

FILED IN MY OFFICE THIS
JUL 26 2024 9:28am
CLERK DISTRICT COURT

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

STATE ETHICS COMMISSION,

ADRIANA MALDONADO

Plaintiff,

D-202-CV-2024-04341

v.

No. 24-cv-652-WJ-LF

TNMP, INC., d/b/a "The New Mexico Project,"
and JEFF APODACA,

Defendants.

MEMORANDUM OPINION AND ORDER TO REMAND

THIS MATTER comes before the Court upon Plaintiff's Motion for Remand and Attorneys' Fees (**Doc. 7**), Defendants' Response (**Doc. 12**), and Plaintiff's Reply (**Doc. 13**). The Court held a hearing on the filings on July 19, 2024. Upon review of the parties' briefings, arguments of counsel, and the applicable law, the Court concludes it lacks jurisdiction—meaning the case must be remanded to state court.

BACKGROUND

On May 24, 2024, Plaintiff filed suit against Defendants in the Second Judicial District Court, Bernalillo County, State of New Mexico (**Doc. 1-2**). Defendants then removed the action to federal court (**Doc. 1**) on June 26, 2024.

Plaintiff is an independent state agency¹ (**Doc. 1-2 at 2**). Defendant TNMP is a domestic nonprofit corporation and Defendant Apodaca is TNMP's president. *Id.* at ¶¶ 9–15. The three causes of action are all rooted in New Mexico's Campaign Reporting Act ("CRA"). *See* 2021 N.M. Laws 109 (codified as amended at NMSA 1978 §§ 1-19-25–27, -27.3–29.1, -31–32.1, -34–37). *See Doc.*

¹ Under its promulgating statute, the Commission is vested with limited jurisdiction—and is, in fact, only able to enforce compliance over nine discreet state laws claims. *See* NMSA 1978 § 10-16G-9(A)(1)–(9) (2020); **Doc. 13 at 2**.

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13 at 1–2. Specifically, the Complaint (Doc. 1-2) alleges Defendants “violated the CRA by failing to register as a political committee with New Mexico’s Secretary of State and by failing to file required reports of its contributions and expenditures, either as a political committee or, alternatively, as an independent-expenditure maker.” Doc. 7 at 1; *see also* Doc. 1-2.

Defendants contend that federal question jurisdiction exists because the claims implicate “[Defendants’] exercise of rights protected by the U.S. Constitution.” Doc. 1 at 2. Defendants also claim the removal was proper under § 1441(a) because the claims “arise[] under federal law, present[] a federal question, and [are] controlled by federal law.” *Ibid.* According to Defendants, “original jurisdiction” exists under § 1331. *Id.* at ¶ 6.

DISCUSSION

I. Federal Question and Original Jurisdiction

Defendants are incorrect. This is a state law case—with exclusively state law causes of action—that belongs in state court.

Federal jurisdiction is to be strictly construed. *Shamrock Oil & Gas v. Sheets*, 313 U.S. 100, 108–09 (1941). In fact, there is a presumption² against removal jurisdiction. *See Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995); *Bd. of Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1250 (10th Cir. 2022). The party invoking federal jurisdiction (here, Defendants) bear the “burden to establish that it is proper.” *Salzer v. SSM Health Care of Okla., Inc.*, 762 F.3d 1130, 1134 (10th Cir. 2014). Defendants failed to carry their burden of establishing federal jurisdiction because there is no federal jurisdiction in the instant case.

² On this point, Plaintiff cited to a prior ruling from this Court (which is equally applicable here). *See* Doc. 7 at 4 (“Federal courts are courts of limited jurisdiction; there is a presumption against removal jurisdiction, which the defendant seeking removal must overcome.” *New Mexico ex rel. Balderas v. Monsanto Co.*, 454 F. Supp. 3d 1132, 1138 (D.N.M. 2020) (Johnson, C.J.)).

Naturally, the Court turns to the jurisdictional test outlined by the Tenth Circuit. *See Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231, 1235–36 (10th Cir. 2003), *opinion reinstated in part*, 440 F.3d 1227 (10th Cir. 2006). Two preconditions must exist:

First, a question of federal law must appear on the face of plaintiff’s well-pleaded complaint. Second, plaintiff’s cause of action must either be (1) created by federal law, or (2) if it is a state-created cause of action, its resolution must necessarily turn on a substantial question of federal law.

Id. (internal quotations and citations omitted); *see also McCollum v. McCollum*, 2022 U.S. App. LEXIS 10470, at *5 (10th Cir. Apr. 19, 2022) (unpublished) (listing the same two factors). Either way, the Court must determine if “Congress evidenced an intent to provide a federal forum” for resolution of the case. *See Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994).

First, Defendant fails to meet the first condition—because no question of federal law appears on the face³ of the complaint. *See Doc. 1–2 at 7–11* (alleging three New Mexico CRA causes of action). Second,⁴ turning to New Mexico’s CRA, the Court finds no suggestion that Congress intended to confer federal question jurisdiction over state-level campaign finance disputes arising under state law.

Defendants’ Response claims that 42 U.S.C. § 1983 itself evidences Congress’s intent to provide federal forum for “actions like the ones here undertaken by state governments that violate rights.” *Doc. 12 at 3–4*. On this point, the Court agrees. But this argument is not germane to the

³ As the Honorable J. Harvie Wilkinson, United States Circuit Judge, stated in *Capitol Broad. Co., Inc. v. City of Raleigh, N.C.*, 104 F.4th 536 (4th Cir. 2024):

The federal nature of the controversy must be determined from what necessarily appears in the plaintiff’s statement of his own claim unassisted by the anticipation of defenses which it is thought the defendant may interpose. In short: look to the essential elements of the plaintiff’s—and only the plaintiff’s—claim. If there is not a federal ingredient therein, the district court generally lacks federal question jurisdiction. This rule, which is the first step to ascertaining federal question jurisdiction, is known as the well-pleaded complaint rule.

Id. at 2024 U.S. App. LEXIS 14637, at *7–8 (cleaned up).

⁴ The Court’s analysis could end at step one. “Because Plaintiff cannot meet the well-pleaded complaint rule,” the Court need not address the second “necessary condition for federal-question jurisdiction.” *Von Loh v. Synthes, Inc.*, 106 F. App’x 665, 667 (10th Cir. 2004) (unpublished) (Hartz, J.). But even so, the Court analyzes the second step under *Nicodemus*—ultimately finding Defendants fail to establish both jurisdictional prerequisites.

Complaint at hand. Whether or not Defendants could file a standalone lawsuit alleging civil rights violations has no bearing on whether this instant case (involving entirely state law claims) was properly removed to federal court based on federal defenses, counterclaims, and third-party claims.⁵ See *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (“[A] suit ‘arises under’ federal law ‘only when the plaintiff’s statement of his own cause of action shows that it is based upon [federal law].’” (quoting *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) (brackets in original))). For this reason, Defendants’ citations to *Wyo. Gun Owners v. Gray*, 83 F.4th 1224 (10th Cir. 2023) is unavailing. In that case, the organization “sued the Secretary of State (and related parties) in federal district court, arguing that various provisions of the Wyoming statute were void for vagueness and that the disclosure scheme was not constitutionally justified.” *Id.* at 1229.⁶

Next, the Court turns to the *Grable/Gunn* test.⁷ Causes of action under state law may “arise under” federal law (for purposes of § 1331 jurisdiction) even when the complaint does not explicitly plead a federal cause of action. Under this test, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of

⁵ At the hearing, Defendants argued that a third-party complaint under Fed. R. Civ. P. 14 can establish federal jurisdiction, or, at the very least, such a proposition is unsettled law in the Tenth Circuit. This argument is without merit.

The Third, Fifth, and Ninth Circuits have expressly disclaimed the ability of a “third-party complaint” to confer jurisdiction in opinions. See, e.g., *United States v. Vista Paint Corp.*, 1992 U.S. App. LEXIS 24747 (9th Cir. Sept. 24, 1992) (unpublished); *Poche v. Tex. Air Corps*, 549 F.3d 999, 1003–04 (5th Cir. 2008); *Kislak Co. v. Prominent Props. LLC*, 2024 U.S. App. LEXIS 16258 (3d Cir. July 3, 2024) (unpublished). According to defense counsel, the absence of a Tenth Circuit opinion using the exact phrase “third-party complaint” means the issue is unsettled. The Court disagrees. The cases cited below regarding Rule 14(a) make clear that a third-party complaint cannot establish subject matter jurisdiction under § 1331 after removal under § 1441.

On this point, the Tenth Circuit has ruled—repeatedly—that Rule 14(a) does not establish subject matter jurisdiction. See, e.g., *U.S. Fid. & Guar. Co. v. Perkins*, 388 F.2d 771, 773 (10th Cir. 1968) (explaining that Rule 14 is “not a catchall for independent litigation”); *Goodrich v. Burlington N. R.R. Co.*, 701 F.2d 129, 130 (10th Cir. 1983) (“[W]here jurisdiction does not otherwise appear, mere permission, in the rules to assert a claim, does not itself confer jurisdiction over that claim.”); *King Fisher Marine Serv. v. 21st Phoenix Corp.*, 893 F.2d 1155, 1158 (10th Cir. 1990) (explaining Rule 14(a) does not establish jurisdiction unless the court has jurisdiction over the original claim).

