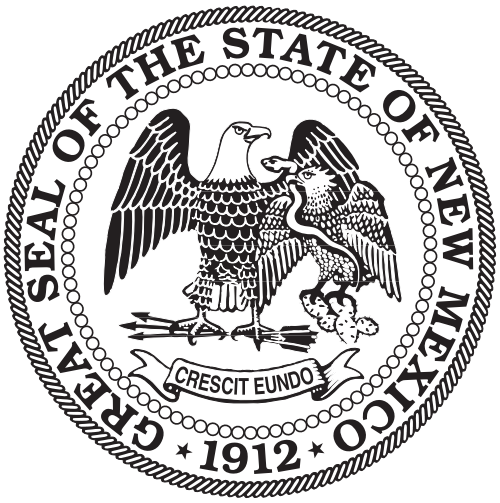

STATE ETHICS COMMISSION MEETING

June 10, 2022

PUBLIC MATERIALS

PUBLIC MATERIALS

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STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeffrey L. Baker, Member
Stuart M. Bluestone, Member
Hon. Garrey Carruthers, Member
Hon. Celia Foy Castillo, Member
Ronald Solimon, Member
Dr. Judy Villanueva, Member

Friday, June 10, 2022, 9:00 a.m. to 12:00 p.m. (Mountain Time)

Public Meeting (via Zoom):

Join Zoom through internet
browser: https://us02web.zoom.us/j/89881513617?pwd=K2lnVmQ2Mlh0RmdoeGJyUUZPTTZ6UT09
Meeting ID: 898 8151 3617
Dial In Number: (346 248 7799)
Password: SEC365
One-tap Dial in Number: +12532158782,,89881513617#,,,,*058723#

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of May 11, 2022 Commission Meeting

Commission Meeting Items	**Action Required**
4. Introduction of new staff (*Farris*)	No
5. Advisory Opinion 2022-06 (*Branch*)	Yes
6. Advisory Opinion 2022-07 (*Farris*)	Yes

7. Overview of 2022 Financial Disclosure Filings (*Farris*) — No

Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) & 10-15-1(H)(7) (attorney client privilege pertaining to litigation)

8. Discussion regarding current and potential litigation:
   a. *State Ethics Comm'n v. Vargas & Double Eagle Real Estate LLC*, D-202-CV-2021-06201 (2d Jud. Dist. Ct.)
   b. *In re State Ethics Commission Petition for Issuance of a Subpoena Duces Tecum Pursuant to NMSA 1978, 10-16G-10(J)*, No. A-1-CA-39841 (N.M. App.), and *Dow v. Martin*, No. S-1-SC-38928 (N.M.)
   c. Following the Secretary of State's referral under NMSA 1978, Section 10-16A-6(D), potential civil action(s) to enforce the Financial Disclosure Act

9. Discussion regarding administrative matters under Revised Uniform Law on Notarial Acts:
   a. *In re notary public commission of Samaniego*, 2022-NP-03
   b. *In re notary public commission of Perez*, 2022-NP-05
   c. *In re rotary public commission of Bratcher f/k/a Stevenson*, 2022-NP-08

10. Discussion regarding administrative matters under State Ethics Commission Act:
    a. Administrative Complaint No. 2022-001
    b. Administrative Complaint No. 2022-004
    c. Administrative Complaint No. 2022-009
    d. Administrative Complaint No. 2022-012
    e. Administrative Complaint No. 2022-013
    f. Administrative Complaint No. 2022-019
    g. Administrative Complaint No. 2022-020
    h. Administrative Complaint No. 2021-012

Upon applicable motion, Commission returns from executive session

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11. Actions on Administrative Complaints (*Farris*) — Yes

    Administrative Matters under State Ethics Commission Act:
    a. Administrative Complaint No. 2022-001
    b. Administrative Complaint No. 2022-004
    c. Administrative Complaint No. 2022-009
    d. Administrative Complaint No. 2022-012
    e. Administrative Complaint No. 2022-013
    f. Administrative Complaint No. 2022-019

g. Administrative Complaint No. 2022-020

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c. *In re rotary public commission of Bratcher f/k/a Stevenson*, 2022-NP-08

12. Resolutions related to commission authorization of demand and civil enforcement actions (*Farris*) — Yes

13. Discussion of next meeting (*Lang*) — No

14. Public Comment — No

15. Adjournment

For inquires or special assistance, please contact Suha Musa at Ethics.Commission@state.nm.us

SEC 3

SEC Office
800 Bradbury Dr. SE,
Suite 215
Albuquerque, NM 87106

STATE ETHICS COMMISSION

Commission Meeting Minutes of May 11, 2022 | 3:00PM-5:00PM
Virtually Via Zoom
View Recording Here

[SUBJECT TO RATIFICATION BY COMMISSION]

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Chair Lang. The roll was called; the following Commissioners were present:

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner
Hon. Garrey Carruthers, Commissioner
Hon. Celia Foy Castillo, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Hon. William Lang, Chair

1. APPROVAL OF AGENDA

Chair Lang sought a motion to approve the agenda. Commissioner Carruthers moved to approve the agenda; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda unanimously.

