

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**STATE ETHICS COMMISSION,**

**Plaintiff/Counter-Defendant,**

**v.**

**Case No. 1:24-cv-652-WJ-LF**

**TNMP, INC., d/b/a “The New Mexico Project”;  
and JEFF APODACA,**

**Defendants/Counter-Plaintiffs,**

**and**

**JEFF APODACA,**

**Third Party Plaintiff,**

**v.**

**JEREMY FARRIS; COMMISSONER DOES 1-7,**

**Third Party Defendants,**

**ANSWER, COUNTERCLAIMS AND  
THIRD-PARTY COMPLAINT**

COME NOW, Defendants, through undersigned counsel, and provides their Answer to the Complaint in this matter as follows:

1. Defendants deny the allegations set forth in ¶1 of the Complaint.
2. Defendants deny the allegations set forth in ¶2 of the Complaint as a matter of opinion about the law not being a fact.
3. Defendants deny the allegations set forth in ¶3 to the extent that they are a legal conclusion purporting to be a fact of the Complaint.
4. Defendants deny the allegations set forth in ¶4 of the Complaint.

5. Defendants deny the allegations set forth in ¶5 of the Complaint.

6. Defendants deny the allegations set forth in ¶6 of the Complaint.

7. Defendants deny the allegations set forth in ¶7 of the Complaint.

8. Defendants admit the allegations set forth in ¶8 thru ¶10 of the Complaint.

9. Defendants deny the allegations set forth in ¶11 of the Complaint.

10. Defendants admit the allegations set forth in ¶12 thru ¶24 of the Complaint.

11. Defendants deny the allegations set forth in ¶25 of the Complaint.

12. Defendants deny the allegations set forth in ¶26 of the Complaint.

13. Defendants deny the allegations set forth in ¶27 of the Complaint.

14. Defendants admit the allegations set forth in ¶28 thru ¶35 of the Complaint.

15. Defendant TPNM admits or denies the allegations ¶36 of the Complaint according to its previous admissions or denials.

16. Defendant TPNM admits the allegations set forth in ¶37 of the Complaint.

17. Defendant TPNM denies the allegations set forth in ¶38 of the Complaint.

18. Defendant TPNM denies the allegations set forth in ¶39 of the Complaint and demand strict proof thereof.

19. ¶40 of the Complaint states a legal conclusion, to the extent that it is a factual allegation Defendant TPNM denies the allegations.

20. ¶41 of the Complaint states a legal conclusion, to the extent that it is a factual allegation Defendant TPNM denies the allegations.

21. Defendant TPNM denies that Plaintiff is entitled to the relief sought in ¶42.

22. Defendant TPNM admits or denies the allegations ¶43 of the Complaint according to its previous admissions or denials.

23. ¶44 of the Complaint requires neither admission or denial.

24. Defendant TPNM denies the allegations set forth in ¶45 thru ¶47 of the Complaint and demand strict proof thereof.

25. Defendant TPNM denies that Plaintiff is entitled to the relief sought in ¶48 and ¶49.

26. Defendant Apodoca admits or denies the allegations ¶50 of the Complaint according to his previous admissions or denials.

27. ¶51 of the Complaint requires neither admission or denial.

28. Defendant Apodaca denies the allegations set forth in ¶52 thru ¶55 of the Complaint and demand strict proof thereof.

29. Defendants deny that Plaintiff is entitled to the relief sought in ¶56 and ¶57.

30. Defendants deny that Plaintiff is lawfully entitled to the relief sought by the Complaint.

#### **AFFIRMATIVE DEFENSES**

#### **AFFIRMATIVE DEFENSE I**

The Complaint fails to state a cause of action as to at least one or more of the claims for relief, and Defendants are entitled to dismissal of the same.

#### **AFFIRMATIVE DEFENSE II**

Plaintiff may have failed to join a necessary party.

**AFFIRMATIVE DEFENSE III**

Plaintiff's Complaint is preempted by federal law.

**AFFIRMATIVE DEFENSE IV**

Plaintiff's Complaint is brought with unclean hands.

**AFFIRMATIVE DEFENSE V**

Plaintiff's Complaint violates the civil rights of Defendants.

**AFFIRMATIVE DEFENSE VI**

Plaintiff's claims are ultra vires.

**AFFIRMATIVE DEFENSE VII**

Plaintiff's claims against Defendants are barred by the doctrines of equitable estoppel, laches, consent, waiver, informed consent, release, unclean hands, res judicata, and collateral estoppel.

**AFFIRMATIVE DEFENSE X**

Plaintiff's claims constitute an unconstitutional punishment without fair notice in violation of Defendants' due process rights under the Due Process Clause of the New Mexico Constitution (Section II-18) and the Fifth and Fourteenth Amendments to the United States Constitution.