⁶ The Complaint in that case (Doc. 1, D. Wyo. #21-cv-108) makes abundantly clear that the nonprofit corporation sued Wyoming officials under § 1983. As Plaintiff, the Wyoming Gun Owners also brought: (1) a facial challenge, (2) an as-applied challenge, and (3) a vagueness challenge to the Wyoming statute. What they did not do, however, is remove a Wyoming state court lawsuit to federal court by asserting a federal question in their defense or counterclaim.

⁷ The United States Supreme Court first announced this test in *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005). The Court subsequently clarified how lower courts should apply this test in *Gunn v. Minton*, 568 U.S. 251 (2013).

resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn*, 568 U.S. at 258. If all four of these requirements are met, “jurisdiction is proper.” *Id.* Only a “slim category” of cases satisfies this test. *See New Mexico ex rel. Balderas v. Gilead Scis., Inc.*, 548 F. Supp. 3d 1098, 1102 (D.N.M. 2021) (quoting *Empire HealthChoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 701 (2006)).

Applied here, Defendants’ broad assertion of federal constitutional issues is insufficient. This “mere assertion of a federal interest” is not enough to confer federal jurisdiction. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 813 (1986). It is apparent from the face of the Complaint that Plaintiff can establish the facts necessary for holding Defendants liable for breaches of state law without forcing a court to interpret (or even apply) federal statutes, regulations, or the Constitution. Again, Defendants’ reliance on *Wyo. Gun Owners* is misplaced. *See supra* n.3. Thus, Defendants’ attempt to establish subject matter jurisdiction fails the first prong. Nevertheless, the Court addresses the remainder of the four-step test.

On the second prong, the Court assumes without deciding that some portion of the underlying federal issues presented in this case are disputed.⁸

On the third prong, the Court finds the federal issues presented are not “substantial.” *See Doc. 7 at 8–10*; *see also Grable*, 545 U.S. at 313 (explaining a “substantial” issue is one that “indicat[es] a serious federal interest in claiming the advantages thought to be inherent in a federal forum”). Additionally, the Court also notes that federal question jurisdiction cannot be predicated upon a

⁸ This assumption provides Defendants with the benefit of the doubt. But the legal standard is not at issue—as “exacting scrutiny” is the law of the land for such challenges. *See, e.g., Aims. For Prosperity Found. v. Bonta*, 594 U.S. 595, 603 (2021); *Frank v. Lee*, 84 F.4th 1119, 1140 (10th Cir. 2023); *Cowboys for Trump v. Oliver*, 2022 U.S. App. LEXIS 4149, at *13 (10th Cir. Feb. 15, 2022) (unpublished).

Additionally, whether New Mexico’s CRA disclosure provisions can survive exacting scrutiny is not unsettled. *See Rio Grande Found. v. Oliver*, No. 19-cv-1174, 2024 U.S. Dist. LEXIS 59829 (D.N.M. Mar. 29, 2024). Again, this factor is not dispositive (but it could have easily been weighed against Defendants).

defense.⁹ *See Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1350 n.4 (2020); *see also Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1027 (10th Cir. 2012) (Holmes, J.) (noting that “federal-question jurisdiction turns upon thrusts, not parries,” and explaining that defenses do not confer jurisdiction).

Finally, Defendants’ claim of jurisdiction falters at the fourth prong as well (*i.e.*, whether a federal court could resolve the federal question without disrupting the federal-state balance approved by Congress). This analysis, when applied, allows for a federal court to exercise “a possible veto” on its exercise of “arising under” jurisdiction. *Grable*, 545 U.S. at 313. The Court finds that an exercise of federal jurisdiction here would disturb the congressionally approved balance of federal and state judicial responsibilities. The campaign finance related challenges arise under state law—not federal law. The Founders delegated substantial authority over Federal elections to the States, and a State’s authority over its elections is particularly potent—especially with regard to campaign finance laws to ensure the integrity of elections. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015); *U.S. Term Limits Inc. v. Thornton*, 514 U.S. 779, 834 (1995); THE FEDERALIST NO. 59 (Alexander Hamilton) (discussing division of power between the state legislatures and Congress to make federal election rules). Defendants’ reliance on § 1983 as a congressionally legislated cause of action is, again, misplaced. The fact that TNMP could file a lawsuit (as Plaintiff) against the State (or other officials) has nothing to do with whether this Court has original jurisdiction over the removed Complaint here.

The New Mexico state court in which this suit was lodged is competent to apply any defense grounded in federal law (to the extent it is relevant). Plus, the state court is best positioned to

⁹ Ordinarily, defenses do not provide a jurisdictional basis of removal. The Court is cognizant, however, of three circumstances where a defense of federal preemption constitutes a legitimate reason for removal—but this is extraordinarily rare (and does not apply here). In fact, the Supreme Court has recognized only three completely preemptive statutes: the Employee Retirement Income Security Act (“ERISA”), the Labor Management Relations Act (“LMRA”), and the National Bank Act. *See, e.g., Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968) (noting preemption under the LMRA); *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987) (discussing preemption under ERISA); *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1 (2003) (finding the same preemption under the National Bank Act).

determine whether Defendants are liable under its state law. *See Empire HealthChoice Assurance, Inc.*, 547 U.S. at 701.

At bottom, the Court agrees with Plaintiff, “Defendants improperly removed the case to federal court.” **Doc. 7 at 4**. Accordingly, this case must be remanded.

II. Attorneys’ Fees and Costs

Plaintiff asks the Court to award fees and costs incurred as a result of Defendants improper removal (**Doc. 7 at 1, 12–14; Doc. 13 at 10–11**). This request is specifically permitted by statute. Section 1447(c) authorizes this Court to “require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” Ultimately, the decision to award, or not award, fees and costs is reviewed for an abuse of discretion. *Porter Tr. v. Rural Water Sewer & Solid Waste Mgmt. Dist. No. 1*, 607 F.3d 1251, 1253 (10th Cir. 2010).

Here, Defendants had no “objectively reasonable basis for removal.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 136 (2005). Because the standard for awarding fees turns on the reasonableness of removal—and because the removal here was patently unreasonable—Plaintiff is awarded fees, as requested (**Doc. 7 at 3**). Thus, “thanks to § 1447(c),” this Court may order Defendants to pay Plaintiff’s “costs and expenses (including attorney’s fees)” for the frivolous removal of the case from state court. *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 246 (2021).

CONCLUSION

The Court concludes that it lacks subject-matter jurisdiction over this case. 28 U.S.C. §§ 1331 & 1441. Accordingly, Plaintiff’s Motion to Remand (**Doc. 7 at 1–12**) is **GRANTED**. Plaintiff’s accompanying request for an award of attorneys’ fees and costs (**Doc. 7 at 1, 12–14**) pursuant to 28 U.S.C. § 1447(c) is also **GRANTED**.

IT IS THEREFORE ORDERED that on or before the close of business on August 2, 2024, Plaintiff shall submit an affidavit or application for reasonable attorneys' fees and costs. Defendants shall have fourteen (14) days to file any objections.

IT IS FURTHER ORDERED that this case is hereby **REMANDED** to the Second Judicial District Court, Bernalillo County, State of New Mexico. The Clerk of Court is directed to take the necessary actions to effectuate the remand.

/s/ _____
WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

V.

Defendant

TNMP, Inc.
doing business as
The New Mexico Project

represented by **Jared Robert Vander Dussen**
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ATTORNEY TO BE NOTICED

Defendant

Jeff Apodaca

represented by **Jared Robert Vander Dussen**
(See above for address)
ATTORNEY TO BE NOTICED

A. Blair Dunn
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

TNMP, Inc.
doing business as
The New Mexico Project

represented by **Jared Robert Vander Dussen**
(See above for address)
ATTORNEY TO BE NOTICED

A. Blair Dunn
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

Jeff Apodaca

represented by **Jared Robert Vander Dussen**
(See above for address)
ATTORNEY TO BE NOTICED

A. Blair Dunn
(See above for address)
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

Jeremy Farris

ThirdParty Defendant

Commissioner Does 1-7
TERMINATED: 07/04/2024

Counter Claimant

TNMP, Inc.
doing business as
The New Mexico Project

represented by **Jared Robert Vander Dussen**
(See above for address)
ATTORNEY TO BE NOTICED

A. Blair Dunn
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Jeff Apodaca

represented by **Jared Robert Vander Dussen**
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A. Blair Dunn
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V.