2. APPROVAL OF APRIL 1, 2022 COMMISSION MEETING MINUTES

Chair Lang sought a motion to approve the minutes of the April 1, 2022 Commission meeting. Commissioner Baker moved to approve the minutes; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

3. APPROVAL OF FY23 OPERATING BUDGET

Director Farris provided an update on the Commission's FY23 Operating Budget and asked the Commission to ratify the same.

Chair Lang sought a motion to approve the FY23 Operating Budget as drafted Commission meeting. Commissioner Carruthers moved to approve the budget; Commissioner Solimon seconded. After a discussion to clarify elements of the operating budget, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the budget unanimously.

4. EXECUTIVE SESSION

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Carruthers moved to enter executive session; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and entered executive session.

---BEGINNING OF EXECUTIVE SESSION---

The following matters were discussed in executive session:

- Discussions regarding potential civil claims to enforce provisions of the Campaign Reporting Act

- Discussions regarding administrative complaints:
  - *Whitlock v. Dow*, No. 2020-031

The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.

---END OF EXECUTIVE SESSION---

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5. ACTIONS ON ADMINISTRATIVE CASES

Director Farris asked the Commission for the following motion(s) on the following administrative case(s):

- **In administrative case 2020-031, *Whitlock v. Dow*, a motion to authorize staff to petition Judge Martin to issue subpoenas to compel the attendance of witnesses, if ncesssary, in the event of a hearing.**
  Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

6. REQUEST FOR ADVISORY OPINION

Commissioner Carruthers and Chair Lang requested an advisory opinion that addresses the following question:

"Under what circumstances is a contribution to a candidate by a limited liability corporation, partnership, corporation, or other business entity attributable to an individual under Section 1-19-34.7(D) of the Campaign Reporting Act."

7. SELECTION OF NEXT MEETING

Chair Lang confirmed that the next meeting would take place on June 10, 2022 and would still be virtual.

8. PUBLIC COMMENTS

- No public comments were offered.

9. ADJOURNMENT

Chair Lang raised adjournment of the meeting. With no objections made, the meeting was adjourned.

[SUBJECT TO RATIFICATION BY COMMISSION]

STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-06

June 10, 2022[1]

QUESTIONS PRESENTED[2]

1. During legislative sessions, are there any limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?

2. Outside of legislative sessions, are there limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?

3. Are there limitations on communications between a legislator and the board members or employees of an entity that either contracts with or employs the legislator?

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[1] This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C).

[2] The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue." NMSA 1978, § 10-16G-8(A)(2) (2019). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity.

ANSWERS AND ANALYSIS

No, to each question.

New Mexico's ethics statutes, including the Lobbyist Regulation Act ("LRA"), NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2021), and the Governmental Conduct Act ("GCA"), NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2019), do not constrain any communications between a legislator and a lobbyist employed by an entity that contracts with or employs the legislator.[3] Nor do the ethics statutes currently constrain communications between a legislator and the board members or employees of an entity that employs or contracts with the legislator.

While the ethics statutes do not limit communications between legislators and lobbyists, board members, or employees of entities that employ or contract with legislators, we nevertheless observe that a legislator's employment or contract relationship with an entity might give rise to a potential conflict of interest if the legislator is called to take legislative action that would affect the entity. The GCA address conflicts of interest and regulates the conduct of legislators in limited circumstances. Subsection 10-16-3(A), for example, provides that "[a] legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interest." § 10-16-3(A).

As we have counseled in Advisory Opinion 2021-07 (Apr. 2, 2021), and Advisory Opinion 2021-08 (June 4, 2021), the GCA does not require that legislators recuse from a vote on legislation that implicates a conflict of interest, such as a bill that would affect the financial health of an entity that employs or contracts with a legislator. A legislator's *voluntary* recusal on matters affecting a legislator's interest, however, would likely defeat a Subsection 10-16-3(A) claim that a legislator used the powers of their office to obtain personal gain. Separate from the issue of recusal, Section 10-16-3 indicates that a legislator should disclose