**AFFIRMATIVE DEFENSE XI**

Plaintiff failed to exhaust required administrative remedies.

**AFFIRMATIVE DEFENSE XII**

Defendant is protected from the disclosure of its donors by the First Amendment to the United States Constitution.

WHEREFORE, Defendants that the Court enter judgment in their favor and against Plaintiff, for their costs and expenses incurred herein, and for such other and further relief as the court deems just and proper. Defendants deny that Plaintiffs are entitled to any award against them as enumerated in Plaintiff's prayer for judgment.

## **COUNTERCLAIMS**

### **FACTS APPLICABLE TO ALL COUNTS**

31. Plaintiff has elected to selectively engage in an enforcement action against Defendant TNMP upon the basis of the viewpoint of The New Mexico Project and upon a racially motivated basis.

32. Plaintiff has specifically avoided attempting to enforce the same laws against other 501(c)(4) entities that have reached the exact same threshold of a political committee for registering and reporting donors that Plaintiff complains apply to Defendants TPNM and Apodaca.

33. Instead of any attempt to obtain compliance or to afford any notice or opportunity to Defendants for explanation, Plaintiff, in an attempt to engage in electioneering to target the largely moderate Latino candidates that were identified by TPNM, instigated a media smear campaign using tax payer funds to a private PR company, The Garrity Group, to target TNMP and Apodaca before they had even received a file stamped copy of the Complaint.

34. The Plaintiff, whose Board of Commissioners is selected in a significant part by white progressive Democrat elected officials and whose staff is significantly comprised of white individuals, was racially and ideologically motivated to maliciously weaponize the statutorily granted authority of the Plaintiff to harm Defendants to attempt to influence the outcome of the June 2024 Democratic Party primary.

35. Upon information and belief, the Plaintiff's actions negatively affected the outcome of the primary election as specifically designed by the inclusion of the candidates' names in the lawsuit in a distributed pre-filing version of the lawsuit. The rush to influence the election and to vindictively prosecute TPNM and Apodaca could not even wait for a file stamped copy of the complaint.

36. Plaintiff's complaint alleges that on May 24, 2024, the same day that the lawsuit was filed that the Commission voted to authorize the bringing of the lawsuit. However, the authority of the Commission staff to investigate and adjudicate this type of claim on behalf of the commission can only be initiated by a complaint that has been received. *See* NMSA 1978 § 1-19-34.8 ("The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act."). Upon information and belief, the Commission was not referred a complaint by the Secretary of State nor received one from a citizen.

37. Further, NMSA 1978 § 10-16G-10, provides the process for a complaint of the Campaign Reporting Act, as alleged by the Plaintiff, which includes that "the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint." *Id.* Defendants' were provided no notice of any complaint and afforded no opportunity to respond.

38. Assuming *arguendo*, that the May 24, 2024 authorization by the Commission, was the action contemplated by NMSA 1978 § 10-16G-5(c)(1), that "by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer", the actions taken by Commission staff to investigate and

prepare the instant lawsuit as well as the media campaign prior to the vote by at least five commissioners was ultra vires as taken without prior initiating complaint as a prerequisite required by § 1-19-34.8. *See* Exhibit A.

39. After learning of the lawsuit from the media, on May 30, 2024, Defendants directed counsel to make public records requests to the Plaintiff. One of those requests sought:

*Any and all correspondence or communications (in their native format, i.e. .eml, to the extent possible) between any staff, employee or commissioner to any other person, both internal and external to the Ethics Commissioner, regarding the litigation filed against The New Mexico Project and Jeff Apodaca in the Second Judicial District Court.*

*See* Exhibit B.

40. On June 12, 2024, Plaintiff transmitted a response to the above noted request.

41. The response withholds without explanation the email addresses of the persons to whom the email in Exhibit C was transmitted.

42. Another of the requests sought “Any and all communications sent to or received from any person affiliated with the Garrity PR firm.” *See* Exhibit D.

43. On June 24, 2024, Plaintiff transmitted a response to the above noted request.

44. The response denies providing a copy of correspondence between Plaintiff and the Garrity PR firm that contained a draft of the press release at issue in this litigation before the Commission authorized the investigation and authorization of a complaint against Defendants. *See* Exhibit E

### **COUNTER COUNT 1**

#### **VIOLATION OF N.M. CONST. ART. II, § 17 and N.M. CONST. ART. II, § 18**

45. Defendants herein incorporate all the foregoing paragraphs.

46. Pursuant to N.M. Const. art. II, § 17 and N.M. Const. art. II, § 18 Defendants had

the right to speak on the matters of public importance.