Counter Defendant

State Ethics Commission

represented by **James Walker Boyd**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jonas M. Nahoum
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nancy Ruth Long
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeremy Daniel Farris
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Defendant

Stuart M. Bluestone

ThirdParty Defendant

Celia Foy Castillo

ThirdParty Defendant

Terry McMillan

ThirdParty Defendant

Jeffrey L. Baker

ThirdParty Defendant

Judy Villanueva

ThirdParty Defendant

William F. Lang

ThirdParty Defendant

Ronald Solimon

Counter Defendant

State Ethics Commission

represented by **James Walker Boyd**
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LEAD ATTORNEY
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Jonas M. Nahoum
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Nancy Ruth Long
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeremy Daniel Farris
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/26/2024	<u>1</u>	

		NOTICE OF REMOVAL by TNMP, Inc., Jeff Apodaca from Second Judicial District Court, case number D-202-CV-2024-04341. (Filing Fee – Online Payment), filed by TNMP, Inc., Jeff Apodaca. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit A – Original Complaint)(Dunn, A.) (Entered: 06/26/2024)
06/26/2024		Filing and Administrative Fees Received: \$ 405 receipt number ANMDC-9422298 re <u>1</u> Notice of Removal, filed by TNMP, Inc., Jeff Apodaca (Payment made via Pay.gov)(Dunn, A.) (Entered: 06/26/2024)
06/26/2024		United States Magistrate Judge John F. Robbenhaar and United States Magistrate Judge Laura Fashing assigned. (jg) (Entered: 06/26/2024)
06/26/2024	<u>2</u>	PLEASE TAKE NOTICE that this case has been randomly assigned to United States Magistrate Judge John F. Robbenhaar to conduct dispositive proceedings in this matter, including motions and trial. Appeal from a judgment entered by a Magistrate Judge will be to the United States Court of Appeals for the Tenth Circuit. It is the responsibility of the case filer to serve a copy of this Notice upon all parties with the summons and complaint. Consent is strictly voluntary, and a party is free to withhold consent without adverse consequences. Should a party choose to consent, notice should be made no later than 21 days after entry of the Order setting the Rule 16 Initial Scheduling Conference. For e-filers, visit our Web site at www.nmd.uscourts.gov for more information and instructions. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (jg) (Entered: 06/26/2024)
06/26/2024	<u>3</u>	REFUSAL TO CONSENT to Proceed before a U.S. Magistrate Judge (Dunn, A.) [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (Entered: 06/26/2024)
06/26/2024	<u>4</u>	PLEASE TAKE NOTICE that this case has been reassigned to Chief United States District Judge William P. Johnson as the trial judge. Under D.N.M.LR-Civ. 10.1, the first page of each document must have the case file number and initials of the assigned judges. <i>Accordingly, further documents filed in this matter must bear the case number and the judges' initials shown in the case caption and the NEF for this document.</i> Kindly reflect this change in your filings. United States Magistrate Judge John F. Robbenhaar no longer assigned to this case. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (jg) (Entered: 06/26/2024)
06/27/2024	<u>5</u>	INITIAL SCHEDULING ORDER: by Magistrate Judge Laura Fashing. Rule 16 Initial Scheduling Conference set for 8/19/2024 at 02:00 PM in Albuquerque – Telephonic Hearing/Conference before Magistrate Judge Laura Fashing. Joint Status Report and Provisional Discovery Plan due by 8/12/2024. Unless otherwise notified by the Clerk or the Court a notice of consent or non-consent for this case to proceed before the trial Magistrate Judge should be submitted by each party no later than July 18, 2024. (amf) (Entered: 06/27/2024)
06/28/2024	<u>6</u>	NOTICE of Appearance by Jeremy Daniel Farris on behalf of State Ethics Commission (Farris, Jeremy) (Entered: 06/28/2024)
06/28/2024	<u>7</u>	

		MOTION to Remand to State Court by State Ethics Commission. (Attachments: # <u>1</u> Exhibit Ex. A, Emls from B. Dunn, Counsel for Defendants, to J. Farris, Counsel for Plaintiff, # <u>2</u> Exhibit Ex. B, Mot. for Prelim. Inj. (N.M. 2d Jud. Dist Ct. June 24, 2024)) (Farris, Jeremy) (Entered: 06/28/2024)
07/01/2024	<u>8</u>	ORDER by Magistrate Judge Laura Fashing VACATING the <u>5</u> Initial Scheduling Order due to the pending <u>7</u> Opposed MOTION to Remand to State Court filed by State Ethics Commission. Pursuant to Fed. R. Civ. P. 16 (b)(2), the Court finds good cause to delay entering a scheduling order at this time due to the pending dispositive motion (Doc. 7). The Rule 16 Initial Scheduling Conference set for 8/19/2024 at 02:00 PM in Albuquerque and all associated deadlines are VACATED and will be reset, if necessary. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (amf) (Entered: 07/01/2024)
07/02/2024	<u>9</u>	ANSWER to Complaint (Notice of Removal) , THIRD PARTY COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO 42 USC SECTION 1983 against Jeremy Farris, Commissioner Does 1-7, COUNTERCLAIM FOR DAMAGES AND INJUNCTIVE RELIEF UNDER THE CIVIL RIGHTS ACT AND IPRA against State Ethics Commission by TNMP, Inc., Jeff Apodaca. (Attachments: # <u>1</u> Exhibit A - EMAIL WITH TGG RE PRESS RELEASES, # <u>2</u> Exhibit B - IPRA LETTER 1, # <u>3</u> Exhibit C - EMAIL TO UNDISCLOSED PRESS, # <u>4</u> Exhibit D - IPRA LETTER 2, # <u>5</u> Exhibit E - INTERNAL EMAIL, # <u>6</u> Exhibit F - SECOND PRESS RELEASE) (Dunn, A.) (Entered: 07/02/2024)
07/02/2024	<u>10</u>	ORDER Scheduling Motion Hearing: Motion Hearing re <u>7</u> and <u>9</u> set for 7/19/2024 at 01:30 PM in Albuquerque - 560 Cimarron Courtroom before Chief District Judge William P. Johnson. (fs) (Entered: 07/02/2024)
07/04/2024	<u>11</u>	AMENDED ANSWER to <u>9</u> Answer to Complaint (Notice of Removal),, Third Party Complaint,, Counterclaim,, , THIRD PARTY COMPLAINT against Jeremy Farris, Stuart M. Bluestone, Celia Foy Castillo, Terry McMillan, Jeffrey L. Baker, Judy Villanueva, William F. Lang, Ronald Solimon, COUNTERCLAIM against State Ethics Commission by TNMP, Inc., Jeff Apodaca. (Attachments: # <u>1</u> Exhibit A - EMAIL WITH TGG RE PRESS RELEASES, # <u>2</u> Exhibit B - IPRA LETTER 1, # <u>3</u> Exhibit C - EMAIL TO UNDISCLOSED PRESS, # <u>4</u> Exhibit D - IPRA LETTER 2, # <u>5</u> Exhibit F - Second PR, # <u>6</u> Exhibit G - IPRA Record, # <u>7</u> Exhibit H - June 12 IPRA letter, # <u>8</u> Exhibit I - Farris May 15 letter) (Dunn, A.) (Entered: 07/04/2024)
07/12/2024		Summons Issued as to Jeffrey L. Baker, Stuart M. Bluestone, Celia Foy Castillo, Jeremy Farris, William F. Lang, Terry McMillan, Ronald Solimon, Judy Villanueva on Third Party Complaint. (dr) (Entered: 07/12/2024)
07/12/2024	<u>12</u>	RESPONSE in Opposition re <u>7</u> MOTION to Remand to State Court filed by Jeff Apodaca, TNMP, Inc.. (Dunn, A.) (Entered: 07/12/2024)
07/16/2024	<u>13</u>	REPLY to Response to Motion re <u>7</u> MOTION to Remand to State Court filed by State Ethics Commission. (Farris, Jeremy) (Entered: 07/16/2024)
07/16/2024	<u>14</u>	NOTICE of Briefing Complete by State Ethics Commission re <u>7</u> MOTION to Remand to State Court filed by State Ethics Commission (Farris, Jeremy) (Entered: 07/16/2024)
07/17/2024	<u>15</u>	NOTICE of Appearance by Nancy Ruth Long on behalf of State Ethics Commission (Long, Nancy) (Entered: 07/17/2024)
07/19/2024	<u>16</u>	

		Clerk's Minutes for proceedings held before Chief District Judge William P. Johnson: Motion Hearing held on 7/19/2024 re <u>7</u> MOTION to Remand to State Court filed by State Ethics Commission. (Court Reporter M. Loughran) (fs) (Entered: 07/19/2024)
07/19/2024	<u>17</u>	MEMORANDUM OPINION AND ORDER by Chief District Judge William P. Johnson GRANTING <u>7</u> MOTION to Remand to State Court . (fs) (Entered: 07/19/2024)
07/19/2024	<u>18</u>	Letter by USDC of New Mexico to 2nd Judicial District Court of New Mexico. (fs) (Entered: 07/19/2024)

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

STATE ETHICS COMMISSION,

Plaintiff,

v.

Case No. 24-cv-652

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

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants, by and through counsel, WARBA, LLP, hereby remove the above-captioned case from the Second Judicial District Court for the State of New Mexico, Bernalillo County, to the United States District Court for the District of New Mexico. The District Court has original jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1367 (supplemental jurisdiction). In support thereof, Defendants state as follows:

GROUND FOR REMOVAL – FEDERAL QUESTION

1. On May 24, 2024, Plaintiff commenced this action against Defendants by filing a Complaint in the Second Judicial District, Bernalillo County, New Mexico, Case Number D-202-CV-2024-04341 (the “State Action”). True and correct copies of pleadings in the State Action are attached hereto as **Exhibit A**.

2. Under 28 U.S.C. § 1441, a defendant in state court may remove the case to federal court when a federal court would have had jurisdiction if the case had been filed there originally. *Topeka Hous. Auth. v. Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005).