[3]While the LRA does not limit communications between lobbyists and members of the legislature, it provides a framework requiring registration of lobbyists and disclosure of expenditures from lobbyists to legislators. *See, e.g.*, § 2-11-6 (requiring lobbyists or lobbyist employers to report expenditures made in connection with lobbying).

any conflict of interest. *See* NMSA 1978, § 10-16-3(C); *accord* House Rule 26-1(A).[4]

CONCLUSION

No ethics statute requires any "limitations on communications" between a legislator and the lobbyists, board members, or employees of an entity that employs or contracts with the legislator. Under the LRA, lobbyists must make required disclosures. And, under the GCA, legislators must disclose any conflict of interest and use the powers of their legislative office only to advance the public interest.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. GARREY CARRUTHERS, Commissioner
HON. CELIA FOY CASTILLO, Commissioner
RONALD SOLIMON, Commissioner
JUDY VILLANUEVA, Commissioner

[4]We reaffirm what we counseled in Advisory Opinion 2021-08. Ideally, the disclosure contemplated by Subsection 10-16-3(C) should occur before the legislator votes on the legislation. Subsection 10-16-3(C) of the GCA does not specify how legislators, public officials and employees should disclose conflicts of interests. Accordingly, the Commission encourages each legislative chamber to adopt additional rules regarding the timing and content of disclosures of conflicts of interest. The Commission also encourages each chamber to adopt rules relating to the filing of statements of interests with the respective clerk of each legislative chamber.

STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-07

June 10, 2022[1]

QUESTION PRESENTED[2]

Under what circumstances is a contribution to a candidate or a candidate's campaign committee by a limited liability company, partnership, corporation, or other business entity attributable to an individual under Section 1-19-34.7(D) of the Campaign Reporting Act?

ANSWER

Under NMSA 1978, Section 1-19-34.7(D) (2019), a contribution to a candidate by a business entity is attributable to an individual in two circumstances: first, where an individual, who is the ultimate source of the funds, directs a contribution to a candidate through a business entity; second, where an individual both exercises control over a business entity and unilaterally causes the business

[1] This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C).

[2] The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue." *See* NMSA 1978, § 10-16G-8(A)(2) (2019). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On May 11, 2022, the Commission received a request for an advisory letter that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. The request was submitted by two public officials with authority to request an opinion. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(B)(1) NMAC.

entity to make a contribution to a candidate. In each circumstance, the business entity's contribution is attributable to the individual for the purposes of calculating the individual's aggregate contributions.

ANALYSIS

I.

The Campaign Reporting Act, NMSA 1978, §§ 1-19-26 to -37 (1976, as amended through 2021) ("CRA"), requires candidates and their campaign committees to disclose the persons from whom they received contributions and the amounts of those contributions. *See* NMSA 1978, § 1-19-27(A) (2016); § 1-19-31 (2019). There are several ways a person may contribute to a candidate: directly (*i.e.*, by a direct transfer of funds from a person to a campaign's account); through an "in-kind" contribution of goods or services; or through a "coordinated expenditure" on the candidate's behalf.[3] No matter how a person contributes, the CRA limits the total amount that a person may contribute to a candidate in each election cycle. Currently those limits are $20,800.00 to a candidate seeking election to the Office of the Governor and $10,400.00 to a candidate seeking election to another office.[4]

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[3] *See* NMSA 1978, § 1-19-26(H) (2019) (defining "contribution"); § 1-19-26(I)(2) (2019) (defining "coordinated expenditure" as an expenditure made "at the request or suggestion of, or in cooperation, consultation or concert with, a candidate"); 1.10.13.7(M) NMAC (defining "in-kind contribution" as "goods or services or anything of value contributed to a candidate or committee other than money").

[4] The CRA limits the amounts a person may contribute to a non-gubernatorial candidate or candidates' campaign committee: $5,200 per primary election cycle and $5,200 per general election cycle. *See* NMSA 1978, § 1-19-34.7(A)(1). A candidate may solicit and accept contributions during the primary election cycle for use in the general election cycle, meaning that a candidate may solicit a $10,400 contribution during the primary election cycle, so long as $5,200 of that contribution is designated for use in the general election cycle. *See id.* The contribution limits are doubled for candidates seeking election to the Office of Governor, *see* § 1-19-34.7(B), and the contribution amounts increase over time in step with inflation, *see* § 1-19-34.7(F). The per-election contribution limit is currently $5,200. *See* New Mexico Secretary of State, Campaign Contribution Limits, https://www.sos.state.nm.us/candidate-and-campaigns/how-to-become-a-candidate/campaign-contribution-limits/ (last accessed Apr. 19, 2022). Accordingly, a person may currently contribute a *maximum* of $20,800 total to a candidate seeking election to the Office of the Governor and $10,400 total to a candidate seeking election to another office. The CRA prohibits candidates and their campaign committees from knowingly soliciting and accepting contributions that violate the contribution limits, including beyond-limits contributions given "directly or indirectly, including a contribution earmarked or

To ensure that a person's aggregate contributions to a candidate comply with the CRA's contribution limits, the CRA includes an *attribution rule*. Section 1-19-34.7(D) attributes contributions—whether given directly or indirectly to a candidate—to a specific person for the purposes of calculating that person's contribution totals and applying the contribution limits.[5] When considering all the contributions attributable to a person, the CRA prohibits that person from making contributions beyond the statutory limits. *See* §§ 1-19-34.7(A)–(B), (D).

