

NEW MEXICO SECRETARY OF STATE
RULEMAKING HEARING
Friday, August 16, 2019, 1:08 p.m.

NEW MEXICO STATE CAPITOL
Room 322
491 Old Santa Fe Trail
Santa Fe, New Mexico 87501

A P P E A R A N C E S

DYLAN K. LANGE, Deputy Elections Director/
Hearing Officer

SHARON PINO, Deputy Secretary of State

MANDY VIGIL, Elections Director

BEFORE: KIM KAY SHOLLENBARGER, RPR, CCR #236
Paul Baca Professional Court Reporters
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1 DEPUTY PINO: So we're going to go ahead and
2 getted started. If everybody can take your seats. I
3 would like to welcome everyone. Thank you for being
4 here and thank you for those of you who are joining
5 us via the webcast. I'm Deputy Secretary of State
6 Sharon Pino.

7 We are here today for a public hearing to
8 gather input on an amendment to our Campaign Finance
9 Rule that our office has drafted. This rulemaking
10 process was mandated by the passage of Senate Bill 3
11 during of the 2019 legislative session. It directed
12 the Secretary of State to promulgate rules in order
13 to implement the changes in the Campaign Reporting
14 Act and those changes were contained within Senate
15 Bill 3.

16 Now, just to clarify for this hearing, this
17 hearing concerns only the drafted language that is
18 amending the existing Campaign Finance Rule. The
19 original rule was promulgated back in 2017.

20 The comment period for this rule process has
21 been open since we posted the Notice of the Proposed
22 Rule Amendment on July 16th.

23 I want to thank, again, everyone for being
24 here today and participating in this public process.
25 I also want to thank all the individuals and

1 organizations who submitted public comment over the
2 last month to our office, we appreciate that.

3 The comments you will give here today,
4 whether they are oral, or again if you would like to
5 offer them in written form and we'll label that as an
6 exhibit, will be included in the overall record of
7 public comment for these rules.

8 Today's hearing officer is our Deputy
9 Elections Director, Dylan Lange. We also have our
10 Elections Director, Mandy Vigil, who is here to
11 assist with this hearing.

12 So with that, I will turn it over to Dylan
13 and we can get started.

14 HEARING OFFICER LANGE: Thank you very much.
15 This hearing will now come to order. Today is August
16 16th, 2019. The time is 1:08 p.m. We are assembled
17 in the State Capitol Building, Room 322 in Santa Fe,
18 New Mexico. I'm Dylan Lange, Deputy Elections
19 Director and will be acting as the hearing officer
20 for today's public comment rule hearing.

21 The purpose of this hearing is for the
22 Office of the New Mexico Secretary of State to
23 receive public comment, views, testimony and data on
24 the legislatively-mandated amendment to the Campaign
25 Finance Rule currently codified in Part 1.10.13 NMAC.

1 The hearing is being conducted pursuant to
2 and in accordance with Sections 1-2-1 and 1-19-26.2
3 NMSA 1978, which authorizes the Secretary of State's
4 office to adopt and promulgate rules and regulations
5 to implement and provide uniform effective procedures
6 and regulations to enable the provisions of the
7 Campaign Practices Act.

8 Further, Senate Bill 3 passed in 2019
9 mandated our office, in consultation with the
10 Attorney General, to promulgate these rules, to
11 implement the amendatory provisions of the Campaign
12 Practices Act. In addition, this hearing format will
13 comply with the State Rules Act.

14 Public notice of this hearing was provided
15 to the public and published in the New Mexico
16 Register on July 16, 2019. Copies of the proposed
17 rules have been available on the Secretary of State's
18 website and in our office since notice was published.
19 Copies of the proposed rules are also available today
20 for the public attending the hearing, on the table
21 located near the door. This hearing is also being
22 webcast live streamed on the Secretary of State's
23 website.

24 I ask all members in attendance today to
25 silent their cell phones, as the hearing will begin.

1 I'll remind everybody to sign the attendance sheet.
2 It will later be entered as an exhibit in today's
3 proceeding.

4 Let the record show that many members of the
5 Secretary of State's office are present today.
6 Deputy Secretary of State Sharon Pino and Elections
7 Director Mandy Vigil, along with our Press Secretary
8 Alex Curtas is here.

9 This is a formal proceeding. A court
10 reporter has been designated to transcribe the
11 proceedings. The transcript from today's hearing
12 will become part of the rulemaking record.
13 Therefore, when a person comes to testify we need you
14 to identify yourself, provide your party affiliation
15 each time you speak, and speak loudly and clearly so
16 the court reporter can write down your comments.

17 The hearing will be conducted in the
18 following manner in accordance with Part 1.24.25.13
19 NMAC. First the Secretary of State will present
20 exhibits, I will rule on admissibility of the
21 exhibits offered. Exhibits have been admitted to the
22 -- once they have been admitted into evidence they
23 are able to be reviewed by members of the public.
24 They've been provided -- all exhibits so far have
25 been provided to the public before the hearing and

1 they were located on the table when you first came
2 in.

3 If you've indicated that you would like to
4 testify you should have signed your name on the
5 corresponding attendance sheet. We will proceed in
6 numerical sequence through each part of the proposed
7 rule amendments. I will call individuals to testify
8 in the order they have signed up.

9 After public comment is given on specific
10 sections, and questions, I will call for general
11 public comment. If you would like to give general
12 comment about the amendments to the rule as a whole,
13 please save your comment to the end.

14 SOS staff will introduce part of the rule in
15 which we will receive testimony. After that part of
16 the rule is announced I will call for testimony.
17 Speakers will address only one part of the rule at a
18 time. Please limit your testimony only to that part
19 of the rule we are receiving testimony on. However,
20 speakers may refer to other parts of the rules that
21 may directly relate to the rule being discussed or
22 which comments are received. I further ask that
23 people do not applaud or voice opposition after
24 hearing public comment.

25 Today's hearing do not follow the Rules of

1 Evidence. However, in the interests of efficiency,
2 I, as hearing officer, may exclude or limit comment
3 or questions deemed irrelevant, redundant or unduly
4 repetitious.

5 May I have a show of hands on the number of
6 people who intend to testify today. It's important
7 to note as well that after a person has testified or
8 offer comment any member of the audience wishing to
9 question that person may do so after being recognized
10 first by me, the hearing officer. Each person
11 recognized to speak shall identify him or herself for
12 the record. Questions, though, will be limited to
13 clarifying questions.

14 In asking clarifying questions please be
15 aware that the hearing is scheduled for three hours
16 and we need to be respectful of everyone's time.
17 This is a public hearing and it is intended to
18 provide the public with an opportunity to voice
19 opinions, that's why we're here.

20 The public hearing is now open. Secretary
21 of State's office, do you have exhibits to introduce
22 at this time?

23 DIRECTOR VIGIL: Yes. On behalf of the
24 Secretary of State's office I do have the following
25 exhibits to introduce as evidence.

1 Exhibit Number 1, Notice of Rulemaking
2 published in the New Mexico Register on July 16,
3 2019. Exhibit 2, electronic correspondence regarding
4 the posting of Notice of Rulemaking on the New Mexico
5 Sunshine portal, July 15, 2019. Exhibit 3,
6 electronic correspondence sent regarding the Notice
7 of Rulemaking sent to interested parties on July 16,
8 2019. Exhibit 4, correspondence to the New Mexico
9 Legislative Council regarding the Notice of
10 Rulemaking on July 15, 2019. Exhibit 5, article
11 regarding the Notice of Rulemaking published in the
12 Santa Fe New Mexican on July 19, 2019. Exhibit 6,
13 article regarding the Notice of Rulemaking published
14 in the Albuquerque Journal, July 19, 2019. Exhibit
15 7, proposed rule amendment to Part 1.10.13 NMAC,
16 Campaign Finance, written comment received on the
17 proposed rules prior to today's hearing. Exhibit 8,
18 written comment received on the proposed rules prior
19 to today's hearing.

20 HEARING OFFICER LANGE: Thank you. I'll
21 receive those. Although these proposed exhibits have
22 been available for inspection before the hearing, is
23 there any member of the public who would like to
24 inspect the exhibits that have been marked 1 through
25 8 at this time? You would like to see them?

1 (Exhibits being examined)

2 AUDIENCE: Pardon me, may I raise a
3 procedural question?

4 HEARING OFFICER LANGE: What's your
5 procedural question?

6 AUDIENCE: Pardon me?

7 HEARING OFFICER LANGE: Let me rule on these
8 exhibits. Exhibits 1 through 8 have been offered by
9 the Secretary of State's office, I will admit them
10 into the record.

11 At this point any person wishing to submit
12 additional data, views, argument or testimony shall
13 do so after only being recognized by me, the hearing
14 officer. Each document shall be introduced as an
15 exhibit to the record and marked with an exhibit
16 number. The proposed rule has been introduced into
17 the record.

18 I will now open the floor to the audience
19 for testimony, comments on each part of the rule
20 specifically. The audience may ask clarifying
21 questions, of course, to each person providing his or
22 her testimony or commentary.

23 To begin with, may I see a show of hands of
24 how many people in the audience support the rule.
25 May I see how many hands of people who oppose it.

1 There was a question about a clarifying
2 procedural question. Any comments or questions, I
3 will call for general comment, you can give those
4 comments at that particular time. All right.

5 AUDIENCE: Okay, thank you.

6 HEARING OFFICER LANGE: The first section we
7 will hear testimony on, no one has signed up for, is
8 Sections 1 through 6. Although you didn't sign up,
9 no one signed up initially, does anyone want to
10 provide testimony on Sections 1 through 6 of the
11 proposed rules?

12 Seeing none, I will move to Section 7,
13 Definitions. There are people who signed up to speak
14 on this section. First is Austin Graham. Please
15 come to the front, identify yourself and your
16 organization.

17 MR. GRAHAM: Mr. Lange, Members of the
18 Panel, I want to thank you for having me here today.
19 My name is Austin Graham and I am legal counsel with
20 The Campaign Legal Center's state and local reform
21 program.

22 The Campaign Legal Center is a non-partisan,
23 non-profit organization dedicated to protecting and
24 strengthening democracy across all levels of American
25 government. In addition to the testimony that I will

1 provide today, The Campaign Legal Center has
2 submitted written comments to the Secretary's office
3 on this rulemaking.

4 Regarding the Definitions section, I'd like
5 to address two definitions. The first is the
6 definition of advertisement, and in particular the
7 definition's coverage of paid online advertising.

8 The amount spent on online advertising in
9 U.S. elections has grown substantially in recent
10 years. By one estimate, over \$1 billion was spent in
11 federal, state and local elections in both 2018 and
12 in 2016.

13 Considering the growing use of online
14 advertising in political campaigns, The Campaign
15 Legal Center recognized the Secretary's office
16 defined the term paid online advertising within the
17 definition of advertising.

18 In our written comments The Campaign Legal
19 Center has included a suggested definition for paid
20 online advertising modeled on a definition of
21 qualified Internet or digital communications within
22 the Federal Election Legislation, H.R.1. We hope
23 that the Secretary's office will consider adding this
24 definition within the final rule.

25 The next definition I would like to comment

1 on is the definition of coordinated expenditure. The
2 Campaign Legal Center strongly recommends including
3 coordination with legislative caucus committee within
4 the rule's definition of coordinated expenditure.

5 Legislative caucus committees, like
6 candidates and political parties, are subject to
7 contribution limits under the Campaign Reporting Act.

8 To ensure the limits on contributions to
9 legislative caucus committees are effective, the
10 final rule should regulate coordinated spending
11 involving these entities.

12 Importantly, state law definition of
13 coordinated expenditure covers agent and
14 representatives of political parties. By statutory
15 definition a legislative caucus committee is the
16 political committee controlled and established by
17 members of the state legislature.

18 Thus, including coordination with
19 legislative caucus committees in the final rule
20 aligns with state laws intent to regulate
21 coordination involving agents or representatives of
22 political parties.

23 That's all I have for the Definitions
24 section. If there are any questions I'm happy to
25 answer them.

1 HEARING OFFICER LANGE: I'll ask, does
2 members of the public have a question?

3 AUDIENCE: Yes, I have a question. My name
4 is Chris Mechels. Let's see, do you want my back --
5 what else am I supposed to provide?

6 HEARING OFFICER LANGE: Party affiliation.

7 MR. MECHELS: My party affiliation on --

8 HEARING OFFICER LANGE: No, I'm sorry, just
9 your affiliation, if you have any.

10 MR. MECHELS: I'm just a retired Los Alamos
11 guy. My question for you, as part of this I think
12 you address the online comments, which I commend you
13 on. Part of this section is, the legislative caucus
14 committee. It seems like you think that this could
15 actually be regulated in such a way that it could be,
16 let's say, as transparent as it was before we had it.

17 MR. GRAHAM: Thank you for your question,
18 Mr. Mechels. The purpose of recommending including
19 legislative caucus committees within the coordinated
20 expenditure definition goes more towards ensuring
21 that contribution limits within state law are abided
22 by and not susceptible to evasion through coordinated
23 spending with legislative caucus committees. It goes
24 less to the need for greater transparency and more to
25 ensure the effective enforcement of contribution

1 limits.

2 MR. MECHELS: Thank you.

3 MR. GRAHAM: That's all I have for this
4 section. Thank you.

5 HEARING OFFICER LANGE: Thank you. Next on
6 the list is Heather Ferguson.

7 MS. FERGUSON: Thank you. I'm Heather
8 Ferguson, I am the Executive Director for Common
9 Cause New Mexico, and we work very closely with the
10 folks over at The Campaign Legal Center. So as you
11 will see, our written comments are very reflective of
12 a lot of the points that they have made.

13 But I would first actually like to just
14 begin by applauding and thanking the Secretary of
15 State's office for the great efforts in doing this
16 rulemaking process, as we finally got our campaign
17 finance statutes amended through a long eight-year
18 battle this legislative session.

19 Consistently the Secretary's office has
20 really helped us look at better ways of
21 enforceability and, in fact, took great steps with
22 campaign finance two years ago with many of these
23 rules already that we finally got to codify into
24 statute. So I just wanted to begin with that. We
25 really appreciate the constant attention that the

1 Secretary's office has to better disclosure and
2 better transparency for our state.

3 We believe that the goals with Common Cause
4 New Mexico and Common Cause as a national
5 organization is trying to get campaign finance
6 reforms, ethics accountability and holding power
7 accountable, essentially. We are the peoples lobby
8 and so what we want to do is make sure that things
9 are as accessible and clear to the public as
10 possible.

11 And with this we wanted to just emphasize
12 two things that I thought were very important from
13 what The Campaign Legal Center has submitted and that
14 goes specifically to the definition of the
15 coordinated expenditure. We feel that that is
16 critically necessary to avoid the easy evasion of any
17 of these campaign contribution limits that are in the
18 Statute 1-19-34.7, Subsection C, and to treat the
19 legislative caucus committees as agents of political
20 parties in determining an otherwise independent
21 expenditure would instead be treated as a coordinated
22 expenditure.

23 And so what we are really hoping with this
24 is that, as Mr. Graham has lined out in his letter,
25 is that the legislative caucus committee, the

1 contribution limits within statute would be able to
2 be adhered to and clarified with these rules.

3 So with that, we feel that if a person could
4 coordinate their spending with such an entity without
5 having the expenditure treated as a coordinated
6 expenditure, anyone who had maxed out their
7 contributions to a particular legislative caucus
8 committee could nevertheless continue making
9 unlimited donations to a committee in the form of
10 political expenditures that are carried out under its
11 direction.

12 So for those reasons we strongly support The
13 Campaign Legal Center's suggestion to insert into the
14 rule the provision that states, "in applying the rule
15 of definition of a coordinated expenditure, a
16 legislative caucus committee will be treated as an
17 agent of a political party by whose members it was
18 formed."

19 The next piece we've already highlighted
20 also in our written comments, so I don't want to be
21 too duplicative in going into that, but I wanted to
22 highlight that particular section. And then
23 everything else we have already covered with that.

24 So thank you.

25 HEARING OFFICER LANGE: Thank you. Would

1 anyone in the audience like to ask any clarifying
2 questions? Seeing none, there's no one on the list
3 to speak to Definitions. Is there anyone here who
4 didn't get to sign up and would like to provide
5 testimony regarding Definitions?