3. One category of cases over which federal district courts have original

jurisdiction is “federal question” cases, meaning those cases “arising under the Constitution, laws, or treaties of the United States.” *Metro. Life Ins. Co. v. Taylor*, 482 U.S. 58, 63 (1987) (quoting 28 U.S.C. § 1331).

4. Federal question jurisdiction exists when “a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

5. Plaintiff asserts claims against Defendants “to compel TNMP’s compliance with the Campaign Reporting Act.”, *see* Exhibit A, ¶ 7 and against Defendant Apodaca for statements he made to the press. *See* Exhibit A, ¶¶ 5, 19, 22-24, 28, 34, and 35.

6. Because Plaintiff asserts claims arising implicating the exercise of rights protected by the U.S. Constitution, this Court has original jurisdiction under 28 U.S.C. § 1331. Defendants may remove this action pursuant to 28 U.S.C. § 1441(a) because it arises under federal law, presents a federal question, and is controlled by federal law.

7. Once federal question jurisdiction exists, the district court may exercise supplemental jurisdiction over “state law claims that derive from a common nucleus of fact.” *United Intl. Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1220 (10th Cir. 2000). Plaintiff asserts claims in this case for violations of NMSA 1978, §§ 1-19-26.1 (requiring registration of political committees); 1-19-27.3 (requiring disclosures related to independent expenditures); & 1-19-31. *see* Exhibit A, ¶ 3. These state law claims are based the Defendants’ exercise of rights protected by the United States Constitution and form part of the same case or controversy, as Plaintiff’s federal claims. Therefore, this Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a), and they are properly

removable under 28 U.S.C. § 1441(c).

8. No responsive pleadings to the Complaint have been filed in the State Action.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because it is the District Court and division embracing the place where this action is pending.

TIMELINESS OF REMOVAL

10. The Complaint was filed on May 24, 2024. Service was made on Defendant TNMP on May 31, 2024 and proper service has not been made on Defendant Apodaca as of today's date, but is hereby waived by Mr. Apodaca, who joins in the removal. Removal of this action is timely pursuant to 28 U.S.C. § 1446(b) and *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

NOTICES

11. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the Second Judicial District Court, Bernalillo County, New Mexico.

12. Defendants have satisfied all requirements for removal and reserve the right to amend this Notice of Removal. If any questions of the propriety of this removal should arise, Defendants request the opportunity to present a brief and argument in support of this removal.

JURY DEMAND

13. A jury trial is demanded on all claims cognizable for trial before a jury.

WHEREFORE, for the above-stated reasons, Defendants respectfully remove this action from the Second Judicial District Court, Bernalillo County, New Mexico to the United States District Court for the District of New Mexico.

Respectfully submitted,

Western Agriculture, Resource and
Business Advocates, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.

Jared R. Vander Dussen

400 Gold Ave SW, Suite 1000

Albuquerque, NM 87102

(505) 750-3060

abdunn@ablairdunn-esq.com

warba.llp.jared@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 26, 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

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS State Ethics Commission
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
DEFENDANTS
TNMP, Inc., d/b/a "The New Mexico Project" and Jeff Apodaca
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
A.Blair Dunn and Jared R. Vander Dussen, WARBA, LLP
400 Gold Ave SW, Ste 1000, Albuquerque, NM 87102
505-750-3060

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
I U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Click here for: Nature of Suit Code Descriptions.
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/ Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
PRISONER PETITIONS
Habeas Corpus:
463 Alien Detainee
510 Motions to Vacate Sentence
530 General
535 Death Penalty
Other:
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
IMMIGRATION
462 Naturalization Application
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS
820 Copyrights
830 Patent
835 Patent - Abbreviated New Drug Application
840 Trademark
880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS - Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729(a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit (15 USC 1681 or 1692)
485 Telephone Consumer Protection Act
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C § 1441
Brief description of cause:
Alleged violations of US and NM Constitutions, state law.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions):
JUDGE DOCKET NUMBER

DATE June 24, 2024
SIGNATURE OF ATTORNEY OF RECORD /s/ A. Blair Dunn, Esq.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

STATE ETHICS COMMISSION,

Plaintiff,

v.

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

Defendants.

No. D-202-CV-2024-04341

COMPLAINT

1. Voters in New Mexico are entitled to know who is paying to influence their votes in the 2024 primary elections for eight House districts and seven Senate districts. Plaintiff State Ethics Commission brings this action to stop Defendants' ongoing efforts to frustrate the public's right to know.

2. In 2019, the Legislature amended the Campaign Reporting Act to shine light on "dark money" in state elections, requiring groups that pay for advertisements or advocacy in support of candidates to be minimally transparent about who funds those advertisements and advocacy efforts.

3. The 2019 amendments to the Campaign Reporting Act require groups advocating for or opposing an identified candidate to register and disclose their expenditures and the sources of contributions used to fund those expenditures. *See* Laws 2019, ch. 262, §§ 1-18; *see also* NMSA 1978, §§ 1-19-26.1 (requiring registration of political committees); 1-19-27.3 (requiring disclosures related to independent expenditures); & 1-19-31 (requiring disclosures of political committees *inter alia*).

EXHIBIT A

4. In the months leading up to the June 4, 2024 primary election, Defendant The New Mexico Project (“TNMP”) made advertisements supporting “pro-moderate” and “pro-business” candidates seeking election for eight House districts and seven Senate districts. Yet, TNMP refuses to give New Mexicans basic facts about who funded these advertisements.

5. In fact, TNMP’s President, Jeff Apodaca, incorrectly maintains TNMP is not required to disclose its donors. *See* The Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, at 19:50 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (“We can go raise as much money as we want. We don’t have to disclose our donors. So that’s why people, companies and organizations don’t have to worry about them being attacked.”).

6. TNMP is mistaken; the Campaign Reporting Act requires TNMP to give New Mexicans basic information about the sources of the money TNMP is using to influence their votes.

7. Plaintiff State Ethics Commission therefore brings this civil action to compel TNMP’s compliance with the Campaign Reporting Act.

PARTIES

8. Plaintiff State Ethics Commission is an independent state agency established by Article V, Section 17(A) of the State Constitution with constitutional and statutory authority to enforce New Mexico’s ethics laws, including the Campaign Reporting Act. On May 24, 2024, the Commission authorized Commission staff to bring this lawsuit.

9. Defendant TNMP is a New Mexico domestic nonprofit corporation.

10. Upon information and belief, TNMP holds itself out as having registered with the Internal Revenue Service as an IRC Section 501(c)(4) organization.

11. TNMP states its principal place of business is 8100 Wyoming Blvd. NE Ste. M4-307, Albuquerque, NM 87113.

12. Defendant TNMP also may be served at the following address: 1213 San Pedro Dr. NE, Albuquerque, NM 87110.

13. TNMP has three directors: Jeff Apodaca, Robert James Montoya, and Ron Marquez.

14. Apodaca is TNMP's President, Marquez is TNMP's Vice President, and Montoya is TNMP's Secretary.

15. Upon information and belief, Defendant Apodaca is a resident of Bernalillo County.

JURISDICTION AND VENUE

16. The Court has jurisdiction for this action pursuant to N.M. Const., Art. VI, § 13 and NMSA 1978, § 44-6-2 (1975).

17. Venue is proper.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

18. TNMP is a domestic nonprofit corporation. It was incorporated on September 13, 2023.

19. In an April 23, 2024 interview broadcast over KKOB 96.3 in Albuquerque, Apodaca described TNMP: "The New Mexico Project is basically focused on getting the word out about candidates that are pro-business, moderate candidates, that are going to help us bring more doctors, and better healthcare here, that are going to bring more business, and be business friendly." The TJ Trout Show, *The New Mexico Project*, 96.3 KKOB, at 04:58 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project>.

20. The New Mexico Project also identifies and advocates for candidates which it believes support key industries to New Mexico, including the oil and gas industry.

21. TNMP is focused on advocating for candidates seeking election to at least 15 legislative seats in the June 2024 primary election.

22. To that end, TNMP targets Latino and moderate communities and communicates with advertisements urging support for “pro-business, pro-moderate candidates.” The TJ Trout Show, *The New Mexico Project*, 96.3 KKOB, at 4:06 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project>; see also, e.g., The Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, at 7:23 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (“So really The New Mexico Project is to basically support pro-business, moderate candidates, and it’s time to start fighting back against the progressive candidates that are out there.”).

23. According to Apodaca, “We just go out and educate moderate Latino voters on the best candidates to vote for.” The TJ Trout Show, *The New Mexico Project*, 96.3 KKOB, at 05:50 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project>; see also The Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, at 24:40 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (same); Jeff Apodaca, Letter to the Editor, *New Mexico Project points toward state’s moderate roots*, SANTA FE NEW MEXICAN, May 4, 2024 (“The New Mexico Project is actively informing New Mexicans that our Latino leaders and communities are under siege by out-of-state, ultra-liberal progressives more concerned with their political careers than with our community and state.”).

24. To further its objectives to “educate moderate Latino voters on the best candidates to vote for,” TNMP launched a website, <https://thenewmexicoproject.com>, which, as of May 15, 2024, is comprised of only (i) a landing page; (ii) a “Priority Candidates” link, a “Focusing on

Pivotal Elections” link; and (iii) a “Get Involved” link, directing visitors to an online donation form.

