Draft Minutes of the Seventh Meeting of the Governor's Ethics and Campaign Finance Reform Task Force

Governor's Task Force on Ethics Reform

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On September 20, the seventh meeting of the Governor’s Ethics and Campaign Finance Reform Task Force, hereinafter referred to as the “task force,” was held in Room 307 of the State Capitol.

PRESENT

Governor Garrey Carruthers, Dean, NMSU College of Business, Co-Chair
Suelyn Scarneccchia, Dean, UNM School of Law, Co-Chair
Stuart Bluestone, NM Chief Deputy Attorney General
Barbara Brazil, President, New Mexico First
Doug Brown, NM State Treasurer
Matt Brix, Executive Director, Common Cause
Maralyn Budke, Public Member
John Carey, President & CEO, Association of Commerce and Industry
Dede Feldman, NM State Senator
Mary Graña, Public Member
W. Ken Martinez, NM State Representative
Kathy McCoy, NM State Representative
Andrew Montgomery, Public Member
Gay Kernan, NM State Senator
Jim Noel, Executive Director, NM Judicial Standards Commission
Leonard Sanchez, CPA, Moss-Adams + Neff, L.L.P.
Ron Solimon, President & CEO, Indian Pueblo Cultural Center
Hilary Tompkins, Chief Counsel, Office of the Governor
Stewart Udall, Former U.S. Secretary of the Interior

STAFF

Justin Miller, Associate General Counsel, Office of the Governor
Amy Camille Chavez, Deputy Director, New Mexico State Board of Finance
Catherine Monroe, New Mexico State Board of Finance

Gifts Subcommittee Follow-Up

Matt Brix presented recommendations of the gifts subcommittee. The recommendations of the gifts subcommittee include:
• disclosure of all gifts having a fair market value greater than $100;
• prohibition of any gift with a fair market value greater than $250;
• a ban on the acceptance of any gift with a fair market value greater than $100 during a legislative session;
• prohibition on gifts to designated charities of public officials if such gifts are intended to influence the public official;
• a fall and spring reporting date for public officials who receive gifts and regular reporting during campaign cycles; and
• criminal penalties for violations of new gift restrictions.

During previous meetings, task force members suggested that the subcommittee explore the possibility of banning all gifts from registered lobbyists during the legislative session; allowing public officials to receive large gifts on behalf of the State of New Mexico; and providing an annual cap on gifts. Although the subcommittee discussed those ideas, the subcommittee did not include them in its set of recommendations. The subcommittee members wanted to keep its recommendations manageable and avoid imposing overly-onerous rules that might discourage public service job expansion.

Some task force members suggested that a $1000 cap on the aggregate provision of gifts to public officials by lobbyists, lobbyist employers and other public officials be included as part of the task force’s final package of recommendations. Other task force members stated beliefs that a gift ban would be a less complicated alternative to reducing the influence of gifts in state government.

Task force members also stated their beliefs that public officials should be permitted to accept some gifts, so long as they are accepted on behalf of the state of New Mexico or a political subdivision of the state. Task force members also suggested that criminal penalties for violation of new laws pertaining to gifts mirror current property crime penalties in the criminal code. Some task force members expressed concern that the creation of new felony penalties in the Criminal Code might undermine the ability to prosecute violators of other, more serious charges.

Public Finance Subcommittee Follow-Up

On behalf of the public finance subcommittee, Matt Brix recommended that the task force suggest the implementation of a voluntary public financing system for all legislative, statewide and contested judicial appellate court elections if campaign contribution limits are simultaneously enacted. Mr. Brix indicated that by recommending a full voluntary public financing system for all statewide, legislative and judicial appellate court contested elections, the task force would be following a precedent set by other states, as well as here in New Mexico. He stated that in 2003, the legislature passed, and the governor signed the Voter Action Act, creating public financing for Public Regulation Commission races. He also stated that in 2005, voters in Albuquerque approved a ballot referendum by 69%-31% that developed a system of public financing for future mayoral and council races in that city.
Mr. Brix indicated that a public financing system would require candidates to raise a limited amount of seed money early in the campaign process to pay for the limited, initial costs of starting a campaign. The candidates would then be required to gather a predetermined amount of qualifying contributions from registered voters. After gathering the required number of qualifying contributions, the candidate would submit qualifying contributions, with proper documentation for each individual contribution to the system’s oversight authority. The oversight authority then would examine the qualifying contributions and accompanying documentation. A candidate that meets the qualifying requirements would be certified by the oversight authority. Once certified, the candidate would sign an affidavit with the oversight authority, agreeing to limit campaign spending to only that which is received from the public fund. If a candidate who is not participating in the system spends more than the voluntary limit for candidates participating in the public financing system, matching funds would be available up to a set limit, such as two times the designated public finance amount.

