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Discussion Group Report: Campaign Finance

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GOVERNOR’S ETHICS AND CAMPAIGN FINANCE REFORM TASK FORCE DISCUSSION GROUP REPORT:

CAMPAIGN FINANCE

Group Leader: Matt Brix
Other Task Force Participants: City Councilor Brad Winter, Andrew Montgomery

I. Overview:

“Campaign finance” laws cover the manner in which money is raised, spent and reported by candidate committees, political action committees, political parties and independent expenditure groups. This report will examine existing laws in New Mexico, potential problem areas in those laws and options for amending current laws. The real or perceived influence of money on the political process creates an inevitable tension between the right to free speech on the one hand, and the established norm of one person, one vote on the other.

Existing laws governing campaign finance in New Mexico focus on reporting requirements, limits on campaign spending, and public campaign funding (for Public Regulation Commission races). With the exception of the Voter Action Act, which provides public campaign funding for Public Regulation Commission races, existing laws discussed in this report are drawn from the various sections of the Campaign Disclosure Act. In accordance with the Task Force matrix, each of the following issue areas will be addressed separately: campaign spending, campaign donations, campaign reporting, public campaign funding and third-party expenditures/out-of-state funding.

A. Campaign Spending:

1. Existing law:

The Campaign Reporting Act makes it a petty misdemeanor for a political party to expend funds for or against a candidate or candidates of the same party during a primary campaign. NMSA 1978, § 1-19-1. Laws governing the direct or indirect expenditure of funds by a political committee for the purpose of making a telephone call require the disclosure of the organization that authorized or paid for the call. NMSA 1978, § 1-19-26.3.

The lawful expenditure of political committee funds includes: expenditures of the campaign, expenditures by legislators that are related to their official legislative duty, donations to the general fund, donations to tax-exempt organizations, expenditures to eliminate campaign debt or expenditures incurred when seeking election to another public office, donations to a political party, donations to another candidate, disbursements to return unspent funds to contributors. NMSA 1978, § 1-19-29.1(A).

2. Problem areas:

- There may be some ambiguity as to what constitutes a lawful expenditure of political funds.
- There may be some difficulty enforcing the restrictions on political committee expenditures.

B. Campaign Donations:

1. Existing law:

New Mexico is one of the least restrictive states in terms of regulating campaign donations. New Mexico is one of thirteen states that do not limit individual contributions to political committees, and one of fourteen states that do not limit political action committee contributions to political committees. New Mexico law also does not limit state party contributions to political committees. In addition, New Mexico is one of only five states that do not limit or prohibit corporate and union contributions. The National Conference of State Legislators has detailed comparative campaign donation data for all fifty states: <http://www.ncsl.org/programs/legman/about/ContribLimits.htm>.

Current law does prohibit three particular kinds of campaign donations. It is unlawful for a legislator, candidate for the state legislature, or the governor to solicit a campaign donation during a regular or special legislative session. NMSA 1978, § 1-19-34.1. It is unlawful for a regulatory officer or employee, or candidate for regulatory office, to solicit donations from an entity directly regulated by that office. NMSA 1978, § 1-19-34.2. Current law also prohibits a candidate committee from accepting a donation from a person or entity when it is known that the donation is actually from another person or entity. NMSA 1978, § 1-19-34.3.

2. Problem areas:

- With the few exceptions noted above, no limits on campaign donations from the following: individuals, political action committees, corporations, or unions.
- No limits on cash donations.
- Prohibitions against legislative session solicitations exist, but there is no reference to “accepting” a donation during a prohibited period.

C. Campaign Reporting:

1. Existing law:

The Campaign Reporting Act specifies who must report fundraising and expenditure activities, the identity of the filing officer, the schedule of annual reporting (including a reporting schedule for election cycles), required information for each report, regularly scheduled random audits by the filing officer, exclusion of certain candidates from filing, limits for anonymous contributions and rules for accepting cash contributions at special events.

A candidate seeking statewide office that receives or spends \$2,500 or more must file an annual campaign disclosure report. A candidate seeking a non-statewide office, such as a seat in the Senate or House, who receives or spends \$1,000 or more must file an annual campaign report. NMSA 1978, § 1-19-26(E). Candidates who do not receive or spend \$2,500 for statewide offices, or \$1,000 for non-statewide offices during a primary, general or special election may file a statement of exemption. NMSA 1978, § 1-19-33. Campaign reports are to be filed annually by the second Monday in May with the secretary of state and with the exception of those who file hardship exemptions, all candidates must file campaign reports electronically. NMSA 1978, § 1-19-27. A detailed account of the reporting schedule for an election year is provided in the Campaign Reporting Act. NMSA 1978, § 1-19-29. Reports must include the following: the name and address of the person to whom the expenditure was made or from whom the contribution was received, the occupation or type of business for a person or entity making an aggregate contribution of \$250 or more per election, the amount of the contribution or expenditure, the purpose of the expenditure and the date the expenditure was made or contribution was received. NMSA 1978, § 1-19-31(A). An anonymous contribution in excess of \$100 may not be accepted. Aggregate totals for anonymous contributions during a primary, general, or statewide special election may not exceed \$2,000 for statewide races and \$500 for all other races. NMSA 1978, § 1-19-34(B).