47. In retaliation for the protected exercise of speech, in discrimination of Defendants' viewpoints and on the basis of race, Defendant acting through its agents has initiated and maintained a vindictive prosecution against Defendants that seeks to deprive them of their property and his liberty.

48. Plaintiff's actions unconstitutionally deprived Defendants of procedural due process codified by New Mexico statute.

49. Plaintiff's disparate enforcement actions, ideologically and racially motivated, deprive Defendants of equal protection of the law.

50. Under the New Mexico Civil Rights Act (NMCRA), "[a] person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court." NMSA 1978 § 41-4A-3

51. Because the Plaintiff acting through its agents has violated Defendants' rights protected by the Bill of Rights of the New Mexico Constitution, Defendants are entitled to judgement establishing that their rights were violated and for actual damages associated to those violation as well as attorney's fees and costs.

52. Because the Plaintiff is continuing to violate their civil rights, Defendants are entitled to injunctive relief halting the vindictive prosecution by the Plaintiff to require the exhaustion of the administrative due process and preserving their property and their liberty.

## **COUNT II – VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT**



53. Defendants herein incorporate all the foregoing paragraphs.

54. This counterclaim is brought by Defendants against the Plaintiff to enforce the provisions of the New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1 (“IPRA”).

55. The IPRA provides that, with only certain, specified limitations, “Every person has a right to inspect public records of the state.” *Id.*

56. Under IPRA, “Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.” NMSA § 14-2-11(A).

57. Pursuant to NMSA 1978 § 14-2-11 Plaintiff has violated the New Mexico Inspection of Public Records Act by withholding records regarding who the email with the press release was transmitted to.

58. Pursuant to NMSA 1978 § 14-2-12 Plaintiff has violated the New Mexico Inspection of Public Records Act by improperly denying Defendants access to public records.

59. Because Plaintiff has violated the IPRA by failing to produce to and improperly denying the Defendants the public records requested by them without justification under the law, Defendants are entitled to an injunction ordering the Plaintiff to produce all relevant documents in the Defendant’s possession.

60. Pursuant to NMSA 1978 § 14-2-11 Plaintiff is entitled to statutory damages, attorney’s fees and costs for the failure of the Defendant to follow IPRA.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants pray the Court: (1) enter declaratory relief and injunctive relief as described above; (2) enter an award of compensatory damages and statutory damages in an amount to be proven at trial; and (3) enter an award of attorney fees, costs, and such other legal or equitable relief as the Court may deem proper

**THIRD PARTY COMPLAINT FOR DAMAGES PURSUANT TO 42 USC §1983 FOR  
FIRST AMENDMENT RETALIATION AND DENIAL OF PROCEDURAL DUE  
PROCESS**

**FACTUAL BACKGROUND**

61. As admitted in the Plaintiff's Complaint, Third-Party Defendants are aware that Third-Party Plaintiff Apodaca is only one of three officers for The New Mexico Project.

62. As described in the Plaintiff's Complaint, the only evidence alleging violations of law by Mr. Apodaca are his statements made to the press. *See* ECF Doc. 1-2, ¶¶ 5, 19, 22, 23, 28, 34, and 35.

63. Third-Party Defendants did not initiate litigation against either of the other officers of The New Mexico Project. In fact, Third-Party Defendants, in direct response to Mr. Apodaca's statements to the press, filed a frivolous, retaliatory claim, naming him personally and seeking penalties, without any factual support as part of a directed plan to use the judicial system to deny Mr. Apodaca his First Amendment rights and to interfere with the primary election.

64. On May 24, 2024, Third-Party Defendant Commissioner Does 1-7 authorized the initiation of the litigation against Mr. Apodaca personally by some action or vote that has been withheld from the public

65. Pursuant to NMSA 1978 § 10-16G-10 was entitled to procedural due process to respond to the purported claims against him prior to the initiation of litigation which was intentionally denied by the Third-Party Defendants.

66. Not satisfied with abusing the legal system to harass Mr. Apodaca with a frivolous claim, Third-Party Defendants Commissioner Does 1-7 and Farris have directed their legal counsel to engage in a media smear campaign in furtherance of their vindictive prosecution.

67. The use of PR to harass and intimidate Mr. Apodaca to deter the exercise of his First Amendment rights is ongoing, occurring just before the filing of this third-party complaint. *See Exhibit F.*

### **PARTIES**

68. Third-Party Plaintiff Jeff Apodaca is a resident of Albuquerque against whom a vindictive prosecution in retaliation for his exercise of First Amendment protected speech and denying him procedural due process has been initiated by Third-Party Defendants Jeremy Farris and Commissioner Does 1-7.