The task force members indicated their preference to adopt an incremental approach to the implementation of public financing. Some task force members stated that the task force should first attempt the use of public financing with statewide and contested appellate judicial elections. If public financing is implemented successfully for such elections, task force members indicated the possibility of extending the public financing option to legislative elections.

Some task force members raised questions as to whether a public financing system would eliminate corruption and encourage ethical behavior in state government. Other task force members stated that public financing systems would eliminate the need for public officials and candidates for public office to depend on outside sources and outside influences for campaign funds. Several task force members expressed support for a public financing system as an opportunity to boldly reform state campaign laws and to encourage candidates to run for office. There was also discussion about whether the current hybrid system of appointing and electing judges should be revised and whether the task force should note that in its recommendations to the Governor.

State Treasurer/State Auditor Subcommittee Follow-Up

State Treasurer Doug Brown reviewed the recommendations of the State Treasurer/State Auditor Subcommittee. He stated that the two offices have faced corruption due to a lack of accountability and mentioned that the only way to discipline those office-holders is through impeachment, which is a drastic, time-consuming and burdensome process. Treasurer Brown stated that making the offices appointed offices would permit easier removal of those officers and permit the establishment of minimum qualifications for the officers. Treasurer Brown suggested that the Governor appoint the state treasurer. To ensure the independence of the state auditor, Treasurer Brown suggested that a commission with representatives from the legislative branch, the governor’s office and representatives from public accountancy appoint the state auditor.
Treasurer Brown discussed minimum qualifications that might be set for the state treasurer and state auditor. He indicated that the state auditor should be a certified public accountant and the state treasurer possess at least five years of high level investment experience, possessing a Series 7 or 63 designation, or comparable experience in supervising investment operations.

Task force members expressed agreement that the state treasurer and state auditor should have different appointing authorities, due to the increased need for independence in the state auditor’s office. Other task force members discussed the possibility of permitting legislative members to appoint the state auditor. There was also discussion of how to prevent arbitrary removals of the treasurer and auditor by providing for independent Supreme Court hearings.

**Legislative Compensation Subcommittee Follow-Up**

Governor Garrey Carruthers summarized the final recommendations of the legislative compensation subcommittee. The subcommittee recommended that legislators be provided by a $10,000 fund to reimburse legislators for expenses incurred during the course of legislative business. The subcommittee additionally recommended that legislators be prohibited from using campaign funds for legislative expenses. Governor Carruthers noted that the subcommittee did not recommend legislative salaries because it probably would constitute a politically unpopular proposal.

Some task force members indicated their preference for the provision of legislative stipends. Those task force members indicated that the provision of stipends would reduce accounting requirements and problems with a required reimbursement system.

**Public Comments**

Gayle Thompson-Prinkey indicated that increased disclosure with respect to gifts and campaign contributions to candidates and public officials should be made available to the public. She also indicated her disapproval of the acceptance of gifts in state government. She further stated that television air time during campaigns runs high and that some public funding of provision of candidate information should be made available.

Dick Minzner, chair of the Association of Commerce and Industry ethics committee, stated the committee’s support of the appointment of the state treasurer and state auditor. However, he also expressed skepticism that the state auditor should be required to be a certified public accountant. He indicated that just because an official is a certified public accountant, ethical behavior is not guaranteed. Mr. Minzner further stated that the task force has appropriately examined the acceptance of gifts in state government. He also indicated the committee’s acceptance of the proposal to impose increased campaign contribution limits in the state.
Eliot Gould, a candidate for legislative office, indicated his support for the limitation of the receipt of gifts in state government. He expressed support of measures used to buy influence from state officials. William Prinkey expressed his support for a voluntary publicly financed system for campaigns so long as the system is adequately funded.

**Campaign Limits**

Andrew Montgomery and Hilary Tompkins presented the recommendations of the campaign limits subcommittee. The subcommittee recommended that contributions for candidates for statewide office be limited to one-half of the federal contribution limit for individuals, currently $1050 per candidate per election. It further recommended that candidates for district-wide office be limited to one-fourth of the federal contribution limit for individuals. The subcommittee agreed that by keying to the federal contribution limit for individuals, the contribution limits would be adjusted for inflation every two years based on the consumer price index. The subcommittee also recommended that the existing limit of $500 for contributions to candidates for the Public Regulation Commission from persons other than regulated entities should be repealed and replaced with the uniform, inflation-indexed limit of $525 for district-wide offices. However, the subcommittee recommended retention on the prohibition on Public Regulation Commission candidates accepting any contribution from a regulated entity.

The subcommittee further suggested that the same contribution limits should apply to all contributors, including individuals, corporations, unions, and political committees, residents or non-residents alike. The subcommittee additionally suggested that administration and enforcement of campaign contribution limits should be performed by an independent commission such as the State Ethics Commission proposed by the separate subcommittee addressing that subject. Mr. Montgomery and Ms. Tompkins emphasized that the campaign contribution limits are politically feasible and that they work within the legal parameters set forth by the United States Supreme Court.