The CRA allows any "person" to make a contribution, *see* NMSA 1978, § 1-19-34.7(A)(1) (2019), and it defines a "person" to mean "an individual or entity," § 1-19-26(P). The CRA therefore suggests that, as persons, corporations and other business entities may make contributions to candidates running for elected office in New Mexico.[6] A corporation, however, "can only act through its officers and

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otherwise directed or coordinated through another person, including a political committee[.]" NMSA 1978, § 1-19-34.7(E) (2019).

[5] *Cf. United States v. O'Donnell*, 608 F.3d 546, 554 (9th Cir. 2010) (interpreting similar language in 2 U.S.C. § 441a(a)(8), an analogous provision of the Federal Election Campaign Act Amendments of 1974, which reinstated contribution limits, as "providing guidance on accounting purposes of calculating an individual's contribution totals").

[6] The CRA's attribution rule is substantially similar the federal campaign-contribution attribution rule. *Compare* § 1-19-34.7(D) ("All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to the candidate"), *with* 52 U.S.C. § 30116 ("[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate."). But the question as to how the attribution rule applies to contributions from corporations has not arisen in federal law. Congress has long prohibited corporations or labor organizations from making contributions in connection with any federal election. *See* Tillman Act of 1907, Pub. L. No. 59-36, 34 Stat. 864 (codified as amended at 52 U.S.C. § 30118); *see also* 11 C.F.R. § 114.2(b). Federal law also dictates the circumstances when a contribution may be made by a limited liability company or a partnership. LLCs that have elected to be treated as a partnership and partnerships may make contributions to a candidate, but those contributions are attributed to both the partnership and to each partner of the partnership in proportion to his or her share of the partnership profits. *See* 11 C.F.R. § 110.1(e), (g)(2). A single natural person member LLC that does not elect corporation treatment by the IRS may make contributions to a candidate, but those contributions are attributable to the single member. 11 C.F.R. § 110.1(g)(4). Likewise, federal law generally permits contributions from living or testamentary trusts to candidates, but those contributions

employees[.]" *Bourgeous v. Horizon Healthcare Corp.*, 1994-NMSC-038, ¶ 11, 117 N.M. 434. Because the CRA permits both business entities and the individuals through whom they act to make contributions, and because the CRA limits the total allowable contributions from any person, the question at issue arises: When is a contribution from a business entity attributable to the business entity or, by contrast, to an individual?

II.

The CRA's attribution rule, Section 1-19-34.7(D), supplies the answer. It provides:

> All contributions made by a person to a candidate, either directly or *indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate*, shall be treated as contributions from the person to the candidate.

§ 1-19-34.7(D) (emphasis added). If an individual uses a business entity to "indirectly" make a contribution to a candidate, then the CRA requires the contribution to be attributed to the individual. By attributing a business entity's contribution to an individual who, in fact, "indirectly" made the contribution, Section 1-19-34.7(D) supports the application of the CRA's contribution limits against individuals who have the resources, means, and inclination to make contributions to candidates that exceed the statutory limits.

Considering the text and purpose of Section 1-19-34.7(D), there are at least two kinds of contributions that a business entity might ostensibly make to a candidate that are, in fact, "indirectly" made by an individual and, thus, attributable to that individual. *See* § 1-19-34.7(D). The first are *conduit contributions*: If an individual directs a contribution through the business entity, using the entity as a conduit for the individual's own funds, then the business entity's contribution is attributable to the individual. The second are *controlled contributions*: Where an individual necessarily controls the business entity's operations, and exercises unilateral control to make a contribution of the entity's funds to a candidate, then the individual, in fact, "indirectly" makes a contribution to the candidate, and the

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will be attributed to the trust beneficiary or testator for purposes of contribution limits. *See* FEC AO 1999-19 (Aug. 25, 1999).

entity's contribution is attributable to the individual. We detail each "indirectly" made contribution in turn.

A.