6 MR. MECHELS: Pardon me, I'm having trouble
7 hearing you, because I have bad hearing. I have some
8 comments on 1.10.13.10, would that be that
9 appropriate at this point?

10 HEARING OFFICER LANGE: No.

11 MR. MECHELS: No.

12 HEARING OFFICER LANGE: I'm calling for
13 Definition section, Section 7.

14 MR. MECHELS: Oh, okay, thank you.

15 HEARING OFFICER LANGE: Seeing none, we will
16 move to Section 8, Candidate Campaign Committee
17 Registrations. No one has signed up on the list to
18 speak specifically about that section. Is there a
19 member of the audience who would like to speak about
20 Section 8, Candidate Campaign Committee
21 Registrations?

22 Seeing none, we will move to Section 10,
23 Political Committee Registrations. No one signed up
24 to speak on Section 10. Would you like to speak on
25 Section 10?

1 MR. MECHELS: Please. Again, my name is
2 Chris Mechels for the record, retired Los Alamos.

3 First, I have just an administrative
4 correction. On page 6 at midpage, at A(1)(d),
5 there's an item there that reads, "the name, address
6 and relationship of any connected or associated
7 organization." I believe -- or I checked, that
8 language has been deleted in the statute. I suspect
9 it's an oversight that it wasn't deleted here. So
10 again, I think you probably just should delete it,
11 because it appears to be superfluous at this point.
12 Or not just superfluous, in conflict of the statute.

13 The other item I would like to raise, which
14 is much more substantive is on page 7 of the same
15 section and it's at number -- on page 7 it's cap D.
16 And the particular language that I'm interested in in
17 cap D concerns the legislative caucus committee
18 registration. That language, I believe, is -- I find
19 just -- I think it shouldn't be there. I think you
20 should delete most of that language. The reason is,
21 because the language provided there in D1, 2, 3 and
22 4, which apparently to -- in defining legislative
23 caucus committee registration, most of that language
24 is duplicated at the end of this document in
25 1.10.13.32. Unfortunately it's not duplicated. They

1 don't match each other. So you've got two sections
2 of your NMAC doing the same thing almost. That's not
3 usually very good practice, to have two sets of
4 language that conflict with each other.

5 And the third language that conflicts with
6 these two is in the statute itself. And because the
7 statute itself has the language that would rule, then
8 I suggest that these two sections should simply be
9 deleted as superfluous. Because this language is
10 clearly -- is very clearly supplied in the statute
11 and there's no need to have it here. You might need
12 a couple of lines there.

13 Just for example, the first line describing
14 like one line what the legislative caucus committee
15 is, but strike all the descriptive language because
16 you're just getting in trouble. And I don't think it
17 serves any purpose.

18 And that would be the end my comments on
19 that section.

20 HEARING OFFICER LANGE: Thank you. Is there
21 anyone from the audience that would like to ask
22 Mr. Mechels any clarifying questions? Seeing none,
23 I'll call for any other comments on Section 10.

24 Please come forward and state your name for
25 the record.

1 REPRESENTATIVE PRATT: I'm Representative
2 Bill Pratt representing the northeast section of
3 northeast Albuquerque, the House of Representatives.

4 I would like some clarification. Under
5 registration it indicates that the treasurer's name,
6 mailing address, email address, contact information
7 be registered with the Secretary of State. Will that
8 be available for public information?

9 DIRECTOR VIGIL: Yes, that information is a
10 public record and made available online.

11 REPRESENTATIVE PRATT: Will it be in the
12 campaign finance system?

13 DIRECTOR VIGIL: Correct.

14 REPRESENTATIVE PRATT: Thank you very much.

15 DIRECTOR VIGIL: You're welcome.

16 HEARING OFFICER LANGE: Any other comments
17 on Section 10, Political Committee?

18 Seeing none, we will move to Section 11,
19 Reporting of Independent Expenditures. First person
20 on the list is Austin Graham.

21 MR. GRAHAM: Hello again. Austin Graham,
22 The Campaign Legal Center, speaking to Reporting of
23 Independent Expenditures.

24 The Campaign Reporting Act now requires any
25 person making independent expenditures above certain

1 amounts to file a report disclosing, among other
2 information, the sources of contributions over \$200
3 that were, quote, earmarked or made in response to a
4 solicitation to fund independent expenditures.

5 However, neither state law or the proposed
6 rule explains when a contribution has been earmarked
7 or solicited to fund independent expenditures. In
8 order to ensure the effectiveness of the Campaign
9 Reporting Act's new independent expenditure
10 disclosure requirements, The Campaign Legal Center
11 recommends clarifying when contributions are
12 earmarked are made in response to a solicitation to
13 fund independent expenditures.

14 In our written comments we've included
15 suggested language for clarifying this reporting
16 requirement. The suggested text is based on the
17 Federal Disclose Act and would take into account the
18 broader context in which money was contributed in
19 order to ensure the sources responsible for
20 independent expenditures are disclosed according to
21 state law.

22 For the final rule we strongly recommend the
23 Secretary clarify donor reporting requirements
24 applicable to persons filing independent expenditure
25 reports, and in particular clarify the meaning of

1 earmarked or made in response to a solicitation to
2 fund independent expenditures.

3 That's all I have for this section.

4 HEARING OFFICER LANGE: Thank you,
5 Mr. Graham. Any clarifying questions from the
6 audience?

7 Seeing none, is there any other person here
8 in attendance today that would like to speak on
9 Selection 11, Reporting of Independent Expenditures?

10 Please come forward. Remember, we are
11 seeking public comment regarding this section.

12 REPRESENTATIVE PRATT: Thank you very much.
13 I'm Representative Bill Pratt representing a district
14 in northeast Albuquerque.

15 My question, or comment is, I understand
16 that independent expenditures must be reported. To
17 whom are they reported? And is the information thus
18 reported public information?

19 DIRECTOR VIGIL: All transactions that are
20 subject to either the Campaign Reporting Act or our
21 Administrative Rule, are reported electronically
22 through our Campaign Finance Information System and
23 are public record and posted online.

24 REPRESENTATIVE PRATT: Thank you very much.

25 HEARING OFFICER LANGE: Any questions for

1 Mr. Pratt? Representative Pratt. Seeing none, is
2 there any further comment on Section 11, Reporting of
3 Independent Expenditures?

4 Seeing none, we will move to Section 12,
5 General Reporting Rules. No one has signed up. Is
6 there a member of the audience who would like to
7 speak on Section Part 12, General Reporting Rules?

8 Seeing none, we will move to Section 16,
9 Loans. No one has signed up to speak on Section 16,
10 Loans. Is there a member of the audience who would
11 like to speak on Loans?

12 Seeing none, we will move to Section 18,
13 In-Kind Contributions. No one has signed up to
14 speak. Is there a member of the audience who would
15 like to speak on In-Kind Contributions?

16 Seeing none, we will move on to Section 25,
17 Candidate Expenditures. No one has signed up to
18 speak on Part 25, Candidate Expenditures. Is there a
19 member of the audience who would like to speak
20 specifically on Candidate Expenditures at this time?

21 Seeing none, we will move on to Section 27,
22 Primary and General Election Cycles for the Purposes
23 of Contribution Limits. No one has signed up to
24 speak. Is there a member of the audience who would
25 like to speak on this section?

1 MR. MECHELS: Pardon me, I'm having trouble
2 again.

3 HEARING OFFICER LANGE: Section 27.

4 MR. MECHELS: 27, okay. Getting close.

5 HEARING OFFICER LANGE: Seeing no members
6 who would like to speak on Section 27, we'll move to
7 Section 31. Representative William Pratt is first on
8 the list.

9 I will state that Mr. Pratt handed me
10 already an exhibit, which I will mark as Exhibit 9,
11 which will accompany his testimony today.

12 REPRESENTATIVE PRATT: Thank you very much.
13 Representative Bill Pratt representing a district in
14 Albuquerque. House District 27 in the New Mexico
15 House of Representatives.

16 My main point is to have the public easily
17 have the ability to easily access information about,
18 particularly independent expenditures. And I believe
19 that it would be well to include in the disclaimers
20 on visual material, a website of the organization or
21 person paying for the expenditure. I have some
22 examples.

23 So at any rate, my -- I watch a lot of
24 television, and disclaimers are often written in
25 light letters, in light background that are

1 unintelligible. So one thing, any disclaimer should
2 be black letters on a white background or vice versa,
3 and I think it should include a website. I
4 understand that there's public -- expenditures have
5 to be reported to the Secretary of State's election
6 website. I think it would be well to require a
7 website of the organization that has to provide
8 information about a listing. It would be legible and
9 intelligible.

10 Many expenditures are made from different
11 PACs, one PAC to the other, to the other, and then
12 it's spent. And who knows, perhaps the regulations
13 or rules could require clarity by information.

14 Thank you very much.

15 HEARING OFFICER LANGE: Thank you. Are
16 there any members of the public who would like to ask
17 Representative Pratt any questions?

18 Yes, please identify yourself.

19 AUDIENCE: No questions.

20 HEARING OFFICER LANGE: Thank you very much.
21 Next on the list is Austin Graham.

22 MR. GRAHAM: I am Austin Graham, Campaign
23 Legal Center. I just want to say, I largely agree
24 with Representative Pratt's points about the need to
25 add some clarity about what is required for political

1 advertising disclaimers.

2 The proposal would actually remove the
3 existing section of the Campaign Finance Rule
4 governing disclaimer notices on political
5 advertisements. It's unclear to me, however, why the
6 proposed rule gets rid of the section, considering
7 SB 3 included disclaimer requirements that largely
8 track those in the Secretary's existing rule.

9 The Campaign Legal Center thus recommends
10 the Secretary include disclaimer requirements within
11 the final rule in order to ensure that New Mexico's
12 voters are properly informed about the sources of
13 political advertising.

14 That's all I have for this section. Thank
15 you.

16 HEARING OFFICER LANGE: Thank you. Are
17 there any clarifying questions? Seeing none, that's
18 all who have signed up to speak regarding Disclaimer
19 Notices. Is there a member of the public who would
20 like to provide comment?

21 Please come forward.

22 MR. MECHELS: My name is Chris Mechels,
23 retired Los Alamos. First, a quick question. I have
24 a comment I wish to make on the previous section,
25 1.10.13.30, but it seems like you went over that one

1 because it's not part of your changes. I believe it
2 should be part of your changes, so I would like to
3 comment on what I think 30 should be.

4 HEARING OFFICER LANGE: Mr. Mechels, you can
5 comment for general comment. This is specifically on
6 Section 31, Disclaimer Notice.

7 MR. MECHELS: Okay. As to 31, yes, I have a
8 comment. I strongly support the comments of the
9 gentleman that just left. And also, I think there
10 was a beautiful and clear explanation of the problem
11 from Katy Duhigg, who was one of the people who
12 submitted comments for this hearing. I think what
13 both of them said was, you have no justification for
14 doing this.

15 And I checked, I checked your Notice of
16 Proposed Rulemaking where you're required to give us
17 a succinct explanation to what this is about, and all
18 I could find is, this amendment provides clarifying
19 language on the regulation of independent
20 expenditures reporting and advertising. Clarifying
21 language, I don't think clarifying language extends
22 to deletion of advertising. I think you've
23 overreached. I don't think what you're doing is
24 legal, because it wasn't described adequately. If
25 you're going to delete that I think it should have

1 been clearly stated. And I also think that deleting
2 is an extremely bad idea.

3 So I totally support the commentators who
4 are saying this language should not be deleted.
5 There's no reason in the statute, in the statutory
6 changes, to support deletion. I can see -- it
7 appears on the surface of it just to be a whim. And
8 I don't think whims are appropriate.

9 So with that I say, don't go there. Don't
10 delete that. That's nothing wrong with it. And you
11 have no reason for doing it.

12 That's my comment.

13 HEARING OFFICER LANGE: Thank you. Any
14 questions for Mr. Mechels? Seeing none, would anyone
15 like to speak regarding Disclaimer Notices on
16 Advertising?

17 Seeing none, we will move to Section 32,
18 Austin Graham, Legislative Caucus Committee.

19 MR. GRAHAM: Thank you again. I'm Austin
20 Graham with The Campaign Legal Center. My comments
21 on Legislative Caucus Committee are not necessarily
22 specific to this section within the rule, but I would
23 like to discuss some general issues about legislative
24 caucus committees that we would like the Secretary's
25 office to be considering as part of this rulemaking.

1 Senate Bill 3 amended the Campaign Reporting
2 Act in ways that significantly enhance the
3 fundraising abilities of political parties along with
4 these new entities, legislative caucus committees.

5 To help ensure political parties and
6 legislative caucus committees do not become vehicles
7 for circumventing contribution limits, we suggest the
8 Secretary include measures within the final rule:

9 One, to clarify the recordkeeping and
10 reporting requirements for earmarked contributions
11 made through political parties or legislative caucus
12 committees.

13 And two, to explain when earmarked
14 contributions are attributed to both the original
15 sources and to legislative caucus committees or
16 political parties that are transferring those
17 earmarked funds.

18 For guidance in clarifying New Mexico's
19 rules for reporting of contributions for legislative
20 caucus committees, The Campaign Legal Center suggests
21 looking to the Federal Elections Commission's
22 regulations on earmarking. The FEC regulations
23 include both special reporting procedures for
24 earmarked contributions as well as an explanation of
25 when contributions are attributed to both the

1 original donors and to intermediaries.

2 Thank you. That's all I have for this
3 section.

4 HEARING OFFICER LANGE: Thank you. Any
5 clarifying questions?

6 MR. MECHELS: I have a question. Having
7 read your comment online, I was left unclear. Your
8 concern of earmarking is well taken. What we're
9 doing here -- again, my question is, does it appear
10 to be legal, what we're doing? Or do we have a
11 problem with earmarking? Does the earmarking concern
12 rise to the level that there's legal issues with it?

13 MR. GRAHAM: Thank you, Mr. Mechels. I do
14 believe that there are provisions within the Campaign
15 Reporting Act that broadly prohibit making
16 contributions with the intent to conceal the original
17 source of the funds.

18 So I do think that adding fair rules around
19 earmarking would help with the enforcement of that
20 and allow the public to know when legislative caucus
21 committees, political parties or other entities are
22 basically responsible for channeling resources to
23 specific candidates.

24 MR. MECHELS: What I hear you saying is, it
25 would be wise policy, what you suggested, but not

1 necessarily that it's necessary to address the legal
2 implications.

3 MR. GRAHAM: I do think that it does help to
4 address the state law prohibition on making
5 contributions in a false name, essentially.

6 MR. MECHELS: Thank you.

7 HEARING OFFICER LANGE: Any further
8 questions?

9 Seeing none, would someone else like to
10 speak on this section regarding Legislative Caucus
11 Committee, Section 32?

12 Please come forward.

13 MR. MECHELS: My name is Chris Mechels,
14 retired Los Alamos, for the record. My concern is
15 much simpler on 1.10.13.32, as I hope I was clear
16 when I commented earlier, I don't think the section
17 should exist.

18 This section conflicts with the previous
19 section, as I pointed out before, and it also
20 conflicts with the statute. And I don't see any need
21 for it to be here in this place. It's just there.
22 It's just gratuitous. So I would just say, delete
23 it.

24 The concerns the other gentleman just had
25 are well taken, but they don't rely upon this

1 language. They're just concerns about features of
2 the statutory, and so forth. His concerns are
3 different. I'm just saying, this language just makes
4 trouble and is totally useless. Leave the language
5 in the statute stand. Forget putting this stuff in
6 the NMAC. It just confuses things and raises
7 possible conflict, because the three copies, there's
8 part three, have three different sets of language,
9 that's very dangerous.

10 HEARING OFFICER LANGE: Thank you. Any
11 clarifying questions from the audience?

12 Seeing none, I'll call for additional public
13 comment on Section 32, Legislative Caucus Committee.

14 Seeing none, the public comment on specific
15 sections of Part 1.10.13 NMAC is now concluded.

16 I'll now call for general public comment.
17 The first person who's indicated they would like to
18 speak generally is Chris Mechels.