25. On TNMP’s “Priority Candidates” page, TNMP noted it “has identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state.” TNMP identified for its endorsement eight (8) candidates for election to House districts and seven (7) candidates for election to Senate districts.

26. Among its strategic priorities for the New Mexico House of Representatives, TNMP identified its objective to “protect” House District 9 (supporting Rep. Lundstrom), House District 27 (supporting Rep. Matthews), House District 53 (supporting Rep. Madrid), House District 59 (supporting Rep. Hembree), House District 69 (supporting Rep. Garcia), and House District 70 (supporting Rep. Castellano); to “flip” House District 16 (supporting Marsella Duarte as a candidate); and to advocate for John D’Antonio as a candidate for House District 57. *See* Ex. 1, The New Mexico Project, Our Priority Candidates (House), <https://thenewmexicoproject.com/priorities/> (retrieved May 10, 2024).

27. Furthermore, looking to its priorities for the New Mexico Senate, TNMP identified its objective to “protect” Senate District 4 (supporting Sen. Muñoz), Senate District 8 (supporting Sen. Campos), Senate District 13 (supporting Sen. O’Neill), Senate District 15 (supporting Sen. Ivey-Soto), Senate District 26 (supporting Sen. Maestas); and to advocate for Nicole Tobiassen for Senate District 21, and Clemente Sanchez for Senate District 30. *See* Ex. 2, The New Mexico Project, Our Priority Candidates (Senate), <https://thenewmexicoproject.com/priorities/> (retrieved May 10, 2024).

28. TNMP conducts advertising, including radio advertising, directing voters to its website, where TNMP promotes its “priority candidates.” Bob Clark Show, *The New Mexico*

Project, 96.3 KKOB, 21:10 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (“The radio commercial just ran. We’re telling people go to thenewmexicoproject.com, take a look at the candidates that we’re supporting.”); *see also id.* at 08:42 (“We’re doing some radio ads, for branding, and some of our smaller communities, call to action, we’re targeting them on social media, different things like that, we’re doing ballot chasing, stuff like that, we’re doing door to door.”).

29. Upon information and belief, TNMP’s radio advertisements urge New Mexico voters, and specifically “the moderate Latino voter,” to “vote for the moderate candidate that will support our needs” and directs voters to “[v]isit thenewmexicoproject.com or on Facebook for candidates who share our values.”

30. TNMP has expended more than \$10,000 to Cumulus Media to place these radio advertisements from April 22, 2024 to June 4, 2024 with KKOB-AM (2 spots), KRST-FM (84 spots), KOBQ-FM (84 spots), and KKOB-FM (85 spots). Ex. 3, Licensing & Databases Public Inspection File for The New Mexico Project, at 2, 6-7, 11-12, 16-17, 20, Federal Communications Commission (retrieved May 9, 2024).

31. In the memo field of its check to Cumulus Media, TNMP made clear that the purpose for its payment was for “Radio Ad – Primary.” *Id.* at 20.

32. In addition to its radio advertisements, TNMP has purchased at least 33 Facebook advertisements supporting Sen. Campos, Rep. Castellano, Sen. Ivey-Soto, Nicole Tobiassen, Sen. Maestas, Rep. Hembree, John D’Antonio, Rep. Lundstrom, Rep. Madrid, Marsela Duarte, Nicole Chavez, Rep. Garcia, Sen. O’Neill, Clemente Sanchez, Sen. Muñoz, and Rep. Matthews.

33. TNMP’s Facebook advertisements started running on or about May 17, 2024 or May 18, 2024. Depending on the advertisement, the estimated audience size varies from 1,000

to 5,000 Facebook uses to 10,000 to 50,000 Facebook users, and, as of the date of this complaint, the advertisements' impressions (*i.e.*, the number of times the advertisement appeared on a screen) range from fewer than 1,000 to more than 8,000.

34. TNMP's President, Defendant Apodaca, has even represented that TNMP's advertisements constitute independent expenditures in support of candidates contesting the June 2024 primary. *See* The Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, at 20:15 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> ("We're an educational *independent expenditure*. So we're going in and educating the voters on what we need to do to get out and vote and vote for the right candidates.") (emphasis added).

35. Upon information and belief, TNMP has received "close to \$1 million" in contributions. *See* New Mexico Politics with Joe Monahan (Apr. 24, 2024), <https://joemonahansnewmexico.blogspot.com/> ("Apodaca says the group has already raised 'close to \$1 million,' all from within the state."); *see also* Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, at 11:30 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> ("Let me make this very clear: We're raising money, we've done some good raising money, we've collected probably half of what we need to raise."); *id.* at 13:08 ("All the money we've raised is from local industries, local New Mexicans, and local individuals from New Mexico. One hundred percent of the money we've raised is from New Mexicans, right, whether it is industries, businesses or individuals.").

Count I: To enforce the civil compliance provisions of the Campaign Reporting Act applicable to political committees.

36. Plaintiff incorporates by reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

37. Defendant TNMP is an association of two or more persons.

38. Defendant TNMP's primary purpose is to make independent expenditures.

39. Upon information and belief, Defendant TNMP has received more than five thousand dollars (\$5,000) in contributions or made independent expenditures of more than five thousand dollars (\$5,000) in the election cycle running from January 1, 2023 through December 31, 2024. *See* NMSA 1978, § 1-1-3.1 (2003, as amended 2019) (defining "election cycle").

40. Defendant TNMP is therefore a "political committee" under NMSA 1978, Section 1-19-26(Q)(4).

41. As a political committee, Defendant TNMP is subject to registration, filing-fee requirements, and disclosure report requirements under the Campaign Reporting Act, including disclosure of TNMP's contributions and contributors under Section 1-19-26.1 and Section 1-19-31.

42. Plaintiff State Ethics Commission seeks relief in the form of an order declaring TNMP is a "political committee" as defined by the Campaign Reporting Act; an injunction requiring TNMP pay the filing fee, appoint a treasurer, register as a political committee, and file one or more disclosure reports as provided by NMSA 1978, Sections 1-19-26.1 to 1-19-31; civil penalties and forfeitures as provided by Section 1-19-34.6(C) (1995, as amended 2019); and any other relief the Court deems proper.

Count II as to Defendant TNMP: To enforce the civil compliance provisions of subsections 1-19-27.3(B)(3) and (C) of the Campaign Reporting Act applicable to independent expenditures of more than \$3,000 in a nonstatewide election.

43. Plaintiff incorporates by reference paragraphs 1 through 42 of this complaint as though fully set forth herein.

44. This count is pleaded in the alternative to count I under Rule 1-008(E)(2) NMRA.

45. Upon information and belief, Defendant TNMP made aggregate independent expenditures in excess of one thousand dollars (\$1,000) in a nonstatewide election.

46. Upon information and belief, Defendant TNMP received one or more contributions—i.e., gifts, subscriptions, loans, advances or deposits of money or other things of value, including the estimated value of an in-kind contribution, made or received for the purpose of supporting or opposing the nomination or election of a candidate.

47. Upon information and belief, Defendant TNMP received contributions from one or more persons who made contributions of more than two hundred dollars (\$200) in the election cycle running from January 1, 2023 through December 31, 2024, made in response to a solicitation to fund independent expenditures.

48. Defendant TNMP therefore must report the name and address of each person who has made contributions of more than two hundred dollars (\$200) in the election cycle, running from January 1, 2023 through December 31, 2024, made in response to a solicitation to fund independent expenditures, as required by NMSA 1978, Section 1-19-27.3(B)(3) and (C), and must further make reports as required by NMSA 1978, Section 1-19-27.3(D).

49. Plaintiff State Ethics Commission seeks relief in the form of an order declaring TNMP made independent expenditures during the election cycle running from January 1, 2023 through December 31, 2024 that, when aggregated with all independent expenditures made by TNMP, exceed three thousand dollars (\$3,000) in a nonstatewide election; an injunction compelling TNMP to file disclosure reports providing the name and address of each person who made contributions of more than two hundred dollars (\$200) during the election cycle, running from January 1, 2023 through December 31, 2024, that were earmarked or made in response to a solicitation to fund independent expenditures and the amount of each contribution, as required by

NMSA 1978, Section 1-19-27.3(B)(3) and (C); an injunction compelling TNMP to make disclosures required by Section 1-19-27.3(D), including the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars (\$5,000) during the election cycle to TNMP; civil penalties and forfeitures as provided by Section 1-19-34.6(C); and any other relief the Court deems proper.

Count III as to Defendant Apodaca: To enforce the civil compliance provisions of subsections 1-19-27.3(B)(3) and (C) of the Campaign Reporting Act applicable to independent expenditures of more than \$3,000 in a nonstatewide election.

50. Plaintiff incorporates by reference paragraphs 1 through 49 of this complaint as though fully set forth herein.

51. This count is pleaded in the alternative to count II under Rule 1-008(E)(2) NMRA.

52. Defendant Apodaca is a “person” under the Campaign Reporting Act.

53. Upon information and belief, Defendant Apodaca made aggregate independent expenditures in excess of one thousand dollars (\$1,000) in a nonstatewide election.