We begin with conduit contributions. Section 1-19-34.7(D) provides an example of contributions that, although ostensibly given by one person, are attributable to another—namely, "contributions that are in any way earmarked or otherwise directed through another person to a candidate" § 1-19-34.7(D). The CRA does not define "earmarked," but regulations issued by the Secretary of State make clear that, as the statute contemplates, "earmarked" contributions include contributions that a donor gives to a third person to give to a candidate. *See* 1.10.13.7(H) NMAC (defining earmarking as "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").[7] Accordingly, if an individual donor transfers funds to a third party with the intention that the third person will make a contribution to the candidate, and the third party does make a contribution, then the third party's contribution is attributable to the individual donor. *See* § 1-19-34.7(D).

Beyond requiring attribution to the original donor for contributions that the donor "direct[s] through another person to a candidate," § 1-19-34.7(D), the CRA also generally prohibits such contributions. The CRA expressly prohibits a person from making contributions "in the name of another person[.]" NMSA 1978, § 1-19-34.3(A) (2019) ("It is unlawful for a person to make a contribution in the name of another person, and no person shall knowingly accept a contribution made in the name of another person."). This prohibition reaches both what courts have referred to as "false name" contributions and "straw donor" contributions.[8] "A false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that the contribution is from another person who may be real or fictional, with or

[7] This definition is similar to the definition of "earmark" contained in federal law. *See* 11 C.F.R. § 110.6(b)(1) (defining "earmarked" to mean "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or candidate's authorized committee").

[8] *See O'Donnell*, 608 F.3d at 548-49 (interpreting the same language in 2 U.S.C. § 441f, an analogous provision of the Federal Election Campaign Act of 1971).

without obtaining that person's consent."[9] A "straw donor" contribution (also known as a "conduit" contribution), by contrast, "is an *indirect* contribution from *A,* through *B,* to the campaign. It occurs when *A* solicits *B* to transmit funds to a campaign in *B*'s name, subject to *A's* promise to advance or reimburse the funds to *B*."[10] In each case, *A* is the ultimate source of the funds that are contributed to the candidate. Section 1-19-34.3(A) prohibits both false name contributions and "conduit" or "straw" contributions, so that a person (i) cannot avoid disclosure of the contributions they give to a candidate, *and* (ii) cannot by-pass contribution limits by giving beyond-limits contributions through a false name or directed through a conduit.[11]

Any conduit contribution that a person gives to a candidate "in the name of another" in violation of Section 1-19-34.3(A) is a contribution that, under Section 1-19-34.7(D), is attributable to that person for the purpose of calculating contribution totals. For example, if *A* gives *A's* funds to *B* to contribute to the candidate, and if *B* contributes *A's* funds to the candidate, then *A* has made an indirect, conduit contribution to the candidate. Furthermore, because *A's* conduit contribution to the candidate through *B* is a contribution that *A* made "indirectly" by being "directed through another person to a candidate," under Section 1-19-

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[9] *Id.*; *see also State v. Moyer*, 200 P.3d 619, 623 (Or. Ct. App. 2009) ("A false name contribution could occur by a contributor using either someone else's name or someone else's money in making the contribution. In either event, the gravamen of the offense is the fact that the contributor is supplying *false information* to the recipient of the contribution.").

[10] *O'Donnell*, 608 F.3d at 548-49 (emphasis added); *see also Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent these restrictions[.]"). There are myriad forms that a conduit contribution scheme can take. *See, e.g.*, *Doe, 1 v. Federal Election Comm'n*, 902 F.3d 866, 868 (D.C. Cir. 2019) (contribution by trust to political committee via two intermediary entities); *Federal Election Comm'n v. Kazran*, No. 3:10-cv-1155-J-37MCR, 2011 WL 13323117 (M.D. Fla. Nov. 16, 2011) (business owner instructed comptroller to reimburse employees for contributions made to candidate); *United States v. Whittemore*, 776 F.3d 1074 (9th Cir. 2015) ("unconditional" gifts to employees, friends and relatives which were given as contributions to senate candidate); *Goland*, 959 F.2d 1452 (payment to political consultant who used money to produce and broadcast commercials scripted by the contributor and read by the candidate); *Towbin v. Antonacci*, 885 F.Supp.2d 1274, 1278-79 (S.D. Fla. 2012) (loan offer or reimbursement in exchange for agreement to contribute); *Federal Election Comm'n v. Odzer*, No. 05 CV 3101 NG RML, 2006 WL 898049 (E.D.N.Y. 2006) (checks from personal account with names of children in "for" line reported by committee as from Odzer's children).

[11] *Cf. O'Donnell*, 608 F.3d at 553 ("[T]he congressional purpose behind § 441f—to ensure the complete and accurate disclosure of the contributors who finance federal elections—is plain.").