19 MR. MECHELS: Oh, okay. Again, I'm Chris
20 Mechels, retired Los Alamos. First, perhaps just to
21 reassure you before I make these comments, I'm not a
22 full novice. Some of my responsibilities at Los
23 Alamos was, I was very heavily involved in quality
24 assurance. We did a lot of procedures. The depth of
25 our procedures were worse than yours. So the

1 procedures are not new to me. So when you hear these
2 comments don't think I'm just naive walking off the
3 street.

4 First I'd like to thank you for having
5 improved your hearing protocols since last time.
6 Gosh, I was very critical a few weeks ago in here
7 because exhibits were not available to the public.
8 You did a better job on that. I think you got a ways
9 to go, but it's improvement. We're heading in the
10 right direction.

11 I've got some really serious issues about
12 the procedural problems and about the way you're
13 presenting your information to the public, which I
14 think really serves to block public involvement, and
15 that's bad. We all claim to be interested in
16 transparency and public input, but you have to look
17 around the room. Where's the public? It's because I
18 think the public doesn't show up at rules hearings in
19 general, or as much as this one specifically, because
20 we make it very difficult for them to understand
21 what's going on.

22 I think one of the things the Secretary of
23 State should be doing, and doesn't do, is actually
24 reach out to the public and explain to the public
25 what rules hearings are about in a coherent way and

1 invite them in and listen to their concerns about why
2 they're not being invited. I think the Secretary of
3 State is not doing that. I think it's part of her
4 job and she should do it, because rules hearings are
5 a very important part of our governance.

6 As far as your procedures today, I think
7 you've got some problems, and I'm not sure you even
8 had a legal hearing, but we can decide that later.

9 The first issue I would have is, again, I
10 think you should be posting your hearing procedure.
11 You mentioned the numbers of the hearing procedure,
12 but it wasn't available. People who aren't familiar
13 with the hearing procedure, having the numbers
14 mentioned don't do a whole lot of good.

15 I mean, any rules hearing in this Secretary
16 of State or anyone else should make the procedure
17 commonly available so people could see what the
18 hearing is about and what their rights are within
19 that hearing protocol. And by failing to do that, I
20 don't think it's illegal, but I think it's extremely
21 unwise.

22 By the way, the Secretary of State has the
23 same problem, they have hearings over there and they
24 won't tell you what they're doing. And these are two
25 of the top legal, or top agencies in the state that

1 should be sensitive to these issues. And they have
2 hearings that just cut the public out. Worse than a
3 lot of other places.

4 So I say again, if you're having hearings in
5 the future, just make the hearing, I'd say even post
6 your hearing procedure online, there's no reason not
7 to, and make it available to the public if they're
8 watching the hearing. Just saying, we're having a
9 hearing at one o'clock, I should be able to walk into
10 that hearing and not feel shut out. All this is is a
11 bunch of insiders. We have the trouble to go online
12 to generate comments, this is an insiders collection.
13 A member of the public should be able to walk into
14 this room and get enough information that they can
15 feel like they can participate in the hearing and
16 make comments. Read the material as you're going
17 along, follow what's going on and make comments.
18 They're shut out, they can't do that. They should be
19 able to.

20 The next comment I would make is, I don't
21 think your public notice, what you announce as public
22 notice, doesn't meet the -- I'm not sure there's a
23 legal requirement for public notice in newspapers,
24 because of the change that we made recently in the
25 rules act, but what we do describe as public notice

1 doesn't pass muster. I mean, it just -- if you
2 actually look at the rules act and look at the
3 requirements of a public notice, you meet the
4 requirement in what you put on the Sunshine portal,
5 which you're required to do under the rules act. The
6 notice you put on the Sunshine portal meets the
7 requirements. It's got the required information in
8 it.

9 The information that ends up in the
10 newspaper doesn't have that information in it and
11 therefore, doesn't meet the requirements. So you're
12 not only clearly in violation of the rules act, is
13 that it's unclear that public notice is required in
14 the newspapers. No problem with putting it in the
15 newspaper, but if you're going to put it in the
16 newspapers and think you're meeting the public notice
17 requirement, you're not. You just don't meet the
18 requirement of what has to be in the notice.

19 The other thing that's going on is, and this
20 is -- so that public notice act, you're skating on
21 the edge of having a legal hearing, because the other
22 thing that's required -- if you look in the rules act
23 it says, what should you supply, what are you
24 required to supply. One of them is, and you didn't
25 supply it, the list of the people. Your notification

1 list, you didn't provide that. You should. You're
2 required to provide it, because in exchange for not
3 being required to advertise and make a legal notice,
4 which is what would be, I think well advised, in
5 exchange for not doing that, what they did in House
6 Bill 58, they gave you, oh, okay, we'll put it on the
7 transparency portal. Okay, not a bad idea, if
8 anybody did anything about it. But they cut off the
9 newspaper requirement, but they did say you got to
10 have a list of people that will be contacted when
11 you're having these hearings. Do you have such a
12 list? If so, you didn't provide them. You should be
13 providing those lists as part of your -- that's
14 required for your hearing. You didn't do it. That's
15 marginally illegal. But you should be providing a
16 list of the individuals who have signed up to give
17 their notification and a list of media and so forth
18 who have signed up for notifications. I wonder if
19 you even have those lists. The Secretary of State
20 doesn't.

21 So I think you're standing on the edge of
22 having a legal hearing. Typically people will sue
23 you over this and perhaps they should and then
24 perhaps you'd improve your protocols.

25 As far as the public, what I would suggest

1 going forward, go the extra step, put your hearings
2 in the newspaper -- don't put them in the newspaper.
3 Notice them legally, then they show up on the public
4 notice website and people who watch the public notice
5 websites will be able to see that you're having a
6 meeting. If you look at your public notice website I
7 couldn't tell you're having a hearing. A meeting.
8 Because when you put it -- when you just do a press
9 release it doesn't show up in the notices. Go the
10 extra step. You're the Secretary of State. Put it
11 up. Pay a couple of bucks, legally advertise it. It
12 will end up in public notices, then people can see
13 that you're having a meeting. It's just common good
14 practice, because most of the hearings held in this
15 state are still advertised, by law. It just turns
16 out that after we passed House Bill 58, the Secretary
17 of State and the Attorney General don't have to
18 advertise and they choose not to. To save a couple
19 of bucks you don't tell the public what's going on.
20 I mean, come on. You're the Secretary of State, for
21 Christ sakes.

22 You talk about transparency, spend a couple
23 of bucks, put the advertisement where people are
24 actually looking for it, which is in the public
25 notices. They're not looking on the Sunshine portal.

1 I mean, nobody looks at the Sunshine portal, except a
2 couple of insiders.

3 The other thing you have -- another issue I
4 have, which is actually marginally illegal, is that
5 your Sunshine portal is where you're supposed to be
6 posting all the information about this hearing. No,
7 but you don't do it. What you do is, you advertise
8 the hearing and then you put links on the Sunshine
9 portal to the Secretary of State website.

10 So now you drop me off. You don't even link
11 it to a -- you're required to put it -- unless you
12 have good reason, that information should be on the
13 Sunshine portal, but you choose not to put it there.
14 And when you link it to something, let's say -- I
15 should find a link to the day that I need that's not
16 provided there, there's no harm with linking it to
17 the website. But when I go to your website the link
18 is not just -- the link is not to the file. The link
19 is to your bloody website. It's Maggie's picture.
20 So now I've got to start with Maggie and try to see
21 if I can find this stuff. I mean, come on. If
22 you're going to put it on the website, link to it.
23 To a file. I don't want to get linked to Maggie if
24 I'm looking for a file. I want to get linked to a
25 file. I mean, I'm a computer guy. I can see why the

1 public doesn't show up.

2 If you're a novice web user you'd go nuts
3 looking for the data. You can do better than that,
4 and hopefully you want to do better than that. So
5 anyway, it's a -- right now I think what you got with
6 -- and the other thing you're doing is, you're using,
7 you're using insider junk on the website. What do
8 you have there? Insider junk.

9 Let's say I'm a novice web user. I am not,
10 I'm from Los Alamos. But I don't normally use
11 Twitter, I use SpiceWare. So what are you using?
12 You're using all kinds of inside -- I go on the
13 website and what do I have to do?

14 COURT REPORTER: Please slow down.

15 MR. MECHELS: You put a novice -- have a
16 novice look at that website, see if they can find
17 anything. I don't think they can, because you're
18 using Twitter, you're using Facebook, you're using
19 all kinds of really nifty stuff that just absolutely
20 confuses the hell out of anybody who doesn't do
21 computers for a living. So clean up the act if
22 you're going -- you're required to have it on the
23 Sunshine portal. If you're not on the Sunshine
24 portal, they should be clearly linked to a concrete
25 file. They shouldn't be linked to Maggie's picture.

1 So anyway, enough berating you with that.

2 DEPUTY PINO: And just for purposes of the
3 record, are you referring to Secretary of State
4 Maggie Toulouse-Oliver?

5 MR. MECHELS: Yes, that's the only Maggie I
6 know who has their picture on the Secretary of
7 State's website. Maybe there's another one, I don't
8 know.

9 The other comment I would like to make was
10 the -- you have a problem with your comments. I got
11 confused and I don't get confused easily. I do
12 computers for a living. I could look at your written
13 public comments received on 8/6/2019, the file name
14 is actually inconsistent with what you posted it
15 under. It's posted as Campaign Finance Public
16 Comment Pratt. So I would think that if I go on that
17 link it will produce a file that's called Campaign
18 Finance Public Comment Pratt. No, it doesn't. It
19 produces a file called 2019-08-06 Disclaimer Rules
20 Public -- come on. This is pretty simple, to have
21 consistent file name. I mean, it confused me. I'm
22 like, where did it go? It's got to be in my file
23 someplace. I know I tracked it down. The file name
24 is different from the link. Please, consistency
25 would be nice.

1 Anyways, the other thing -- the other
2 overall problem I have with what we're doing here
3 today is -- oh, here's another one. This is, this is
4 a big one, and you should address it. You got a
5 section in 1.19.34.4 statute. Education -- the
6 statute to remember is 1.19.34.4. The title of it is
7 Education and Voluntary Compliance in which it states
8 a number of requirements for the Secretary of State
9 -- that the Secretary of State must meet as far as
10 informing the public. Like contacting everybody
11 annually to advise them of their requirements and
12 their responsibilities.

13 What if the Secretary of the State doesn't
14 do that? Does that mean that all the requirements
15 are now void because the Secretary of State didn't do
16 her part? The reason I ask this question is, the
17 same requirement exists of the financial -- the same
18 requirement exists today in the Financial Disclosure
19 Act, and I know from hard experience that the
20 Secretary of State doesn't do that. And not only do
21 I suspect she doesn't do that, I sent an IPRA in and
22 said, "please provide any documents to show that you
23 do that," and she couldn't -- they didn't provide
24 any. I think the Secretary of State is just not
25 doing that.

1 So if she doesn't do it for the Financial
2 Disclosure Act, what makes us think she's going to do
3 it for Campaign Finance Report. It's basically the
4 same language. Oh, the Secretary of State is going
5 to let everybody know and if the Secretary of State
6 doesn't let them know, what are the implications?

7 She has failed her duty. I think there's a
8 real issue there. She should either do this or we
9 should take that language out, because it invites us
10 to say, "you didn't do your part, now why should I do
11 my part." She's got to do her part or get rid of
12 that language.

13 The other thing that's going on here, which
14 I wanted to comment on is the one I mention in NMACs,
15 which is what I think you should change, but it
16 wasn't on today's list, 1.10.13.30. It's on page 16
17 of the NMAC changes, Random Report Selection and
18 Report Review Process. I was curious about that so I
19 looked at it. It's not a bad idea, it's just that
20 what you've got here, 1.10.13.30 conflicts with the
21 statutes. You can't do that. You can't conflict
22 with the statutes. You just can't do that.

23 So I would say right now, right now, what I
24 would do, I would get rid of it. I looked at the
25 statute. The statute is readable, it makes sense.

1 It doesn't need this language, it conflicts with it.
2 It's legal and executable in the statute. Take this
3 1.10.13.30, delete it. Throw it away.

4 NMACs typically -- I ran into this at the
5 law enforcement academy, NMACs typically introduce
6 language that just makes trouble. Put language in
7 NMACs that only is necessary to clarify the statutes.
8 This is superfluous. You should delete it.

9 And overall I think you've got so many
10 issues with both your process and there's big changes
11 that were talked about here today, like deleting a
12 section on advertising. I mean, come on.

13 So I think you've got some major changes to
14 the extent that I think you should just rethink this
15 set of NMACs and come again. I think you've got
16 major problems and I think they should be addressed
17 in a new hearing.

18 Thank you.

19 HEARING OFFICER LANGE: No one else had
20 signed up to speak for public comment. Is there a
21 member of the audience who hasn't been able to sign
22 up for public comment, would like to give public
23 comment, general.

24 Please come forward.

25 REPRESENTATIVE PRATT: Bill Pratt from

1 Albuquerque. My general comment is that it should be
2 possible for the public to find out who is paying for
3 advertisements. I see a flaw in my suggestion that
4 the contributor, or the organization, maintain an
5 available list of donors and also the Secretary of
6 State's office do the same thing.

7 So I would suggest that a disclaimer have a
8 link to the Secretary of State's CFIS system and with
9 a specific link to that particular advertisement or
10 organization.

11 Thank you.

12 HEARING OFFICER LANGE: Thank you. Any
13 other person like to give public comment?

14 DEPUTY PINO: I just have one thing to say,
15 Dylan, before you proceed. I know it was referenced
16 that, you know, we're a smaller group in this room,
17 but certainly it's important to the Secretary to be
18 transparent and make it available.

19 So although not required, we are grateful to
20 all the people who are able to join us via the
21 webcast.

22 HEARING OFFICER LANGE: Thank you. Has
23 everyone present signed the attendance sheet, along
24 with their email address or mailing address? We'll
25 get that, we'll add you to the list. Once everyone

1 has signed it I will admit the attendance sheet as
2 Exhibit 10 and it enter into the record.

3 All members in attendance who have provided
4 their email address will be included on any
5 correspondence further regarding this rule.

6 MR. MECHELS: Is the record still open?

7 HEARING OFFICER LANGE: Yes.

8 MR. MECHELS: A comment, which might be
9 useful, which I forgot, but it's perhaps the most
10 important one.

11 HEARING OFFICER LANGE: Please state your
12 name for the record.

13 MR. MECHELS: Chris Mechels, Los Alamos,
14 retired long ago. I was encouraged at the first set
15 of hearings that I saw the Secretary of State have in
16 2017, and because she was using an excellent hearing
17 protocol and I thought, wow, somebody's finally going
18 to do it right. Because frankly, the Attorney
19 General never does it right. So I thought wow, this
20 is encouraging.

21 I was less encouraged when I actually
22 checked and found that the reason that they were
23 using such an excellent protocol and process was
24 because they were following the Administrative
25 Procedures Act, which is a lovely act that nobody --

1 that we passed and then said, it doesn't apply to
2 anybody. It's still there. It's still there. And
3 she used it and it worked great. Everybody should
4 use it, except we passed it and then we said, nobody
5 has to do this, but she choose to do it.

6 Well, it turned out she didn't choose to do
7 it, that's the sad part. The sad part of the story
8 is, she didn't choose to do it. The bill, Campaign
9 Finance Bill required her to use it. I wish she had
10 kept using it. It's a fine procedure. So I highly
11 recommend to the Secretary of State that she just
12 goes back and sets a good example for the state and
13 goes and uses the Administrative Procedures Act here
14 in procedures. It would be a wonderful example.
15 It's a nice piece of work. And somebody should start
16 using it. The Secretary of State would be lovely if
17 they would.

18 Thank you so much.

19 HEARING OFFICER LANGE: Thank you. So I'll
20 admit Exhibit 10 to the record, it's today's sign-in
21 sheet. The sign-in sheet consists of both the
22 individual sign-in sheets for the individual sections
23 in question and the general sign-in sheet.

24 As such, the hearing record is now closed
25 and no further oral testimony will be heard. The

1 data, arguments and testimony submitted during this
2 rule hearing will be duly considered by the Secretary
3 of State's office. Any rules adopted by the
4 Secretary of State's office will be filed with the
5 State Records and Archives Center in accordance with
6 the State Rules Act and in the New Mexico Register
7 pursuant to their deadline.

