

  
Joey D. Moya

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*  
WILLIAM E. SHARER, MARK MOORES,  
JAMES R.J. STRICKLER, and DAVID M.  
GALLEGOS,

Petitioners,

No.           **S-1-SC-37435**          

v.

**ORAL ARGUMENT  
REQUESTED**

MAGGIE TOULOUSE OLIVER, in her  
official capacity as Secretary of State,

Respondent.

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**VERIFIED PETITION FOR WRIT OF MANDAMUS  
AND REQUEST FOR STAY**

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## **REQUEST FOR ORAL ARGUMENT**

Pursuant to Rule 12-319(B) NMRA, the Petitioners respectfully request oral argument before the Supreme Court of New Mexico. This Verified Petition for Writ of Mandamus implicates consequential issues at the heart of the New Mexico State Constitution, and oral argument may assist the Court in resolving them.

## **REQUEST FOR STAY**

Pursuant to Rule 12-504(D) NMRA, the Petitioners respectfully request that this Court issue a stay to prohibit the Respondent's enforcement of the regulation at issue in this matter, commonly referred to as the Campaign Finance Rule, 1.10.13 NMAC (10/10/2017), while this matter is pending before the Court.

The Petitioners assert that this regulation is facially unconstitutional. The Respondent's continued enforcement of the regulation will cause immediate, irreparable injury before the interested parties may be heard. Moreover, if the Court grants a stay, the Respondent will not suffer damage, as a stay would merely defer regulatory enforcement at the very beginning of the new election cycle to a later date, should the Court find in favor of the Respondent. This Verified Petition provides adequate notice to the Respondent because the Respondent enacted the regulation in question and has been enforcing it for more than one year.

## I. INTRODUCTION

An extraordinary breach of New Mexico’s constitutional order lies at the heart of this case—a veto of a veto that effectively enacted law without a governor’s signature and without a veto override by the New Mexico State Legislature.

This end-run around New Mexico’s Constitution began in early 2017, when the Legislature passed Senate Bill 96 (“SB96” or the “Bill”). Governor Susana Martinez, however, exercised her constitutional prerogative and vetoed SB96. On the very same day that the Governor vetoed the Bill, Secretary of State Maggie Toulouse Oliver announced that she would make the policies and provisions of SB96 law through rulemaking. Just five months later, the Secretary adopted her Campaign Finance Rule (the “Secretary’s Rule” or the “Rule”)—a regulation substantively identical to SB96, altering, modifying, and expanding the reach of New Mexico campaign finance laws. An executive department administrator thereby accomplished the extraordinary feat of using an administrative decree to veto a veto, resurrecting the policies and strictures of a dead bill and creating a Rule that is very much alive.

The New Mexico Constitution does not confer such authority upon the Secretary of State, nor does it permit her to override a veto. The Secretary’s Rule arrogated the Legislature’s exclusive Article IV authority to establish public policy

and to make law, and it nullified the exclusive Article IV, Section 22 prerogatives of the Governor's veto and the Legislature's veto override.

The Petitioners ask this Court to issue a writ of mandamus to vacate the Secretary's Rule as unconstitutional. To be clear, this case does not challenge the wisdom or folly of the policy choices underlying the Secretary's Rule, nor does it challenge the procedure used to enact the Rule. The legal foundation upon which this Petition rests is constitutional bedrock—Article III of the New Mexico Constitution. Article III's separation of powers clause expressly prohibits any one of the departments of New Mexico government from exercising the authority constitutionally reserved to another department.

Given the extraordinary constitutional absurdity of an administrator's expropriation of legislative and gubernatorial authority and the threat it poses to the essential nature of New Mexico government, nothing short of extraordinary relief from this Court can restore constitutional order to the citizens of New Mexico.

## **II. STATEMENT OF PARTIES & STANDING**

### **A. Petitioners**

1. Petitioner William E. Sharer is District 1's duly elected senator.
2. Petitioner Mark Moores is District 21's duly elected senator.

3. Petitioner James R.J. Strickler is District 2's duly elected representative.

4. Petitioner David M. Gallegos is District 61's duly elected representative.

5. Regarding standing, this Court first looks to whether the issues presented implicate matters of great public importance. *See New Energy Econ., Inc. v. Martinez*, 2011-NMSC-006, Para. 13 (“We do not need to decide whether Petitioners have an actual beneficial interest because we conclude that they have standing under the great public importance doctrine.”).<sup>1</sup> Indeed, when issues of great public interest and importance arise, “[m]ore limited notions of standing are not acceptable.” *State ex rel. Clark v. State Canvassing Bd.*, 1995-NMSC-001, Para. 15. This Court “will grant standing under the great public importance doctrine, and [has] done so when the case raises concerns about the separation of powers.” *New Energy Econ., Inc.*, 2011-NMSC-006, Para. 11. The Petitioners assert that the Respondent has exceeded her constitutional authority and violated Article III, Section 1's separation of powers by enacting a regulation that arrogated

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<sup>1</sup> *See also State ex rel. Clark v. Johnson*, 1995-NMSC-048, Para. 15 (considering the issue of legislators' individual standing moot because the legislators secured great public importance doctrine standing by virtue of their allegations that Governor Johnson violated New Mexico's separation of powers).



exclusive Article IV legislative and gubernatorial prerogatives. Thus, the Petitioners have standing pursuant to the great public importance doctrine.<sup>2</sup>

## **B. Respondent**

6. Respondent Maggie Toulouse Oliver is the duly elected Secretary of State of New Mexico.

7. The Secretary of State is an officer of the executive department. N.M. Const. art. V, § 1. The Secretary also serves as New Mexico's chief election officer. NMSA 1978, § 1-1-1(A) (1969, amended 1975). The facts alleged in this Petition arise from the acts performed in her official capacity.

## **III. STATEMENT OF JURISDICTION & MANDAMUS**

8. The Supreme Court of New Mexico has original mandamus jurisdiction against all state officers. N.M. Const. art. VI, § 3.

9. The Supreme Court will exercise its original mandamus jurisdiction where a petitioner presents:

- a. *a purely legal issue*: Where a case presents no factual questions that could be or should be answered in a district court, a mandamus action presents purely legal issues. *See State ex rel. Clark, 1995-*

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<sup>2</sup> Petitioners also have individual standing because each is beneficially interested. The Respondent's actions injured the Petitioners by thwarting the performance of the Petitioners' constitutional duties. *See New Energy Econ., Inc., 2011-NMSC-006, Para. 9.*

NMSC-048, Para. 17. Since the crux of this matter is whether an administrator arrogated legislative and gubernatorial authority, no additional factual inquiries would be helpful to this Court. Thus, this case presents purely legal issues.

b. *no adequate remedy at law*: Mandamus is the appropriate vehicle to prohibit the unconstitutional acts of state officials. *State ex rel. Sandel v. New Mexico Pub. Utility Comm'n*, 1999-NMSC-019, Para. 11. Moreover, “[d]eclaratory judgment, although theoretically an option, does not constitute an adequate remedy at law that would preclude mandamus relief.” *State ex rel. King v. Lyons*, 2011-NMSC-004, Para. 26. Thus, since the Petitioners seek to prohibit the Secretary’s unconstitutional arrogation of legislative and executive power, there is no adequate remedy at law.

c. *concerning a government official’s nondiscretionary ministerial duty*: “A ministerial act ... is an act or thing which [a public officer] is required to perform by direction of law[.]” *Id.* Para. 27 (internal quotations and citation omitted). An official may have discretion *whether* to act in the first instance, but once he or she has acted, the official may have a nondiscretionary *duty* to comply with controlling statutory mandates. *See id.* Para. 30. *See also State ex rel. King*, 2011-NMSC-004, Para. 30. In this case, while the Secretary may exercise discretion regarding *whether* to

promulgate certain regulations, once the Secretary enacted the Rule, she had an ongoing nondiscretionary statutory *obligation* to enforce it. *See* NMSA 1978, § 1-2-2(D) (1969, amended 2011) *and* 1.10.13.6 NMAC. Moreover, the Secretary’s performance of her nondiscretionary duty to enforce the Rule:

i. *implicates fundamental constitutional questions of great public importance*: This Court has routinely held that allegations that state officials have violated New Mexico Constitution Article III, Section 1 separation of powers, as alleged in this case, implicate fundamental constitutional questions of great public importance:

Recent cases in which this Court has granted standing under the great public importance doctrine have generally involved clear threats to the essential nature of state government guaranteed to New Mexico citizens under their Constitution—a government in which the ‘three distinct departments, ... legislative, executive, and judicial,’ remain within the bounds of their constitutional powers. N.M. Const. art. III, § 1.

*See State ex rel. Coll v. Johnson*, 1999-NMSC-036, Para. 21. Where, as here, a case implicates Article III, Section 1 separation of powers, this Court exercises jurisdiction “as a matter of controlling necessity” because “the conduct at issue affects, in a fundamental way, the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.” *See id.* Para. 21 (internal quotations and citations omitted).

- ii. *presents virtually undisputed facts*: The constitutionally offensive Rule’s adoption is an indisputable matter of public record.
- iii. *requires expeditious resolution that cannot be obtained on appeal*: Swift and decisive resolution is necessary in cases such as this, where the government itself threatens the essential nature, form, and function of state government guaranteed to New Mexico citizens. *See id.* Para. 21. Swift resolution will help the branches better understand their constitutional obligations and limitations, and it will help citizens understand their rights and duties. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, Para. 17. Moreover, remedy by appeal would be grossly inadequate because, in part, there is no need for the taking of evidence in a trial. *See State ex rel. State Bd. of Educ. v. Montoya*, 1963-NMSC-71, Para. 3.

10. Additionally, this Court has “recognized that mandamus is an appropriate means to prohibit unlawful or unconstitutional official action.” *In re Adjs. to Franchise Fee*, 2000-NMSC-035, Para. 6 (internal quotations omitted). Moreover, this Court views regulations alleged to be enacted beyond an agency’s legislative grant of authority as implicating the doctrine of separation of powers. *See State ex rel. Sandel*, 1999-NMSC-019, Para. 19.

#### IV. STATEMENT OF FACTS

11. New Mexico's 53<sup>rd</sup> Legislature passed SB96 (Exhibit A), "Campaign Finance Fixes." N.M. Leg., Official S. & H. Roll Call Votes (Mar. 13, 2017) (Exhibit B). SB96 sought to amend the Campaign Reporting Act ("CRA") by, among other things, requiring reporting of independent expenditures and adding, deleting, and amending statutory definitions. *See* S.B. 96 Fiscal Impact Rep., Legal Fin. Comm., at 2-3 (N.M. Jan. 26, 2017) (updated Mar. 14, 2017) (Exhibit C).

12. Secretary of State Maggie Toulouse Oliver was a vocal proponent of SB96's policy goals, stating that SB96 was "a huge advancement for our work to increase transparency in New Mexico's campaign finance reporting." Press Release, Sec. of State, Statement Regarding Passage of Campaign Finance Reform Bills (Mar. 14, 2017) (Exhibit D). She urged the Governor "to sign these important reform bills[,]" adding that she and her team were "ready and eager to begin drafting rules" to implement SB96's provisions. *See id.*

13. Governor Susana Martinez, however, vetoed SB96 on April 7, 2017. S. Exec. Mess. No. 56 (Apr. 7, 2017) (Exhibit E). The Governor was concerned that "[t]he requirements in this bill would likely discourage charities and other groups that are primarily non-political from advocating for their cause and could also discourage individuals from giving to charities." *Id.*

14. On the very same day, the Secretary stated that SB96 “would have *added much needed language* regarding disclosure on printed campaign literature, and it *would have provided clarifying definitions* to aid candidates on the campaign finance limitations and reporting requirements.” *See* Press Release, Sec. of State, Secretary Disappointed by Vetoes (Apr. 7, 2017) (emphasis added) (Exhibit F).

15. The Secretary described SB96 as “commonsense” and she declared her office’s policy priority: “Campaign finance reform and transparency continue to be *a top priority for me* and my office.” *Id.* (emphasis added). The Secretary drew one conclusion from the Governor’s SB96 veto: “*I’m left with no other choice* then to go forward utilizing my rulemaking authority to address many of these *much needed reforms* before the next statewide election.” *Id.*

16. The Secretary ultimately adopted the Secretary’s Rule (Exhibit G) on September 8, 2017, as 1.10.13 NMAC (10/10/2017). Sec. of State, Notice of Adoption Campaign Finance R. (Sept. 8, 2017). She acknowledged that the “rule contain[ed] some features of Senate Bill 96, which passed both chambers of the New Mexico state legislature ... but was vetoed by Governor Susana Martinez.” Press Release, Sec. of State, Final Campaign Finance Rule (Sept. 8, 2017) (Exhibit H).

## V. ARGUMENT

17. The Secretary's Rule violates Article III, Section 1 of the New Mexico Constitution by disrupting the proper balance between legislative and executive branches in two principal ways, either one of which would suffice to entitle the Petitioners to relief. First, the Rule arrogated the Legislature's exclusive Article IV prerogatives to establish public policy and to make law. Second, the Rule nullified the Governor's exclusive Article IV, Section 22 prerogative of veto and preempted the Legislature's exclusive Article IV, Section 22 prerogative of veto override.

**A. The Secretary of State Violated New Mexico Constitution Article III, Section 1 by Enacting a Regulation that Arrogated the Legislature's Exclusive Article IV Prerogatives to Establish Public Policy and to Make Law.**

18. The Secretary of State may not enact her policy preferences into law. This Court has been clear: administrative agency policymaking violates the separation of powers when an executive department agency assumes the authority to modify existing law or to create new law. *See State ex rel. Sandel*, 1999-NMSC-019, Para. 12. In this case, the Secretary arrogated legislative prerogatives unto her executive department office by unconstitutionally amending the fundamental standards and vital policy choices of the CRA.

19. Notably, this Petition is *not* a matter of first impression in this Court. The Petitioners raise the very same issues probed by the Supreme Court of New

Mexico in the seminal case of *State ex rel. Taylor v. Johnson*, 1998-NMSC-015.