34.7(D)'s attribution rule, *A's* conduit contribution is attributed to *A*. *A's* conduit contribution, therefore, not only violates Section 1-19-34.3(A), but also is attributed to *A* for the purposes of calculating contribution totals and applying contribution limits under Section 1-19-34.7(D). This attribution helps to enforce the contribution limits. If *A* gave a maximum contribution to a candidate and subsequently made an additional conduit contribution through *B*, then *A*'s conduit contribution violated not only 1-19-34.3(A)'s prohibition on contributions "in the name of another," but also Section 1-19-34.7(A)(1)'s prohibition against making contributions in excess of the statutory maximum.

An individual might attempt to make a conduit contribution to a candidate by transferring their funds through a business entity. While there are myriad ways in which an individual might make a conduit contribution through a business, we provide a few examples. First, if an individual transfers funds from their account to the business's account with the intention that the business contribute those (or some equivalent) funds to the candidate, then the individual makes a conduit contribution through the business that is attributable to the individual. Second, if the business entity makes a contribution to the candidate and the individual reimburses the business entity those funds, the individual also makes a conduit contribution through the business that Section 1-19-34.7(D) attributes to the individual. Third, if the individual and the business entity share a bank account or otherwise commingle funds, as is sometimes the case with single member limited liability companies, and the individual causes the business entity to make a contribution to the candidate, there too the individual makes a conduit contribution through the business to the candidate. In each case, the individual is the ultimate source of the funds contributed to the candidate and, therefore, Section 1-19-34.7(D) attributes the contribution to the individual for the purposes of calculating that individual's total contributions.[12]

B.

We now turn to *controlled contributions*, the other category of contributions that, while made by a business entity, are, in fact, "indirectly" made by an individual and, thus, under Section 1-19-34.7(D), are attributable to the individual. To begin, Section 1-19-34.7(D)'s text indicates that its scope extends beyond

[12] *See* N.M. Att'y Gen. Op. 10-03 (2010) (interpreting the CRA's attribution rule and concluding that if an "individual made a personal contribution and transferred funds to the corporation she controlled for the purposes of making another contribution, the Campaign Reporting Act would attribute both contributions to the individual for the purposes of the Act's contribution limits").

conduit contributions. The statutory provision says that "[a]ll contributions made by a person to a candidate, either directly or indirectly, *including* contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate." § 1-19-34.7(D) (emphasis added). The subordinate clause "*including* contributions that are in any way earmarked or otherwise directed through another person to a candidate" modifies the adverb "indirectly"—indicating that there are other ways, beyond earmarked or conduit contributions, for a person to "indirectly" make a contribution to a candidate.[13]

Indeed, there are other ways. One way for *A* to "*indirectly*" make a contribution to a candidate is by unilaterally causing another person, *C*, which *A* necessarily controls, to make a contribution to the candidate, even if *A* is not the source of the funds that *C* transferred to the candidate. Where *A* necessarily controls *C*, and *A* unilaterally causes *C* to contribute to a candidate, *A* indirectly makes the contribution to the candidate and, consequently, Section 1-19-34.7(D) attributes the contribution to *A*. Accordingly, where an individual necessarily controls a business entity—for example, by being the single member of a single member limited liability company; the sole, remaining partner of a dissolving partnership; or the controlling shareholder of a closely held corporation—and the individual unilaterally causes the business entity to make contribution to the

[13] § 1-19-34.7(D) (emphasis added); *see State v. Strauch*, 2015-NMSC-009, ¶ 37, 345 P.3d 317 ("'There is no need to write 'includes but is not limited to'; the word 'includes' implies an incomplete listing. Put another way, 'includes' includes the concept of 'not limited to.'" (quoting New Mexico Legislative Council Service, *Legislative Drafting Manual*, 31 (2000, amended 2008))); *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 13, 148 N.M. 426 ("Our caselaw, on the other hand, recognizes that the use of the word 'includes' to connect a general clause to a list of enumerated examples demonstrates a legislative intent to provide an incomplete list of activities . . . ." (citation omitted)); *Wilson v. Rowan Drilling Co.*, 1950-NMSC-046, ¶ 90, 55 N.M. 81 ("A statute which uses the word 'including' (certain things) is not limited in meaning to that included." (citation omitted)); *In re Estate of Corwin*, 1987-NMCA-100, ¶ 3, 106 N.M. 316 ("A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means.' It has been said the word 'includes' is usually a term of enlargement, and not of limitation. . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated[.]" (alteration in original) (internal quotation marks omitted) (quoting 2A N. Singer, Sutherland Statutory Construction, § 47.07 (Sands 4th ed. 1984))); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 132 (2012) ("The verb *to include* introduces examples, not an exhaustive list.").