8 Any rules or amendments not adopted or
9 postponed for a -- will be postponed for future
10 discussion at a definite time in the future.

11 I would like to thank all members of the
12 public present for their participation and attendance
13 today, both here and on the webcast.

14 Let the record reflect that this hearing was
15 adjourned at 2:12 p.m. on August 16th, 2019.

16 Thank you very much.

17 (Hearing Adjourned at 2:12 p.m.)

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REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, New Mexico Certified Court Reporter, No. 236, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings taken to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this matter and that I have no interest in the final disposition of this matter.

Kim Kay Shollenbarger
CCR No. 236, RPR
License Expires 12-31-2019



NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on amendments to the campaign finance rule that is currently codified in Part 1.10.13 NMAC - Campaign Finance. The public hearing will be held at the State Capitol Room 322, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Friday, August 16, 2019, starting at 1:00 pm. Every effort will be made to ensure that this hearing will be live streamed on the Office's website. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed amendments to the rule.

Authority: This rule is authorized by Sections 1-2-1 and 1-19-26.2 NMSA 1978, of the Campaign Practices Act, ("Act"), which authorizes the Office to adopt and promulgate rules and regulations to implement and provide uniform effective procedures and regulations to enable the provisions of the Act. Further, Senate Bill 3 (2019), mandated the Office, in consultation with the Attorney General, to promulgate rules to implement the amendatory provisions of the Act.

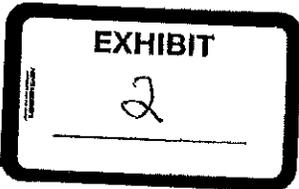
1.10.13 - Campaign Finance

Purpose: The purpose of this amendment is to provide clear guidance regarding the application and implementation of the provisions of the Act to affected parties, while also providing for clear and specific guidance to the Office in administering and enforcing the law. This amendment provides clarifying language on the regulation of independent expenditure reporting, advertising, and legislative caucus committees.

Summary of Full Text: These proposed amendments reflect the changes to the Act based on the passage of Senate Bill 3 (2019). The proposed amendment corrects and clarifies portions of Section 27 relating to the handling of contribution limits collected during primary and general election reporting cycles. The amendment further clarifies and defines the regulation and registration requirements for the newly created legislative caucus committees. Section 11 reflects the changes in law relating to the reporting of independent expenditures. Finally, the rule clarifies language relating to advertising.

Details for Obtaining a Copy of Rules and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.state.nm.us or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing sos.rules@state.nm.us. Interested individuals may provide comments at the public hearing and/or submit written comments to Dylan Lange, Deputy Elections Director via email at sos.rules@state.nm.us, or Dylan.Lange@state.nm.us, fax (505) 827-8081, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. Written comments must be received no later than 5:00 pm on the date prior to the hearing. All written public comment will be posted on the website throughout the written comment period at: www.sos.state.nm.us.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email Dylan.Lange@state.nm.us five (5) business days prior to the hearing.



Lange, Dylan, SOS

From: Lange, Dylan, SOS
Sent: Monday, July 15, 2019 8:09 AM
To: Portal, Sunshine, DoIT
Cc: Vigil, Mandy, SOS
Subject: NMSOS Notice of Rulemaking for publication on the sunshine portal
Attachments: 2019-07-05 Notice of Rule Making CF.PDF

Dear Sunshine Portal:

Pursuant to NMSA 1978, Section 14-4-2(E)(2), the Office of the New Mexico Secretary of State is providing the attached Notice of Rulemaking for posting on the Sunshine Portal website. This notice will be published tomorrow, July 16, 2019 in the NM Register.

Thank you for your support in positing this notice.

Warm Regards,

Lange, Dylan, SOS

From: Curtas, Alex, SOS
Sent: Tuesday, July 16, 2019 3:25 PM
To: Curtas, Alex, SOS
Subject: RELEASE: Sec. of State Maggie Toulouse Oliver Releases Amendment to Campaign Finance Rule and Announces Public Input Process

FOR IMMEDIATE RELEASE

16 July 2019

Contact:

Alex Curtas, Director of Communications
New Mexico Office of the Secretary of State
505-469-2783
alex.curtas@state.nm.us

Secretary of State Maggie Toulouse Oliver Releases Amendment to Campaign Finance Rule and Announces Public Input Process

All New Mexicans invited to provide public comment, participate in public hearing

SANTA FE – Today, New Mexico Secretary of State Maggie Toulouse Oliver released a draft amendment to the state’s Campaign Finance Rule and announced a public hearing in the state’s capital to gather community input about the draft amendment. The amendment was mandated by the passage of Senate Bill 3 during the 2019 New Mexico Legislative Session, which directed the Secretary of State to promulgate rules in order to implement the changes to the Campaign Reporting Act (“the Act”) contained in Senate Bill 3.

“The proposed amendment to the existing Campaign Finance Rule will give the public a better understanding of who is trying to influence our elections by providing more transparency and accountability in campaign finance reporting,” said Secretary Toulouse Oliver. “In order to make this amended rule work in the best possible way it can, I encourage every New Mexican to participate in this rulemaking process and to provide their comments and feedback.”

The purpose of the public hearing in Santa Fe is to allow members of the public an in-person opportunity to submit testimony and feedback on the proposed rule changes.

The purpose of the amendment to the rule is as follows:

Campaign Finance Rule (1.10.13 NMAC) – to provide clear guidance regarding the application and implementation of the provisions of the Act, while also providing for clear and specific guidance to the Secretary of State’s Office in administering and enforcing the law. This amendment

provides clarifying language on the regulation of independent expenditure reporting, advertising, and legislative caucus committees.

The public hearing Secretary Toulouse Oliver will hold on the amendment will be held at the following time and place:

Public Hearing – Santa Fe

When: Friday, August 16, 2019 at 1:00pm

Where: State Capitol Room 322

491 Old Santa Fe Trail, Santa Fe, New Mexico 87501

Click here for a copy of the draft amendment to the Campaign Finance Rule. All New Mexicans are invited to participate in the public hearing and to provide official comment, and the hearing is open to the media.

The public may also submit official comments on the draft amendment by sending them to Dylan Lange, Deputy Elections Director for the Secretary of State's Office, in following manner:

- By Mail – Attn: Dylan Lange–Proposed Rule, Office of the New Mexico Secretary of State, 325 Don Gaspar, Santa Fe, NM 87501;
- By Email – Attn: Dylan Lange–Proposed Rule, sos.rules@state.nm.us; or,
- By Fax – Attn: Dylan Lange–Proposed Rule, (505) 827-8081.

The deadline to submit written comments by mail, email or fax is 5:00pm on Thursday, August 15, 2019. Written comments may also be submitted in person at the hearing. All written public comment will be posted on the Secretary of State's website throughout the written comment period.

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Follow Secretary Toulouse Oliver on Facebook and Twitter

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New Mexico Office of the Secretary of State
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Lange, Dylan, SOS

From: Lange, Dylan, SOS
Sent: Monday, July 15, 2019 8:19 AM
To: 'lcs@nmlegis.gov'; 'senate@nmlegis.gov'; 'house@nmlegis.gov'
Cc: Vigil, Mandy, SOS
Subject: NMSOS Notice of Rulemaking Campaign Finance
Attachments: 2019-07-05 Notice of Rule Making CF.PDF

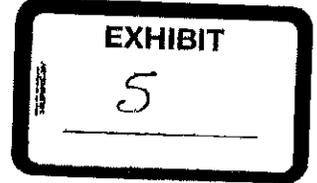
Dear Legislative Council Service:

Please find attached the Secretary of State's Notice of Rulemaking for distribution to the appropriate interim and standing legislative committees. We are providing this information pursuant to NMSA 1978, Section 14-4-2(E)(7), and 14-4-5.2(A) of the State Rules Act. If you have any questions, comments, or need clarification, please do not hesitate to contact me.

Please note the following date for the rule hearing:

Rule Hearing – Santa Fe

When: Friday, August 16, 2019, from 1:00 pm to 4 pm
Where: State Capitol Room 322
491 Old Santa Fe Trail, Santa Fe, New Mexico 87501



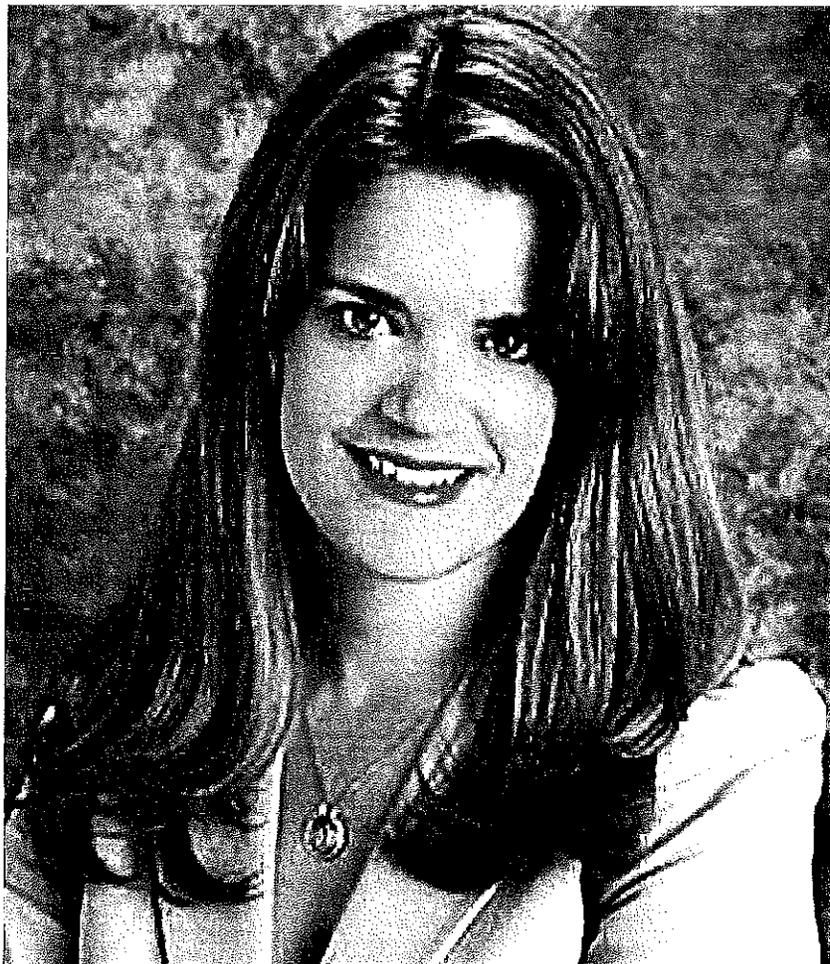
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https://www.santafenewmexican.com/news/local_news/hearing-set-on-proposed-changes-to-dark-money-rules/article_72104042-244b-5df4-aa3a-c60557e65278.html

Hearing set on proposed changes to 'dark money' rules

By Steve Terrell | sterrell@sfnewmexican.com Jul 19, 2019



Maggie Toulouse Oliver

New Mexico Secretary of State Maggie Toulouse Oliver announced Tuesday her office will hold a public hearing in August on proposed changes to “dark money” rules for campaign contributions mandated by a new law.

Senate Bill 3, sponsored by Senate Majority Leader Peter Wirth, D-Santa Fe, passed the Legislature and was signed into law this year. It calls for new reporting requirements for individuals or groups — other than a candidate or campaign committee — that spend money for political advertisements. The new law requires a person making an independent expenditure of \$1,000 or more in a local election — or \$3,000 in statewide elections — to file a report with the Secretary of State’s Office within a specified time.

The bill required the secretary of state to craft new rules in order to implement the changes.

In a news release, Toulouse Oliver said the changes “will give the public a better understanding of who is trying to influence our elections by providing more transparency and accountability in campaign finance reporting.” She encouraged the public to give input on the proposed changes to election rules.

The hearing is set for 1 p.m. Aug. 16 in Room 322 of the state Capitol.

Comments about the rule change also can be sent to Deputy Elections Director Dylan Lange, in care of the Secretary of State’s Office, 325 Don Gaspar Ave., Santa Fe, NM 87501; emailed to Lange at sos.rules@state.nm.us; or faxed to him at 505-827-8081.

Steve Terrell

Hearing planned on new campaign law

By Dan McKay / Journal Staff Writer

Friday, July 19th, 2019 at 6:16pm



Secretary of State Maggie
Toulouse Oliver

SANTA FE — Lawmakers this year approved legislation strengthening New Mexico’s disclosure requirements for political spending by “dark-money” groups.

The state’s top election officer is now seeking public comment on a proposed rule clarifying how the new law will be enforced.

A public hearing is scheduled at 1 p.m. Aug. 16 in the Capitol, focusing on regulations for independent expenditure reporting, advertising and legislative caucus committees.

“The proposed amendment to the existing Campaign Finance Rule will give the public a better understanding of who is trying to influence our elections by providing more transparency and accountability in campaign finance reporting,” Secretary of State Maggie Toulouse Oliver said in a written statement. “In order to make this amended rule work in the best possible way it can, I encourage every New Mexican to participate in this rulemaking process and to provide their comments and feedback.”



TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 13 CAMPAIGN FINANCE

1.10.13.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.13.1 NMAC - N, 10/10/2017]

1.10.13.2 SCOPE: This rule applies to all persons, candidates and committees covered by the Campaign Practices Act, Sections 1-19-1 through 1-19-37 NMSA 1978.
[1.10.13.2 NMAC - N, 10/10/2017]

1.10.13.3 STATUTORY AUTHORITY: This rule is authorized by Section 1-2-1 NMSA 1978 and Section 1-19-26.2 of the Campaign Reporting Act, Sections 1-19-25 through 1-19-37 NMSA 1978.
[1.10.13.3 NMAC - N, 10/10/2017]

1.10.13.4 DURATION: Permanent
[1.10.13.4 NMAC - N, 10/10/2017]

1.10.13.5 EFFECTIVE DATE: October 10, 2017, unless a later date is cited at the end of a section.
[1.10.13.5 NMAC - N, 10/10/2017]

1.10.13.6 OBJECTIVE: The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign Practices Act, Sections 1-19-1 through 1-19-37 NMSA 1978 to affected parties [~~in a manner that meets the requirements set forth in applicable case law~~] while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law.
[1.10.13.6 NMAC - N, 10/10/2017]

1.10.13.7 DEFINITIONS:

- A. "Advertisement"** pursuant to Subsection A of Section 1-19-26 NMSA 1978, means a communication referring to a candidate or ballot [measure] question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, internet videos, paid online advertising, recordings, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:
- (1) a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;
 - (2) a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;
 - (3) a candidate debate or forum, or a communication announcing a candidate debate or forum, paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate, or provided that the single candidate is invited in the event that there is only one candidate for that position;
 - (4) nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986 for Section 501(c)(3) organizations; or
 - (5) statements made to a court or administrative board in the course of a formal judicial or administrative proceeding.
- B. "Agent"** means a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.
- C. "Aggregate contributions"** means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in the same election cycle. Aggregate contributions may not exceed contribution limits.
- D. "Ballot [measure] question"** means a constitutional amendment, bond, tax or other question submitted to the voters in an election, as defined in Subsection C of Section 1-19-26 NMSA 1978.
- E. "Clearly identified"** means: (1) the name of the candidate or ballot measure appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot proposal is otherwise apparent by unambiguous reference.
- F. "Committee"** means a political committee or campaign committee covered under the Campaign Reporting Act.

G. "Contribution or coordination political committee" means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

H. "Coordinated expenditure" means an expenditure that is made by a person other than a candidate or campaign committee at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, an agent of the candidate, the candidate's campaign committee or a political party for the purpose of:

- (1) supporting or opposing the nomination or election of a candidate; or
- (2) paying for an advertisement that refers to a clearly identified candidate and is published

and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate is on the ballot.

I. "Debt" means an outstanding expenditure or loan which is not fully paid at the time it is reported in the campaign finance information system and is therefore reported as unpaid debt.

