report required by Subsection A of this section shall state: ...,” and goes on to list the information that must be furnished in every report of an independent expenditure. The proposed rule would replace the quoted statutory language with the phrase “The form prescribed by the secretary shall include: ...” Since it is not the secretary’s form but rather the independent spender’s report that must furnish the required information, the proposed language of the rule would actually somewhat misstate the statutory requirement. In any event, we think it is again preferable to avoid confusion by adhering to the statutory language.

Page 8, §1.10.13.11(B)(2). In the first line, “madeand” should be “made and.”

Page 8, §1.10.13.11(C) and (D). For the reasons already de-

scribed in the discussion of §1.10.13.11(A)(1) above, we think the terms “race or ballot question” in both of these paragraphs of the proposed rule should be replaced by the statutory term “election” in order to avoid inviting speculation about the reasons for departing from the wording of the statute.

Page 13, §1.10.13.22(A). The statutory references in the last two lines of this section are incorrect. The reference in the current version of the rule to Subsection D of §1-19-34 NMSA should be left unchanged by deleting the brackets, strikethroughs and underlining, while the reference to Subsection E of §1-19-34.7 NMSA should be changed to Subsection G by adding appropriate brackets, strikethroughs and underlining.

Page 16, §1.10.13.28(E). Since a “scenario” is a factual description, not a question, there is a slight mismatch between the opening clause and each of the six separate paragraphs of this section. We would suggest that this be corrected by either deleting the word “whether” at the beginning of each of the six paragraphs or revising the opening clause to read: “The following is a list of factors that will be taken into account in determining whether an expenditure shall be treated as a coordinated expenditure:”.

Page 16, §1.10.13.28(E)(6). For improved clarity, we would suggest changing the word “if” in the second line of paragraph (6) to “and”.