candidate, then Section 1-19-34.7(D) attributes the contribution to the individual for the purposes of calculating the individual's total contributions.[14]

Not only does this reading follow from a textual analysis of Section 1-19-34.7(D), the CRA's purpose supports it. An overarching purpose of the CRA is to deter *quid pro quo* corruption and the appearance thereof.[15] The statute accomplishes this objective in two ways. First, Section 1-19-31 requires candidates and their campaign committees to disclose who has contributed to their campaign and the amounts of those contributions. Second, Section 1-19-34.7(A)–(B) imposes limits on the total contributions a person can make to a candidate during an election cycle. By allowing public insight into the contributions to candidates, the public is made aware of contributions that could invite or suggest a *quid pro quo* relationship.

The CRA's attribution rule works in service of the CRA's purposes, attributing not only a person's direct contributions to their totals, but also their indirect contributions, so that a person cannot avoid disclosure or skirt the

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[14] Where business entities are involved, the consideration of whether an individual unilaterally controls a business is equally if not more important as the consideration of the "source" of the funds. Consistent with Section 1-19-34.7(D)'s textual indication that conduit contributions are one, non-exhaustive example of "indirectly" made contributions, where an individual controls a business entity, the individual can make a conduit contribution through the business entity or, alternatively, exercise control over the business's funds to cause the business to make a contribution to a candidate. For example, where an individual necessarily controls a business entity, the individual could decide *either* to cause the business to make a monetary distribution to herself personally *or* to make an equivalent contribution to a gubernatorial candidate. Where the individual causes a distribution to herself, the CRA would prohibit the individual from subsequently transferring the same funds back to the business and directing the business to contribute to a candidate. *See* § 1-19-34.3(A). Further, the CRA's attribution rule would attribute that conduit contribution back to the individual. *See* § 1-19-34.7(D). But the application of the CRA's attribution rule does not depend on this sequence. Indeed, in this hypothetical example, what calls for attribution is not only that the individual *first* causes the business to make a monetary distribution to their personal account (such that, at some point, the individual was the "source" of the funds) and *subsequently* transfers the money back to the business to fund and direct the contribution to the candidate. Rather, what calls for attribution is that the individual ultimately controls how the business expends the business's funds and exercises that control to make a contribution to a candidate.

[15] *Cf. Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (concluding that the Federal Election Campaign Act's contribution limits are supported by the purposes of deterring *quid pro quo* corruption and the appearance thereof).

contribution limits by either (i) directing contributions through another person, or (ii) unilaterally causing a business entity the individual controls to make contributions it would not have otherwise made. If the CRA's attribution rule did not reach controlled contributions, then persons with sophistication and means could easily avoid the contribution limits by directly contributing to a candidate the maximum allowable in their own name (*i.e.*, $20,800.00 in a gubernatorial election), and then unilaterally causing business entities which they necessarily control to also make additional contributions to the candidate in the businesses' names. But the CRA's contribution limit is not meant to be skirted or ignored; the main purpose of the CRA's attribution rule is to ensure otherwise.

In sum, under Section 1-19-34.7(D), a business entity's contribution is attributable to an individual in two circumstances. First, if an individual, who is the ultimate source of the funds, directs a contribution to a candidate through a business entity, then the business entity may still make the contribution, but the contribution is attributable to the individual for the purposes of calculating the individual's total contributions. Second, if an individual both exercises control over a business entity and unilaterally causes the business entity to make a contribution, the CRA still permits the entity to make the contribution, but the contribution is nevertheless attributable to the individual for the purposes of calculating contribution totals.

III.

Our conclusion as to when Section 1-19-34.7(D) operates to attribute a business entity's contribution to an individual is relatively narrow. The foregoing analysis should not be confused with more sweeping generalizations, two of which we distinguish.

First, even though all business entities must necessarily act through individual agents, *see, e.g.*, *Bourgeous*, 1994-NMSC-038, ¶ 11, Section 1-19-34.7(D) does not attribute all contributions by a business entity to an individual as a contribution the individual "indirectly" made. We do not suggest as much. Indeed, there are ready examples in which Section 1-19-34.7(D) would *not* attribute a business entity's contribution to any person other than the business entity. For example, where a partnership, in which no partner holds a controlling share, votes to make a contribution to a candidate and subsequently makes the contribution, no individual both necessarily exercises control over the partnership and unilaterally caused the partnership to make the contribution. In that circumstance, under Section 1-19-34.7(D), the partnership would have directly

made the contribution and no individual would have indirectly made it; accordingly, the contribution would be attributable to the partnership. Similarly, where a corporation has multiple shareholders, none of which hold a majority of shares, and the corporation, acting through an agent, makes a contribution to a candidate, no single individual both necessarily exercises control over the corporation and may unilaterally cause the corporation to make a contribution. In that circumstance, under Section 1-19-34.7(D), the corporation's contribution would be attributable only to the corporation.