69. Third-Party Defendant Jeremy Farris is the Executive Director for the State Ethics Commission that acted individually under the color of law to initiate the vindictive prosecution against Mr. Apodaca for his exercise of his First Amendment right to speech and intentionally denied him procedural due process.

70. Third-Party Defendant Commissioner Does 1-7 are undisclosed commissioners for the State Ethics Commission that acted individually under the color of law to initiate the vindictive prosecution against Mr. Apodaca for his exercise of his First Amendment right to speech and intentionally denied him procedural due process.

### **COUNT I – VINDICTIVE PROSECUTION OR MALICIOUS ABUSE OF PROCESS (First Amendment Retaliation in Violation of the First Amendment to the United States Constitution and N.M. Const. Art. 2, § 17)**

71. Mr. Apodaca hereby incorporates and re-alleges any allegations made in the paragraphs above.

72. Third-Party Defendants acting individually under the color of law caused a claim to be filed personally against Mr. Apodaca without probable cause and has caused the misuse of the legal process for purpose of retaliation against Mr. Apodaca unreasonably chilling his free exercise of protected speech and for the purpose of influencing the outcome of an election.

73. Mr. Apodaca has been damaged and is entitled to compensatory damages, attorneys' fees and costs.

74. Third-Party Defendants' actions are malicious, willful and wanton, entitling Mr. Apodaca to punitive damages to deter Third-Party Defendants and other similarly situated public officials from similar conduct.

#### **COUNT II - 42 U.S.C § 1983 – DENIAL OF PROCEDURAL DUE PROCESS**

75. Mr. Apodaca incorporates the preceding paragraphs as though fully set forth herein.

76. The Fourteenth Amendment to the United States Constitution forbids a state from depriving anyone of life, liberty, or property without due process of law.

77. No due process protections have been afforded to Mr. Apodaca, as required by the United States Constitution of a pre-deprivation or post deprivation process that allows for any opportunity, much less a meaningful opportunity, to be heard and address the propriety of the government's actions including the process codified by the New Mexico Legislature in NMSA 1978 § 10-16G-10.

78. All fundamental rights comprised within the term liberty, including but not limited to, the right free speech, the rights to be free from bodily restraint, the right to contract and engage in the common occupations of life, the right to acquire useful knowledge, to worship God according to the dictates of one's own conscience, and to generally enjoy the privileges long

associated with the rights of free people are guaranteed substantive due process rights under the Fourteenth Amendment.

79. The initiation of litigation against Mr. Apodaca, personally as a direct result for his exercise of speech made to the press (that is the only distinguishing facts separating Mr. Apodaca from the other officers for The New Mexico Project) deprive him of his fundamental liberty interests in speech without the prescribed procedural due process of law.

80. Plaintiff seeks damages, declaratory relief, and injunctive relief to halt these deprivations of his First Amendment Rights without affording him procedural due process.

81. Third-Party Defendants' actions are malicious, willful and wanton, entitling Mr. Apodaca to punitive damages to deter Third-Party Defendants and other similarly situated public officials from similar conduct

### **COUNT III – FOR PRELIMINARY AND PERMANENT INJUNCTION**

82. Mr. Apodaca incorporates all of the preceding paragraphs as if fully stated herein.

83. Third-Party Defendants have demonstrated that they will continue to irreparably harm Mr. Apodaca depriving him of the free exercise of his First Amendment rights by continuing to retaliate against him using tax payer money to fund an outside PR firm to attack him in the media and litigation unless prevented by order of this Court.

84. Third-Party Defendants should be preliminarily and permanently enjoined from continuing their vindictive prosecution or taking actions that abuse the legal process or media to harass and intimidate Mr. Apodaca.

WHEREFORE, Mr. Apodaca respectfully requests that this Court exercise its jurisdiction and enter, pursuant to this Court's original jurisdiction, and 42 U.S.C. §1983:

- A. A declaratory judgment or other appropriate order that the Third-Party Defendants have violated Mr. Apodaca's civil liberties by engaging in a vindictive prosecution out of retaliation for his engagement in constitutionally protected First Amendment conduct.
- B. Judgement in favor of Mr. Apodaca for actual and punitive damages in an amount to be proven at trial for the violation of his constitutional rights;
- C. An Order awarding Mr. Apodaca his costs and reasonable attorneys' fees as provided by 42 U.S.C. §1988;
- D. An Order preliminarily and permanently enjoining the Third-Party Defendants from using the legal process or the media to harass, intimidate and retaliate against Mr. Apodaca through any vindictive prosecution;
- E. Order any other or further relief the court deems just and fair.

**DEMAND FOR JURY TRIAL**

Defendants demand a trial by jury.