The task force members discussed the implications that the suggested recommendations might have on political action committee, corporation and labor union contributions to candidates. They also discussed the potential effects upon family contributions to candidates. Some task force members suggested that a mechanism for the disposition of uncommitted campaign funds should be developed.

The task force members generally agreed that the campaign contribution limits of one-half the federal contribution limit amounts for statewide races and one-fourth the federal contribution limit amounts for district-wide races were too restrictive and might not give candidates enough fundraising power. Thus, they voted that campaign contribution limits in New Mexico should equal the federal contribution limits for statewide races and one-half of the federal contribution limits for district-wide races.
Ms. Tompkins discussed additional options for limiting campaign contributions and strengthening reporting requirements in New Mexico. She indicated that the task force might consider recommendation of more detailed campaign reporting statements for contributions that exceed a certain monetary amount. She additionally suggested that reporting requirements could be developed for cumulative totals of contributions received from individual donors and expenditures made to individual vendors. She also suggested that cash contributions exceeding $100 could be prohibited and cumulative limits for candidates could be established.

Many task force members expressed support of additional reporting requirements. They expressed particular interest in establishing a cap on total contributions to candidates by a particular entity within a specified time period. Discussion also focused on whether, and if so, how to address family members and others jointing together to evade campaign contribution limits. Other task force members indicated that certain modifications taking place in the Secretary of State’s office might reduce the need for additional reporting requirements.

**State Ethics Commission**

Jim Noel presented a motion to the task force for recommendation of the establishment of a state ethics commission. The motion provided details regarding the establishment of powers for the state ethics commission, which would include the powers to investigate allegations of unethical conduct; to issue certain forms of discipline to recommend removal, suspension or demotion of public officers and employees; and to educate public officials, government contractors, lobbyists and the general public about government ethics issues. The motion further included details regarding the composition of the commission. Mr. Noel suggested that the commission be composed of eight members, no more than four of whom would be members of the same political party. He recommended that four members be appointed by the Governor, while the other four members be appointed by the Democratic and Republican leaders of the House and Senate. Mr. Noel also recommended the enactment of a Whistleblower Protection Act to protect and encourage the submission of good faith reports on ethics issues involving public officials and employees.

The task force examined the possibility of including oversight of compliance with campaign laws and rules that involve ethical issues within the function of the state ethics commission. The task force agreed that such a function should not be included within the scope of the work of the state ethics commission. Instead, the task force agreed that an independent elections commission, the establishment of which might require further study, should address elections issues. Until such an independent elections commission is created, some task force members suggested that additional funding should be provided to the Office of the Secretary of State to provide for additional ethics oversight in campaigns and the election process.

**Report of Recommendation Development**
Governor Carruthers briefly discussed the format of the final report of task force recommendations. The task force members then examined each of the recommendations brought forth to the task force by each subcommittee. The task force members voted in favor of the making following recommendations to the Governor in its final report:

State Ethics Commission
- Establish an independent state ethics commission with powers of investigation, reprimand and recommendation of removal, suspension or demotion.
- Enact a Whistleblower Protection Act to protect and encourage the submission of good faith reports on ethics issues involving public officials and employees.

Gift Limitations
- Prohibit any gift with a fair market value greater than $250, unless the gift is accepted on behalf of the state of New Mexico.
- Establish a $1000 cap on gifts to any one recipient who is a state official or state employee.
- Establish reporting requirements for gifts that exceed $100 in value and ban gifts exceeding that value during legislative sessions.
- Ban gifts to designated charities of public officials, where those gifts are intended to influence such public officials.
- Provide criminal penalties for the donation or acceptance of gifts in violation of the new prohibitions.

Campaign Contribution Limits and Reporting Requirements
- Limit contributions to candidates for statewide office to the federal contribution limit for individuals, currently $2,100.
- Limit contributions to candidates for district-wide office to one-half of the federal contribution limit for individuals, currently $1,050.
- Prohibit cash contributions of more than $100.
- Require candidates and political committees to provide more detailed campaign reporting statements.

Legislative Reimbursement
- Prohibit the use of campaign funds for legislative purposes.
- Provide for legislative expense reimbursement accounts in an amount not to exceed $10,000 annually.
- Make the office of the state treasurer an appointive office.
- Make the office of the state auditor an appointive office.
- Require the State Treasurer to have certain minimum qualifications.

Publicly Financed Campaigns
- Provide for public financing of all statewide and contested judicial elections.

Governor Carruthers indicated that a final report of recommendations of the task
force would be prepared and the report would be reviewed and discussed by the task force members at the final task force meeting on October 3. The meeting adjourned at approximately 2:30 p.m.