Second, the foregoing analysis does not imply that business entities may not make within-limits contributions to candidates. We emphasize that business entities, as persons under the CRA, may make contributions to candidates. *See* §§ 1-19-26(P) & 1-19-34.7(A)(1). We also do not question the basic proposition of corporate law that a corporation is a legal entity separate from its shareholders.[16] But the obvious propositions that business entities are both persons under the CRA and separate legal entities from the individuals who are their shareholders, officers and directors do not end the inquiry with respect to the application of the CRA's attribution rule. Rather, they begin it. The text of the attribution rule makes clear that the rule applies in circumstances where there are at least two separate persons—*i.e.*, a "person" who makes a contribution and a separate "person" to whom the contribution might be attributable for purposes of calculating aggregate campaign contributions. Moreover, because a "person" under the CRA includes individuals and entities, *see* § 1-19-26(P), it is indisputable that the attribution rule, by using the term "person," applies to contributions made by both individuals and entities.

In the vast majority of circumstances, the operation of the CRA's attribution rule will not affect the ability of either business entities or persons who control them to contribute to candidates in New Mexico elections covered by the CRA. In very narrow circumstances, however, the operation of the CRA's attribution rule, in combination with the CRA's contribution limits, constrains the ability of some business entities to make contributions. An example illustrates the point. Suppose an individual makes the maximum allowable $20,800.00 contribution to a gubernatorial candidate during an election cycle. Suppose also that the individual, not satisfied with that demonstration of support, directs an additional $10,000.00 of the individual's funds to the candidate through a single-member limited liability

[16] *See Scott v. AZL Res., Inc.*, 1988-NMSC-028, ¶ 6, 107 N.M. 118.

company that the individual controls, in violation of Section 1-19-34.3(A). Even though the company directly makes the contribution, because the contribution is "indirectly" made by the individual, the $10,000.00 is attributable to the individual for the purposes of calculating the individual's total contributions. After proper attribution, the individual's total contributions exceed the CRA's contributions limits, with a consequence that the individual is potentially liable for a civil penalty and the candidate committee is liable to forfeit the excess contribution of $10,000.00, *see* NMSA 1978, § 1-19-34.6(B) (2021), potentially to the public election fund, *see* NMSA 1978, § 1-19-34.7(G) (2019).

In some circumstances, it might not be possible for a business entity to make a contribution that is not also a contribution that an individual indirectly makes. This is likely the case with a single-member limited liability company, especially one that shares an operating account with the single member. In that situation, the operation of the CRA's attribution rule and contribution limits would constrain the business entity's ability to make a contribution—but only where the individual who exclusively and unilaterally controls the business entity already made the maximum allowable contribution. Thus, in narrow circumstances, in which an individual who unilaterally controls a business entity has already made a maximum allowable contribution, the CRA's attribution rule and contribution limits, working together, constrain the ability of the business entity to make contributions.

The CRA contemplates this constraint. Considering that the attribution rule, Section 1-19-34.7(D), directly follows the contribution limits, Section 1-19-34.7(A) through (C), the CRA's structure suggests that, as a consequence of the attribution rule, some indirectly made contributions, when properly attributed, exceed contribution limits and, thus, are not permitted. Indeed, the purpose of the CRA is to allow persons to make contributions that are both disclosed and within limits, so that the public can see who is contributing to candidates and have confidence that no single person is making contributions that, in aggregate, invite or suggest a *quid pro quo* relationship. In furtherance of that purpose, Section 1-19-34.7 fairly contemplates that some contributions, including some contributions from business entities, when properly attributed, are impermissible. By contrast, the CRA's purpose is *not* to allow every business entity to make a maximum contribution, irrespective of how the business entity is controlled or where its funds originated, thereby allowing certain individuals to skirt the contribution limits and candidates to distinguish between their supporters and their real friends.

CONCLUSION

For the foregoing reasons, a contribution to a candidate by a business entity is attributable to an individual in two circumstances: (1) where an individual, who is the ultimate source of the funds, directs a contribution to a candidate through a business entity; and (2) where an individual both exercises control over a business entity and unilaterally causes the business entity to make a contribution to a candidate. In each circumstance, the business entity's contribution is attributable to the individual for the purposes of calculating the individual's aggregate contributions.

SO ISSUED.

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