54. Upon information and belief, Defendant Apodaca received one or more contributions—i.e., gifts, subscriptions, loans, advances or deposits of money or other things of value, including the estimated value of an in-kind contribution, made or received for the purpose of supporting or opposing the nomination or election of a candidate.

55. Upon information and belief, Defendant Apodaca received contributions from one or more persons who made contributions of more than two hundred dollars (\$200) in the election cycle running from January 1, 2023 through December 31, 2024, made in response to a solicitation to fund independent expenditures.

56. Defendant Apodaca therefore must report the name and address of each person who has made contributions of more than two hundred dollars (\$200) in the election cycle running from

January 1, 2023 through December 31, 2024 that were made in response to a solicitation to fund independent expenditures, as required by NMSA 1978, Section 1-19-27.3(B)(3) and (C), and must further make reports as required by NMSA 1978, Section 1-19-27.3(D).

57. Plaintiff State Ethics Commission seeks relief in the form of an order declaring that Defendant Apodaca made independent expenditures during the election cycle running from January 1, 2023 through December 31, 2024, that, when aggregated with all independent expenditures made by Defendant Apodaca, exceed three thousand dollars (\$3,000) in a non-statewide election; an injunction compelling Defendant Apodaca to file disclosure reports providing the name and address of each person who made contributions of more than two hundred dollars (\$200) during the election cycle running from January 1, 2023 through December 31, 2024 that were earmarked or made in response to a solicitation to fund independent expenditures and the amount of each contribution, as required by NMSA 1978, Section 1-19-27.3(B)(3) and (C); an injunction compelling Defendant Apodaca to make disclosures required by Section 1-19-27.3(D), including the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars (\$5,000) during the election cycle to Defendant Apodaca; civil penalties and forfeitures as provided by Section 1-19-34.6(C); and any other relief the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, the State Ethics Commission requests the Court to enter relief as follows:

- a. An order declaring that TNMP is a “political committee” as defined by the Campaign Reporting Act;
- b. Injunctive relief ordering TNMP, as a political committee, to comply with the registration, filing fee, appointment, and reporting requirements of Sections 1-19-26.1 to 1-19-31, including disclosure of TNMP’s contributions and contributors under Section 1-19-31;

- c. Injunctive relief ordering TNMP to comply with the reporting requirements of Sections 1-19-27.3(B)(3), (C) and (D).
- d. Injunctive relief ordering Apodaca to comply with the reporting requirements of Sections 1-19-27.3(B)(3), (C) and (D).
- e. Civil penalties allowed by Section 1-19-34.6(B) and (C);
- f. Assessment of costs under NMSA 1978, § 34-6-40.1; and
- g. For such other relief as the Court deems just and proper.

Respectfully submitted: May 24, 2024,

STATE ETHICS COMMISSION

By: /s/ Jeremy Farris

Jeremy Farris

Walker Boyd

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(505) 827-7800

jeremy.farris@sec.nm.gov

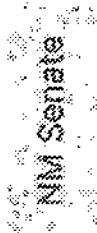
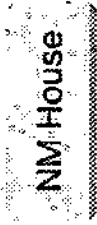
walker.boyd@sec.nm.gov



The New Mexico Project has identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state. By focusing our efforts on these critical battlegrounds, we aim to empower the moderate Latino electorate and ensure their voices are heard at every level of governance.

INSIGHTS

Winning Where It Counts: Focusing on Pivotal Elections



PROTECT

House District 9

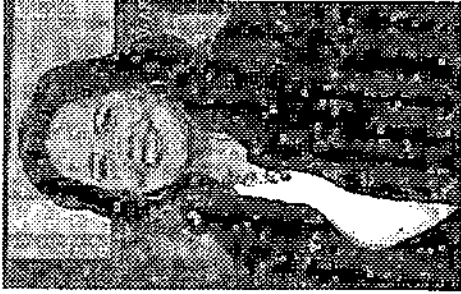
Patty Lundstrom

Location
McKinley

Registered Voters
16,318

REGISTRATION

Dem Rep
Indy/Other



PATTY LUNDSTROM

FLIP

House District 16

Marsella Duarte

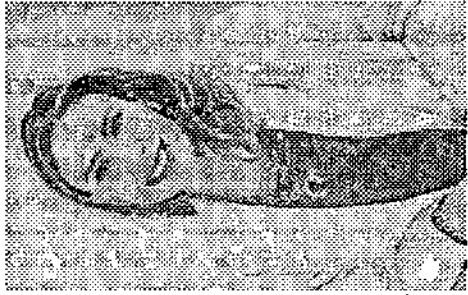
Location

REGISTRATION

Bernalillo

Registered Voters

19,889



MARSELLA DUARTE

Dem Rep Indy / Other

PROTECT

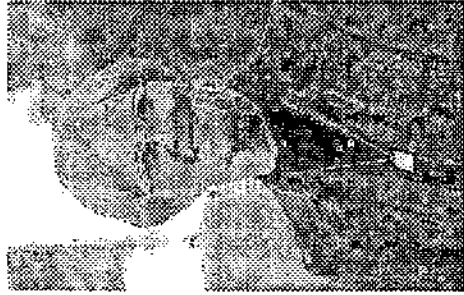
House District 27

Marian Matthews

Location

Bernalillo

REGISTRATION



MARIAN MATTHEWS

Registered Voters

22,820

Dem Rep Indy / Other

PROTECT

House District 53

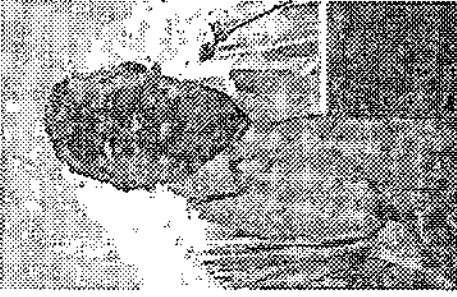
Willie Madrid

Location

Dona Ana, Otero

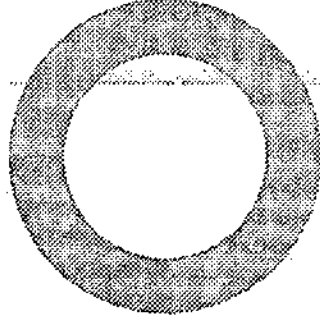
Registered Voters

16,666



WILLIE MADRID

REGISTRATION



Dem Rep Indy / Other

OPEN SEAT

House District 57

John D'Antonio

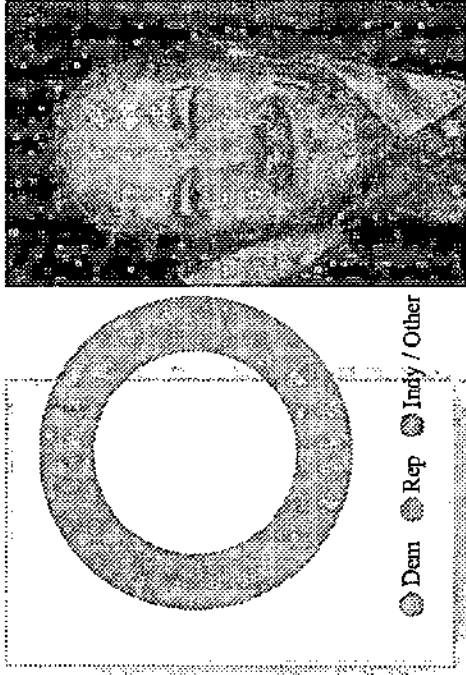
Location

REGISTRATION

Sandoval

Registered Voters

22,155



JOHN D'ANTONIO

PROTECT

House District 59

Jared Hembree

Location

Chaves

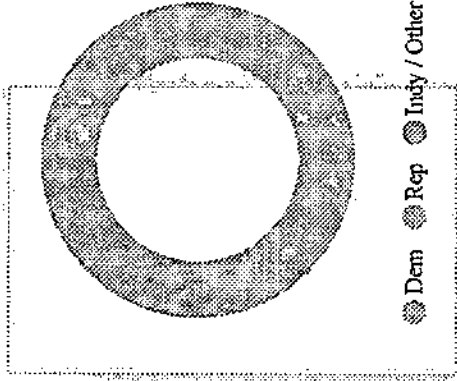
REGISTRATION



JARED HEMBREE

Registered Voters

17,802



PROTECT

House District 69

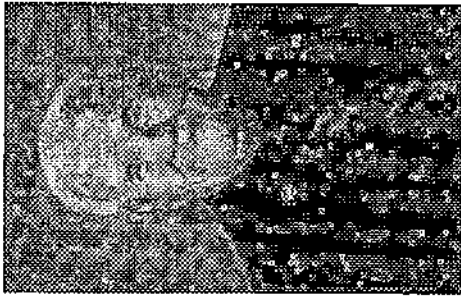
Harry Garcia

Location

Bernalillo, Cibola, McKinley, San Juan, Socorro,
Valencia

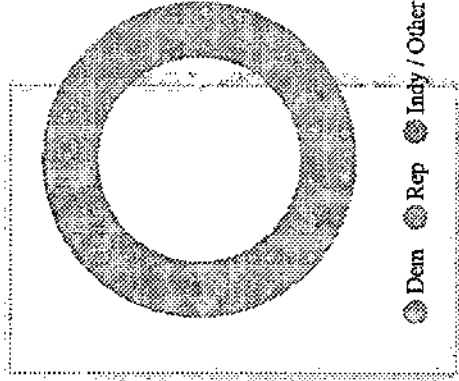
Registered Voters

16,666



HARRY GARCIA

REGISTRATION



PROTECT

House District 70

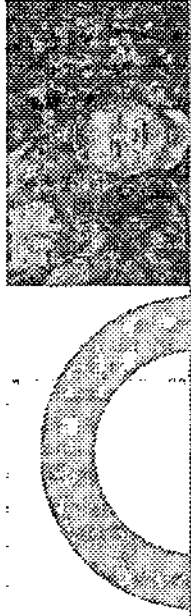
Ambrose Castellano

Location

REGISTRATION

San Miguel, Torrance

Registered Voters



 A large background image of a modern building with a glass facade, reflecting the sky and surrounding environment. The building has a complex, geometric structure with many windows.