The facts in *Taylor* and the facts giving rise to this Petition are materially indistinguishable.

20. Almost exactly twenty years prior to Governor Martinez’s SB96 veto, Governor Johnson vetoed a welfare reform bill. *State ex rel. Taylor*, 1998-NMSC-015, Para. 11. Immediately following Governor Johnson’s veto, he publicly announced his welfare reform policy priorities and directed the Human Services Department (HSD) to implement his policies through administrative regulation. *Id.* Para. 12. Similarly, immediately following the SB96 veto, the Secretary of State publicly announced her policy priorities and announced that she would implement campaign finance reform through regulation.

21. The New Mexico Constitution’s separation of powers clause was the principal constitutional issue in *Taylor*, as it is with this Petition:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others[.]

N.M. Const. art. III, § 1. The *Taylor* Court described New Mexico’s separation of powers as “one of the cornerstones of democratic government: that the accumulation of too much power within one branch poses a threat to liberty.”



*State ex rel. Taylor*, 1998-NMSC-015, Para. 20 (citing Federalist No. 47 and *Gregory v. Ashcroft*, 501 U.S. 452, 458-59 (1991)).

22. The *Taylor* Court explained that “an infringement occurs when the action by one branch prevents another branch from accomplishing its constitutionally assigned functions.” *Id.* Para. 23. The test is whether an executive officer’s action “disrupts the proper balance between the executive and legislative branches.” *Id.* Para. 24 (internal quotations and citations omitted).

23. This Court has consistently held that “[i]t is the particular domain of the legislature ... to make public policy.” *See id.* Para. 21 (quoting *Torres v. State*, 1995-NMSC-025, Para. 10). Indeed, it is axiomatic that “only the legislative branch is constitutionally established to create substantive law.” *See id.* Para. 21 (citing *Sofeico v. Heffernan*, 1936-NMSC-069, Para. 42).

24. Thus, the constitutional role of the governor and other executive officers is to execute the law, not to make it. *See id.* Para. 22. Execution may allow for some discretion, but the *Taylor* Court explained that there are constitutional limits to administrative discretion:

[D]iscretion is not boundless. Generally, the Legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform. *The administrative agency’s discretion may not justify altering, modifying or extending the reach of a law created by the Legislature.*

*Id.* Para. 22 (emphasis added) (internal citations omitted). An executive officer exceeds permissible administrative discretion when he or she encroaches upon the essence of legislative power—lawmaking. *See id.* Para. 24.

25. To determine whether the welfare reform regulations in *Taylor* encroached upon the essence of legislative power, the Court engaged in a side-by-side comparison of the then-existing statutory standards, against the new HSD regulations. The Court concluded that the new regulations unconstitutionally foreclosed the Legislature’s pursuit of a wide range of policy options. *See id.* Para. 26.

26. The *Taylor* Court noted that the regulations altered the statutory scheme by (among other things) eliminating the “dependent” requirement, imposing a mandatory work requirement, and instituting a previously nonexistent program limitation. *See id.* Paras. 27-30. The *Taylor* Court said that such changes “by their very nature, set fundamental standards and [made] vital policy choices, a role reserved for the Legislature.” *See id.* Para. 31 (emphasis added). Given the opportunity, the Legislature may have chosen to do some or none of these things, but one thing is for certain—the HSD administrator’s actions precluded the Legislature from debating policy and enacting laws to effectuate legislative policy. *See id.* Paras. 30-31. Thus, since executive officers “substantially altered, modified, and extended existing law governing the structure and provision of

public assistance in New Mexico[,]” the Court issued a writ of mandamus to vacate the unconstitutional regulation. *See id.* Para. 25.

27. Like the program period limitation and definitional changes identified as constitutionally problematic in *Taylor*, the Secretary’s Rule, by its very nature, set fundamental standards and made vital policy choices by amending the CRA. Take Section 7, “Definitions,” for instance. This section includes new terms not appearing in the CRA, such as “independent expenditure,” “coordinated expenditure,” “advertisement,” and “ballot measure.” *See* S.B. 96 Fiscal Impact Rep. at 2-3 *and* 1.10.13.7 NMAC. Also, Rule Section 10 *redefines* CRA Section 1-19-26(L)’s definition of “political committee.” *See* 1.10.13.10 NMAC.

28. Perhaps the most consequential amendment to the CRA’s fundamental standards and vital policies may be found in “Reporting of Independent Expenditures.” Section 11 is brand new and uses the new definitions of “independent expenditure” and “ballot measure” to require a person to file a report when independent expenditures exceed \$1,000 for a non-statewide race or ballot measure, among other triggering criteria. 1.10.13.11(B) NMAC. There is no such requirement in the CRA. *See* S.B. 96 Fiscal Impact Rep. at 2-3. The Secretary’s Rule thus creates an entirely new class of regulated citizens.

29. Only the New Mexico Legislature can alter or introduce CRA definitions and extend the class of regulated citizens reporting under the CRA. In a

recent unanimous decision from the bench, this Court held that “*the legislature has plenary authority over elections* including the power to regulate the manner of voting, and to enact laws that ensure the purity of elections.” *Unite New Mexico v. Oliver*, No. S-1-SC-37227, Partial Hr’g Tr. at 6:23-7:1 (Sept. 13, 2018) (emphasis added).<sup>3</sup> In *Unite New Mexico*, this Court issued a writ of mandamus to void the Secretary of State’s ballot regulation that would have allowed for straight party voting. *Id.* at 7:23-8:1. The Secretary claimed that she had broad rulemaking authority as the chief election officer to determine the form of ballots. *See Unite New Mexico v. Oliver*, No. S-1-SC-37227, Verified Response at 6-7 (Sept. 7, 2018). This Court disagreed, explaining that “the legislature has indicated its intent to thoroughly regulate every aspect of voting through the election code[,]” thus the “power is theirs alone.” *Unite New Mexico*, Partial Hr’g Tr. at 7:2-5.

30. By enacting the Rule, the Secretary set fundamental standards and made vital policy choices that foreclosed the Legislature’s pursuit of alternative policy options in a new bill. The Rule has disrupted the proper balance between executive and legislative branches by preventing the Legislature from accomplishing its constitutionally assigned policy- and lawmaking functions.

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<sup>3</sup> This Court’s ruling from the bench may be found in its entirety at [https://supremecourt.nmcourts.gov/uploads/FileLinks/e03e8566c7c145218f95b0b77e677f61/unite\\_nm\\_v.\\_oliver\\_mp3.mp3](https://supremecourt.nmcourts.gov/uploads/FileLinks/e03e8566c7c145218f95b0b77e677f61/unite_nm_v._oliver_mp3.mp3). A partial transcript of the ruling from the bench may be found in Exhibit I to this Petition.

Thus, this Court should apply the constitutional principles articulated in *Taylor* and vacate the Secretary's Rule because it encroaches upon the essence of legislation, thereby violating New Mexico's separation of powers.

**B. The Secretary of State Violated New Mexico Constitution Article III, Section 1 by Enacting a Regulation that (1) Nullified the Governor's Exclusive Article IV, Section 22 Veto Prerogative, and (2) Preempted the Legislature's Exclusive Article IV, Section 22 Veto Override Prerogative.**

31. The Secretary of State may not quash the Governor's SB96 veto, nor may she override it. The New Mexico Constitution's mandates and prerogatives are unambiguous: "Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval." N.M. Const. art. IV, § 22. If a governor chooses to veto a bill, the governor "shall return it to the house in which it originated[.]" N.M. Const. art. IV, § 22. "[S]uch [vetoed] bill *shall not become a law unless* thereafter approved by two-thirds of the members present and voting in each house [.]" N.M. Const. art. IV, § 22 (emphasis added). The Secretary's Rule unconstitutionally superseded a gubernatorial veto and prevented the Legislature from taking up the issue of either amending the Bill for re-presentation or voting to override the veto.<sup>4</sup>

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<sup>4</sup> The issue of presentment is an important one. If the Secretary may invalidate the veto and circumvent legislative action on the veto, bicameral bill passage and bill presentment to the chief executive ceases to have any practical importance. This would neutralize much of the liberty-preserving checks and balances scheme and pose a menacing threat to the viability of the republican form

32. Once again, this Court’s *Taylor* decision is as illuminating as it is controlling. “A governor is *constitutionally entitled* to veto the legislation if he does not agree with it.” *State ex rel. Taylor*, 1998-NMSC-015, Para. 44 (emphasis added). “The *Legislature then has the option* of attempting to override the veto, by securing a two-thirds majority.” *Id.* Para. 44 (emphasis added).

33. The *Taylor* Court explained that Governor Johnson implemented the public assistance policies he desired through an HSD regulation, in a form that he deemed appropriate. *Id.* Para. 45. HSD’s encroachment upon legislative authority made subsequent legislative action futile. *Id.* Para. 45. If the Legislature attempted to pass a bill to repeal or amend the regulation, the bill would still require Governor Johnson’s signature, and the Governor would have absolutely no reason to sign it since he had already enacted the policies he preferred, in the form in which he wanted to see them implemented. *See id.* Para. 46.

34. The *Taylor* Court held that Governor Johnson’s administrative agency end-run around the Legislature undermined the Constitution’s system of checks and balances. *Id.* Para. 44. Indeed, the Legislature’s exclusive veto override prerogative “is the mechanism that forces the two branches to compromise and work together to create law.” *Id.* Para. 44. By usurping legislative functions, the

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of government established by New Mexico’s Constitution, and guaranteed to all Americans in Article IV, Section 4 of the U.S. Constitution.

executive put “the Legislature in a position of responding to, rather than initiating, core public policy choices.” *Id.* Para. 48. Thus, the agency’s regulation “turn[ed] our constitutional system of checks and balances on its head.” *Id.* The *Taylor* Court concluded that Governor Johnson violated the separation of powers because the substantive policy changes he enacted required legislative participation. *See id.* Para. 49.

35. Even a cursory glance at the provisions of the Secretary’s Rule demonstrates that it effectively nullified a gubernatorial veto, preempted legislative action to address the veto, and turned the constitutional system of checks and balances on its head.

36. The Legislative Finance Committee’s (LFC) Fiscal Impact Report is a public document prepared in coordination with the Secretary of State’s and the Attorney General’s Offices. It provides an official synopsis of SB96. While numerous examples could be used to illustrate the Rule’s neutralizing effect on Article IV prerogatives, two provisions stand out.

37. First, consider that the Secretary’s Rule adds many of the same new definitions to the campaign reporting regime that SB96 would have added to the CRA. According to the LFC Report, SB96 “revises the Campaign Reporting Act to define independent expenditures[.]” *See S.B. 96 Fiscal Impact Rep.* at 2. The Secretary’s Rule also adds the new “independent expenditure” definition, and it is

identical to SB96 in every material way. SB96 is in black, below. The blue [if viewed in black-and-white, note the underlined/strikeout portions] indicates edits the Secretary made to SB96 when transforming the Bill into a Rule:

N. 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 the Campaign Reporting Act paragraph H of this section; 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;
  - (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot measure; or
  - (c) refers to a clearly identified candidate or ballot measure and is published and disseminated to the relevant electorate in New Mexico within thirty-30 days before the primary election or sixty-60 days before the general election at-in which the candidate or ballot measure is on the ballot~~;~~.

*Compare* S.B. 96, 53rd Leg., 1st Sess., § 3(N) (N.M. 2017) *with* 1.10.13.7(Q)

NMAC.

38. Second, consider the entirely new scope of the Rule’s reporting requirements—they are the same as those proposed in SB96. According to the LFC Report, SB96 “revises the Campaign Reporting Act ... and includes specific reporting requirements of individuals or entities that make independent expenditures as defined by the bill.” *See* S.B. 96 Fiscal Impact Rep. at 2. SB96 itself identifies these reporting requirements as “[a] new section of the Campaign



Reporting Act[.]” S.B. 96 at § 3(N). Once again, the Secretary’s Rule copied much of the text directly from SB96, but the key to Rule Section 11 is not merely its textual similarity to SB96. The critical point is that the Rule creates *new* statutory rights and duties for a *new* class of regulated citizens without any legislative action. This can be seen in SB96’s black text and in the blue underline/strikeout changes reflected in a portion of the Rule below:

A Any person who makes an independent expenditure not otherwise required to be reported under ~~the Campaign Reporting Act~~ 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 ~~preceding twelve month-s~~ election cycle, exceeds ~~one thousand dollars (\$ 1,000)~~ these thresholds, shall file a report ~~with of~~ the secretary of state within independent expenditure....

*Compare id.* at § 1(A) *with* 1.10.13.11(B) NMAC. Later in the same section, SB96 continues (as does the Rule in blue underline/strikeout):

A person who makes independent expenditures totaling three thousand dollars (\$3,000) or less ~~that are required to be reported pursuant to this section~~ in a nonstatewide race or ballot measure, or seven thousand five hundred dollars (\$ 7,500) or less in a statewide race or ballot measure 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 ~~election cycle~~ 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.

*Compare* S.B. 96 at § 1(C) *with* 1.10.13.11(C) NMAC.

39. The foregoing examples are just two instances of many where the Secretary's Rule unabashedly advances the Secretary's public policy preference for the provisions of an inoperative and defunct bill. Governor Martinez was constitutionally entitled to veto SB96, but the Rule circumvented her veto. The Legislature was constitutionally entitled to vote to override the veto or to negotiate a mutually-agreeable legislative alternative, but the Rule circumvented its participation in policy- and lawmaking. Moreover, even if the Legislature now took up a bill to participate in the campaign reporting policymaking process, it would not be *initiating* election-related policy, it would be *reacting* to the executive branch's usurpation of its quintessential lawmaking power.

40. Thus here, as in *Taylor*, New Mexico's separation of powers and system of checks and balances has been turned on its head by the Secretary's Rule. The *Taylor* Court found a similar executive branch encroachment unconstitutional because it "foreclose[d] legislative action in [an] area[ ] where legislative authority is undisputed." *See State ex rel. Taylor*, 1998-NMSC-015, Para. 25 (internal quotations and citation omitted).