J. "Donor" means contributor.

K. "Earmarking" means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.

L. "Election cycle" for purposes of applying the disclosure of reporting requirements of the act and this rule, the definition of this term is the definition set forth in Subsection A of Section 1-1-3.1 NMSA 1978 and means the period beginning on [the day] January 1 after the last general election and ending [on the day of the] December 31 after the general election. ~~[For purposes of applying the contribution limits established by Section 1-19-34.7 NMSA 1978, the definition is the one used in Subsection G of Section 1-19-34.7 NMSA 1978 and is more fully explained in Section 1-10-13.27 NMAC.]~~

M. "Expressly advocate" means that the communication contains a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "candidate for elected office," "vote against," "defeat," "reject," or "sign the petition for," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot measures or candidates.

N. "Final report" means the last report electronically filed under the Campaign Reporting Act in accordance with Subsection ~~[F]~~ G of Section 1-19-29 NMSA 1978 indicating that:

- (1) there are no outstanding campaign debts;
- (2) all money has been expended in accordance with the provisions of Section 1-19-29.1

NMSA 1978; and

- (3) the bank accounts ~~[has]~~ have been closed.

O. "Foreign nationals" means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

P. "General election cycle" means the period beginning on the day after the primary election and ending [on the day of the] December 31 after the general election. ~~[See 1-10-13.27 NMAC for specific information on how this is applied to different reporting entities.]~~

Q. "Independent expenditure" means an expenditure that is:

- (1) made by a person other than a candidate or campaign committee;
- (2) not a coordinated expenditure as defined in ~~[paragraph H of this section]~~ the Campaign Reporting Act; and
- (3) made to pay for an advertisement that:
 - (a) expressly advocates for the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot ~~[measure]~~ question;
 - (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot ~~[measure]~~ question; or
 - (c) refers to a clearly identified candidate or ballot ~~[measure]~~ question and is

published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate or ballot ~~[measure]~~ question is on the ballot.

R. "In-kind contributions" means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

S. "Legislative Caucus Committee" means a political committee established by the members of a political party in a chamber of the legislature pursuant to the provisions of Subsection O of Section 1-19-26 NMSA 1978. A legislative caucus committee is also a political committee pursuant to Subsection Q of Section

1-19-26 NMSA 1978.

T. "Loan" means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

U. "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

- (1) have some financial attachment to the membership organization; or
- (2) pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (3) have an organizational attachment to the membership organization that includes:

affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

V. "Membership organization" means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

- (1) is composed of members;
- (2) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- (3) makes its articles, bylaws, constitution or other formal organizational documents available to its members;
- (4) expressly solicits persons to become members;
- (5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and
- (6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

W. "Mixed purpose political committee" means a type of political committee that makes independent expenditures and coordinated expenditures or contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

X. "Person" means individual or entity pursuant to Subsection K of Section 1-19-26 NMSA 1978.

Y. "Pledge" means a promise from a contributor to send or deliver a contribution by a specified time.

Z. "Political party" means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978. A political party is also a political committee pursuant to Subsection Q of Section 1-19-26 NMSA 1978.

AA. "Primary election cycle" means the period beginning [~~the day~~] January 1 after the last [~~preceding~~] general election and ending on the day of the primary election. [~~See Section 1-10.13.27 NMAC for specific information on how this is applied to different reporting entities.~~]

BB. "Primary purpose" means the purpose for which an entity or committee:

- (1) was created, formed or organized; or
- (2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or
- (3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.

CC. "Relevant electorate" means the constituency eligible to vote for the candidate or ballot measure.

DD. "Reporting individual" means [~~every~~] a public official, candidate or treasurer of a campaign committee [~~and every~~] or a treasurer of a political committee pursuant to Subsection Q V of Section 1-19-26 NMSA 1978.

EE. "Solicit" means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly to the candidate or committee, or through a conduit or intermediary.

FF. "Sponsoring organization" means an organization that has provided more than twenty-five percent of the total contributions to a political committee as of the time the committee is required to register under this rule.

GG. "Special event" means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing [~~fifteen dollars (\$15)]~~ twenty five dollars (\$25) or less are sold and no more than one thousand dollars (\$1,000) net contributions are received.

HH. "Statement of no activity" means the prescribed form used by a reporting individual to indicate that no contributions were raised or expenditures were made during a particular reporting period.

II. "Treasurer" means an individual explicitly designated by a candidate or committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and who, along with the candidate, is liable for discrepancies in the finances and reports of the committee.

[1.10.13.7 NMAC - N, 10/10/2017]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending one thousand dollars (\$1,000) or more [for

~~campaign expenditures or filing a declaration of candidacy~~]; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending ~~[two]~~ three thousand ~~[five hundred]~~ dollars ~~[(~~\$2,500~~)]~~ (\$3,000) or more ~~[for campaign expenditures]~~ or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a ~~[candidate]~~ campaign committee registration form and submit the completed form to the secretary of state, or otherwise with the proper filing officer, if completed at the time the declaration of candidacy is submitted. Following acceptance of the ~~[candidate]~~ campaign committee registration form, the secretary of state will create a user account for the candidate in the campaign finance information system (CFIS) and will issue the candidate a unique CFIS user identification and password.

D. A candidate is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the candidate's liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the secretary of state.

F. A candidate may serve as the candidate's own treasurer. If the candidate does not serve as the candidate's own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate's own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The candidate is deemed to have authorized and approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time. Any candidate campaign committee registration form received will result in the secretary of state moving the last reported campaign balance, including debts, to the new campaign committee account in CFIS unless the candidate is seeking public financing and must keep a previous campaign account open and separated.
[1.10.13.8 NMAC - N, 10/10/2017]

1.10.13.9 WITHDRAWING FROM CANDIDACY: If a candidate files a statement of withdrawal, the candidate must file a final report in CFIS no later than the next report deadline or continue to file CFIS reports pursuant the schedule defined by Section 1-19-29 NMSA 1978.
[1.10.13.9 NMAC - N, 10/10/2017]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

~~A. [The Campaign Reporting Act, specifically Subsection A, Subparagraph 3 of Subsection L, and Subsection M of Section 1-19-26 NMSA 1978 and Section 1-19-26.1 NMSA 1978, requires every person who spends more than five hundred dollars (\$500) on advertisements influencing or attempting to influence an election to register as a political committee, to appoint a treasurer, establish a bank account and thereafter report every contribution received and every expenditure made for any purpose as long as the person continues to exist. The courts have determined, however, that only a small subset of these persons can constitutionally be compelled to comply with these extensive registration and reporting requirements. In compliance with these court decisions, only the following will be obligated to comply with the requirements for political committees that are prescribed by the Campaign Reporting Act:~~

- ~~(1) a state or county political party;~~
- ~~(2) an association of two or more persons that has as its primary purpose making contributions to candidates or committees, coordinated expenditures or any combination thereof, and has received~~

more than five hundred dollars (\$500) in contributions or made expenditures of more than five hundred dollars (\$500) in the preceding 12 months; and

(3) ~~an association of two or more persons that has as its primary purpose making independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in the preceding 12 months.~~

(4) ~~Unless otherwise stated, requirements for political committees set forth in these rules shall apply only to political committees that fall within one of these categories enumerated in this section, and will not be applied to political committees that satisfy the statutory definition pursuant to Subsection L of Section 1-19-26 NMSA 1978 but that do not fall within any of these categories. However, all persons making independent expenditures shall be subject to the reporting requirements for independent expenditures set forth in Section 1.10.13.11 NMAC.~~

A. Registration.

(1) ~~Notwithstanding the political committee registration requirements as outlined in Section 1-19-26.1 NMSA 1978 and pursuant to applicable case law, a political committee of the kind described in Subparagraph 3 of Subsection A of 1.10.13.10 NMAC is not required to register until 10 days after it has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in a 12-month period;~~

(1) Prior to receiving or making any contribution or expenditure for a political purpose, [A]ll political committees shall complete a political committee registration form/statement of organization and submit the completed form, along with a fifty dollar (\$50) filing fee, to the secretary of state. The form shall include:

(a) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) the physical address of the political committee, a mailing address if different from the physical address, and an email address;

(c) a statement of the [political] purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i) an independent expenditure political committee;

(ii) a contribution or coordination political committee;

(iii) a mixed purpose political committee; or

(iv) other; if a political committee selects other, then the political committee shall submit a written explanation to the secretary of state as to why the categories of independent expenditure political committee, contribution or coordination political committee, and mixed purpose political committee do not apply;

(d) the name, address and relationship of any connected or associated organization or entity; a connected or associated organization or entity means a related corporation, union or trade organization from which the political committee receives more than fifty percent of its funding;

(e) the names and addresses of the officers of the committee;

(f) an identification of the bank(s) used by the committee for all expenditures or contributions made or received; this shall include the name of the bank(s), business address(es) of the branch office(s) where the account(s) was/were opened, and [a] telephone number for the bank(s); and

(g) the treasurer's name, mailing address, email address, and contact information.

(2) Following acceptance of the political committee registration form, the secretary of state will create a user account for the political committee in the (CFIS) and will issue the treasurer a unique CFIS user identification and password.

(3) The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee is located in another state and reports to the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within 10 days of filing the report to the FEC.

(4) If a political committee is located in another state, and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

- (5) If a political committee is located in New Mexico, and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.
 - (6) The political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and this rule, and should understand the responsibilities and potential liabilities associated with those duties. Under the Campaign Reporting Act, the treasurer is a reporting individual who can be named in a complaint or official action by the secretary of state. Additionally, a treasurer may be found liable if he or she knowingly and willfully violates the Campaign Reporting Act.
 - (7) If a change is made to a treasurer of a political committee, the political committee shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.
 - (8) A political committee shall not continue to receive or make any contributions or expenditures unless the name of the current treasurer is on file with the secretary of state by filing an updated political committee registration form.
 - (9) A political committee is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.
 - (10) Any changes to the information provided in the registration form/statement of registration shall be reported to the secretary of state within 10 days.
- B.** Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.
- C.** **Political party registration:** Qualified political parties that file rules in accordance with Article 7 of the Election Code with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act and this rule.
- D.** ~~[The contribution limits provided for in Section 1-19-34.7 NMSA 1978 do not apply to a political committee that only makes independent expenditures or to any contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.]~~ **Legislative caucus committee registration:** a legislative caucus committee are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act.
- (1) Only one legislative caucus committee may be registered for the majority and minority of each legislative chamber.
 - (2) The speaker and the minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless:
 - (a) two-thirds of the members of a political party in a legislative chamber vote to designate a different leader from among their members;
 - (b) the results of that vote are recorded with the secretary of state.
 - (3) The treasurer of the legislative caucus committee shall be the designated leader of the legislative caucus committee, unless the leader designates another person.
 - (4) A legislative caucus committee cannot be dissolved or cancel its registration as a political committee pursuant to Subsection G of Section 1-19-29 NMSA 1978.
- E. Notice of cancellation**
- (1) A political committee that has not received any contribution or made any coordinated or independent expenditures for a continuous period of at least one year may cancel its registration as a political committee by completing and submitting a prescribed cancellation form to the secretary of state.
 - (2) A political committee that has cancelled its registration pursuant to Subsection G of Section 1-19-29 NMSA 1978, shall submit a new registration in the event that its future activities meet the requisites for registration pursuant to Section 1-19-26.1 NMSA 1978.
 - (a) a political committee submitting a new registration must file with the secretary of state within 24 hours of receiving any contribution or making any expenditure for a political purpose.
 - (b) a new registration shall include:

- (1) current bank account balance(s); and
- (2) a certification that no contributions have been received or any expenditures made for a political purpose during the period wherein the political committee's registration was cancelled pursuant to Subsection C of Section 1-19-29.

[1.10.13.10 NMAC - N, 10/10/2017]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES:

A. ~~Persons making independent expenditures for elections covered by the act who do not fall within any of the categories enumerated in Subsection A of 1.10.13.10 NMAC cannot be constitutionally compelled to comply with all the registration and reporting requirements imposed on political committees by the Campaign Reporting Act. Courts have also ruled, however, that persons who engage in the particular kind of campaign spending that meets the definition of independent expenditure under this rule can be required to report certain categories of information regarding the nature of their independent expenditures and the sources of the money that were used to pay for them. Accordingly, all persons making independent expenditures for elections covered by the act will be required to file reports in compliance with the rules set forth in this section.~~ A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reporting Act shall file a prescribed report with the secretary of state within:

(1) three days of making the expenditure if the expenditure, by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars (\$1,000) in a non-statewide race(s) or ballot measure(s) or in an amount that exceeds three thousand dollars (\$3,000) in a statewide race(s) or ballot measure(s).

(2) twenty-four hours of making the expenditure if the expenditure is in an amount of three thousand dollars (\$3,000.00) or more and is made within seven days before a non-statewide or statewide election.

B. ~~Any person who makes an independent expenditure not otherwise required to be reported under these regulations in an amount that exceeds one thousand dollars (\$1,000) for one or more non-statewide race or ballot measure or in an amount that exceeds two thousand five hundred dollars (\$2,500) for one or more statewide race or ballot measure, or in an amount that, when added to the aggregate amount of the independent expenditures made by the same person during the election cycle, exceeds these thresholds, shall file a report of the independent expenditure that includes all of the following information] The form prescribed by the secretary of state shall include:~~

- (1) The name and address of the person who made the independent expenditure.
- (2) The name and address of the person to whom the independent expenditure was made and

the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, [it is sufficient to report instead a description of the services, property or rights furnished through the expenditure] a description of the services, property or rights furnished through the expenditure;

(3) The source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

(4) [The candidate(s) or ballot measure(s) referenced in the advertisement(s) that are paid for by the independent expenditure and a description of the message included in the advertisement(s). If the advertisement(s) refer to multiple candidates or ballot measures, some statewide and some non-statewide, the lower reporting threshold for non-statewide elections, i.e. one thousand dollars (\$1,000) for reporting under Subsections B and C of this section, and three thousand dollars (\$3,000) for reporting under Subsection D of this section, will trigger the reporting requirement.]

C. A person who makes independent expenditures totaling three thousand dollars (\$3,000) or less in a non-statewide race or ballot [measure] question, or [seven] nine thousand [five hundred] dollars [(\$7,500)] (\$9,000) or less in a statewide race or ballot [measure] question [during the election cycle] shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the previous twelve months that were earmarked or made in response to a solicitation to fund independent expenditures, and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures totaling more than three thousand dollars (\$3,000) for a non-statewide race or ballot [measure] question or more than [seven] nine thousand [five hundred] dollars [(\$7,500)] (\$9,000) for a statewide race or ballot [measure] question during an election cycle, in addition to reporting the information specified in Subsection C of this section, shall report the following information:

- (1) if the expenditures were made exclusively from a segregated bank account that contains only funds contributed to the account by individuals for the purpose of making independent expenditures, the name and address of, and the amount of each contribution not previously reported for, each contributor who contributed more than two hundred dollars (\$200) in the aggregate to the account ~~[during the 12 months preceding the report]~~ in the election cycle; or
 - (2) if the expenditures were made in whole or in part from funds other than a bank account of the kind described in paragraph (1), ~~any source other than a bank account of the kind described in paragraph (1)~~, the name and address of, and amount of each ~~[donation]~~ contribution made by, each ~~[donor]~~ contributor who ~~[donated]~~ contributed more than a total of five thousand dollars (\$5,000) during the election cycle, to the person making the independent expenditures ~~[in the previous twelve months]~~; provided, however, that a ~~[donation]~~ contribution is exempt from reporting pursuant to this paragraph if the ~~[donor]~~ contributor requested in writing that the ~~[donation]~~ contribution not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee.
- E. A person reporting an independent expenditure under this section shall complete the online registration process prescribed by the secretary of state in order to access the required disclosure reporting system. All reports of independent expenditures under this section shall be filed using the required system.
- F. Time ~~[of filing reports]~~ requirements:
- (1) ~~[An independent expenditure of more than three thousand dollars (\$3,000) that is made within fourteen days before a primary, general, or statewide special election shall be reported within twenty-four hours after making the expenditure.]~~
 - (2) ~~[Except for independent expenditures that are required to be reported within twenty-four hours pursuant to Paragraph F of Subsection F of 1-10-13-11 NMAC, every independent expenditure shall be reported on the earliest of the reporting dates specified in Section 1-19-29 NMSA 1978 subsequent to the date the independent expenditure is made.]~~
 - (1) An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.
 - (2) If any person making independent expenditures incurs subsequent independent expenditures, the person shall report such expenditures pursuant to this section.
- G. No person may 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 expenditure.

