



## **COMMENTS RE: COMMISSION'S PROPOSED LEGISLATIVE AMENDMENTS**

In addition to comments previously made during our presentation before the Commission on October 2, 2020, regarding amendments to statutes within the Commission's jurisdiction, New Mexico Ethics Watch (NMEW) respectfully submits the following comments.

### **I. General Comments**

NMEW shares the concerns stated by Common Cause New Mexico (CCNM) in their comments dated November 25, 2020, regarding the presentation of substantive amendments to statutes within the Commission's jurisdiction during a pandemic and a legislative session in which public participation will be difficult, at best. We also share specific concern regarding the amending of both the State Ethics Commission Act (SECA) and the Campaign Reporting Act (CRA). Enactment and amendment of these Acts has previously involved delicate and nuanced negotiation and participation by multiple stakeholders that would be impossible to achieve during the upcoming session held during the pandemic. There is a potential for grave disturbance to these Acts and NMEW recognizes that it may be best to be avoided.

These concerns, however, need to be balanced against the responsibility the Commission has under Section 10-16G-5(B)(5) NMSA 1978 to include any recommendations regarding state ethics laws in its annual report to the legislature and the governor, as well as those portions of the Commission's enabling legislation (SB 668, Sections 19, 20 and 21) requiring the Commission and the Secretary of State to make recommendations during the 2021 legislative session on any changes to the Campaign Reporting Act, the Voter Action Act and the Lobbyist Regulation Act, "necessary for the efficient administration and enforcement of the provisions" of those Acts.

Additionally, as matters during the short legislative session in 2022 are constitutionally required to chiefly concern the budget, and absent a decision by the governor to place ethics legislation reform upon the governor's call, ethics legislation reform may not be taken up again by the legislature until 2023, after another election cycle has passed. NMEW is equally concerned with letting a substantive, long session pass by and having to wait another two years for substantive ethics law reform to be considered by the legislature.

The Commission's decision to propose certain ethics law reform must, therefore, involve a balancing between the concerns expressed above.

In the event that the Commission does pursue passage of its proposed legislative amendments, NMEW offers the specific comments found below.

### **II. Comments Re: Proposed Amendments to Specific Acts**

- a. State Ethics Commission Act** (Section 10-16G-1 NMSA 1978 et seq.)
  - i. Notarization: NMEW is in agreement about dropping the notarization requirement for filing a complaint with the Commission. We have spoken with and attempted to assist people who are unable to get a complaint notarized. Given

- current practices and Commission duties to notify and investigate, dropping the notarization requirement appears to constitute a best practice.
- ii. Requiring Commissioners to file a Financial Disclosure Statement every January is supported by NMEW and puts into law the practice already undertaken by the Commission. (NOTE: the Commission does not propose an amendment to the Financial Disclosure Act, Section 10-16A-3 NMSA 1978, requiring filing by specified persons.)
  - iii. Section 10-16G-9(F): if the proposed amendment changing “respondent” to “defendant” will provide the Commission with the necessary and desired power of enforcement to proceed to District Court prior to undertaking administrative processes, NMEW is in support of the amendment.
  - iv. Additionally, NMEW encourages the Commission to propose an amendment to Section 10-16G-15 NMSA 1978 that would provide the Commission with the authority to compel a candidate, at any time, to file a financial disclosure statement pursuant to the provisions of the Financial Disclosure Act, including during the sixty-day blackout period prior to a primary or general election.

**b. Campaign Reporting Act** (Section 1-19-25 NMSA 1978 et seq.)

While NMEW has not seen some of the Commission’s proposed amendments to the CRA, commented upon by CCNM, NMEW is aware of the desire to close a Commission-identified “loophole” contained in Section 1-19-27.3(D)(2). While we are in strong agreement that the disclosure of dark money in elections is of great importance, we urge caution in amending this statutory section. If a proposed amendment is put forth, it must be one that neatly and surely closes the loophole and does not lead to unintended consequences that weaken or endanger the CRA’s current disclosure requirements. NMEW recommends that any additional and currently unknown proposed amendments to the CRA be likewise vetted.