Respectfully submitted,

Western Agriculture, Resource and  
Business Advocates, LLP

/s/ A. Blair Dunn  
A. Blair Dunn, Esq.  
Jared R. Vander Dussen  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 2, 2024, a true and correct copy of the foregoing was filed electronically pursuant to the CM/ECF procedure for the District of New Mexico, and caused counsel of record to be served by electronic means.

/s/ A. Blair Dunn

**From:** [Kirkpatrick, Jane, SEC](#)  
**To:** [Tom Garrity](#)  
**Cc:** [Farris, Jeremy, SEC](#)  
**Subject:** RE: [EXTERNAL] Re: State Ethics Commission Press Releases May 24th  
**Date:** Thursday, May 23, 2024 9:45:00 AM  
**Attachments:** [image001.png](#)

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Tom,  
Thanks!

I am available today after 1:00 pm. A phone call to discuss logistics would be great. Does 1:00 work?

**Jane Kirkpatrick (she/her)**  
Communications Manager  
State Ethics Commission  
505.554.7706  
[Sec.nm.gov](mailto:Sec.nm.gov)



**From:** Tom Garrity <[tom@garritypr.com](mailto:tom@garritypr.com)>  
**Sent:** Wednesday, May 22, 2024 7:02 PM  
**To:** Kirkpatrick, Jane, SEC <[jane.kirkpatrick@sec.nm.gov](mailto:jane.kirkpatrick@sec.nm.gov)>  
**Cc:** Farris, Jeremy, SEC <[Jeremy.Farris@sec.nm.gov](mailto:Jeremy.Farris@sec.nm.gov)>  
**Subject:** Re: [EXTERNAL] Re: State Ethics Commission Press Releases May 24th

Hello Jane,

Thank you for the thoughtful reply. Please feel free to call me Tom. And yes, TGG can be the point of contact for the news releases.

How is your schedule tomorrow (Thursday) between 9:30 and 10am or after 1pm to connect over the phone or virtual meeting to discuss logistics?

Tom

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**From:** Kirkpatrick, Jane, SEC <[jane.kirkpatrick@sec.nm.gov](mailto:jane.kirkpatrick@sec.nm.gov)>  
**Date:** Wednesday, May 22, 2024 at 3:46 PM  
**To:** Tom Garrity <[tom@garritypr.com](mailto:tom@garritypr.com)>  
**Cc:** Farris, Jeremy, SEC <[Jeremy.Farris@sec.nm.gov](mailto:Jeremy.Farris@sec.nm.gov)>  
**Subject:** RE: [EXTERNAL] Re: State Ethics Commission Press Releases May 24th

Mr. Garrity,

**EXHIBIT A**



Thank you for the feedback on the press releases. After some discussion today, we think that it would be best if the Garrity Group could be point of contact for the releases. Please let me know what I can do moving forward to assist with that. I am planning on having the press releases and their corresponding information uploaded on our website and readily available so hopefully any inquiries can be directed straight to our website.

Looking forward to hearing from/working with you on this.

Thanks!

**Jane Kirkpatrick (she/her)**

Communications Manager

State Ethics Commission

505.554.7706

Sec.nm.gov



**From:** Tom Garrity <tom@garritypr.com>

**Sent:** Sunday, May 19, 2024 4:37 PM

**To:** Kirkpatrick, Jane, SEC <jane.kirkpatrick@sec.nm.gov>

**Cc:** Farris, Jeremy, SEC <Jeremy.Farris@sec.nm.gov>

**Subject:** [EXTERNAL] Re: State Ethics Commission Press Releases May 24th

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Thank you, both.

Attached as some suggested edits in the form of tracked changes.

- Both include an added sub headline, focusing on the result or action.
- Added boilerplate (used in Turquoise Care news release).
- Please note the question in the Lewis news release. The wording raised the question in my mind so I wanted to be sure to bring it to your collective attention.

Best regards,

Tom

**Tom Garrity**

**President, The Garrity Group Public Relations**

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**From:** Kirkpatrick, Jane, SEC <[jane.kirkpatrick@sec.nm.gov](mailto:jane.kirkpatrick@sec.nm.gov)>

**Date:** Wednesday, May 15, 2024 at 2:28 PM

**To:** Tom Garrity <[tom@garritypr.com](mailto:tom@garritypr.com)>

**Cc:** Farris, Jeremy, SEC <[Jeremy.Farris@sec.nm.gov](mailto:Jeremy.Farris@sec.nm.gov)>

**Subject:** State Ethics Commission Press Releases May 24th

Tom,

Following our discussion last week, I think it's a good idea to be proactive in notifying our media contacts about the upcoming Commission meeting and subsequent press releases.

I will send an email this Friday to inform the media that not only will there be a meeting next week—a routine update I provide the week before a meeting—but they should also expect significant press releases thereafter. It seems prudent to ensure that all our contacts are informed simultaneously, rather than selectively. The Commission has a substantial list of journalists that cover the Commission regularly, however I will also send the email to the Garrity Group so they can disperse this information to their contacts.