[1.10.13.11 NMAC - N, 10/10/2017]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate campaign committees.

- (1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight mountain time on the date of filing without penalty. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.
- (2) Campaign committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.
- (3) Coordinated expenditures made on behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits.
- (4) Candidates must file all required reports while they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and continue to file reports until the candidate files a final report. Losing an election does not terminate a candidate's requirement to file under the Campaign Reporting Act.
- (5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS; however, these funds are not subject to contribution limits.
- (6) Upon request by the secretary of state, the campaign committee shall provide a copy of

bank statements, for all accounts, for any reporting period.

(7) Candidates benefiting from independent expenditures have no obligation to report the independent expenditure.

B. Political committees.

(1) All political committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight on the date of filing deadline without penalty. Beginning after 12:01 a.m. mountain time on the date after the filing deadline of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures shall also disclose the name of the candidate, campaign committee, or political committee who is being coordinated with.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements, for all accounts, for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically in the manner and on forms as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship waiver, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship waiver by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver request does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35 NMSA 1978. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/10/2017]

1.10.13.13 NO ACTIVITY:

A. All candidates are required to register and file reports in CFIS according to the reporting schedule outlined in the Campaign Reporting Act once a declaration of candidacy has been filed, even if the candidate does not raise or spend any funds. Candidates who have collected no contributions and made no expenditures shall file a statement of no activity.

B. Candidates who do not raise funds are not required to open a campaign bank account.

C. Receiving funds as a publicly financed candidate pursuant to the Voter Action Act is considered raising funds for the purpose of this rule.

[1.10.13.13 NMAC - N, 10/10/2017]

1.10.13.14 SUPPLEMENTAL REPORTS:

A. Certain candidates must report in CFIS contributions and pledges to contribute that are received beginning the Thursday before an election through the election in CFIS using supplemental reports in accordance with Subparagraph 5 of Subsection B of Section 1-19-29 NMSA 1978.

B. If a candidate receives a pledge during the time period specified in Subparagraph 5 of Subsection B of Section 1-19-29 NMSA 1978 but does not receive the contribution as pledged, the candidate may later amend the campaign committee's supplemental report.

[1.10.13.14 NMAC - N, 10/10/2017]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report under 1.10.13.11 NMAC fails to timely file a report in CFIS, or fails to file a report, a written notice will be sent by the secretary of state to the reporting individual or person required to file a report explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded 10 working days from the date of the written notice to file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of fifty dollars (\$50) per day up to a maximum fine of five thousand dollars (\$5,000) per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Subsection C of Section 1-19-35 NMSA 1978.

F. The reporting individual or person required to file the report may challenge the imposition of a fine within 10 working days of the date of the notice of final action by filing a request for arbitration on the prescribed arbitration request form. The arbitrator shall conduct the hearing within 30 days of the request for arbitration. The arbitrator may schedule the arbitration beyond the 30-day timeframe with the agreement of the parties.

G. The arbitrator shall issue a binding written decision in accordance with Subsection F of Section 1-19-34.4 NMSA 1978, which shall be a public record. The decision shall be issued and filed with the secretary of state within 30 days of the arbitration hearing.

H. Failure to respond to the notice of final action may result in a referral to the attorney general's office or district attorney's office.

[1.10.13.15 NMAC - N, 10/10/2017]

1.10.13.16 LOANS:

A. All loans made to a candidate or committee, including loans sourced from a candidate's own personal funds must be reported.

B. Contribution limits apply to loans, unless the loan is sourced from the candidate's own personal funds in accordance with Subsection [F] H of Section 1-19-34.7 NMSA 1978.

C. If a spouse of a candidate co-signs a commercial loan to a candidate pledging community assets as collateral, it is not considered a contribution from the spouse to the candidate as long as the candidate's interest in the community asset meets or exceeds the amount of the loan.

D. Loan repayments and forgiven loans must be reported separately from other expenditures within the loan module of CFIS.

[1.10.13.16 NMAC - N, 10/10/2017]

1.10.13.17 CAMPAIGN DEBTS:

A. Campaign debts may not exceed available campaign funds unless the debt is a loan. Loans from a third party must conform to contribution limits.

B. Following the date of the primary or general election, if a candidate has outstanding debts after expending all available campaign funds, the candidate may collect contributions for the sole purpose of paying those debts.

C. The contributions will apply to the primary or general election cycle for which the campaign debt was incurred for purposes of computing allowable contribution limits.

D. A candidate who does not have net outstanding campaign debt may not collect contributions for a primary or general election cycle that has ended.

E. A candidate may not transfer funds collected specifically to satisfy campaign debt to a subsequent primary or general election cycle. Accordingly, contributions collected for the purpose of paying off outstanding campaign debts may not exceed the amount of the outstanding debts.

[1.10.13.17 NMAC - N, 10/10/2017]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with the actual value of the contribution. If an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, each candidate must report the estimated benefit received per person.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost, given its age and condition, at the time the contribution was made.

E. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the candidate or committee.

F. The value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle do not apply to the limitation on contribution to candidates or campaign committees.

[1.10.13.18 NMAC - N, 10/10/2017]

1.10.13.19 VOLUNTEERS:

A. Volunteer work performed for a candidate or committee is not considered a contribution. An individual may volunteer his or her own personal services to a campaign or candidate if the services are not compensated by the candidate, campaign or any other person. If a third party pays a person to volunteer for a candidate or committee, the payment constitutes an in-kind contribution to the campaign committee which must be reported by the campaign committee.

B. Individuals may use their own homes, recreation or meeting rooms of complexes, or other facilities to conduct volunteer activities for a campaign committee without reporting the rental value of the premises as a contribution.

C. Candidates and campaigns may reimburse volunteers for out of pocket expenses other than the value of their time. Any expense reimbursed by the candidate or committee must be reported by the candidate or committee.

[1.10.13.19 NMAC - N, 10/10/2017]

1.10.13.20 CONTRIBUTIONS:

A. The entire amount paid by a donor to attend a political fundraiser or other political event or to purchase a fundraising item sold by a candidate is a contribution and counts against the donor's limit for political contributions, except for special events pursuant to Subsection C of Section 1-19-34 NMSA 1978.

B. Contributions received as a result of special events shall be reported cumulatively on the special events form in CFIS. Reporting individuals shall report the sponsor of the event, the amount received (gross proceeds), the expenditures incurred, the estimated number of persons in attendance, and the net amount received after deducting the expenditures incurred in conducting the event (net proceeds).

C. For all other fundraising events at which the price of admission exceeds [fifteen] twenty five dollars [(\$15)] (\$25), or which raise more than one thousand dollars (\$1,000) in net proceeds, the reporting individual must report each individual contribution pursuant to Section 1-19-31 NMSA 1978.

D. No single anonymous contribution may be accepted in excess of one hundred dollars (\$100). No more than five hundred dollars (\$500) may be accepted in aggregate anonymous contributions for any non-statewide candidate in a primary or general election cycle. No more than two thousand dollars (\$2000) may be accepted in aggregate anonymous contributions for any statewide campaign committee or political committee in a primary or general election cycle.

E. A candidate's spouse and family are subject to the same contribution limits to the candidate's campaign as other contributors, provided, however, that a candidate may contribute from a joint account with a spouse or family member without limit if the funds would otherwise be available to the candidate in the regular course of business, or as community property or as a joint tenant.

F. The personal funds of a candidate include:

- (1) assets which the candidate has the legal right of access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;
- (2) income from employment, including self-employment;
- (3) dividends and interest from, and proceeds from, sale or liquidation of stocks, real estate or other investments;
- (4) income from trusts, if established before the commencement of a primary or general election cycle;
- (5) bequests to the candidate, if established before the commencement of a primary or general election cycle;
- (6) personal gifts that have been customarily received by the candidate prior to the commencement of a primary or general election cycle; and
- (7) proceeds from lotteries or games of chance.

G. The reporting individual is responsible for ensuring that all contributions are lawful. If the reporting

individual has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, validate the legality of the contribution and correct any discrepancy, if necessary, in order to comply with the law.

[1.10.13.20 NMAC - N, 10/10/2017]

1.10.13.21 CANDIDATE DESIGNATIONS OF CONTRIBUTIONS OVER THE LIMIT:

A. When a person makes a contribution above the contribution limits to a candidate in the primary cycle, the candidate may re-designate the excessive portion to the general election cycle if the contribution:

- (1) is made during that candidate's primary election cycle;
- (2) is not designated in writing for a particular election;
- (3) would be excessive if treated as a primary election contribution; and
- (4) if re-designated, does not cause the contributor to exceed any contribution limit.

B. If a candidate receives a contribution for the general election prior to the start of the general election cycle that candidate must segregate those funds and not use them until the start of the general election cycle.

C. A candidate who receives funds in the primary election cycle that are designated for use in the general election cycle and who loses the primary election must return the funds to the original donor or must donate the excessive contribution to the public election fund. A candidate or committee must disclose refunds of contributions in reports filed in CFIS using the refund contributions option.

[1.10.13.21 NMAC - N, 10/10/2017]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions may be returned to the donor, without penalty to the reporting individual, if the candidate or committee voluntarily returns the contribution without a finding of violation by the secretary of state. If the secretary of state makes a formal finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution in accordance with Subsection [D] G of Section 1-19-34 NMSA 1978 or Subsection E of Section 1-19-34.7 NMSA 1978.

B. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

C. When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

D. An excessive contribution which is not designated for either the primary or general election cycle, and which is made after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

E. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States.

[1.10.13.22 NMAC - N, 10/10/2017]

1.10.13.23 DATE CONTRIBUTION IS MADE VS DATE OF RECEIPT:

A. A contribution is "made" by the contributor when the contributor relinquishes control over it. If the contributor hand delivers a contribution, the contribution is made on the delivery date. If mailed, a contribution is made on the date of the postmark. An in-kind contribution is made on the date that the goods or services are provided by the contributor. A contribution made via the internet is considered made on the date the contributor electronically confirms the transaction.

B. The date of receipt is the date the candidate, committee or person acting on the committee's behalf, actually receives the contribution. This is the date that shall be used to report the contribution. The date of deposit is not used for reporting or contribution limit purposes.

C. When a contribution is received through debit or credit card charges, the date of receipt is the date on which the contributor's signed or electronic authorization to charge the contribution is received by the candidate, committee or a person acting on the committee's behalf.

D. The date of receipt of in-kind contributions is the date the goods or services are provided to the recipient.

[1.10.13.23 NMAC - N, 10/10/2017]

1.10.13.24 EARMARKING:

A. It is unlawful for a person to make a contribution in the name of another person and no reporting entity shall knowingly accept a contribution from one person in the name of another person.

B. A reporting individual shall not knowingly accept a contribution which was earmarked by an original donor for contribution from a subsequent donor to the candidate or committee unless the original donor is disclosed in the committee's reporting.

C. All contributions made by a person, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person, shall be treated as contributions from the person who originally made the contribution.

[1.10.13.24 NMAC - N, 10/10/2017]

1.10.13.25 CANDIDATE EXPENDITURES:

A. Candidates who use the candidate's own personal funds for expenditures of the campaign committee must report the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee. A candidate may also pay for expenditures of the campaign committee out of personal funds and obtain reimbursement from the campaign committee, but the campaign committee must itemize the expenditures reimbursed. A candidate may not, for instance, report a single payment to a credit card in lieu of reporting each individual expenditure paid for out of personal funds. Use of a credit card specifically designated for campaign expenses is permissible but expenditures must be itemized when reported.

B. Permissible Expenditures.

(1) Use of campaign funds must be in accordance with Section 1-19-29.1 NMSA 1978. Candidates and committees must provide a purpose or description detailed enough to associate the expense to the campaign. For example, an expense of "taxi" is not appropriately descriptive to determine that it is related to a campaign. Such an expense should be reported as "taxi for travel to campaign meeting."

(2) Expenditures that are reasonably attributable to the candidate's campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate's campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.

(3) Legal expenses specifically related to the campaign or legislative office are permissible uses of campaign funds. Such expenses include, but are not limited to, presenting a legal challenge to an opponent's qualifications for election, participating in such a challenge or defending such a challenge. Permissible legal expenditures also include defending or filing a complaint with the office of secretary of state, state ethics commission or any ethics authority.

(4) Candidates and public officials shall not use campaign funds to pay any fine or penalty imposed by the secretary of state or any court of competent jurisdiction.

(5) Political committees may use campaign funds to pay fines and penalties imposed by the secretary of state.

(6) Wear and tear on a vehicle is a permissible expense of the campaign and candidates shall claim mileage rather than actual repairs for travel solely related to the campaign. Mileage shall be calculated at no more than the published rate pursuant to the Mileage and Per Diem Act. Candidates must keep a log for the candidate's own records regarding miles traveled for campaign purposes and calculate the per diem based on this log. Mileage rates are meant to account for both wear and tear on a vehicle as well as costs for gas; therefore, candidates may not charge for both gas and mileage.

(7) A candidate, candidate's agent, or committee's agent may seek an agency opinion or declaratory ruling from the secretary of state on the lawfulness of expenditures made prior to the campaign committee facing an enforcement action. A declaratory ruling made by the secretary of state shall be issued in accordance with the Administrative Procedures Act, Section 12-8-9 NMSA 1978. To the extent that an expenditure is determined unlawful pursuant to an agency declaratory ruling, the campaign committee shall be given the opportunity to amend any inconsistent reports and take other necessary steps to come into voluntary compliance.

[1.10.13.25 NMAC - N, 10/10/2017]

1.10.13.26 CHARITABLE DONATIONS:

A. Donations to charity from campaign funds permitted under Paragraph 4 of Subsection A of Section 1-19-29.1 NMSA 1978 may be paid only to organizations recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.

B. The candidate or committee making a charitable donation is responsible for determining whether the charity has the permissible tax status prior to making the donation.
[1.10.13.26 NMAC - N, 10/10/2017]

1.10.13.27 PRIMARY AND GENERAL ELECTION CYCLES FOR PURPOSES OF CONTRIBUTION LIMITS:

~~A. [For state representatives and any other two year office holders, the primary election cycle begins the day after each general election and ends at midnight on the day of the primary election. The general election cycle begins on the day after each primary election and ends at midnight on the day of the general election.~~

~~B. For statewide office holders and any other four year office holders and for political committees, the primary election cycle begins on the day after the general election in which the office is on the ballot, or included in governor's primary election proclamation, and ends at midnight on the day of the primary election in which the office appears on the ballot. The general election cycle begins on the day after the applicable primary election and ends at midnight on the day of the general election.~~

~~C. Transferring funds to a different primary or general election cycle in CFIS: Within CFIS, the secretary of state shall move funds, including debts, from an existing candidate campaign account to a new candidate campaign account pursuant to Section 1 of 1.10.13.8 NMAC, including for a candidate campaign committee that reports on a different election cycle. This transfer is applicable to all current and former candidates and elected officials who have an open CFIS account including candidates who chose to run for a different office.~~

~~(1) Each time a candidate runs for office, a new candidate campaign committee registration form is required. If a candidate has previously run for an office covered by the CRA, the secretary of state will create a new campaign in CFIS for the election year listed on the registration form in the candidate's existing CFIS account.~~

~~(2) Upon submitting the candidate campaign committee registration form for the new campaign year, the candidate is eligible to collect contributions in accordance with the contribution limits and the election cycle applicable to the campaign year and office listed on the form.~~

~~(3) Candidate withdrawal or loss of a primary election: If a candidate withdraws from candidacy or loses an election, the candidate may move funds collected to a future election campaign by submitting a new candidate campaign committee registration form.~~

~~(4) If contributions collected under the previous campaign cycle exceed what is allowable for the office associated with the new campaign, the candidate must take one of the following actions:~~

~~(a) Refund excessive funds to the original contributor;~~

~~(b) Allocate excessive funds received in a primary election cycle to the general election cycle to ensure limits are met; or~~

~~(c) Turn excess funds over to the SOS to deposit within the public election fund pursuant to Section 1-19-34.7 NMSA 1978.]~~

[1.10.13.27 NMAC - N, 10/10/2017; A, 04/24/2018]

1.10.13.28 COORDINATED EXPENDITURES:

A. A coordinated expenditure shall be treated as an in-kind contribution from the person who made the expenditure to the candidate or committee at whose request or suggestion, or in cooperation, consultation or concert with whom, the expenditure was made, and shall be subject to all the limits, prohibitions and reporting requirements that are applicable to such contributions under the Campaign Reporting Act.