41. This Court should apply the constitutional principles articulated in *Taylor* and vacate the Secretary's Rule in its entirety. The Governor lacks the constitutional authority to repeal the Rule, and the Legislature cannot be relegated to reacting to executive branch-implemented policy. The Rule, as the *Taylor* Court

observed, has turned New Mexico’s constitutional system on its head, and only this Court can vindicate Article III, Section 1 and restore constitutional order to New Mexico.

**C. The Legislature Did Not—Indeed, It Could Not—Delegate Its Plenary Authority to Regulate Elections to the Secretary of State.**

42. Given the conspicuous nexus between SB96 and the Secretary’s Rule in both policy and precept, the Secretary’s assertion that the Legislature authorized her rulemaking pursuant to Election Code Section 1-2-1 and Campaign Reporting Act Section 1-19-26.2 is, at best, disingenuous. *See* 1.10.13.3 NMAC (citing NMSA 1978, § 1-2-1 (1969, amended 2017) *and* NMSA 1978, § 1-19-26.2 (1997)). These statutory provisions only grant the Secretary the authority to promulgate rules related to implementing *legislative* policies in the *existing* Code and Act.<sup>5</sup> *See* NMSA 1978, § 1-2-1(B)(2) (1969, amended 2017) *and see* NMSA 1978, § 1-19-26.2 (1997).

Administrative bodies are creatures of statute and can act only on those matters which are within the scope of authority delegated to them. An agency cannot amend or enlarge its authority through rules and regulations. Nor may an agency, through the device of regulations, modify the statutory provision.

---

<sup>5</sup> Additionally, had the Legislature believed that the CRA in its current state delegated to the Secretary the responsibility to make the Rule, the Legislature would not have introduced, amended, and passed SB96 in the first place.

*Chalamidas v. Env'tl. Improvement Div.*, 1984-NMCA-109, Para.13 (internal citations omitted). Moreover, agencies do not have “power to adopt a rule or regulation that is not in harmony with ... statutory authority.” *New Mexico Pharm. Ass'n v. State*, 1987-NMSC-054, Para. 4. When a regulation brings to bear broader authority than that contemplated by statute, the regulation is a nullity. *See State ex rel. McCulloch v. Ashby*, 1963-NMSC-217, Para. 17. As noted above, the Rule adds new definitions, redefines pre-existing CRA definitions, and expands the reach of the CRA’s reporting requirements.

43. It is worth emphasizing that no statute could—under *any* circumstance—confer to the Secretary the authority to “abridge, enlarge, extend or modify the statute creating [a] right or imposing [a] duty[,]” because even the *Legislature* lacks the authority to make such a delegation of quintessential legislative power. *See id.* Para. 17 (citing *Campbell v. Galeno Chem. Co.*, 281 U.S. 599, 610 (1930)). “If the rule were otherwise, regulations of administrative agencies could nullify laws enacted by the Legislature.” *See Rainbo Baking Co. v. Comm’r of Revenue*, 1972-NMCA-139, Para. 10. Indeed, if the rule were otherwise, administrative agency regulations could nullify vetoes, as happened in this case.

44. Nor can the Secretary claim that the Legislature’s silence on election reporting issues confers to her the authority to enact the Rule. This Court’s

unanimous ruling from the bench in *Unite New Mexico* is instructive in this regard. In *Unite New Mexico*, the Secretary claimed that as the chief election officer, she had the authority to enact straight-party voting, in part, because the “Legislature never prohibited the inclusion of a straight-party voting option on the ballot.” See *Unite New Mexico*, Verified Resp. at 3. The Court corrected the Secretary’s fundamental misunderstanding of her authority—it is not grounded in the *absence* of legislative direction. See *Unite New Mexico*, Partial Hr’g Tr. at 7:21-22. Since 2001, the Court noted, there had been nine *failed* legislative attempts to either prohibit or authorize straight-party voting. See *id.* at 6:2-8. This prompted the Court to ask one dispositive question, elegant in its constitutional simplicity: By not deciding one way or the other on the issue, “[d]id the Legislature intend to delegate its decision-making authority over straight party voting to the Secretary of State?” *Id.* at 6:19-21. The Court’s response was unequivocal: “The answer to this question, is no.” *Id.* at 21-22.

45. Here, as in *Unite New Mexico*, the Secretary cannot credibly advance the notion that the statutory *void* regarding independent expenditure reporting, for instance, delegated to her the authority to require such reporting. “[I]t strains logic,” the Court said, to suggest that where the Legislature has failed to enact an election-related statute directing a particular policy course, the Secretary has the

discretionary authority to take on policy- and lawmaking responsibilities that are otherwise the plenary power of the Legislature. *See id.* at 7:14-22.

## VI. CONCLUSION & STATEMENT OF RELIEF

For the foregoing reasons, the Secretary of State's Rule poses a clear threat to the essential nature of New Mexico government and the Petitioners respectfully request that this Court:

A. issue a writ of mandamus vacating the Campaign Finance Rule, 1.10.13 NMAC (10/10/2017), as unconstitutional pursuant to Article III, Section 1 of the New Mexico Constitution; and

B. grant such other relief as permitted by Rule 12-403 NMRA, including Petitioners' costs, as the Court considers appropriate.

Respectfully submitted,

/s/ Michael P. DeGrandis

Michael P. DeGrandis  
NEW CIVIL LIBERTIES ALLIANCE  
1225 19<sup>th</sup> Street NW, Suite 450  
Washington, DC 20036  
tel.: (202) 869-5208  
mike.degrandis@ncla.legal

/s/ Colin L. Hunter

Colin L. Hunter  
THE BARNETT LAW FIRM  
1905 Wyoming Boulevard, NE  
Albuquerque, NM 87112  
tel.: (505) 275-3200  
colin@theblf.com

## STATEMENT OF COMPLIANCE

Pursuant to Rule 12-504(H) NMRA, the undersigned certifies that this Petition complies with Rule 12-504(G)(3) NMRA in that the body of the Petition is prepared in proportionally-spaced Times New Roman typeface and contains 5,941 words. Microsoft Office 365 Word v.1808 conducted the word count.

*/s/ Michael P. DeGrandis*

\_\_\_\_\_

Michael P. DeGrandis

## **APPENDIX & EXHIBITS**



**VERIFICATION**

I, William E. Sharer, am a Petitioner in this proceeding. I have read this Petition and hereby verify that the contents are true and correct to the best of my knowledge, information, and belief, this 14<sup>th</sup> day of December, 2018.

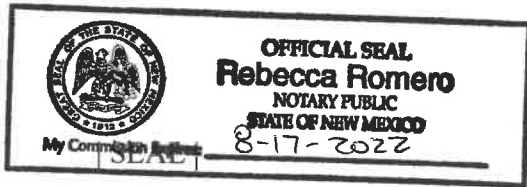
W E Sharer

William E. Sharer

State of New Mexico

County of San Juan

Signed and sworn before me on this 14<sup>th</sup> day of December, 2018 by  
William E. Sharer.



Rebecca Romero

Notary Public

My Commission Expires: 8-17-2022

VERIFICATION

I, Mark Moores, am a Petitioner in this proceeding. I have read this Petition and hereby verify that the contents are true and correct to the best of my knowledge, information, and belief, this 14 day of December, 2018.

*Mark Moores*

Mark Moores

State of New Mexico

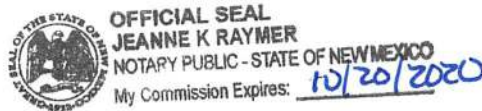
County of Chaves

Signed and sworn before me on this 14 day of December, 2018 by Mark Moores.

*Jeanne K Raymer*  
Notary Public

My Commission Expires: 10/20/2020

| SEAL |



**VERIFICATION**

I, James R.J. Strickler, am a Petitioner in this proceeding. I have read this Petition and hereby verify that the contents are true and correct to the best of my knowledge, information, and belief, this 14 day of December, 2018.

  
James R.J. Strickler

State of New Mexico

County of San Juan

Signed and sworn before me on this 14 day of December, 2018 by James R.J. Strickler.



OFFICIAL SEAL  
STEPHANIE WATSON  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires 08/03/2021

  
Notary Public

My Commission Expires: 08/03/2021

VERIFICATION

I, David M. Gallegos, am a Petitioner in this proceeding. I have read this Petition and hereby verify that the contents are true and correct to the best of my knowledge, information, and belief, this 19 day of December, 2018.

David M. Gallegos  
David M. Gallegos

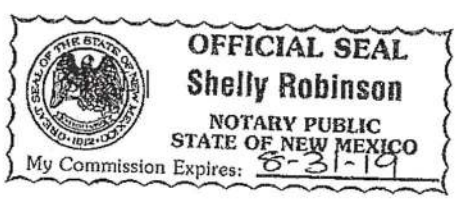
State of New Mexico

County of Dea

Signed and sworn before me on this 19th day of December, 2018 by David M. Gallegos.

Shelly Robinson  
Notary Public

My Commission Expires: 8-31-19





Office of the General Counsel  
 PO Box 92860, Albuquerque, NM 87199-2860  
 5121 Masthead St NE, Albuquerque, NM 87109

RECEIVED BY OFFICE OF

DEC 17 2018

THE GENERAL COUNSEL

Office Use Only  
 ID# 51810 Reg: 186

**REGISTRATION CERTIFICATE OF NON-ADMITTED LAWYER**

(Admission Pro Hac Vice)

I, Michael P. DeGrandis (Non-admitted Lawyer), certify pursuant to Rule 24-106 NMRA the following:

**Attorney Information**

Attorney's Name: Michael P. DeGrandis City, State, Zip: Washington, DC 20036  
 Attorney's Firm: New Civil Liberties Alliance Telephone: (202) 869-5208  
 Street: 1225 19th Street, NW, Suite 450 E-mail: mike.degrandis@ncla.legal

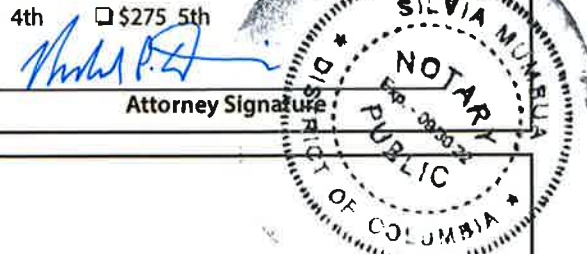
**Action/Suit/Proceeding or Matter**

Bold/Underlined Required

Title of case/Client Name/Identifier: William E. Sharer, James R.J. Strickler, Mark Moores, Rebecca Dow, et al.  
 Local Counsel: Colin L. Hunter, The Barnett Law Firm, PA  
 Case # (if any): To be assigned Court (if any): To be filed

**Attorney Certification (check all that apply)**

1.  I am admitted or licensed as an attorney in good standing in: the Commonwealth of Virginia  
 Enclosed is a Certificate of Good Standing from every State or Country in which I am admitted.
2.  I have not been disciplined, suspended, or disbarred in any jurisdiction.
3.  I have not had a pro hac vice admission revoked in any jurisdiction  
 If you have been disciplined, suspended, disbarred, or had a pro hac vice admission revoked in any jurisdiction, you must submit the details of the same to the Disciplinary Board for investigation and recommendation to the court in which you seek to practice pro hac vice. (see 24-106 (C) NMRA)
4.  I will comply with applicable statutes, laws and procedural rules of the State of New Mexico.
5.  I will comply with the applicable rules as noted in Rule 24-106 (B) (5) NMRA
6.  I will submit to the jurisdiction of the New Mexico courts and the Disciplinary Board with respect to acts and omissions occurring during my admission under this rule.
7.  I am submitting my 1st registration certificate of this calendar year. Including corresponding fee of:  
 \$450 1st     \$275 2nd     \$275 3rd     \$275 4th     \$275 5th
8.  I am making a Rule 24-106 (D) NMRA fee waiver certification. (Explanation attached)



Michael P. DeGrandis  
 Attorney Signature

**Notary**

STATE of D.C )  
 )ss.  
 County of \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me this 11 day of December 2018 by Michael P DeGrandis  
 my commission expires: 09/30/2022 name of applicant

NOTARY PUBLIC

**Credit/Debit Card**

Credit Card#: \_\_\_\_\_  
 Exp. Date: \_\_\_\_\_ CVV: \_\_\_\_\_  
 Accepting: MasterCard, Visa, Discover, American Express

**FOR OFFICE USE ONLY**

DEC 17 2018  
1008 \$450

Return registration certificate to the address above with your check or pay by credit card and secured fax to 866-767-7281.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*  
WILLIAM E. SHARER, *et al.*

Petitioner,

v.

No. \_\_\_\_\_

MAGGIE TOULOUSE OLIVER, in her  
capacity as Secretary of State,

Respondent.


AFFIDAVIT OF NONADMITTED COUNSEL

**District of Columbia**

Michael P. DeGrandis (the "Affiant") of the New Civil Liberties Alliance, 1225 19<sup>th</sup> Street, N.W., Suite 450, Washington, D.C., having been duly sworn, states upon oath:

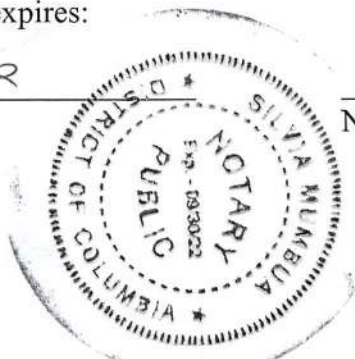
1. The Affiant is admitted to practice law and is in good standing to practice law in the Commonwealth of Virginia.
2. The Affiant has complied with Rule 24-106 NMRA.
3. The Affiant has associated with Colin L. Hunter of The Barnett Law Firm, P.A., 1905 Wyoming Boulevard, NE, Albuquerque, New Mexico, counsel licensed to practice law in good standing in New Mexico.