With regard to the suggested amendments to the CRA put forth in the Discussion Draft titled “Attachment 2” and included within the Commission’s public materials prepared for the December 4, 2020 meeting, at p. 53, NMEW is in support, generally, of amendments that improve “the efficient administration and enforcement” of the CRA, that grant the Commission adjudicatory and civil enforcement roles and that bring New Mexico into alignment with other states regarding the division of responsibilities between secretaries of state and ethics commissions.

**c. Lobbyist Regulation Act** (Section

NMEW has previously presented its recommendations to the Commission on October 2, 2020, regarding amendments to the LRA. With regard to the Commission’s recommended amendments, NMEW offers the following comments:

- i. While NMEW has previously recommended a misdemeanor penalty for those former legislators and public officials who violate a mandatory cooling off period, NMEW is in support of imposing a civil penalty instead.
- ii. NMEW is in support of the Commission’s support for an amendment calling for the filing of a post-session report detailing lobbyist activity on and positions on legislation.
- iii. While NMEW has previously recommended recusal by a legislator whose family member is lobbying on legislation, NMEW is in support of requiring disclosure instead.

- iv. NMEW has previously recommended disclosure of lobbyist compensation and encourages the Commission to support this disclosure.
- v. Additionally, NMEW encourages the Commission to support amendments to the LRA that place the following provisions and requirements re: the promulgation of rules and regulations and auditing of filings found within the CRA into the LRA, modified, as necessary, to comport with provisions of the LRA:
  - 1. **1-19-26.2. Rules and regulations.**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

**2. 1-19-32.1. Reports examination; forwarding of reports.**

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

With regard to the suggested amendments to the LRA put forth in the Discussion Draft titled “Attachment 2” and included within the Commission’s public materials prepared for the December 4, 2020 meeting, at p. 53, NMEW is in support, generally, of amendments that improve “the efficient administration and enforcement” of the LRA, that grant the Commission adjudicatory and civil enforcement roles and that bring New Mexico into alignment with other states regarding the division of responsibilities between secretaries of state and ethics commissions.

d. **Financial Disclosure Act** (Section 10-16A-1 NMSA 1978 et seq.)

With regard to the suggested amendments to the FDA put forth in the Discussion Draft titled “Attachment 2” and included within the Commission’s public materials prepared for the December 4, 2020 meeting, at p. 53, NMEW is in support, generally, of amendments that improve “the efficient administration and enforcement” of the FDA, that grant the Commission adjudicatory and civil enforcement roles and that bring New Mexico into alignment with other states regarding the division of responsibilities between secretaries of state and ethics commissions. We are also in agreement that the Commission’s administrative procedures provide ample due process for persons subject to the FDA and that the arbitration provisions currently in Section 10-16A-6(B) through (D) are no longer necessary in view of the Commission’s administrative process to adjudicate financial disclosure claims.

Additionally, NMEW encourages the Commission to propose the following amendments to the FDA:

- i. An amendment to Section 10-16A-4 NMSA 1978 that requires the Secretary of State to maintain a public access database that includes all financial disclosure statements filed with the Secretary of State. While the existing database can be found at <https://portal.sos.state.nm.us/FinancialDisclosure/search.aspx>, there is currently no requirement that it be maintained and available to the public. The only current requirement found in Subsection (C) requires the disclosures to be made available by the Secretary of State for inspection to any citizen of New Mexico.
- ii. Additionally, NMEW encourages the Commission to propose amendments to the FDA that place the following provisions and requirements re: the promulgation of rules and regulations and auditing of filings found within the CRA into the FDA, modified, as necessary to comport with provisions of the FDA:
  1. **1-19-26.2. Rules and regulations.**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [[1-19-25](#) to [1-19-36](#) NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [[12-8-1](#) to [12-8-25](#) NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section [12-8-4](#) NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

2. **1-19-32.1. Reports examination; forwarding of reports.**

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [[1-19-25](#) to [1-19-36](#) NMSA 1978]. The examination may

include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section [1-19-34.4](#) NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section [1-19-36](#) NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section [1-19-32](#) NMSA 1978.

NMEW appreciates the opportunity to comment upon the Commission's legislative recommendations and proposals. We also look forward to participating through public comment at the Commission's December 4, 2020 meeting.