B. Candidates for office may endorse other candidates. Endorsements do not constitute a coordinated expenditure unless the endorser pays for an advertisement that constitutes a coordinated expenditure.

C. A candidate's or committee's response to an inquiry or questionnaire about that candidate's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not constitute a coordinated expenditure.

D. Persons may use publicly available information and materials in creating, producing or distributing an advertisement, and such use does not, in and of itself, constitute coordination with the candidate or campaign. However, expenditures funding the republication of materials produced by a candidate's campaign shall be reported as coordinated expenditures subject to contribution limits.

E. The following is a non-exhaustive list of scenarios in which an expenditure will be deemed coordinated:

- (1) whether the person making the expenditure is also an agent of the candidate or committee receiving the contribution;
- (2) whether any person authorized to accept receipts or make expenditures for the person making the expenditure is also an agent of the candidate or committee receiving the contribution;
- (3) whether the person making the expenditure has been established, financed, maintained, or controlled by any of the same persons that have established, financed, maintained, or controlled a political committee authorized by the candidate;
- (4) whether the reporting individual shares or rents space for a campaign-related purpose with or from the person making the expenditure;
- (5) whether the reporting individual, or any public or private office held or entity controlled by the reporting individual, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle, either primary or general, in which the expenditure is made; or
- (6) whether the reporting individual and the person making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

[1.10.13.28 NMAC - N, 10/10/2017]

1.10.13.29 RECORDS RETENTION:

A. A reporting individual shall obtain and preserve all records, including bank statements and receipts, necessary to substantiate the campaign finance reports required pursuant to the Campaign Reporting Act for a period of two years from the date of the filing of the report containing such items.

B. A reporting individual shall make such records available to the secretary of state, attorney general or district attorney upon written request.

[1.10.13.29 NMAC - N, 10/10/2017]

1.10.13.30 RANDOM REPORT SELECTION AND REPORT REVIEW PROCESS:

A. Pursuant to Section 1-19-32.1 NMSA 1978, a randomly selected list of current and past candidates and political committees is computer generated by the secretary of state.

B. The secretary of state conducts a review of the reports filed during the election year or reporting period being reviewed for compliance with 1.10.13 NMAC and the Campaign Reporting Act. Areas of review during the report examination include:

- (1) Campaign committees or political committees who fail to register or fail to register timely.
- (2) Contributions, including loans and anonymous contributions, which exceed allowable contribution limits.
- (3) Expenditures that may not be permissible.
- (4) To the extent possible, cross checking with other reporting entities including those filing under the Lobbyist Regulation Act.

C. Pursuant to Section 1-19-32.1 NMSA 1978, the secretary of state shall notify potential violators that a possible discrepancy has been found and allow the candidates or committees 10 working days from the date of the notice to submit a written explanation.

D. After a written response is received, the secretary of state will issue a notice of final action which may include dismissal of the finding upon explanation or correction or could include a penalty pursuant to Section 1-19-34.4 NMSA 1978.

E. Upon completion of the random review, the secretary of state shall generate a report that details the findings and actions taken by the candidates, committees, and the secretary of state which shall be made publicly available.

[1.10.13.30 NMAC - N, 10/10/2017]

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

~~A. [The disclaimers on campaign advertising mandated by Sections 1-19-16 and 1-19-17 NMSA-1978 will be required only for:~~

~~(1) advertisements that are disseminated by a candidate, a campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC, or at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, a candidate's campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC; and~~

~~(2) advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding one thousand dollars (\$1,000) during the current election cycle, and that either:~~

~~(a) expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure, or~~

~~(b) refer to a clearly identified candidate or ballot measure and are disseminated to the relevant electorate within 30 days before the primary election or 60 days before the general election at which the candidate or ballot measure is on the ballot.~~

~~B. The requirements of Subsection A of this section do not apply to the following:~~

~~(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or~~

~~(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impractical.~~

~~C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.]~~

~~[1.10.13.31 NMAC - N, 10/10/2017]~~

1.10.13.32 LEGISLATIVE CAUCUS COMMITTEE

A. Only one legislative caucus committee may exist for the majority and minority of each legislative chamber.

B. The speaker and the minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless:

(1) two-thirds of the members of a political party in a legislative chamber vote to designate a different leader from among their members; and

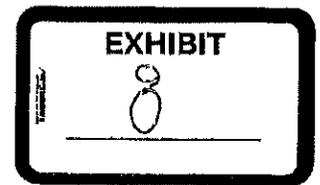
(2) the results of that vote are recorded with the secretary of state.

C. A legislative caucus committee must comply with all statutes and rules applicable to political committees, with the exception of in-kind contributions from a legislative caucus committee to a candidate nominated by that party in a general election cycle, which do not apply to limitation on contributions.

D. No funds belonging to a legislative caucus committee shall be expended by the committee unless a current designated leader of the committee is on file with the secretary of state.

E. A legislative caucus committee cannot be dissolved or cancel its registration as a political committee pursuant to Subsection G of Section 1-19-28 NMSA 1978.

HISTORY OF 1.10.13 NMAC: [RESERVED]



From: [William Pratt](#)
To: [rules_sos_SQS](#)
Subject: Disclaimer rules
Date: Tuesday, August 6, 2019 10:05:02 AM

Madam Secretary,

A legible website that links to the sponsor of a visual Independent political advertisement should be included in the disclaimer.

The website should show who paid for the advertisement. If payers for the ad are other entities, it should be clear that those entities are not required to disclose anything. If the Constitution does not require dark money disclosures, the website should indicate that and the sponsors or payers prefer to remain secret.

William "Bill " Pratt MD State Representative HD 27 505 859 0722

From: [Paul Kinzelman](#)
To: [rules_sos_SOS](#)
Subject: Comments for Campaign Finance Hearing Aug 16, 2019
Date: Monday, August 12, 2019 9:10:06 AM

I think the root cause of many problems in our political system is the dark money funding damaging campaigns. Because we can't yet limit this money, we can at least publicize where it's coming from.

Please consider instituting the following requirements in NM:

1) Require all ads in any media (TV, radio, social media, etc.) to contain a legible and intelligible web site address of the organization that bought the ad.

2) Require all organizations buying political ads in NM to have a list of their donors available on their website, similar to how you can look up the donors to individual state office candidates:

<https://www.cfis.state.nm.us/media>

3) Similarly, any Political Action Committee (PAC) listed as a donor of an organization funding an ad must contain that PAC website and that website too must contain a list of donors (as specified under item 2) or else that PAC is not allowed to contribute to any political organization or any campaign in NM. This requirement is to be applied recursively so that in the end, all contributors to any PAC in NM can be known.

In other words, the public should be able to get a list of individuals and corporations funding any political ad in NM.

-Paul Kinzelman
7 Park Lane Cir
Peralta NM 87042
505-865-4648
paul@kinzelman.com

From: [BARAK Wolff](#)
To: [rules_sos_SOS](#)
Cc: [William Pratt](#)
Subject: Campaign Finance Rules...
Date: Monday, August 12, 2019 4:19:46 PM

Dear SOS...

Thanks so much for drafting these regulations to match up with legislative changes in our campaign finance rules. I am very supportive. I am particularly concerned with the need for greater transparency around dark money political ads that are so corrosive and currently have no transparency. I am supportive of and hope that you include clear and strong rules about all political ads being required to have information about sponsorship and where to find additional information about who is behind such ads.

Thanks for considering these comments.

Barak Wolff
Tesuque, NM



ADVANCING
DEMOCRACY
THROUGH LAW

August 14, 2019

Submitted electronically to Dylan.Lange@state.nm.us

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

Dear Secretary Toulouse Oliver,

The Campaign Legal Center ("CLC") respectfully submits these written comments regarding the proposed rulemaking to amend New Mexico's campaign finance rule, N.M. Code R. § 1.10.13.¹ CLC staff attorney Austin Graham will be present at the Secretary's rulemaking hearing on August 16 to answer questions and provide additional information about the comments.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening American democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other court cases and regulatory proceedings. Our work promotes every citizen's right to participate in the democratic process and to know the true origin of funds spent to influence elections.

CLC supports the Secretary's initiation of this rulemaking to implement the provisions of S.B. 3,² and the Secretary's continued leadership on political transparency issues will enable the people of New Mexico to know who is trying to influence elections in their state. The recommendations in our comments are intended to help ensure the Secretary's final rule provides effective disclosure of independent expenditures and prevents the circumvention of contribution limits in New Mexico's Campaign Reporting Act ("CRA"). The comments are organized according to the sections of the proposed rule to which they relate.

¹ Vol. XXX, Issue 13 N.M. Reg. 355 (July 16, 2019).

² 2019 N.M. Laws ch. 262.

I. § 1.10.13.7. “Definitions”

A. *Defining “Paid Online Advertising” to Ensure Disclosure of Digital Advertisements*

In § 1.10.13.7(A), the proposed rule defines “advertisement” to include a communication referring to a candidate or ballot question that is distributed by “electronic media,” including “paid online advertising.” As amended by S.B. 3, the CRA similarly defines “advertisement” to include communications through “electronic media.”³

The amount spent on online campaign advertising has grown considerably at both the federal and state levels in recent years. According to research firm Borrell Associates, total expenditures for online advertising in federal, state, and local elections exceeded \$1 billion both in 2018 and during the 2016 election cycle.⁴ The estimated \$1.8 billion spent for online advertising in last year’s midterms alone represents a 2,400% increase over the total spending for online ads in the 2014 midterm elections.⁵ The surge in online campaign advertising is likely to continue in future elections, as campaigns, political committees, and outside groups increasingly rely on digital media to target prospective voters.

Considering the growing prominence of online advertising in U.S. elections, the Secretary should clarify the meaning of “paid online advertising” to make clear the types of “electronic media” advertisements regulated in New Mexico campaigns, and to ensure online political ads are disclosed in accordance with state law. For guidance in defining “paid online advertising,” we suggest the Secretary look to the definition of “qualified internet or digital communication” in H.R. 1, the federal election-reform legislation passed by the House of Representatives earlier this year.⁶ Generally, H.R. 1 defines “qualified internet or digital communication” as a communication “placed or promoted for a fee on an online platform,” which is separately defined, in part, as “any public-facing website, web application, or digital application, including a social network, ad network, or search engine.”⁷

³ See N.M. Stat. Ann. § 1-19-26(A) (defining “advertisement” to include “a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, or by printed materials, including mailers, handbills, signs and billboards”).

⁴ See Rob Lever, *Despite Restrictions, Digital Spending Hits Record in US Midterms*, AFP (Nov. 13, 2018), <https://www.yahoo.com/news/despite-restrictions-digital-spending-hits-record-us-midterms020115626.html>; Kate Kaye, *Data-Driven Targeting Creates Huge 2016 Political Ad Shift: Broadcast TV Down 20%, Cable and Digital Way Up*, ADAGE (Jan. 3, 2017), <https://adage.com/article/media/2016-political-broadcast-tv-spend-20-cable-52/307346>.

⁵ Rob Lever, *Despite Restrictions, Digital Spending Hits Record in US Midterms*, AFP (Nov. 13, 2018), <https://www.yahoo.com/news/despite-restrictions-digital-spending-hits-record-us-midterms020115626.html>.

⁶ For the People Act of 2019, H.R. 1, 116th Cong. § 4206 (2019)

⁷ *Id.* §§ 4206, 4208.

Along similar lines, the definition of “advertisement” in the final rule could include a subsection setting forth the meaning of “paid online advertising,” such as:

“For purposes of this rule, ‘paid online advertising’ means any communication placed or promoted for a fee on any public-facing website, web application, or digital application, including a social network, ad network, or search engine.”

B. Including Coordination with Legislative Caucus Committees in the Definition of “Coordinated Expenditure”

Under § 1.10.13.7(H) of the proposed rule, the definition of “coordinated expenditure,” in relevant part, covers an expenditure made “at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, an agent of the candidate, the candidate’s campaign committee or a political party.” S.B. 3 also added a definition of “coordinated expenditure” to the CRA, encompassing expenditures made “at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party.”⁸

While the rulemaking proposal’s “coordinated expenditure” definition would apply to coordinated spending with a candidate’s campaign or a political party, it does not expressly include expenditures made in coordination with a legislative caucus committee. Since legislative caucus committees, like candidates and political parties, are subject to contribution limits under the CRA,⁹ the Secretary should extend the rule’s definition of “coordinated expenditure” to cover coordination with legislative caucus committee. Otherwise, the CRA’s contribution limits for legislative caucus committees could be susceptible to evasion, as donors who had made maximum contributions to legislative caucus committees could then engage in unlimited coordinated activity with the committees to further support them.

Importantly, the addition of legislative caucus committees within the rule’s definition of “coordinated expenditure” would comport with the CRA’s comprehensive application to expenditures made in coordination with any “agent or representative” of a political party.¹⁰ By definition, a legislative caucus committee is “a political committee established by *the members of a political party* in a chamber of the legislature.”¹¹ Because the CRA requires a political party’s members to establish and administer legislative caucus committees, these committees and the legislators controlling them are effectively “agents” and “representatives” of New Mexico’s political parties. Accordingly, the final rule should treat legislative caucus

⁸ N.M. Stat. Ann. § 1-19-26(I).

⁹ *Id.* § 1-19-34.7(C).

¹⁰ *Id.* § 1-19-26(I).

¹¹ *Id.* § 1-19-26(O) (emphasis added). *See also* 2019 N.M. Laws ch. 262, § 15 (establishing “[t]he speaker and minority floor leader of the house of representatives and the majority floor leader and minority floor leader of the senate” as “the designated leaders of the legislative caucus committees for the members of their political party,” and requiring “[f]unds belonging to a legislative caucus committee [to] be managed by the designated leader or the leader's designee.”).

committees as representatives of political parties, and expressly regulate coordination involving legislative caucus committees to preserve the effectiveness of the CRA's contribution limits.

II. § 1.10.13.11. "Reporting of Independent Expenditures"

Specifying When Contributions Are Earmarked or Solicited to Fund Independent Expenditures

In § 1.10.13.11(C), the proposed rule would require any person making independent expenditures above certain amounts to file a report disclosing the name and address of each source of contributions received in excess of \$200 "that were earmarked or made in response to a solicitation to fund independent expenditures." The CRA, as amended by S.B. 3, includes an analogous requirement to disclose sources of contributions above \$200 "earmarked or made in response to a solicitation to fund independent expenditures" on independent expenditure reports.¹² S.B. 3 also amended the CRA to expressly forbid a person from making contributions or expenditures "with an intent to conceal . . . the true source of funds used to make independent expenditures."¹³ However, neither the proposed rule nor the CRA explains when a person has "earmarked" a contribution or given it "in response to a solicitation" to pay for independent expenditures.

In the absence of regulatory guidelines describing when contributions are earmarked or solicited for independent expenditures, the CRA's new disclosure requirements are unlikely to be fully effective. Independent expenditure reporting laws that restrict disclosure to donors who have memorialized their intent to pay for independent expenditures are notoriously ineffectual.¹⁴ In practice, donors rarely provide written documentation indicating the purpose of contributions made to organizations that are not registered political committees, especially since these entities, in addition to making independent expenditures, may engage in other activities unrelated to elections. Consequently, limiting donor reporting only to the most obvious instances of earmarking can preclude meaningful disclosure of the sources of money used to make independent expenditures.

To ensure that the sources of funds used for independent expenditures are disclosed as required by state law, and to help enforce the CRA's restriction on contributions or expenditures being made with an intent to conceal "the true source of funds used to make independent expenditures," the final rule should explain when a contribution is earmarked or solicited to pay for independent expenditures. In delineating this requirement, the rule should take into account contextual factors to help the CRA's new independent expenditure disclosure regime bring greater transparency to New Mexico elections.

¹² N.M. Stat. Ann. § 1-19-27.3(C).

¹³ *Id.* § 1-19-34.3(B).

¹⁴ *See, e.g.*, Press Release, Public Citizen, Public Citizen Urges FEC to Close its Donor Disclosure Loophole (Mar. 4, 2019), <https://www.citizen.org/news/public-citizen-urges-fec-to-close-its-donor-disclosure-loophole/>.