Michael P. DeGrandis, Affiant, being first duly sworn, states upon oath, that all representations in this affidavit are true as far as Affiant knows or is informed, and that such affidavit is true, accurate, and complete to the best of his knowledge and belief:

Date: December 11, 2018 \_\_\_\_\_  
  
Michael P. DeGrandis, Affiant

SUBSCRIBED AND SWORN TO before me this 11 day of December, 2018.

My commission expires:  
09/30/2022 \_\_\_\_\_  
  
Notary Public



## **EXHIBITS**

The following exhibits are attached to this Petition and made a part hereof, pursuant to Rule 12-504(B)(2) NMRA, as they will inform the Court regarding the circumstances out of which this Petition arises and the basis for granting relief.

### **Exhibit A**

Campaign Finance Fixes., Senate Bill 96, 53rd Leg., 1st Sess. (N.M. 2017)

### **Exhibit B**

N.M. Leg., Official S. & H. Roll Call Votes (Mar. 13, 2017)

### **Exhibit C**

S.B. 96 Fiscal Impact Report, Legal Fin. Comm. (N.M. Jan. 26, 2017)

### **Exhibit D**

Press Release, Sec. of State, Statement Regarding Passage of Campaign Finance Reform Bills (Mar. 14, 2017)

### **Exhibit E**

S. Exec. Mess. No. 56 (Apr. 7, 2017)

### **Exhibit F**

Press Release, Sec. of State, Secretary Disappointed by Vetoes (Apr. 7, 2017)

### **Exhibit G**

Campaign Finance Rule, 1.10.13 NMAC (10/10/2017)

### **Exhibit H**

Press Release, Sec. of State, Final Campaign Finance Rule (Sept. 8, 2017)

### **Exhibit I**

*Unite New Mexico v. Oliver*, No. S-1-SC-37227, Partial Hr'g Tr. (Sept. 13, 2018)

# **EXHIBIT A**



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AN ACT  
RELATING TO CAMPAIGN FINANCE; REQUIRING REPORTING OF  
INDEPENDENT EXPENDITURES; REDEFINING "POLITICAL COMMITTEE";  
DEFINING "ADVERTISEMENT", "BALLOT MEASURE", "CAMPAIGN  
EXPENDITURE", "COORDINATED EXPENDITURE", "INDEPENDENT  
EXPENDITURE" AND OTHER TERMS; ADJUSTING CONTRIBUTION AND  
EXPENDITURE REPORTING REQUIREMENTS, LIMITS AND THRESHOLDS;  
CHANGING PENALTIES; PROVIDING PENALTIES; AMENDING, REPEALING  
AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Campaign Reporting Act  
is enacted to read:

"INDEPENDENT EXPENDITURES--REPORTING REQUIREMENTS.--

A. A person who makes an independent expenditure  
not otherwise required to be reported under the Campaign  
Reporting Act in an amount that exceeds one thousand dollars  
(\$1,000), 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 one thousand  
dollars (\$1,000), shall file a report with the secretary of  
state within three days of making an expenditure for which a  
report is required by this section, or, if an independent  
expenditure of three thousand dollars (\$3,000) or more is  
made within fourteen days before a primary or general

1 election, within twenty-four hours after making the  
2 expenditure.

3 B. The report required by Subsection A of this  
4 section shall state:

5 (1) the name and address of the person who  
6 made the independent expenditure;

7 (2) the name and address of the person to  
8 whom the independent expenditure was made and the amount,  
9 date and purpose of the independent expenditure. If no  
10 reasonable estimate of the monetary value of a particular  
11 expenditure is practicable, it is sufficient to report  
12 instead a description of the services, property or rights  
13 furnished through the expenditure; and

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

17 C. A person who makes independent expenditures  
18 totaling three thousand dollars (\$3,000) or less that are  
19 required to be reported pursuant to this section shall report  
20 the name and address of each person who has made  
21 contributions of more than a total of two hundred dollars  
22 (\$200) in the election cycle that were earmarked or made in  
23 response to a solicitation to fund independent expenditures,  
24 and shall report the amount of each such contribution made by  
25 that person.

1           D. A person who makes independent expenditures  
2 totaling more than three thousand dollars (\$3,000) that are  
3 required to be reported pursuant to this section, in addition  
4 to reporting the information specified in Subsection C of  
5 this section, shall either:

6                   (1) establish a segregated bank account,  
7 consisting only of funds contributed to the account by  
8 individuals to be used for making independent expenditures,  
9 and report the name and address of, and amount of each  
10 contribution made by, each contributor who contributed more  
11 than two hundred dollars (\$200) to that account in the  
12 election cycle; or

13                   (2) report the name and address of, and  
14 amount of each contribution made by, each contributor who  
15 contributed more than a total of five thousand dollars  
16 (\$5,000) to the person in the election cycle; provided,  
17 however, that a contribution is exempt from reporting  
18 pursuant to this paragraph if the contributor requested in  
19 writing that the contribution not be used to fund independent  
20 or coordinated expenditures or make contributions to a  
21 candidate, campaign committee or political committee."

22           SECTION 2. A new section of the Campaign Reporting Act  
23 is enacted to read:

24           "DISCLAIMERS IN ADVERTISEMENTS.--

25           A. A person who makes a campaign expenditure, a

1 coordinated expenditure or an independent expenditure for an  
2 advertisement in an amount that exceeds one thousand dollars  
3 (\$1,000), or in an amount that, when added to the aggregate  
4 amount of the campaign expenditures, coordinated expenditures  
5 and independent expenditures for advertisements made by the  
6 same person during the election cycle, exceeds one thousand  
7 dollars (\$1,000), shall ensure that the advertisement  
8 contains the name of the candidate, committee or other person  
9 who authorized and paid for the advertisement.

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

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

15 (2) skywriting, water towers, wearing  
16 apparel or other means of displaying an advertisement of such  
17 a nature that the inclusion of a disclaimer would be  
18 impracticable.

19 C. The disclaimer statements required by  
20 Subsection A of this section shall be set forth legibly on  
21 any advertisement that is disseminated or displayed by visual  
22 media. If the advertisement is transmitted by audio media,  
23 the statement shall be clearly spoken during the  
24 advertisement. If the advertisement is transmitted by  
25 audiovisual media, the statement shall be both written

1 legibly and spoken clearly during the advertisement."

2 SECTION 3. Section 1-1-3.1 NMSA 1978 (being Laws 2003,  
3 Chapter 356, Section 1, as amended) is amended to read:

4 "1-1-3.1. ELECTION CYCLE.--Except as otherwise  
5 provided, as used in the Election Code:

6 A. "election cycle" means the period beginning on  
7 January 1 after the last general election and ending on  
8 December 31 after the general election;

9 B. "general election cycle" means the period  
10 beginning on the day after the primary election and ending on  
11 December 31 after the general election; and

12 C. "primary election cycle" means the period  
13 beginning on January 1 after the last general election and  
14 ending on the day of the primary election."

15 SECTION 4. Section 1-19-26 NMSA 1978 (being Laws 1979,  
16 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,  
17 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended  
18 to read:

19 "1-19-26. DEFINITIONS.--As used in the Campaign  
20 Reporting Act:

21 A. "advertisement" means a communication referring  
22 to a candidate or ballot measure that is published  
23 disseminated, distributed or displayed to the public by  
24 print, broadcast, satellite, cable or electronic media,  
25 including recorded phone messages, or by printed materials,

1 including mailers, handbills, signs and billboards, but  
2 "advertisement" does not include:

3 (1) a communication by a membership  
4 organization or corporation to its current members,  
5 stockholders or executive or administrative personnel;

6 (2) a communication appearing in a news  
7 story or editorial distributed through a print, broadcast,  
8 satellite, cable or electronic medium, unless the  
9 communication is paid for or the medium is controlled or  
10 owned by a candidate, campaign committee or political  
11 committee;

12 (3) a candidate debate or forum or a  
13 communication announcing a candidate debate or forum paid for  
14 on behalf of the debate or forum sponsor; provided that two  
15 or more candidates for the same position have been invited to  
16 participate; or

17 (4) nonpartisan voter guides allowed by the  
18 federal Internal Revenue Code of 1986 for Section 501(c)(3)  
19 organizations;

20 B. "anonymous contribution" means a contribution  
21 the contributor of which is unknown to the candidate or the  
22 candidate's agent or the political committee or its agent who  
23 accepts the contribution;

24 C. "ballot measure" means a constitutional  
25 amendment or other question submitted to the voters in an

1 election;

2 D. "bank account" means an account in a financial  
3 institution chartered and regulated by the United States or a  
4 state of the United States;

5 E. "campaign committee" means an association of  
6 two or more persons, authorized by a candidate to act on the  
7 candidate's behalf for the purpose of electing the candidate  
8 to office; provided that a candidate may not authorize more  
9 than one campaign committee;

10 F. "campaign expenditure" means an expenditure  
11 that is made by a campaign committee or by a candidate in  
12 support of the candidate's campaign in an election;

13 G. "candidate" means an individual who seeks or  
14 considers an office in an election covered by the Campaign  
15 Reporting Act, including a public official, who either has  
16 filed a declaration of candidacy or nominating petition and  
17 has not subsequently filed a statement of withdrawal or:

18 (1) for a nonstatewide office, has received  
19 contributions or made expenditures of more than one thousand  
20 dollars (\$1,000) or authorized another person or campaign  
21 committee to receive contributions or make expenditures of  
22 more than one thousand dollars (\$1,000) for the purpose of  
23 seeking election to the office; or

24 (2) for a statewide office, has received  
25 contributions or made expenditures of more than three

1 thousand dollars (\$3,000) or authorized another person or  
2 campaign committee to receive contributions or make  
3 expenditures of more than three thousand dollars (\$3,000) for  
4 the purpose of seeking election to the office or for  
5 candidacy exploration purposes in the years prior to the year  
6 of the election;

7 H. "contribution":

8 (1) means a gift, subscription, loan,  
9 advance or deposit of money or other thing of value,  
10 including the estimated value of an in-kind contribution,  
11 that is made or received for a political purpose, including  
12 payment of a debt incurred in an election campaign;

13 (2) includes a coordinated expenditure;

14 (3) does not include the value of services  
15 provided without compensation or unreimbursed travel or other  
16 personal expenses of individuals who volunteer a portion or  
17 all of their time on behalf of a candidate or political  
18 committee nor does it include the administrative or  
19 solicitation expenses of a political committee that are paid  
20 by an organization that sponsors the committee; and

21 (4) does not include the value of the  
22 incidental use of the candidate's personal property, home or  
23 business office for campaign purposes; provided that for each  
24 occurrence, the fair market value does not exceed fifty  
25 dollars (\$50.00);



1 I. "coordinated expenditure" means an expenditure  
2 that is made:

3 (1) by a person other than a candidate or  
4 campaign committee;

5 (2) at the request or suggestion of, or in  
6 cooperation, consultation or concert with, a candidate,  
7 campaign committee or political party or any agent or  
8 representative of such a candidate, campaign committee or  
9 political party; and

10 (3) for the purpose of:

11 (a) supporting or opposing the  
12 nomination or election of a candidate; or

13 (b) paying for an advertisement that  
14 refers to a clearly identified candidate and is published and  
15 disseminated to the relevant electorate in New Mexico within  
16 thirty days before the primary election or sixty days before  
17 the general election in which the candidate is on the ballot;

18 J. "deliver" or "delivery" means to deliver by  
19 certified or registered mail, telecopier, electronic  
20 transmission or facsimile or by personal service;

21 K. "election" means any primary, general or  
22 statewide special election in New Mexico and includes county  
23 and judicial retention elections but excludes federal,  
24 municipal, school board and special district elections;

25 L. "election year" means an even-numbered year in

1 which an election covered by the Campaign Reporting Act is  
2 held;

3 M. "expenditure" means a payment, transfer or  
4 distribution or obligation or promise to pay, transfer or  
5 distribute any money or other thing of value for a political  
6 purpose, including payment of a debt incurred in an election  
7 campaign or pre-primary convention;

8 N. "independent expenditure" means an expenditure  
9 that is:

10 (1) made by a person other than a candidate  
11 or campaign committee;

12 (2) not a coordinated expenditure as defined  
13 in the Campaign Reporting Act; and

14 (3) made to pay for an advertisement that:

15 (a) expressly advocates the election or  
16 defeat of a clearly identified candidate or the passage or  
17 defeat of a clearly identified ballot measure;

18 (b) is susceptible to no other  
19 reasonable interpretation than as an appeal to vote for or  
20 against a clearly identified candidate or ballot measure; or

21 (c) refers to a clearly identified  
22 candidate or ballot measure and is published and disseminated  
23 to the relevant electorate in New Mexico within thirty days  
24 before the primary election or sixty days before the general  
25 election at which the candidate or ballot measure is on the

1 ballot;

2 O. "person" means an individual or entity;

3 P. "political committee" means:

4 (1) a political party;

5 (2) an association that consists of two or  
6 more persons whose primary purpose is to make contributions  
7 to candidates, campaign committees or political committees or  
8 make coordinated expenditures or any combination thereof; or

9 (3) an association that consists of two or  
10 more persons whose primary purpose is to make independent  
11 expenditures and that has received more than five thousand  
12 dollars (\$5,000) in contributions or made independent  
13 expenditures of more than five thousand dollars (\$5,000) in  
14 the election cycle;

15 Q. "political party" means an association that has  
16 qualified as a political party pursuant to the provisions of  
17 Section 1-7-2 NMSA 1978;

18 R. "political purpose" means for the purpose of  
19 supporting or opposing a ballot measure or the nomination or  
20 election of a candidate;

21 S. "prescribed form" means a form or electronic  
22 format prepared and prescribed by the secretary of state;

23 T. "proper filing officer" means the secretary of  
24 state;

25 U. "public official" means a person elected to an

1 office in an election covered by the Campaign Reporting Act  
2 or a person appointed to an office that is subject to an  
3 election covered by that act; and

4 V. "reporting individual" means every public  
5 official, candidate or treasurer of a campaign committee and  
6 every treasurer of a political committee."