2. Problem areas:

- The lack of a discernable structure in the Campaign Reporting Act, including the duplication of some provisions of the Act, may cause confusion.
- Candidates are not required to file campaign reports electronically.
- Reporting required only once annually during non-election years.
- No aggregate contribution totals available for individual donors.
- Information required for individual donors may be ambiguous (i.e., occupation required instead of employer).
- The lack of sufficient resources to carry out random audits of campaign reports.

D. Public Campaign Funding:

Currently, New Mexico has no monetary limits on campaign spending. Mandatory limits on campaign spending were held to be a violation of free speech as part of the 1976 decision of the United States Supreme Court entitled *Buckley v. Valeo*. Therefore, spending limits are likely to be found constitutional only if they are optional. In an effort to make voluntary spending limits viable, almost half of the states currently offer some form of partial public funding to candidates. In partial public funding systems, candidates raise a specified, limited amount of private funds and the state matches the private funding up to a certain limit.

Clean elections or full public campaign funding systems are marked by candidates gathering a required amount of low-dollar (usually \$5) qualifying contributions from a specified number of registered voters statewide, or in the district they hope to represent.

When the chief elections official in a state verifies the required number of qualifying contributions has been collected, the election official certifies the candidate as a participating candidate. Once certified, the candidate receives a monetary stipend, and in exchange for the stipend, the candidate agrees to neither raise nor spend any private funds (including their own money). Matching funds are available up to a certain limit for participating candidates should a nonparticipating opponent spend more than the voluntary limit. Severe penalties are imposed on participating candidates who violate the voluntary spending limits. Clean elections systems are in place for all statewide and legislative races in Arizona, Maine, Connecticut, as well as for North Carolina appellate court races and New Mexico Public Regulation Commission races. Albuquerque city council and mayoral races and Portland, Oregon city races also have clean elections systems in place.

1. Existing law:

In 2003, the legislature passed and the governor signed the Voter Action Act, providing public campaign funding for Public Regulation Commission races. NMSA 1978, § 1-19A-1 *et seq.* Candidates seeking to qualify for public funding must gather qualifying contributions from registered voters equal to one-fourth of one percent (0.25%) of the number of votes cast for all candidates for governor in the candidate's PRC district in the last general election. Once this requirement is met and verified by the secretary of state, the candidate is certified. In exchange for agreeing to spend no more than they receive from the public fund and to seek contributions from no other source, qualified candidates receive money from the public fund to run their campaign. The funding amount is based on the average cost in contested Public Regulation Commission elections for the previous four election cycles.

If a certified candidate is opposed by a candidate who has not opted into the voluntary system, the certified candidate can receive additional funding if the non-certified candidate raises or spends more than the amount allocated to the certified candidate. The certified candidate receives additional funding on a dollar-for-dollar basis, up to a total of twice the amount initially allocated. To finance the public fund, the act includes slight increases in three different regulatory fees (the insurance premium tax, the carrier inspection and utility inspection fees, and the inspection and supervision fee) on regulated industries. The increases do not exceed 2.5% and are designed to raise an additional \$100,000 in each of the three fees.

2. Problem areas:

- Timely distribution of campaign funds.
- Lack of clarity of the PRC matching funds provision.
- Adequate funding for candidates.

E. Third-Party Expenditures/Out-of-State Funding:

1. Existing law:

Third-party expenditures are not specifically referenced in existing New Mexico statutes. However, existing law makes reference to “political action committees.” NMSA 1978, § 1-19-2(L)(1).

2. Problem areas:

- Definitions of political action committees and independent expenditures.
- State reporting exemptions for those committees or independent expenditure groups that are registered in a state other than New Mexico and that file required reports with the Federal Elections Commission

II. Options/Best Practices:

A. Campaign Spending:

- More oversight and enforcement of lawful expenditures.
- Training for elected officials and candidates for elected office about what constitutes lawful campaign expenditures.

B. Campaign Donations:

- Limit the aggregate annual amount a donor and political committee can give to a political candidate.
- Limit or ban campaign contributions from corporations and unions.
- Limit cash contributions.

C. Campaign Reporting:

- Require more frequent campaign reporting, such as quarterly instead of annually, and ensure that random audits of reports are carried out.
- Require electronic filing of campaign reports.
- Require additional information on campaign reports such as the donor’s employer and aggregate contribution totals for each donor.

D. Public Campaign Funding:

- Expand the PRC clean elections system to additional offices (contested partisan judicial elections and other contested statewide and legislative races).

E. Third-Party Expenditures/Out-of-State Funding:

- Define third-party expenditures and require any third party expenditure, regardless of FEC reporting, to report in New Mexico.

III. Experts:

1. Todd Lang*, Executive Director of Citizens Clean Elections Commission in Arizona
 - a. Costs: Airfare \$159.10 + 1 night Albuquerque hotel \$100 = \$259.10.
2. Marc Spitzer, Arizona Corporations Commissioner and former Arizona Senate Majority Floor Leader

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* With permission from Co-Chair Governor Garrey Carruthers, Mr. Lang is scheduled to appear as an expert witness on the afternoon of June 28 to discuss matters related to the Arizona clean elections system.