Additionally, I have attached the two draft press releases for your review, one concerning the settlement with Dan Lewis and the other regarding our civil enforcement action against The New Mexico Project/Jeff Apodaca.

The Commission will need support distributing these press releases to a broader media list.

As far as who will be the point of contact after the press releases are issued, we are still speaking internally about who will be point while I'm gone.

Thank you for your support and attention to this. I look forward to hearing from you.

**Jane Kirkpatrick (she/her)**

Communications Manager

State Ethics Commission

505.554.7706

[Sec.nm.gov](http://Sec.nm.gov)





## STATE ETHICS COMMISSION

Caroline "KC" Manierre, Chief Compliance Counsel  
800 Bradbury Drive Southeast, Suite 215  
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505.362.9617 | [Caroline.Manierre@sec.nm.gov](mailto:Caroline.Manierre@sec.nm.gov)

Hon. William F. Lang (Chair)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Celia Castillo  
Hon. Dr. Terry McMillan  
Ronald Solimon  
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

May 31, 2024

*Via e-mail correspondence only*

A. Blair Dunn  
WARBA, LLP  
400 Gold Ave. SW, Ste. 1000  
Albuquerque, NM 87102  
E-mail: [abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

Re: Request to Inspect Public Records (IR-2024-09)

Dear Mr. Dunn:

On May 28, 2024, the State Ethics Commission received your request to inspect certain records:

- *Any and all correspondence or communications (in their native format, i.e. .eml, to the extent possible) between any staff, employee or commissioner to any other person, both internal and external to the Ethics Commissioner, regarding the litigation filed against The New Mexico Project and Jeff Apodaca in the Second Judicial District Court.*
- *Any information pertaining to the organization called Advanced Legislative Leadership Services or ALLS.*

Please note that we need additional time to respond, until **Wednesday, June 12, 2024**. If you have any questions or concerns regarding your request, please do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink that reads "Caroline Manierre".

Caroline "KC" Manierre

# EXHIBIT B

**From:** [Kirkpatrick, Jane, SEC](#)  
**Cc:** [Commission, Ethics, SEC](#)  
**Subject:** State Ethics Commission: Press Release, Commission announces lawsuit against The New Mexico Project  
**Date:** Friday, May 24, 2024 2:23:23 PM  
**Attachments:** [image001.png](#)  
[2024-05-24 SEC v. TNMP Press Release \(1\).pdf](#)

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Dear Media Contacts,

Attached to this email please find a press release issued by the Commission today, May 24, 2024, regarding the Commission's lawsuit against The New Mexico Project to enforce the Campaign Reporting Act.

This press release is also available on the Commission's website: [Press Release: State Ethics Commission files lawsuit against The New Mexico Project](#)

Should you have any inquiries or require further information, please don't hesitate to contact me.

Thank you for your continued coverage on the Commission's work.

**Jane Kirkpatrick (she/her)**  
Communications Manager  
State Ethics Commission  
505.554.7706  
[Sec.nm.gov](http://Sec.nm.gov)



**EXHIBIT C**

800 Bradbury Dr. SE  
Suite 217  
Albuquerque, NM 87106  
[www.sec.nm.gov](http://www.sec.nm.gov)



Hon. William F. Lang (*Chair*)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Celia Castillo  
Hon. Dr. Terry McMillan  
Ronald Solimon  
Dr. Judy Villanueva

## STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

[Ethics.commission@sec.nm.gov](mailto:Ethics.commission@sec.nm.gov)  
[News@garritypr.com](mailto:News@garritypr.com)

5/24/2024

### PRESS RELEASE

State Ethics Commission files lawsuit against The New Mexico Project  
to enforce the Campaign Reporting Act

*Action made to force campaign disclosure requirements and  
shine light on “dark money” in New Mexico’s elections*

*Albuquerque, NM, May 24, 2024* – The State Ethics Commission filed a lawsuit against The New Mexico Project (“TNMP”) and Jeff Apodaca to enforce the disclosure provisions of the Campaign Reporting Act (“CRA”). TNMP, a domestic nonprofit cooperation, or Apodaca spent thousands of dollars on creating and hosting a website and purchased radio and social media advertisements to influence the outcome of elections for at least 15 legislative districts in the New Mexico House of Representatives and Senate.

The CRA requires those who have made aggregate independent expenditures in excess of \$1,000 dollars in a non-statewide election to disclose to whom those expenditures were made and the source of the contributions that funded the expenditures. TNMP has made more than \$1,000 dollars in independent expenditures in support of specific “pro-moderate” and “pro-business” candidates but has failed to register as a political committee or make any disclosures related to those independent expenditures. Accordingly, the Commission filed suit to enforce the CRA’s disclosure requirements.