7 SECTION 5. Section 1-19-26.1 NMSA 1978 (being Laws  
8 1993, Chapter 46, Section 2, as amended) is amended to read:

9 "1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--  
10 DISCLOSURES.--

11 A. It is unlawful for a political committee to  
12 continue to receive or make any contribution or expenditure  
13 for a political purpose if that committee fails to meet the  
14 requirements of Subsections B and C of this section.

15 B. A political committee shall appoint and  
16 maintain a treasurer and file a statement of organization  
17 with the secretary of state by paying a filing fee of fifty  
18 dollars (\$50.00) and filing a statement of organization.

19 C. A statement of organization required by  
20 Subsection B of this section shall be made under oath on a  
21 prescribed form showing:

22 (1) the full name of the committee, which  
23 shall fairly and accurately reflect the identity of the  
24 committee, including any sponsoring organization, and its  
25 address;

1                   (2) a statement of the purpose for which the  
2 committee was organized;

3                   (3) the names and addresses of the officers  
4 of the committee; and

5                   (4) an identification of any bank account  
6 used by the committee to receive or make contributions or  
7 make expenditures.

8                   D. The provisions of this section do not apply to  
9 a political committee that is located in another state and is  
10 registered with the federal election commission if the  
11 political committee reports on federal reporting forms filed  
12 with the federal election commission all expenditures for and  
13 contributions made to reporting individuals in New Mexico and  
14 files with the secretary of state, according to the schedule  
15 required for the filing of forms with the federal election  
16 commission, a copy of either the full report or the cover  
17 sheet and the portions of the federal reporting forms that  
18 contain the information on expenditures for and contributions  
19 made to reporting individuals in New Mexico."

20                   SECTION 6. Section 1-19-29 NMSA 1978 (being Laws 1993,  
21 Chapter 46, Section 5, as amended) is amended to read:

22                   "1-19-29. TIME AND PLACE OF FILING REPORTS.--

23                   A. Except as otherwise provided in this section,  
24 all reporting individuals shall file with the proper filing  
25 officer no later than the second Monday in April and October

1 a report of all expenditures made and contributions received  
2 on or before the first Monday in those months and not  
3 previously reported. The report shall be filed biannually  
4 until the provisions specified in Subsection F, G or H of  
5 this section have been satisfied.

6 B. In an election year, instead of the biannual  
7 reports provided for in Subsection A of this section, all  
8 reporting individuals, except for public officials who are  
9 not candidates in an election that year, shall file reports  
10 of all expenditures made and contributions received or, if  
11 applicable, statements of no activity, according to the  
12 following schedule:

13 (1) no later than the second Monday in  
14 April, a report of all expenditures made and contributions  
15 received on or before the first Monday in April and not  
16 previously reported;

17 (2) no later than the second Monday in May,  
18 a report of all expenditures made and contributions received  
19 on or before the first Monday in May and not previously  
20 reported;

21 (3) no later than the second Monday in  
22 September, a report of all expenditures made and  
23 contributions received on or before the first Monday in  
24 September and not previously reported;

25 (4) no later than the second Monday in

1 October, a report of all expenditures made and contributions  
2 received on or before the first Monday in October and not  
3 previously reported;

4 (5) no later than the Thursday before a  
5 primary, general or statewide special election, a report of  
6 all expenditures made and contributions received by 5:00 p.m.  
7 on the Tuesday before the election and not previously  
8 reported. Any contribution or pledge to contribute that is  
9 received after 5:00 p.m. on the Tuesday before the election  
10 and that is for more than one thousand dollars (\$1,000) in a  
11 nonstatewide election, or more than three thousand dollars  
12 (\$3,000) in a statewide election, shall be reported to the  
13 proper filing officer either in a supplemental report on a  
14 prescribed form within twenty-four hours of receipt or in the  
15 report to be filed no later than the Thursday before a  
16 primary, general or statewide special election, except that  
17 any such contribution or pledge to contribute that is  
18 received after 5:00 p.m. on the Friday before the election  
19 may be reported by 12:00 noon on the Monday before the  
20 election;

21 (6) no later than the Thursday before a  
22 primary or general election, or within twenty-four hours of  
23 the independent expenditure, a report of each independent  
24 expenditure made after 5:00 p.m. on the Tuesday before the  
25 election that is for more than one thousand dollars (\$1,000)

1 in a nonstatewide election or more than three thousand  
2 dollars (\$3,000) in a statewide election. Such expenditures  
3 shall be reported to the proper filing officer either in a  
4 supplemental report on a prescribed form within twenty-four  
5 hours of being made or in the report to be filed no later  
6 than the Thursday before a primary or general election,  
7 except that any such expenditure that is made after 5:00 p.m.  
8 on the Friday before the election may be reported by 12:00  
9 noon on the Monday before the election;

10 (7) no later than the thirtieth day after a  
11 primary election, a report by all reporting individuals,  
12 except those individuals that become candidates after the  
13 primary election, of all expenditures made and contributions  
14 received on or before the twenty-fifth day after the primary  
15 election and not previously reported;

16 (8) no later than on the thirtieth day after  
17 a statewide special election, a report of all expenditures  
18 made and contributions received on or before the twenty-fifth  
19 day after the statewide special election and not previously  
20 reported; and

21 (9) no later than January 7 after a general  
22 election, a report of all expenditures made and contributions  
23 received on or before December 31 after the general election  
24 and not previously reported.

25 C. If a candidate, political committee, campaign



1 committee or public official has not received any  
2 contributions and has not made any expenditures since the  
3 candidate's, committee's or official's last report was filed  
4 with the proper filing officer, the candidate, committee or  
5 official shall only be required to file a statement of no  
6 activity, which shall not be required to be notarized, in  
7 lieu of a full report when that report would otherwise be due  
8 and shall not be required to file a full report until the  
9 next required filing date occurring after an expenditure is  
10 made or a contribution is received.

11 D. In an election year, a public official who is  
12 not a candidate shall file biannual reports of expenditures  
13 made and contributions received or statements of no activity  
14 in accordance with the schedule provided for in Subsection A  
15 of this section.

16 E. A report of expenditures and contributions  
17 filed after a deadline set forth in this section shall not be  
18 deemed to have been timely filed.

19 F. Except for candidates, campaign committees and  
20 public officials who file a statement of no activity, each  
21 reporting individual candidate, campaign committee or public  
22 official shall file a report of expenditures and  
23 contributions pursuant to the filing schedules set forth in  
24 this section, regardless of whether any expenditures were  
25 made or contributions were received during the reporting

1 period. Reports shall be required until the reporting  
2 individual delivers a report to the proper filing officer  
3 stating that:

- 4 (1) there are no outstanding campaign debts;
- 5 (2) all money has been expended in  
6 accordance with the provisions of Section 1-19-29.1 NMSA  
7 1978; and
- 8 (3) the bank accounts have been closed.

9 G. If, during a nonelection year, a political  
10 committee has not received any contributions or made any  
11 coordinated or independent expenditures since it filed its  
12 last report pursuant to this section, it need not file any  
13 report under this section until the next reporting period, if  
14 any, in which it receives contributions or makes such  
15 expenditures. A political committee that has not received  
16 any contributions or made any coordinated or independent  
17 expenditures for a continuous period of at least one year may  
18 thereupon cancel its registration as a political committee by  
19 submitting an appropriate request in writing to the proper  
20 filing officer. The committee shall retain the obligation to  
21 submit a new registration pursuant to Section 1-19-26.1 NMSA  
22 1978 in the event that its future activities should meet the  
23 requisites for registration under that section.

24 H. A reporting individual who is a candidate  
25 within the meaning of the Campaign Reporting Act because of

1 the amount of contributions the candidate receives or  
2 expenditures the candidate makes and who does not ultimately  
3 file a declaration of candidacy or a nominating petition with  
4 the proper filing officer and does not file a statement of no  
5 activity shall file biannual reports in accordance with  
6 Subsection A of this section.

7 I. Reports required by this section shall be  
8 subscribed and sworn to by the candidate or the treasurer of  
9 the political committee or, in the case of candidates for  
10 judicial office, by the treasurer of the candidate's campaign  
11 committee. A report filed electronically shall be  
12 electronically authenticated by the candidate or the  
13 treasurer of the committee using an electronic signature in  
14 conformance with the Electronic Authentication of Documents  
15 Act and the Uniform Electronic Transactions Act. For the  
16 purposes of the Campaign Reporting Act, a report that is  
17 electronically authenticated in accordance with the  
18 provisions of this subsection shall be deemed to have been  
19 subscribed and sworn to by the candidate or the treasurer of  
20 the committee who was required to file the report.

21 J. Reports required by this section shall be filed  
22 electronically by all reporting individuals.

23 K. Reporting individuals may apply to the  
24 secretary of state for exemption from electronic filing in  
25 case of hardship, which shall be defined by the secretary of

1 state."

2 SECTION 7. Section 1-19-31 NMSA 1978 (being Laws 1979,  
3 Chapter 360, Section 7, as amended) is amended to read:

4 "1-19-31. CONTENTS OF REPORT.--Each required report of  
5 expenditures and contributions shall be typed or printed  
6 legibly, or on a computer disc or format approved by the  
7 secretary of state, and shall include:

8 A. the name and address of the person or entity to  
9 whom an expenditure was made or from whom a contribution was  
10 received, except as provided for anonymous contributions or  
11 contributions received from special events as provided in  
12 Section 1-19-34 NMSA 1978; provided that for contributors,  
13 the name of the entity or the first and last names of any  
14 individual shall be the full name of the entity or  
15 individual, and initials only shall not constitute a full  
16 name unless that is the complete legal name;

17 B. the occupation, name and type of business, as  
18 applicable, of any individual or entity making contributions  
19 of two hundred fifty dollars (\$250) or more in the aggregate  
20 per election;

21 C. the amount of the expenditure or contribution  
22 or value thereof;

23 D. the purpose of the expenditure;

24 E. the date that the expenditure was made or the  
25 contribution was received;

1 F. the opening and closing cash balance for the  
2 bank accounts maintained by the reporting individual during  
3 the reporting period and the name of the financial  
4 institution for each account; and

5 G. the amount of each unpaid debt and the identity  
6 of the person to whom the debt is owed."

7 SECTION 8. Section 1-19-34 NMSA 1978 (being Laws 1979,  
8 Chapter 360, Section 10, as amended) is amended to read:

9 "1-19-34. CANDIDATES--POLITICAL OR CAMPAIGN  
10 COMMITTEES--TREASURER--BANK ACCOUNT--ANONYMOUS  
11 CONTRIBUTIONS--CONTRIBUTIONS FROM SPECIAL EVENTS.--

12 A. A political or campaign committee or any  
13 candidate shall ensure that:

14 (1) a treasurer has been appointed and is  
15 constantly maintained; provided, however, that when a duly  
16 appointed treasurer is unable for any reason to continue as  
17 treasurer, the candidate or committee shall appoint a  
18 successor; and provided further that a candidate may serve as  
19 the candidate's own treasurer;

20 (2) all disbursements of money and receipts  
21 of contributions are authorized by and through the candidate  
22 or treasurer;

23 (3) a bank account has been established and  
24 all receipts of money contributions are deposited in and all  
25 expenditures of money are disbursed from one or more bank

1 accounts maintained by the treasurer in the name of the  
2 candidate or committee; provided that nothing in this section  
3 shall prohibit investments from a bank account to earn  
4 interest as long as the investments and earnings are fully  
5 reported. All disbursements except for disbursements made  
6 from a petty cash fund of one hundred dollars (\$100) or less  
7 shall be made in a form such that the date, amount and payee  
8 of the transaction are automatically recorded or by check  
9 made payable to the person or entity receiving the  
10 disbursement and not to "cash" or "bearer"; and

11 (4) the treasurer, upon disbursing or  
12 receiving money or other things of value, immediately enters  
13 and thereafter keeps a proper record preserved by the  
14 treasurer, including a full, true and itemized statement and  
15 account of each sum disbursed or received, the date of such  
16 disbursal or receipt, to whom disbursed or from whom received  
17 and the object or purpose for which it was disbursed or  
18 received.

19 B. No anonymous contributions may be accepted for  
20 more than one hundred dollars (\$100). The aggregate amount  
21 of anonymous contributions received by a reporting individual  
22 during a primary or general election or a statewide special  
23 election shall not exceed two thousand dollars (\$2,000) for  
24 statewide races and five hundred dollars (\$500) for all other  
25 races.

1           C. Cash contributions received at special events  
2 that are unidentifiable as to specific contributor but  
3 identifiable as to the special event are not subject to the  
4 anonymous contribution limits provided for in this section so  
5 long as no single special event raises, after expenses, more  
6 than one thousand dollars (\$1,000) in such cash  
7 contributions. For those contributions, due diligence and  
8 best efforts shall be made to disclose on a special  
9 prescribed form the sponsor, date, place, total amount  
10 received, expenses incurred, estimated number of persons in  
11 attendance and other identifiable factors that describe the  
12 special event. For purposes of this subsection, "special  
13 event" includes an event such as a barbecue or similar  
14 fundraiser where tickets costing twenty-five dollars (\$25.00)  
15 or less are sold or an event such as a coffee, tea or similar  
16 reception; provided that no candidate shall accept a  
17 contribution of more than twenty-five dollars (\$25.00) in  
18 cash at a special event from any one contributor.

19           D. Any contributions received pursuant to this  
20 section in excess of the limits established in Subsections B  
21 and C of this section shall be donated to the state general  
22 fund or an organization to which a federal income tax  
23 deduction would be available under Subparagraph (A) of  
24 Paragraph (1) of Subsection (b) of Section 170 of the  
25 Internal Revenue Code of 1986, as amended."

1 SECTION 9. Section 1-19-34.3 NMSA 1978 (being Laws  
2 1993, Chapter 46, Section 14, as amended) is amended to read:

3 "1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER  
4 PROHIBITED--CONCEALING SOURCE OF CONTRIBUTIONS USED FOR  
5 INDEPENDENT EXPENDITURES.--

6 A. It is unlawful for a person to make a  
7 contribution in the name of another person, and no person  
8 shall knowingly accept a contribution made by one person in  
9 the name of another person.