For guidance in developing a standard for when contributions are earmarked or solicited for independent expenditures, we recommend the Secretary look to “covered transfer” reporting laws. The most well-known covered transfer legislation is the federal DISCLOSE Act, which was approved by the House of Representatives this year as part of H.R. 1.¹⁵ Originally formulated in response to the surge of dark money spending after *Citizens United v. FEC*, the DISCLOSE Act would require corporations, labor unions, and nonprofit groups to disclose certain transfers made to other organizations if the transfers were initially designated or solicited for making campaign-related disbursements, including independent expenditures or electioneering communications.¹⁶

By extending reporting requirements beyond contributions given for the express purpose of paying for independent expenditures, covered transfer reporting presents a more comprehensive approach to disclosure that takes into account the broader context in which money was contributed, helping to ensure the public knows the real sources responsible for independent expenditures. In a similar manner, New Mexico’s rule should make clear when a contribution is “earmarked or made in response to a solicitation” to fund independent expenditures.

For example, the final rule could include the following as a new subsection within § 1.10.13.11:

“For purposes of 1.10.13.11(C) NMAC, a contribution is earmarked or made in response to a solicitation to fund independent expenditures if the person making the contribution:

(1) Designates, requests, or suggests that the amounts be used for independent expenditures. A person ‘designates, requests, or suggests’ that amounts be used for independent expenditures if, at any time, there is an agreement, suggestion, designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, that all or any part of the transfer or payment be used to fund independent expenditures;

(2) Provided the amounts in response to a solicitation or other request, whether direct or indirect, express or implied, oral or written, for a transfer or payment to fund independent expenditures; or

(3) Knew or had reason to know from the surrounding circumstances that the amounts would be used to fund independent expenditures.”

¹⁵ For the People Act of 2019, H.R. 1, 116th Cong. § 4111 (2019). Likewise, both Rhode Island and Austin, Texas have enacted covered transfer laws modeled on the DISCLOSE Act. See R.I. Gen. Laws Ann. § 17-25.3-1; Austin, Tex., City Code § 2-2-34.

¹⁶ See Lisa Rosenberg, *What You Should Know About the DISCLOSE Act Part 1: What is the Disclose Act*, SUNLIGHT FOUND. (July 12, 2012), <https://sunlightfoundation.com/2012/07/12/what-you-should-know-about-the-disclose-act-part-1-what-is-the-disclose-act/>.

III. § 1.10.13.24. “Earmarking”

Preventing Circumvention of Contribution Limits

The CRA, as amended by S.B. 3, now allows for political parties and legislative caucus committees to accept contributions in amounts up to five times greater than the contribution limits for candidates and other political committees.¹⁷ Likewise, New Mexico law now permits political parties and legislative caucus committees to provide unlimited in-kind contributions to candidates during the general election campaign,¹⁸ while candidates’ campaign committees, in turn, can make unlimited contributions to political parties and to legislative caucus committees of their parties.¹⁹

S.B. 3’s amendments to the CRA open new channels for political parties and legislative caucus committees to deliver substantial resources to candidates. These channels also present new challenges to the enforcement of state law’s contribution limits, as political parties and legislative caucus committees could become vehicles for donors, especially those who have already provided contributions up to the statutory limits to specific candidates, to provide additional financial support to candidates in excess of the CRA’s contribution limits. Therefore, as part of the final rule, we recommend that the Secretary include measures to help safeguard against the use of political parties and legislative caucus committees as conduits for making excessive contributions to candidates.

To address circumvention concerns, the rule should make clear that an intermediary who forwards an earmarked contribution must provide to the recipient of the funds, in writing, all the information about the original source of the contribution necessary for recordkeeping and reporting purposes under state law. New Mexico’s rule currently specifies that contributions “earmarked or otherwise directed through another person” are considered contributions “from the person who originally made the contribution.”²⁰ However, there is no additional guidance in the rule describing how recipients of earmarked contributions must collect and report information about the original sources of those contributions.

For example, the Federal Election Commission’s (“FEC”) regulations include a requirement for an intermediary forwarding earmarked contributions to provide the recipient of the earmarked money with a “transmittal report,” which must contain the name and address of the original contributor, along with information about the amount and date of the contribution.²¹ Similarly, a number of state election agencies have promulgated special reporting procedures for earmarked

¹⁷ N.M. Stat. Ann. § 1-19-34.7(C).

¹⁸ *Id.* § 1-19-34.7(J).

¹⁹ *Id.* § 1-19-34.7(K).

²⁰ N.M. Code Regs. § 1.10.13.24(C).

²¹ See 11 C.F.R. § 110.6(c). See also Fed. Election Comm’n, *How to Report Earmarked Contributions*, <https://www.fec.gov/help-candidates-and-committees/filing-ssf-reports/earmarked-contributions/> (last visited Aug. 13, 2019).

contributions.²² Including an analogous requirement in New Mexico's final rule would serve to ensure that earmarked contributions are properly documented and disclosed, thus aiding in the enforcement of the CRA's contributions limits.²³

As another anti-circumvention measure, the final rule should specify when an earmarked contribution is attributable both to the original contributor and to the intermediary who forwarded the earmarked funds. Using their enhanced fundraising capabilities, political parties and legislative caucus committees may try to direct donors to provide their contributions for the purpose of supporting particular candidates through either monetary or in-kind contributions. When a political party or legislative caucus committee instructs a donor to contribute for the purpose of supporting a specific candidate, the contribution should count toward both the donor's and the party or committee intermediary's respective contribution limits for that candidate.

At the federal level, the FEC's regulations stipulate that if an intermediary forwarding an earmarked contribution has exercised "any direction or control over the choice of the recipient candidate," the contribution is considered made by—and counts toward the contribution limits for—both the original donor *and* the intermediary.²⁴ Election administrators in some states and localities also have prescribed regulations describing when an earmarked contribution is attributable to both its original source and an intermediary.²⁵ In the final rule, we suggest the Secretary add a similar requirement for attributing an earmarked contribution to an intermediary, in addition to the original contributor, in situations where the intermediary has participated in the decision to steer resources to a specific candidate.

²² See, e.g., 2 Cal. Code Regs. § 18432.5; Mont. Admin. R. 44.11.404; Wash. Admin. Code §§ 390-16-240, 390-16-033. For example, Washington State's Public Disclosure Commission requires an intermediary who transfers earmarked contributions to submit a special report to both the beneficiary of the earmarked funds and the Commission. Wash. Admin. Code §§ 390-16-240, 390-16-033; see also Wash. Pub. Disclosure Comm'n, *Earmarked Contributions*, <https://www.pdc.wa.gov/learn/publications/candidate-instructions/contributions/earmarked-contributions> (last visited Aug. 12, 2019).

²³ See N.M. Stat. Ann. § 1-19-34.7(D) ("All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.").

²⁴ 11 C.F.R. § 110.6(d)(2) ("If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.").

²⁵ See Wash. Admin. Code § 390-16-240(3); N.Y.C. Campaign Fin. Bd. R. 1-04(j).

IV. § 1.10.13.31 “Disclaimer Notices on Advertisements”

Including Disclaimer Requirements in the Final Rule

The proposed rule would remove the existing section of the rule, § 1.10.13.31, governing disclaimer notices on political advertisements. It is unclear, however, why the proposed rule would eliminate the section, considering S.B. 3 included disclaimer requirements that largely follow § 1.10.13.31.²⁶ CLC recommends the Secretary include requirements for political advertising disclaimers in the final rule so that New Mexico’s voters are properly informed about the sponsors of advertisements concerning state candidates and ballot questions.

Conclusion

CLC applauds Secretary Toulouse Oliver’s continued efforts to improve political transparency and accountability in New Mexico, and we appreciate the Secretary’s consideration of our comments on this important rulemaking. CLC staff attorney Austin Graham will be attending the public hearing on August 16 to provide testimony and to answer any questions about the recommendations in these comments.

Respectfully submitted,

/s/
Catherine Hinckley Kelley
Director, Policy & State Programs

/s/
Austin Graham
Legal Counsel, State & Local Reform

²⁶ N.M. Stat. Ann. § 1-19-26.4.

From: Katy Duhigg
To: Lange, Dylan, SOS
Subject: Public Comment as private citizen re Campaign Finance Rule
Date: Wednesday, August 14, 2019 12:56:59 PM

Dear Mr. Lange,

I offer the following comments as a private citizen, and not on behalf of any other person, organization, or municipality.

The proposed rule eliminates the section regarding disclaimers. I suggest that the Secretary consider the language below regarding disclaimers, modeled on similar provisions in force in Washington State. As part of the changes suggested, the following definition would need to be added:

“Sponsor” for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

A. All written political advertising, whether relating to candidates or ballot questions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot questions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

B. In addition to the information required by subsection A of this section, except as specifically addressed in subsections D and E of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or entity other than a bona fide political party must include as part of the communication:

(1) The statement: “No candidate authorized this ad. It is paid for by (name, address, city, state)”;

(2) If the sponsor is a political committee, the statement: “Top Five Contributors,” followed by a listing of the names of the five persons or entities making the largest contributions to the sponsor as determined by 1.10.13.31 A(2)(a); and if necessary, the statement “Top Three Donors to PAC Contributors,” followed by a listing of the names of the three individuals or entities, other than political committees, as determined by 1.10.13.31A(2)(b), making the largest aggregated contributions;

(a) For any requirement to include the top five contributor the sponsor must

identify the five persons or entities making the largest contributions to the sponsor in excess of the threshold aggregate value to be considered an independent expenditure in an election reportable during the twelve-month period preceding the date on which the advertisement is initially to be published or otherwise presented to the public'

(b) If one or more of the top five contributors identified under subsection (a) of this section is a political committee, the top three contributors to each of those political committees during the same period must then be identified, and so on, until the individuals or entities other than political committees with the largest aggregate contributions to each political committee identified under subsection (a) of this section have also been identified. The sponsor must identify the three individuals or entities, not including political committees, who made the largest aggregate contributions to any political committee identified under subsection (a) of this section in excess of the threshold aggregate value to be considered an independent expenditure in an election reportable during the same period, and the names of those individuals or entities must be displayed in the advertisement alongside the statement "Top Three Donors to PAC Contributors."

(3) If the sponsor is a political committee established, maintained, or controlled directly, or indirectly through the formation of one or more political committees, by an individual, corporation, union, association, or other entity, the full name of that individual or entity.

(C) The information required by subsections (A) and (B) of this section shall:

(1) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(2) Not be subject to the half-tone or screening process; and

(3) Be set apart from any other printed matter. No text may be before, after, or immediately adjacent to the information required by subsections (A) and (B) of this section.

(D) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height on a solid black background on the entire bottom one-third of the television or visual display screen, or bottom one-fourth of the screen if the sponsor does not have or is otherwise not required to list its top five contributors, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by

(name, city, state).” If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: “Top Five Contributors” followed by a listing of the names of the five persons making the largest aggregate contributions as determined by 1.10.13.31 A(2)(a); and if necessary, the statement “Top Three Donors to PAC Contributors,” followed by a listing of the names of the three individuals or entities other than political committees making the largest aggregate contributions to political committees as determined by 1.10.13.31 A(2)(b). Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(E) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: “No candidate authorized this ad. Paid for by (name, city, state).” If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: “Top Five Contributors” followed by a listing of the names of the five persons making the largest contributions as determined by 1.10.13.31 A(2)(a); and if necessary, the statement “Top Three Donors to PAC Contributors,” followed by a listing of the names of the three individuals or entities, other than political committees, making the largest aggregate contributions to political committees as determined by 1.10.13.31 A(2)(b). Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(F) Political advertising costing one thousand dollars or more supporting or opposing ballot questions sponsored by a political committee must include the information on the top five contributors and top three contributors, other than political committees, as required by as determined by 1.10.13.31 A(2)(a)-(b). A series of political advertising sponsored by the same political committee, each of which is under one thousand dollars, must include the top five contributors and top three contributors, other than political committees, as required by 1.10.13.31 A(2)(a)-(b) once their cumulative value reaches one thousand dollars or more.

(G) Political yard signs are exempt from the requirements of this section that the sponsor's name and address, and the top five contributors and top three PAC contributors as required by 1.10.13.31 A(2)(a)-(b), be listed on the advertising.

(1) For the purposes of this section, “yard sign” means any outdoor sign with dimensions no greater than eight feet by four feet.

Sincerely,
Katy Duhigg

COMMON CAUSE NEW MEXICO
AUGUST 15, 2019

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(l)(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”.



New Mexico

Holding Power Accountable

PO Box 278
Albuquerque, NM 87103
505.323.6399

www.commoncause.org/nm

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

We should know who is behind the curtain.

An Internet website should be included in the disclaimer statement. That website should provide a working link to who (or what) is paying for the independent expenditure.

1-19-26.4 A "the advertisement contains the name of the candidate, committee or other person who authorized and paid for the advertisement. The disclaimer statements... shall be set forth legibly on any advertisement that is disseminated or displayed by visual media."



IF SOMEONE IS GOING TO SAY THIS...

THEY SHOULD ALSO HAVE TO SAY THIS:

Your candidate is an evil flying monkey!

AUTHORIZED AND PAID FOR BY WIZARDS OF OZ POLITICAL ACTION COMMITTEE, WICKED WITCH, TREASURER. www.WeAreTheWizards.org



We need better disclaimers in political advertising.

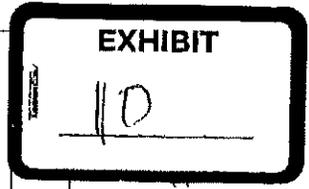
Concept by Rep. Bill Plante - Design by Joe Weber

NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
 Santa Fe, NM - State Capitol Room 322

ATTENDANCE SHEET/PUBLIC COMMENT

	NAME (PRINT your first and last name)	ORGANIZATION	EMAIL ADDRESS	Would you like to speak? <u>YES</u> or NO
1	William Pratt H1037		pratt5@lincoln.edu	
2	ANDY BURNS	NONE		
3	Sydney Tellez	Common Cause NM	stellerz@commoncause.org	NO
4	Heather Ferguson	Common Cause NM		
5	Austin Graham	Camp Legal Center		
6	JAMES HARRINGTON	Common Cause NM		
7	CHRIS MECHELS	Retired LANL	amechels@q.com	yes
8	Rikki-lee G. Chavez	CCC	rge@nmccapitol.com	no
9	Sheila Burns	wolf-pack	sheburnz@gmail.com	no
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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13.

<i>Section 1</i>	<i>Issuing Agency</i>	<i>Section 2</i>	<i>Scope</i>
<i>Section 3</i>	<i>Statutory Authority</i>	<i>Section 4</i>	<i>Duration</i>
<i>Section 5</i>	<i>Effective Date</i>	<i>Section 6</i>	<i>Objective</i>

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NM Secretary of State – Maggie Toulouse Oliver

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Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13 – Section 7: Definitions

	NAME (Please PRINT your first and last name)	ORGANIZATION
1	Austin Gochen	CLC
2	Joshua Ferguson	CENH
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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 8: Candidate Campaign Committee Registrations

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 10: Political Committee Registrations

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 11: Reporting Of Independent Expenditures

	NAME (Please PRINT your first and last name)	ORGANIZATION
1	Austin Graham	CLC
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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 12: General Reporting Rules

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322
PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 16: Loans

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019

Santa Fe, NM - State Capitol Room 322

PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 18: In-Kind Contributions

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322
PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 25: Candidate Expenditures

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322
PUBLIC COMMENT SIGN IN SHEET

*Campaign Finance 1.10.13. – Section 27: Primary and General Election
Cycles for Purposes of Contribution Limits*

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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322
PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 31: Disclaimer Notices on Advertisements

NAME (Please PRINT your first and last name)	ORGANIZATION
1	Rep. Willicia Pratt
2	public
3	Austyn Grohman
4	CLC
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NM Secretary of State – Maggie Toulouse Oliver

Rule Hearing | August 16th, 2019
Santa Fe, NM - State Capitol Room 322
PUBLIC COMMENT SIGN IN SHEET

Campaign Finance 1.10.13. – Section 32: Legislative Caucus Committee

NAME (Please PRINT your first and last name)	ORGANIZATION
1	Aurora Graham
2	CLC
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