In 2019, the Legislature amended the CRA to shine light on “dark money” in New Mexico’s elections, requiring groups that pay for advertisements or advocacy in support of candidates to be minimally transparent about who funded those efforts. The CRA allows New Mexicans to know who funds efforts to influence their votes. The State Ethics Commission has authority to enforce the CRA and has pursued civil enforcement actions to bring greater transparency to New Mexicans regarding who is funding and coordinating election advertisements.

[Click here to read the State Ethics Commission’s complaint.](#)

### **About the State Ethics Commission**

The State Ethics Commission is an independent, constitutional state agency with the authority to enforce civil violations of New Mexico’s governmental ethics and disclosure statutes, including the Procurement Code. The Commission is comprised of three Democratic Commissioners, three Republican Commissioners, and one independent Commissioner who is registered as “decline to state.” For more information about the State Ethics Commission, please visit [sec.nm.gov](http://sec.nm.gov).

###

For more information about the State Ethics Commission, please visit [sec.nm.gov](http://sec.nm.gov).



## STATE ETHICS COMMISSION

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505.554.7706 | Jane.Kirkpatrick@sec.nm.gov

Hon. William F. Lang (Chair)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Celia Castillo  
Hon. Dr. Terry McMillan  
Ronald Solimon  
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

June 24, 2024

### Via U.S. First Class Mail

A. Blair Dunn  
WARBA, LLP  
400 Gold Ave. SW, Ste. 1000  
Albuquerque, NM 87102

Re: Request to Inspect Public Records (IR-2024-12)

Dear Mr. Dunn:

On May 30, 2024, we received your request to review certain records:

1. *Any and all contracts or agreements for service with the Garrity PR firm.*
2. *Receipts for any all monies paid to the Garrity PR firm.*
3. *Any and all communications sent to or received from any person affiliated with the Garrity PR firm.*

Records responsive to this request are being provided through the enclosed CD.

Some records responsive to this request have been redacted pursuant to NMSA 1978, § 14-2-1.1 (2019).

### Inspection of some records responsive to this request is being denied pursuant to NMSA 1978, § 14-2-1(G) & (L) (2023):

- Records subject to the attorney-client communications privilege. *See* NMSA 1978, § 14-2-1(G); NMSA 1978, §10-16G-13(A).
- Attorney work product. *See Richards v. New Mexico Developmental Disabilities Planning Council*, A-1-CA-30796, 2011 WL 2042553 (April 13, 2011) (non-precedential) (holding that attorney work product is not subject to public inspection under the Inspection of Public Records Act).
- Responsive records that are complaints, reports, files, records or communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations. *See* NMSA 1978, § 10-16G-13(C) & (D) (2019).

# EXHIBIT D



State Ethics Commission  
June 24, 2024  
Page 2 of 2

This request is considered filled and closed.

With Respect,

/s/ Jane Kirkpatrick  
Jane Kirkpatrick  
Communications Manager  
State Ethics Commission  
505-554-7706

Additional person(s) responsible for this denial: Caroline Manierre, Chief Compliance Counsel,  
State Ethics Commission

**From:** Tom Garrity  
**To:** Farris, Jeremy, SEC; Kirkpatrick, Jane, SEC  
**Subject:** [EXTERNAL] Re: State Ethics Commission Press Releases May 24th  
**Date:** Wednesday, May 15, 2024 3:28:43 PM  
**Attachments:** image001.png

**CAUTION:** This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Thank you Jeremy and Jane. Understood on all points. I will review the drafts and provide feedback by end of the week. If this is needed ahead of time, let me know.

---

**From:** Farris, Jeremy, SEC <Jeremy.Farris@sec.nm.gov>  
**Date:** Wednesday, May 15, 2024 at 2:30 PM  
**To:** Kirkpatrick, Jane, SEC <jane.kirkpatrick@sec.nm.gov>, Tom Garrity <tom@garritypr.com>  
**Subject:** RE: State Ethics Commission Press Releases May 24th

**CONFIDENTIAL**  
**NOT SUBJECT TO IPRA DISCLOSURE**

Thank you Jane.

Tom – just to reiterate. These attachments are confidential at this point. We don't have Commission authorization for this action yet. If you have any preparatory conversations with any journalists about what the Commission might do next Friday, please omit any identifying details that could comprise our confidentiality.