10 B. No person may make contributions or  
11 expenditures with an intent to conceal the names of persons  
12 who are the true source of funds used to make independent  
13 expenditures or the true recipients of the expenditures."

14 SECTION 10. Section 1-19-34.6 NMSA 1978 (being Laws  
15 1995, Chapter 153, Section 19) is amended to read:

16 "1-19-34.6. CIVIL PENALTIES.--

17 A. If the secretary of state reasonably believes  
18 that a person committed, or is about to commit, a violation  
19 of the Campaign Reporting Act, the secretary of state shall  
20 refer the matter to the attorney general or a district  
21 attorney for enforcement.

22 B. With or without a referral from the secretary  
23 of state, the attorney general or district attorney may  
24 institute a civil action in district court for any violation  
25 of the Campaign Reporting Act or to prevent a violation of



1 that act that involves an unlawful solicitation or the making  
2 or acceptance of an unlawful contribution. An action for  
3 relief may include a permanent or temporary injunction, a  
4 restraining order or any other appropriate order, including a  
5 civil penalty of up to one thousand dollars (\$1,000) for each  
6 violation not to exceed a total of twenty thousand dollars  
7 (\$20,000), and forfeiture of any contribution received as a  
8 result of an unlawful solicitation or unlawful contribution.  
9 Each unlawful solicitation and each unlawful contribution  
10 made or accepted shall be deemed a separate violation of the  
11 Campaign Reporting Act.

12 C. With or without a referral from the secretary  
13 of state, the attorney general or district attorney may  
14 institute a civil action in district court if a violation has  
15 occurred or to prevent a violation of any provision of the  
16 Campaign Reporting Act other than that specified in  
17 Subsection B of this section. Relief may include a permanent  
18 or temporary injunction, a restraining order or any other  
19 appropriate order, including an order for a civil penalty of  
20 up to one thousand dollars (\$1,000) for each violation not to  
21 exceed a total of twenty thousand dollars (\$20,000)."

22 SECTION 11. Section 1-19-34.7 NMSA 1978 (being Laws  
23 2009, Chapter 68, Section 1) is amended to read:

24 "1-19-34.7. CONTRIBUTION LIMITATIONS--CANDIDATES--  
25 POLITICAL COMMITTEES.--

1           A. Except as provided in Subsections F and G of  
2 this section, a person, including a political committee,  
3 shall not make a contribution to a candidate, including the  
4 candidate's campaign committee, or to a political committee  
5 in an amount that will cause that person's total  
6 contributions to the candidate or political committee to  
7 exceed five thousand dollars (\$5,000) during a primary  
8 election cycle or five thousand dollars (\$5,000) during a  
9 general election cycle; provided that a person may make a  
10 contribution attributable to the general election cycle  
11 during the primary election cycle even though the person has  
12 contributed the maximum amount allowed for the primary  
13 election cycle if that contribution is not used to pay for  
14 any expenditure related to the primary election and, if the  
15 candidate is not on the general election ballot, all  
16 contributions made to the candidate for the general election  
17 are returned to the persons who made such contributions to  
18 the candidate's campaign or deposited in the public election  
19 fund. A primary election candidate who does not become a  
20 candidate on the general election ballot shall remain subject  
21 to the contribution limits of the primary election cycle and  
22 shall not accept a contribution from a person who has  
23 contributed the maximum allowable amount during the primary  
24 election cycle to pay for primary election expenditures of  
25 the campaign.

1           B. All contributions made by a person to a  
2 candidate, either directly or indirectly, including  
3 contributions that are in any way earmarked or otherwise  
4 directed through another person to a candidate, shall be  
5 treated as contributions from the person to that candidate.

6           C. A person, including a political committee,  
7 shall not knowingly accept or solicit a contribution,  
8 directly or indirectly, including a contribution earmarked or  
9 otherwise directed or coordinated through another person,  
10 including a political committee, that violates the  
11 contribution limits provided for in this section.

12           D. On January 1 after each general election, the  
13 contribution amounts provided in Subsection A of this section  
14 shall be increased by the percentage of the preceding two  
15 calendar years' increase of the consumer price index for all  
16 urban consumers, United States city average for all items,  
17 published by the United States department of labor. The  
18 amount of the increase shall be rounded to the nearest  
19 multiple of one hundred dollars (\$100). The secretary of  
20 state shall publish by October 1 before each general election  
21 the adjusted contribution limits that shall take effect the  
22 day after the following general election.

23           E. All contributions in excess of the limits  
24 imposed by the provisions of this section shall be deposited  
25 in the public election fund upon a finding by a district

1 court that the contribution limits have been exceeded.

2 F. The limitation on contributions to a candidate  
3 provided for in Subsection A of this section shall not apply  
4 to a candidate's own contribution from the candidate's  
5 personal funds to the candidate's own campaign.

6 G. The limitations on contributions to political  
7 committees provided for in Subsection A of this section shall  
8 not apply to a political committee that makes only  
9 independent expenditures or to any contribution to a  
10 political committee that is deposited in a segregated bank  
11 account that may only be used to make independent  
12 expenditures."

13 SECTION 12. Section 1-19-36 NMSA 1978 (being Laws 1979,  
14 Chapter 360, Section 12, as amended) is amended to read:

15 "1-19-36. PENALTIES.--

16 A. Any person who knowingly and willfully violates  
17 any provision of the Campaign Reporting Act is guilty of a  
18 misdemeanor and shall be punished by a fine of not more than  
19 one thousand dollars (\$1,000) or by imprisonment for not more  
20 than one year or both.

21 B. The Campaign Reporting Act may be enforced by  
22 the attorney general or the district attorney in the county  
23 where the candidate resides, where a political committee has  
24 its principal place of business or where the violation  
25 occurred."

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SECTION 13. TEMPORARY PROVISION.--The secretary of state, in consultation with the attorney general, shall promulgate rules to implement the amendatory provisions of this act by August 1, 2017.

SECTION 14. REPEAL.--Sections 1-19-16 and 1-19-17 NMSA 1978 (being Laws 1973, Chapter 401, Sections 1 and 2) are repealed.

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018. \_\_\_\_\_

## **EXHIBIT B**

OFFICIAL ROLL CALL  
 NEW MEXICO STATE SENATE  
 FIFTY-THIRD LEGISLATURE, FIRST REGULAR SESSION, 2017

LEGISLATIVE DAY 12

DATE: 02/15/17

RCS# 131

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE BILL 96, AS AMENDED

	YES	NO	ABS	EXC	REC		YES	NO	ABS	EXC	REC
BACA	X					ORTIZ y PINO	X				
BRANDT		X				PADILLA	X				
BURT	X					PAPEN	X				
CAMPOS	X					PAYNE	X				
CANDELARIA	X					PINTO	X				
CERVANTES	X					PIRTLE		X			
CISNEROS	X					RODRIGUEZ	X				
GOULD	X					RUE	X				
GRIGGS	X					SANCHEZ	X				
INGLE	X					SAPIEN	X				
IVEY-SOTO	X					SHARER		X			
KERNAN	X					SHENDO	X				
LEAVELL	X					SMITH	X				
LOPEZ	X					SOULES	X				
MARTINEZ	X					STEFANICS	X				
McSORLEY	X					STEINBORN		X			
MOORES		X				STEWART	X				
MORALES	X					TALLMAN	X				
MUÑOZ	X					WHITE	X				
NEVILLE	X					WIRTH	X				
O'NEILL	X					WOODS		X			
						TOTAL =>	36	6	0	0	0

PASSED: 36-6

OFFICIAL ROLL CALL  
NEW MEXICO HOUSE OF REPRESENTATIVES  
FIFTY THIRD LEGISLATURE FIRST SESSION  
2017 REGULAR SESSION

LEGISLATIVE DAY 12

DATE:03/13/2017 9:43:18 PM  
RCS# 430

Senate Judiciary Committee Substitute For  
SB 96/aaa

FINAL PASSAGE

**YEAS: 41**

**NAYS: 24**

**EXCUSED: 2**

**ABSENT: 3**

REPRESENTATIVE	YEA	NAY	EXCUSED	ABSENT	REPRESENTATIVE	YEA	NAY	EXCUSED	ABSENT
Adkins				X	Louis	X			
Alcon	X				Lundstrom	X			
Armstrong, D.	X				Maestas	X			
Armstrong, Gail		X			Maestas Barnes	X			
Baldonado		X			Martínez, Javier	X			
Bandy		X			Martinez, Rudy	X			
Brown		X			McCamley	X			
Chasey	X				McQueen	X			
Clahchischilliage		X			Montoya		X		
Cook		X			Nibert		X		
Crowder		X			Powdrell-Culbert		X		
Dines	X				Rehm		X		
Dodge	X				Roch		X		
Dow	X				Rodella	X			
Egolf	X				Romero	X			
Ely	X				Roybal Caballero	X			
Ezzell		X			Rubio	X			
Fajardo	X				Ruiloba	X			
Ferrary	X				Salazar, Nick			X	
Gallegos, David		X			Salazar, Tomás	X			
Gallegos, Doreen	X				Sariñana	X			
Garcia Richard	X				Scott		X		
Garcia, Harry	X				Small	X			
García, M.P.	X				Smith	X			
Gentry	X				Stapleton	X			
Gomez	X				Strickler		X		
Gonzales	X				Sweetser	X			
Hall		X			Thomson	X			
Harper		X			Townsend		X		
Herrell		X			Trujillo, Carl				X
Johnson	X				Trujillo, Christine	X			
Larrañaga		X			Trujillo, Jim			X	
Lente	X				Trujillo, Linda	X			
Lewis		X			Wooley		X		
Little				X	Youngblood		X		

CERTIFIED CORRECT TO THE BEST OF OUR KNOWLEDGE

(Speaker)

\_\_\_\_\_  
(Chief Clerk)



## **EXHIBIT C**

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/17  
 LAST UPDATED 3/14/17

SPONSOR SJC HB 96/SJCS/aSF1#1/aHJC/  
 SHORT TITLE Campaign Finance Fixes SB HF1#1

ANALYST Esquibel/Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$985.0	\$100.0	\$1,085.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

The SJC substitute for Senate Bill 96 relates to HB 119, Prohibited Period for Candidate Contribution, and conflicts with SB72, Public Accountability Act and HB10, Public Accountability Act.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts  
 Attorney General's Office  
 Secretary of State's Office

### SUMMARY

#### Synopsis of HF1#1

House Floor amendment #1 provides a new exemption to the definition of "contribution" for incidental use of a candidate's personal property, home or business office for campaign purposes subject to a fair market value cap of \$50 for each occurrence.

#### Synopsis of HJC Amendments

The House Judiciary Committee amendments to the Senate Judiciary Committee Substitute for Senate Bill 96:

- Reinstates existing subsection C in Section 1-19-26.1 NMSA 1978 as subsection D, which exempts political committees from other states from the requirements of that section if they are registered with the federal election commission, if they report on federal

reporting forms filed with that commission all expenditures for and contributions made to reporting individuals in New Mexico, and if they file with the SOS either the full report or the cover sheet and that portion that contains information on expenditures for and contributions to reporting individuals in New Mexico;

- Clarify that candidates cannot accept a contribution or more than \$25 in cash at a special event from any one contributor; and
- Provide an exception to the primary election cycle contribution limits to allow a person who has made the maximum primary election cycle contribution to make a contribution attributable to the general election as long as those funds are not used for any expenditures related to the primary election cycle, and directing the return of those funds to the persons who made those contributions or their deposit in the public election fund if the candidate is not on the general election ballot.

### Synopsis of SFL Amendment

Senate floor amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 96 changed the effective date of the bill from July 1, 2017 to January 1, 2018.

### Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 96 (SB96/SJCS) revises the Campaign Reporting Act to define independent expenditures and coordinated expenditures, and includes specific reporting requirements of individuals or entities that make independent expenditures as defined by the bill. Section 1 of SB96/SJCS removes duplicate language requiring independent expenditures to be reported electronically using software approved by the Secretary of State's Office (SOS), as the Act already requires entities to report electronically.

The definitions of "election cycle," "general election cycle," and "primary election cycle" are amended in section 1-1-3.1, and further sections of the bill are aligned to require reporting based upon these corresponding election cycles.

SB96/SJCS deletes Sections 1-19-16 and 1-9-17 NMSA 1978, as they have been declared unconstitutional based upon United States Supreme Court rulings and an opinion from the New Mexico Attorney General and replaces those sections with new material which requires constitutional disclaimers on certain campaign materials.

The bill deletes the definition of "advertising campaign" and replaces it with a specific definition of "advertisement." The bill also revises the definitions included within the Campaign Reporting Act including adding a definition of "campaign expenditure," changes the contribution thresholds of what constitutes a "candidate," and changes the definition of what constitutes a "political committee" and what they must disclose when filing a statement of organization with the Secretary of State's Office (SOS).

Section 1-19-29 is revised to clarify that reporting individuals are required to report their contributions and expenditures electronically to the Secretary of State. Campaign finance reporting deadlines are revised to be no later than the date of the deadline. SB96/SJCS moves the report normally due 30 days after the general election to instead be due no later than January 7. Also included are revisions to reporting thresholds and reporting requirements for independent and coordinated expenditures and additional reporting after a statewide election for expenditures

and contributions not otherwise previously reported. The bill also provides for an allowance for a political committee to cancel its registration after a period of no activity by filing a request with the Secretary of State.

The bill increases the ticket cost for special events from \$15 to \$25 and does not allow any person to contribute more than \$25 cash at a special event.

SB96/SJCS amends Section 1-19-34.3 explicitly prohibiting a person from concealing the true source of funds used to make independent expenditures.

The bill simplifies language in Section 1-19-34.7 setting a flat limit on contributions to all candidates and PACs to \$5,000 per election cycle unless those contributions are from a candidate's own personal funds or are related to an independent expenditure. SB96/SJCS further specifies a primary election candidate who does not move on to the general election shall remain subject to the primary election cycle contribution limits and shall not receive funds beyond those limits to pay for primary election expenditures. The bill changes the date in which contribution limits are increased from the day after the general election to January 1.

The bill allows the Attorney General (AG) or a District Attorney (DA) to bring a civil action in District Court for a violation of the Campaign Reporting Act without a referral from the SOS and increases the civil penalty.

The bill requires the Secretary of State's Office to promulgate rules in consultation with the Attorney General's Office by August 1, 2017.

## **FISCAL IMPLICATIONS**

The bill does not include an appropriation.

The Secretary of State's Office (SOS) indicates the current campaign finance reporting system administered by the SOS will require significant modifications to accommodate the provisions of this bill. The SOS submitted an information technology (IT) special appropriation request for \$985 thousand for consideration during this legislative session to replace the current Campaign Finance Information System (CFIS) to accommodate the system modifications mandated in HB105 passed during the 2016 session. If this special appropriation is approved, the SOS would be able to also accommodate the requirements of SB96/SJCS in the new system design. Once implemented, the CFIS would need annual maintenance, repairs and upgrades which have an additional fiscal impact of approximately \$100 thousand annually based on current IT systems at the Secretary of State's Office.

The LFC recommendation for FY18 IT systems does not including funding for CFIS.

## **PERFORMANCE IMPLICATIONS**

The Secretary of State's Office (SOS) indicates the bill requires reports to be subscribed and sworn to by the candidate, or the treasurer of a political committee, or in the case of the judicial candidates, by the treasurer of the candidate's campaign committee. These requirements comply

with current requirements of the New Mexico code of judicial conduct.

The SOS indicates the bill removes unconstitutional provisions from the Act and replaces them with provisions based on the limitations established by the federal courts making education, compliance, and enforcement easier for the SOS. Also, the bill simplifies contributions for all candidates and PACs to \$5 thousand which makes education, enforcement, and administration regarding contribution limits easier for the SOS. Lastly, the provisions of the bill that address independent and coordinated expenditures provide clearer guidance for the SOS regarding enforcement under the Act or case law.

## **ADMINISTRATIVE IMPLICATIONS**

The Secretary of State's Office (SOS) indicates changes to the definition of the primary and general election cycles should make understanding reporting requirements in relation to each cycle easier which may increase overall compliance with the Campaign Reporting Act (CRA).

The Attorney General's Office indicates SB96/SJCS authorizes the AG to institute civil actions for violations of the CRA, but provides no funding for additional staff.

The bill also proposes the SOS consult with the Attorney General for the promulgation of rules.

## **CONFLICT**

Senate Bill 72 and House Bill 10 propose a Public Accountability Board be established which would be charged with compliance with the Campaign Reporting Act instead of the SOS. If these bills were enacted it would create conflicting language with SB96/SJCS.

## **TECHNICAL ISSUES**

The SOS indicates the sponsor may wish to consider a modified effective date for the bill of January 1, 2018 to allow the SOS time to accomplish all the IT system requirements needed in order to accommodate the additional reporting requirements outlined in this bill, in addition to the fiscal implications outlined above. Given the state's current financial outlook, it may be necessary to phase the changes to the Campaign Finance Information System (CFIS) necessary to accommodate the requirements of SB96/SJCS.

The Senate floor amendment addressed the first issue outlined in the paragraph above and changed the effective date of the bill to January 1, 2018.

## **OTHER SUBSTANTIVE ISSUES**

The Secretary of State's Office (SOS) indicates Section 1 of the bill requires reporting of independent expenditures triggered by different times in the election cycle and by different dollar amounts. Further, these entities may or may not be registered as a political committee with the SOS. The SOS' current Campaign Finance Information System (CFIS) does not have the capability to accommodate the provision outlined in section one as follows:

1. CFIS cannot accept reports of only expenditures as it works more like a bank account where you have to have a positive balance to draw upon before reporting

- expenditures. This would require a system design change to allow for an expenditure only report.
2. CFIS does not currently have the capability to enable reporting at differing and staggering due dates, rather, the system requires specific and static report due dates be established within it according to a specific reporting schedule. This would require a significant design change to allow for reporting on an as needed basis, not on a specific filing schedule.
  3. CFIS does not currently have the ability to allow entities not already pre-registered with the office as a reporting entity, to file an electronic report. The system would be required to allow for online registration for a CFIS account to accommodate this component of the bill.
  4. CFIS does not allow for an expenditure to be reported that does not have a monetary value. Section 1, subsection B (2) of this bill would require system changes to allow for the reporting of a description of an independent expenditure that may not have an assigned monetary value.
  5. CFIS was designed to “balance” all financial reports requiring the next filing report to have the same starting balance of the closing balance of the previous report. It is designed to show all debits and credits and function similar to a checking account record. This base system design does not support much of the needed changes outlined in this bill.

Section 4 requires disclosure of the identification of any bank account to be used by the committee. The Secretary of State’s current Campaign Finance Information System (CFIS) does not have the capability to list more than one bank account per committee or provide for different reports for each account in the event of a reporting entity having multiple account listings.

Additionally, CFIS does not have the capability to track and monitor aggregate contributions from all contributors.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Attorney General’s Office indicates the current Campaign Reporting Act will continue to have unconstitutional provisions and will continue to have serious considerations in relation to addressing independent expenditures. Spending by entities who are independent from candidates has grown significantly since 2010, and under federal law, is not subject to contribution limits. In 2012, the SOS was enjoined from enforcing certain provisions of the Campaign Reporting Act with regard to independent expenditures. The same injunctive order in *Republican Party v. King* determined that the Act’s contribution limits would apply to coordinated expenditures.

RAE/jle/al/jle

## **EXHIBIT D**

**FOR IMMEDIATE RELEASE**

**March 14, 2017**

Contact: John Blair (505) 490-1952

## **Secretary of State Maggie Toulouse Oliver Statement Regarding Passage of Campaign Finance Reform Bills**

SANTA FE – Secretary of State Maggie Toulouse Oliver released the following statement today after the New Mexico Legislature passed two campaign finance reform bills, Senate Bill 96 and 97:

“This is a huge advancement for our work to increase transparency in New Mexico’s campaign finance reporting. These bills will go a long way to inform New Mexico voters just who is financing political campaigns and how much is being spent.

“My team and I are ready and eager to begin drafting rules that will provide better guidance to candidates and campaigns, and uphold the public trust of all New Mexico voters. I strongly urge Governor Martinez to sign these important reform bills.

“I offer tremendous thanks to Senator Wirth and Representative Smith for their leadership on this vital issue.”

# # #



# **EXHIBIT E**

April 7, 2017

SENATE EXECUTIVE MESSAGE NO. 56

The Honorable Mary Kay Papen, President Pro Tempore and  
Members of the New Mexico State Senate  
State Capitol Building  
Santa Fe, New Mexico 87501

Honorable President Pro Tempore Papen and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and return SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE BILL 96, as amended, enacted by the Fifty-Third Legislature, First Session, 2017.

Senate Bill 96 attempts to address money in politics by changing reporting requirements for participants in the political process during an election cycle. While I support efforts to make our political process more transparent, the broad language in the bill could lead to unintended consequences that would force groups like charities to disclose the names and addresses of their contributors in certain circumstances. The requirements in this bill would likely discourage charities and other groups that are primarily non-political from advocating for their cause and could also discourage individuals from giving to charities.

For these reasons, I hereby veto Senate Bill 96.

Respectfully yours,

Susana Martinez  
Governor

SENATE EXECUTIVE MESSAGE NO. 56

The Honorable Mary Kay Papen

April 7, 2017

Page 2

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: \_\_\_\_\_ a.m. p.m.

Date: \_\_\_\_\_, 2017

By \_\_\_\_\_  
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.

Date: \_\_\_\_\_, 2017

By \_\_\_\_\_  
Chief Clerk of the Senate

# **EXHIBIT F**

**FOR IMMEDIATE RELEASE**

**April 7, 2017**

Contact: John Blair (505) 490-1952

## **Secretary Toulouse Oliver Disappointed by Vetoes of Bills to Increase Transparency and Disclosure, and to Consolidate Elections**

*Victories for Blind Voters, Online Absentee Ballot Applications Celebrated*

SANTA FE – On the last days of the signing period following the 2017 legislative session, Governor Susana Martinez vetoed multiple bipartisan, commonsense bills that would have increased transparency in the New Mexico campaign finance system, required additional disclosure for lobbyists and consolidated most local non-partisan elections to one day saving taxpayers money and simplifying the process for voters.

Early today, Governor Martinez vetoed Senate Bill 96, which would have required disclosure of independent expenditures made before a primary and general election. If SB 96 had been signed by the Governor, it would have brought New Mexico campaign laws into constitutional compliance following court decisions like *Citizens United v. Federal Election Commission*, it would have added much needed language regarding disclosure on printed campaign literature, and it would have provided clarifying definitions to aid candidates on the campaign finance limitations and reporting requirements. Senate Bill 97, which was pocket vetoed by the Governor today, would have provided multiple meaningful fixes to state statutes that regulate publicly financed campaigns. Significantly, SB 97 would have reduced the amount of money disbursed to uncontested, publicly funded candidates resulting in a cost savings to the state while protecting the fund for future use.

“I’m very disappointed to see these bipartisan, commonsense transparency bills vetoed by Governor Martinez,” said Secretary of State Maggie Toulouse Oliver. “I’m left with no other choice then to go forward utilizing my rulemaking authority to address many of these much needed reforms before the next statewide election. Campaign finance reform and transparency continue to be a top priority for me and my office.”

The Governor also vetoed Senate Bill 393, which would have fixed a loophole in the current Lobbyist Regulation Act that currently does not require the reporting of expenditures made by lobbyists that are under one hundred dollars. Without this fix, the loophole allows for a significant number of unreported expenditures made by lobbyists in an attempt to influence decisions made by our elected officials.

Additionally, House Bill 174, The Local Elections Act, was pocket vetoed today by the Governor. If enacted, HB 174 would have consolidated non-partisan elections that currently occur throughout the year to a single day in November each odd numbered year. Currently, separate elections for school districts, special hospital districts, community college districts, technical and vocational institute districts, learning center districts, arroyo flood control districts, special zoning districts, and water and sanitation districts are held on different dates throughout the year.

“The Local Election Act was really about putting the voters first,” said Secretary Toulouse Oliver. “Consolidated elections would have made it easier for voters to follow when elections are happening and to be informed about the candidates and issues on the ballot. It would have led to much greater

voter participation in these elections. I strongly believe that consolidating these non-partisan elections would provide real savings for the taxpayers and boost voter turnout.”

SB 96, SB 97, SB 393 and HB 174 all received broad bipartisan support in the both chambers of the legislature before being vetoed by Governor Martinez.

Despite these setbacks, there were some positive results from the 2017 legislative session. Yesterday, Governor Martinez signed House Bill 98, which will let the Secretary of State implement new technology and procedures to provide blind and visually impaired voters a means to independently cast an absentee paper ballot. HB 98 also allows voters to electronically submit requests for absentee ballots through the Secretary of State’s website.

Finally, successfully included in House Bill 2 are a number of supplemental appropriations requested by the Secretary of State’s office to pay outstanding bills in the current year including \$117,000 to help pay an overdue court settlement that was the result of a lawsuit filed by ACLU New Mexico against former Secretary of State Dianna Duran for her failure to comply with the Inspection of Public Records Act. The Secretary of State’s office was also able to secure the \$36,000 needed to reimburse the offices of both the Sandoval County Clerk and the Bernalillo County Clerk for expenses incurred during their statutorily mandated automatic recounts following the 2016 general election.

# # #

# **EXHIBIT G**

2017 SEP 12 PM 1:41

**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"** means a communication referring to a candidate or ballot measure 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"** means a constitutional amendment, bond, tax or other question submitted to the voters in an election.

**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 after the last general election and ending on the day of 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 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 account has 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 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; 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;

(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot measure; or

(c) refers to a clearly identified candidate or ballot measure 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 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.** “**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.

**T.** “**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.

**U.** “**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.

**V.** “**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.

**W.** “**Person**” means individual or entity pursuant to Subsection K of Section 1-19-26 NMSA 1978.

**X.** “**Pledge**” means a promise from a contributor to send or deliver a contribution by a specified time.

**Y.** “**Political party**” means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978.

**Z.** “**Primary election cycle**” means the period beginning the day after the 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.

**AA.** “**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.

**BB.** “**Relevant electorate**” means the constituency eligible to vote for the candidate or ballot measure.

**CC.** “**Reporting individual**” means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee pursuant to Subsection Q of Section 1-19-26 NMSA 1978.

**DD.** “**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.

**EE.** “**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.

**FF.** “**Special event**” means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing fifteen dollars (\$15) or less are sold and no more than one thousand dollars (\$1,000) net contributions are received.

**GG.** “**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.

**HH.** “**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 thousand five hundred dollars (\$2,500) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

**C.** All candidates shall complete a candidate campaign 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 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.

#### **B. 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;

(2) All political committees shall complete a political committee registration form and submit the completed form 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 used by the committee for all expenditures or contributions made or received; this shall include the name of the bank, business address of the branch office where the account was opened, and a telephone number for the bank; and

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

C. 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.

D. **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.

E. 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.

[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.

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:

(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.

(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, or seven thousand five hundred dollars (\$7,500) or less in a statewide race or ballot measure 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 or more than seven thousand five hundred dollars (\$7,500) for a statewide race or ballot measure during an election cycle 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; or

(2) if the expenditures were made from any source other than a bank account of the kind described in paragraph (1), the name and address of, and amount of each donation made by, each donor who donated more than a total of five thousand dollars (\$5,000), to the person making the independent expenditures in the previous twelve months; provided, however, that a donation is exempt from reporting pursuant to this paragraph if the donor requested in writing that the donation 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:

(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 1 of Subsection F of Section 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.

(3) 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.

(4) 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.

[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 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 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 Section 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 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.