Thanks,  
Jeremy

---  
Jeremy Farris, DPhil, J.D.  
Executive Director  
New Mexico State Ethics Commission  
800 Bradbury Dr. SE, Suite 215  
Albuquerque, NM 87106  
www.sec.state.nm.us  
(505) 490 0951 (mobile)  
jeremy.farris@sec.nm.gov

---

**From:** Kirkpatrick, Jane, SEC <jane.kirkpatrick@sec.nm.gov>  
**Sent:** Wednesday, May 15, 2024 2:28 PM  
**To:** Tom Garrity <tom@garritypr.com>

**EXHIBIT E**

**Cc:** Farris, Jeremy, SEC <Jeremy.Farris@sec.nm.gov>

**Subject:** State Ethics Commission Press Releases May 24th

Tom,

Following our discussion last week, I think it's a good idea to be proactive in notifying our media contacts about the upcoming Commission meeting and subsequent press releases.

I will send an email this Friday to inform the media that not only will there be a meeting next week—a routine update I provide the week before a meeting—but they should also expect significant press releases thereafter. It seems prudent to ensure that all our contacts are informed simultaneously, rather than selectively. The Commission has a substantial list of journalists that cover the Commission regularly, however I will also send the email to the Garrity Group so they can disperse this information to their contacts.

Additionally, I have attached the two draft press releases for your review, one concerning the settlement with Dan Lewis and the other regarding our civil enforcement action against The New Mexico Project/Jeff Apodaca.

The Commission will need support distributing these press releases to a broader media list.

As far as who will be the point of contact after the press releases are issued, we are still speaking internally about who will be point while I'm gone.

Thank you for your support and attention to this. I look forward to hearing from you.

**Jane Kirkpatrick (she/her)**

Communications Manager

State Ethics Commission

505.554.7706

Sec.nm.gov



800 Bradbury Dr. SE  
Suite 217  
Albuquerque, NM 87106  
[www.sec.nm.gov](http://www.sec.nm.gov)



Hon. William F. Lang (*Chair*)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Celia Castillo  
Hon. Dr. Terry McMillan  
Ronald Solimon  
Dr. Judy Villanueva

## STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

6/25/2024

Jane Tabet-Kirkpatrick  
Communications Manager  
[Jane.Kirkpatrick@sec.nm.gov](mailto:Jane.Kirkpatrick@sec.nm.gov)

### PRESS RELEASE

State Ethics Commission files motion for preliminary injunction against  
The New Mexico Project to enforce disclosure provisions of the  
Campaign Reporting Act

*The Commission asks the court to compel TNMP to register as a political committee with the secretary of state and to file reports of its contributions and expenditures ahead of the 2024 general election*

Albuquerque, NM, June 25, 2024 – The State Ethics Commission filed a motion for preliminary injunction against The New Mexico Project (“TNMP”) and Jeff Apodaca to enforce the disclosure provisions of the Campaign Reporting Act (“CRA”). The Commission filed this motion to ensure that New Mexican voters have access to information on who is funding independent expenditures that seek to influence their votes before the upcoming general election in November.

The CRA requires political committees like TNMP to disclose their expenditures and contributions. It also requires persons who have made aggregate independent expenditures in excess of \$1,000 dollars in a non-statewide election to disclose to whom those expenditures were made and the source of the contributions that funded the expenditures. On May 24, the Commission filed suit against TNMP and Apodaca to enforce these disclosure requirements. To date, TNMP has not

**EXHIBIT F**



complied, and Apodaca has indicated that the organization plans to continue making independent expenditures without the required reporting. Consequently, the Commission has applied for an injunction to compel TNMP's disclosures.

[Click here to read](#): The Commission's Motion for Preliminary Injunction

Through this lawsuit, the Commission aims to provide New Mexico voters with the transparency the law requires, vindicating New Mexicans' right to know who funds advertisements seeking to influence their votes. Since its inception, the Commission has brought similar action to enforce the CRA's disclosure provisions, irrespective of any defendant's political or policy positions.

[Click here to read](#): The State Ethics Commission settles Campaign Reporting Act lawsuit with the Working Families Organization, Inc.

[Click here to read](#): The State Ethics Commission settles with New Mexico Value PAC for Campaign Reporting Act violations

[Click here to read](#): The State Ethics Commission settles lawsuit with the Council for a Competitive New Mexico

[Click here to read](#): Committee to Protect New Mexico Consumers agrees to disclose over \$264,000 in expenditures supporting PRC ballot question

### **About the State Ethics Commission**

The State Ethics Commission is an independent, constitutional state agency with the authority to enforce civil violations of New Mexico's governmental ethics and disclosure statutes, including the Campaign Reporting Act. The Commission is comprised of three Democratic Commissioners, three Republican Commissioners, and one independent Commissioner who is registered as "decline to state."

###

For more information about the State Ethics Commission, please visit [sec.nm.gov](https://sec.nm.gov).