[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 dollars (\$15), 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 ten

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 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 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.  
[1.10.13.27 NMAC - N, 10/10/2017]

#### **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]

**HISTORY OF 1.10.13 NMAC: [RESERVED]**

# **EXHIBIT H**

**FOR IMMEDIATE RELEASE**

**September 8, 2017**

Contact: Joey Keefe (505) 259-4471

## **Secretary of State Maggie Toulouse Oliver Adopts Final Campaign Finance Rule**

SANTA FE – New Mexico Secretary of State Maggie Toulouse Oliver today adopted the [final version of a campaign finance rule](#) intended to provide much needed guidance regarding New Mexico’s Campaign Reporting Act (CRA) and to bring the CRA into constitutional compliance following numerous court cases.

The rule will go into effect on Tuesday, October 10, 2017, which is the first day of a new campaign finance reporting period.

“For too long our campaign finance disclosure laws have been vague and confusing, and this rule will provide much needed guidance and clarity,” said Secretary of State Toulouse Oliver. “The rule will also help to shine a light on the dark money that has been plaguing our state’s campaigns.”

The rule contains some features of Senate Bill 96, which passed both chambers of the New Mexico state legislature with bipartisan support earlier in 2017 but was vetoed by Governor Susana Martinez.

Toulouse Oliver introduced a draft version of the rule on June 13, 2017, and held three public hearings on the rule – one apiece in Santa Fe, Albuquerque and Las Cruces – despite only being required by state law to host one hearing. Following the three public hearings and a review of official written comments, Toulouse Oliver released a revised version of the rule on July 25, 2017.

Toulouse Oliver held a fourth public hearing on the revised version on August 30, 2017 and reviewed additional official written comments.

“During this process I was encouraged to see that hundreds of New Mexicans are passionate about bringing clarity to our campaign finance requirements,” said Toulouse Oliver. “The feedback we received was invaluable in terms of strengthening this rule so it will work more effectively for all involved.”

The Secretary of State’s Office will soon release guides to help those covered under the Campaign Reporting Act comply with the new rule, and will develop an independent expenditures online reporting tool to make disclosures by non-committees accessible and convenient.



In addition, the Secretary of State's Office will host training sessions to help candidates, committees, and independent expenditures understand the new rule and relevant statutes.

[Click here to view the adopted version of the rule.](#)

# # #

Follow Secretary Toulouse Oliver on [Facebook](#) and [Twitter](#).

# **EXHIBIT I**



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# Transcript of Hearing Excerpt

**Date:** September 13, 2018

**Case:** Unite New Mexico, et al. -v- Oliver

**Planet Depos**

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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UNITE NEW MEXICO, HEATHER :  
NORDQUIST, ELECT LIBERTY : No. S-1-SC-37227  
PAC, LIBERTARIAN PARTY OF :  
NEW MEXICO and REPUBLICAN :  
PARTY OF NEW MEXICO, :  
Petitioners, :  
vs. :  
MAGGIE TOULOUSE OLIVER, :  
Secretary of State :  
of New Mexico, :  
Respondent. :

-----x

HEARING  
(EXCERPT)  
September 13, 2018

Job: 221575  
Pages: 1 - 9  
Transcribed by: Molly Bugher

1 Hearing held at:

2 New Mexico Supreme Court

3 237 Don Gaspar Avenue

4 Santa Fe, NM 87501

5 (505) 827-4860

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A P P E A R A N C E S

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2           Secretary of State:

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C O N T E N T S

PAGE

Opinion

6



1 P R O C E E D I N G S

2 THE COURT: And then after 2001, we  
3 witnessed these nine legislative attempts to either  
4 prohibit straight party voting or to authorize it.

5 So what's the consequence of these nine  
6 failed attempts to pass legislation that bans  
7 straight party voting or authorizes straight party  
8 voting? What's the consequences of the repeal of  
9 the statutes that reference straight party voting  
10 including the lever machine abolishment, but not  
11 including language when we implemented the  
12 electronic voting machines?

13 What's clear to the Court is that there is  
14 a lot of uncertainty as to what the legislature was  
15 trying to accomplish over the years. So to fulfill  
16 our responsibility we have to determine the  
17 objective underlying the statutory scheme as a whole  
18 and in so doing the question becomes pretty clear.

19 Did the legislature intend to delegate its  
20 decision-making authority over straight party voting  
21 to the Secretary of State? The answer to this  
22 question is no. The New Mexico Constitution  
23 specifies that the legislature has plenary authority  
24 over elections including the power to regulate the  
25 manner of voting, and to enact laws that ensure the

1 purity of elections.

2 This power is theirs alone, and the  
3 legislature has indicated its intent to thoroughly  
4 regulate every aspect of voting through the election  
5 code. From the order in which names appear, are  
6 listed on the ballot, which is listed in 1-10-8 to  
7 how candidates' names must appear on a ballot, they  
8 even speak to how you must treat candidates that  
9 have similar names in 1-10-6.

10 They discuss a candidate, emphasis on a  
11 candidate's, ballot position. In 1-10-8.1 they  
12 speak to the print, the numbering, the uniformity of  
13 ballot size in 1-10-12.

14 Void is any authorization or mention of  
15 straight party voting. Given the legislature's  
16 clear authority over elections, its detailed  
17 treatment of ballots including ink color, it strains  
18 logic to suggest that the Secretary of State has the  
19 discretionary authority to include straight party  
20 voting on the ballot.

21 Until the legislature makes a decision one  
22 way or the other, the Secretary of State cannot.

23 Finding no textual support that the  
24 legislature intended to delegate its authority to  
25 the Secretary of State, the Supreme Court is

1 granting the Writ of Mandamus.

2 Are there any questions?

3 UNIDENTIFIED SPEAKER: I would offer  
4 just --

5 THE COURT: Counsel.

6 Okay. That is the decision of the Court.  
7 We will follow it with a written opinion.

8 Thank you once again for your argument and  
9 your thorough briefing.

10 UNIDENTIFIED SPEAKER: Change of court,  
11 please.

12 (Off the record.)

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CERTIFICATE OF TRANSCRIBER

I, Molly Bugher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

*Molly Bugher*

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Molly Bugher

DATE: August 23, 2018

Transcript of Hearing Excerpt  
 Conducted on September 13, 2018

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<b>ability</b> 9:5 <b>abolishment</b> 6:10 <b>accomplish</b> 6:15 <b>advocates</b> 3:20 <b>after</b> 6:2 <b>again</b> 8:8 <b>agriculture</b> 3:19 <b>albuquerque</b> 3:10, 3:15, 4:10 <b>alone</b> 7:2 <b>answer</b> 6:21 <b>any</b> 7:14, 8:2, 9:7 <b>appear</b> 7:5, 7:7 <b>argument</b> 8:8 <b>aspect</b> 7:4 <b>attempts</b> 6:3, 6:6 <b>attorney</b> 4:7 <b>audio</b> 9:5 <b>august</b> 9:14 <b>authority</b> 6:20, 6:23, 7:16, 7:19, 7:24 <b>authorization</b> 7:14 <b>authorize</b> 6:4 <b>authorizes</b> 6:7	3:21 <b>avenue</b> 2:3 <hr style="border: 0.5px solid black;"/> <th style="text-align: center; border-bottom: 1px solid black;">B</th> <hr style="border: 0.5px solid black;"/> <b>ballot</b> 7:6, 7:7, 7:11, 7:13, 7:20 <b>ballots</b> 7:17 <b>bans</b> 6:6 <b>becomes</b> 6:18 <b>best</b> 9:5 <b>blair</b> 3:18 <b>box</b> 3:9, 3:14 <b>briefing</b> 8:9 <b>bugher</b> 1:25, 9:2, 9:13 <b>business</b> 3:19 <hr style="border: 0.5px solid black;"/> <th style="text-align: center; border-bottom: 1px solid black;">C</th> <hr style="border: 0.5px solid black;"/> <b>candidate</b> 7:10 <b>candidate's</b> 7:11 <b>candidates</b> 7:7, 7:8 <b>cannot</b> 7:22 <b>carter</b> 3:7 <b>case</b> 9:8 <b>certificate</b> 9:1 <b>certify</b> 9:2 <b>change</b> 8:10 <b>christopher</b> 3:13	B	C	6:13, 6:18, 7:16 <b>code</b> 7:5 <b>color</b> 7:17 <b>consequence</b> 6:5 <b>consequences</b> 6:8 <b>constitution</b> 6:22 <b>correct</b> 9:3 <b>counsel</b> 8:5, 9:7 <b>court</b> 1:1, 2:2, 6:2, 6:13, 7:25, 8:5, 8:6, 8:10 <b>cuniff</b> 4:5 <hr style="border: 0.5px solid black;"/> <th style="text-align: center; border-bottom: 1px solid black;">D</th> <hr style="border: 0.5px solid black;"/> <b>date</b> 9:14 <b>decision</b> 7:21, 8:6 <b>decision-making</b> 6:20 <b>defendant</b> 4:1 <b>delegate</b> 6:19, 7:24 <b>detailed</b> 7:16 <b>determine</b> 6:16 <b>did</b> 6:19 <b>discretionary</b> 7:19 <b>discuss</b> 7:10 <b>doing</b> 6:18 <b>don</b> 2:3	D	3:18 <b>dylan</b> 4:6 <hr style="border: 0.5px solid black;"/> <th style="text-align: center; border-bottom: 1px solid black;">E</th> <hr style="border: 0.5px solid black;"/> <b>either</b> 6:3 <b>elect</b> 1:4, 3:4 <b>election</b> 7:4 <b>elections</b> 6:24, 7:1, 7:16 <b>electronic</b> 6:12 <b>emphasis</b> 7:10 <b>employed</b> 9:7 <b>enact</b> 6:25 <b>ensure</b> 6:25 <b>esq</b> 3:7, 3:13, 3:18, 4:4, 4:5, 4:6 <b>even</b> 7:8 <b>every</b> 7:4 <b>excerpt</b> 1:17 <hr style="border: 0.5px solid black;"/> <th style="text-align: center; border-bottom: 1px solid black;">F</th> <hr style="border: 0.5px solid black;"/> <b>failed</b> 6:6 <b>fe</b> 2:4 <b>financial</b> 9:9 <b>finding</b> 7:23 <b>follow</b> 8:7 <b>foregoing</b> 9:3	E	F

Transcript of Hearing Excerpt  
 Conducted on September 13, 2018

<p><b>from</b> 7:5, 9:5 <b>fulfill</b> 6:15</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gaspar</b> 2:3 <b>general</b> 4:7 <b>given</b> 7:15 <b>gold</b> 3:21 <b>granting</b> 8:1</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>hanson</b> 3:8 <b>harrison</b> 3:7 <b>has</b> 6:23, 7:3, 7:18 <b>have</b> 6:16, 7:9, 9:8 <b>hearing</b> 1:16, 2:1 <b>heather</b> 1:3, 3:3 <b>held</b> 2:1 <b>hereby</b> 9:2 <b>how</b> 7:7, 7:8</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>implemented</b> 6:11 <b>include</b> 7:19 <b>including</b> 6:10, 6:11, 6:24, 7:17 <b>indicated</b> 7:3 <b>information</b> 9:6</p>	<p><b>ink</b> 7:17 <b>intend</b> 6:19 <b>intended</b> 7:24 <b>intent</b> 7:3 <b>interest</b> 9:8 <b>its</b> 6:19, 7:3, 7:16, 7:24, 9:9 <b>iv</b> 3:7</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>jane</b> 4:4 <b>job</b> 1:23 <b>just</b> 8:4</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>lange</b> 4:6 <b>language</b> 6:11 <b>laws</b> 6:25 <b>legislation</b> 6:6 <b>legislative</b> 6:3 <b>legislature</b> 6:14, 6:19, 6:23, 7:3, 7:21, 7:24 <b>legislature's</b> 7:15 <b>lever</b> 6:10 <b>libertarian</b> 1:5, 3:4 <b>liberty</b> 1:4, 3:4 <b>listed</b> 7:6</p>	<p><b>llp</b> 3:20 <b>logic</b> 7:18 <b>lot</b> 6:14</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>machine</b> 6:10 <b>machines</b> 6:12 <b>maggie</b> 1:10, 4:1 <b>makes</b> 7:21 <b>mandamus</b> 8:1 <b>manner</b> 6:25 <b>mention</b> 7:14 <b>mexico</b> 1:1, 1:3, 1:6, 1:7, 1:12, 2:2, 3:3, 3:5, 4:7, 6:22 <b>molly</b> 1:25, 9:2, 9:13 <b>mullins</b> 3:8 <b>must</b> 7:7, 7:8</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>names</b> 7:5, 7:7, 7:9 <b>neither</b> 9:7 <b>new</b> 1:1, 1:3, 1:6, 1:7, 1:12, 2:2, 3:3, 3:5, 4:7, 6:22 <b>nine</b> 6:3, 6:5 <b>nm</b> 2:4, 3:10,</p>	<p>3:15, 4:10 <b>nor</b> 9:7 <b>nordquist</b> 1:4, 3:4 <b>not</b> 6:10 <b>numbering</b> 7:12 <b>nw</b> 4:8</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>objective</b> 6:17 <b>off</b> 8:12 <b>offer</b> 8:3 <b>okay</b> 8:6 <b>oliver</b> 1:10, 4:1 <b>once</b> 8:8 <b>one</b> 7:21 <b>opinion</b> 5:3, 8:7 <b>order</b> 7:5 <b>other</b> 7:22 <b>otherwise</b> 9:9 <b>our</b> 6:16 <b>outcome</b> 9:9 <b>over</b> 6:15, 6:20, 6:24, 7:16</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>pac</b> 1:5, 3:4 <b>page</b> 5:2</p>
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Transcript of Hearing Excerpt  
 Conducted on September 13, 2018

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## CERTIFICATE OF SERVICE

I certify that a copy of this Verified Petition for Writ of Mandamus and Request for Stay was served in accordance with Rules 12-307 and 12-504 NMRA on this 20<sup>th</sup> day of December 2018, as follows:

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