Logo of The New Mexico Project, featuring a stylized sun with rays.

**Together, we can shape the
future of our state - but we
need your support.**

Get Involved >

The New Mexico
Project

Follow us on:



PAID FOR BY THE NEW MEXICO PROJECT



The New Mexico Project has identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state. By focusing our efforts on these critical battlegrounds, we aim to empower the moderate Latino electorate and ensure their voices are heard at every level of governance.

INSIGHTS

Winning Where It Counts: Focusing on Pivotal Elections

NM House

NM Senate

PROTECT

Senate District 4

George Munoz

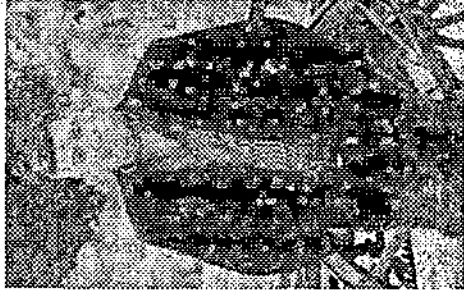
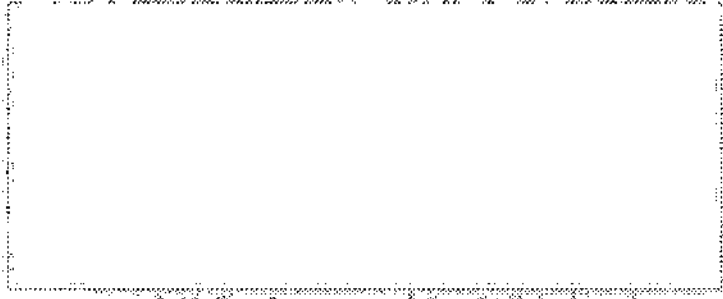
Location

Cibola, McKinley & San Juan

Registered Voters

30,159

REGISTRATION



GEORGE MUNOZ

PROTECT

Senate District 8

Pete Campos

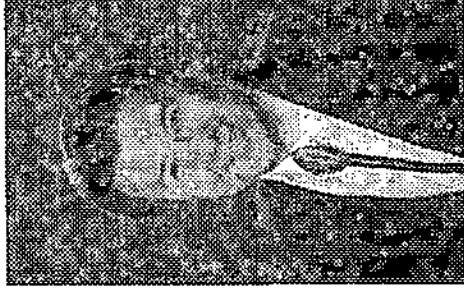
Location

Colfax, Guadalupe, Harding, Mora, Quay, San Miguel & Taos

Registered Voters

34,796

REGISTRATION



PETE CAMPOS

PROTECT

Senate District 13

Bill O'Neill

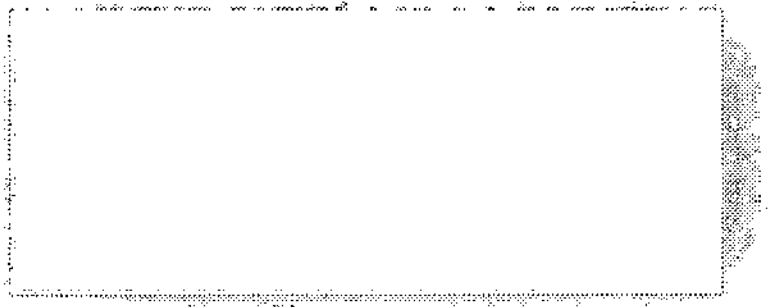
Location

Bernalillo

Registered Voters

30,163

REGISTRATION



BILL O'NEILL

PROTECT

Senate District 15

Daniel Ivey-Soto

Location

Bernalillo

Registered Voters

31,188

REGISTRATION



DANIEL IVEY-SOTO

PROTECT

Senate District 21

Nicole Tobiasen

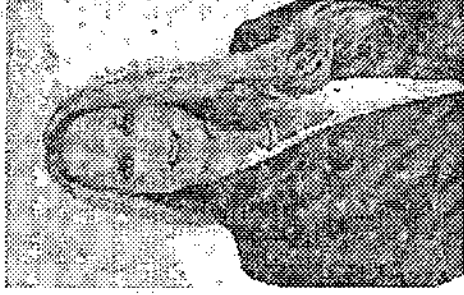
Location

Bernalillo

Registered Voters

39,617

REGISTRATION



NICOLE TOBIASSEN



PROTECT

Senate District 26

Antonio "Moe" Maestas

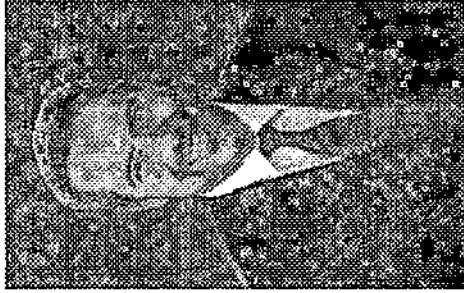
Location

Bernalillo

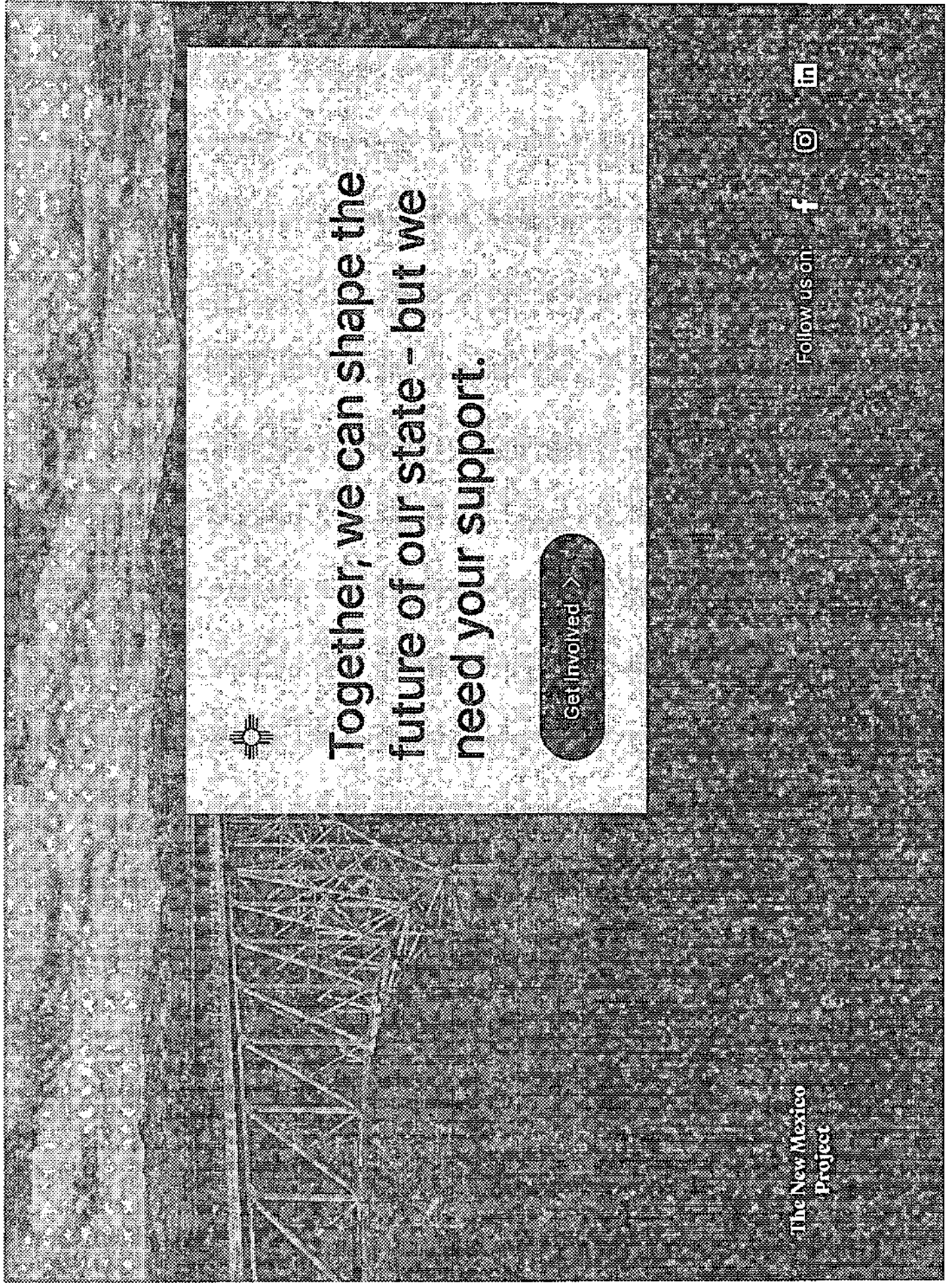
Registered Voters

29,966

REGISTRATION



ANTONIO "MOE"
MAESTAS



**Together, we can shape the
future of our state - but we
need your support.**

Get Involved >

**The New Mexico
Project**

Follow us on:



PAID FOR BY THE NEW MEXICO PROJECT

Order #1282738A: New Mexico../New Mexico../State Pol ../

Activity	Details	Person	Amount	Count	Balance
04/19/24 3:13:36 PM Processed	<sync process>	Jennifer Ji	\$250.00	2	0.00
04/19/24 2:56:36 PM Approved		Micah Tun	\$250.00	2	0.00
04/19/24 2:58:32 PM Approval Workflow	[Centralized AR - Business Office Approval Needed Default]	Micah Tun	\$250.00	2	0.00
04/19/24 2:50:34 PM Approval Workflow	[Sales Manager - Ready Default]	Jeff Berry	\$250.00	2	0.00
04/19/24 2:11:52 PM Ready for approval	new order	Michelle N	\$250.00	2	0.00
04/19/24 2:06:01 PM New order created	<new order>	Michelle N	\$0.00	0	0.00



[Sorted by: Date]

ORDER

Orders	Order / Rev:	<u>1282738A</u>	
	Alt Order #:		
	Product Desc:	<u>State Pol Issue</u>	
	Estimate:		KKOB-AM
	Flight Dates:	<u>04/22/24 - 04/22/24</u>	Primary AE:
	Original Date / Rev:	<u>04/19/24 / 04/19/24</u>	Sales Office:
	Order Type:	<u>GENERAL</u>	Sales Region:
			<u>Local</u>

Agency	Name:	<u>New Mexico Project, The</u>	
	Buying Contact:		Billing Type:
	Billing Contact:	<u>Jeff Apodaca</u>	Cash
		<u>\$100 Wyoming Blvd NE</u>	Billing Calendar:
		<u>Abuquerque, NM 87113</u>	Calendar
			Billing Cycle:
			<u>EOM/EOC</u>
			Agency Commission:
			<u>0%</u>

Advertiser	Name:	<u>New Mexico Project, The</u>	
	Demographic:	<u>A25-54</u>	New Business Est:
	Product Codes:	<u>Issues/Propositions</u>	Advertiser External ID:
	Revenue Code 1:	<u>DIR</u>	Agency External ID:
	Revenue Code 2:	<u>POL-ISS</u>	Unit Code:
	Revenue Code 3:	<u>POL-STATE</u>	General
	Priority:	<u>P-100</u>	Order Separation:
			<u>00:15:00</u>

Bill Plan					Totals				
Start Date	End Date	# Spots	Gross Amount	Net Amount	Month	# Spots	Gross Amount	Net Amount	Rating
04/01/24	04/22/24	2	\$250.00	\$250.00	April 2024	2	\$250.00	\$250.00	0.00
					Totals:	2	\$250.00	\$250.00	0.00

Account Executive	Sales Office	Sales Region	Start Date / End Date	Order %
Michelle Miller	L-ALB	Local	Start Of Order - End Of Order	100%

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 1	KKOB	04/22/24	04/22/24	M-F Prime M-F	CM	5:00 PM-6:00 PM (5:00 PM-6:00 PM)	M-----	1:00	1	\$125.00	P-10	0.00	NM	1	\$125.00
1 spot at 6:00 break															
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>	<u>Spots/Week</u>	<u>Rate</u>	<u>Rating</u>								
Week:		04/22/24	04/28/24	M-----	1	\$125.00	0.00								
N 2	KKOB	04/22/24	04/22/24	M-F Prime M-F	CM	5:00 PM-6:00 PM (5:00 PM-6:00 PM)	M-----	1:00	1	\$125.00	P-10	0.00	NM	1	\$125.00
1 spot at 5:30 break															
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>	<u>Spots/Week</u>	<u>Rate</u>	<u>Rating</u>								
Week:		04/22/24	04/28/24	M-----	1	\$125.00	0.00								
													Totals	2	\$250.00

*Tax 1 Note: Albuquerque 7.825%

**ISSUE (Non-candidate) ADVERTISEMENT
AGREEMENT FORM**

I, Jeff Apodaca, hereby request station time as follows: See Order for proposed schedule and charges. See Invoice for actual schedule and charges.

Check one:

Ad "communicates a message relating to any political matter of national importance" by referring to (1) a legally qualified candidate for federal office; (2) an election to federal office; (3) a national legislative issue of public importance (e.g., health care legislation, IRS tax code, etc.); or (4) a political issue that is the subject of controversy or discussion at the national level.

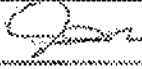
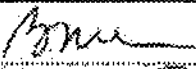
Ad does NOT communicate a message relating to any political matter of national importance (e.g., relates only to a state or local issue).

ALL QUESTIONS/BLOCKS MUST BE COMPLETED

Station time requested by: <u>The New Mexico Project</u>		
Agency name:		
Address: <u>8100 Wyoming Blvd NE, M4-307 Albuquerque, NM 87113</u>		
Contact: <u>Jeff Apodaca</u>	Phone number: <u>310 488 9115</u>	Email: <u>Jeffapo@icloud.com</u>
Name of advertiser/sponsor (list entity's full legal name as disclosed to the Federal Election Commission (for federal committees) with no acronyms; name must match the sponsorship ID in ad):		
Name: <u>TNMP Inc.</u>		
Address: <u>8100 Wyoming Blvd NE M4-307 Albuquerque, NM 87113</u>		
Contact: <u>Jeff Apodaca</u>	Phone number: <u>310 488 9115</u>	Email: <u>Jeffapo@icloud.com</u>
Station is authorized to announce the time as paid for by such person or entity.		
List ALL chief executive officers, members of the executive committee and the board of directors or other governing group(s) of the advertiser/sponsor (Use separate page if necessary):		
<u>Healthcare, Crime, Jobs</u>		
By signing below, advertiser/sponsor represents that those listed above are the only executive officers, members of the executive committee and board of directors or other governing group(s).		
If ad refers to a federal candidate(s) or federal election, list ALL of the following:		<input checked="" type="checkbox"/> N/A
Name(s) of every candidate referred to: <u>Healthcare, Crime, Jobs</u>		
Office(s) sought by such candidate(s) (no acronyms or abbreviations): <u>Healthcare, Crime, Jobs</u>		
Date of election:		
Clearly identify EVERY political matter of national importance referred to in the ad (no acronyms); use separate page if necessary:		<input type="checkbox"/> N/A
<u>Healthcare, Crime, Jobs</u>		

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The advertiser/sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, which may arise from the broadcast of the above-requested advertisement(s). For the above-requested ad(s), the advertiser/sponsor also agrees to prepare a script, transcript or tape, which will be delivered to the station by the log deadlines outlined in the station's disclosure statement.

Advertiser/Sponsor	Station Representative
Signature: 	Signature: 
Name: Jeff Apodaca	Name: Brenda Romeros
Date of Request to Purchase Ad Time: 4/19/24	Date of Station Agreement to Sell Time: 4/19/2024

TO BE COMPLETED BY STATION ONLY

Ad submitted to station? Yes No Date ad received: _____

Note: Must have separate PB-19 forms for each version of the ad (i.e., for every ad with differing copy).

If only one officer, executive committee member or director is listed above, station should ask the advertiser/sponsor in writing if there are any other officers, executive committee members or directors, maintain records of inquiry and update this form if additional officers, members or directors are provided.

Disposition:

- Accepted
- Accepted IN PART (e.g., ad not received to determine content)*
- Rejected - provide reason:

*Upload partially accepted form, then promptly upload updated final form when complete.

Date and nature of follow-ups, if any:

Contract #: 1282738A	Station Call Letters: KKOB	Date Received/Requested: 4/19/2024
Est. #:	Station Location: Albuquerque	Run Start and End Dates: 4/22/2024

For national issue ads only (not required for state/local issue ads):

Upload order, this disclosure form and invoice (or traffic system print-out) or other material reflecting this transaction to the OPIF or use this space to document schedule of time purchased, when spots actually aired, the rates charged and the classes of time purchased (including date, time, class of time and reasons for any make-goods or rebates) or attach separately. If station will not upload the actual times spots aired until an invoice is generated, the name of a contact person who can provide that information immediately should be placed in the "Terms and Disclosures" folder in the OPIF.

KkbB

Order #1283286A: New Mexico../New Mexico../Political ../

Date	Action	Comment	By	Amount	Spent	Expected BSR
04/22/24 4:52:37 PM	User Comment	pd via check 107006506 \$10,000 04/19/24	Rachel Ca	\$5,335.00	85	0.00
04/22/24 4:51:57 PM	CIA Spot status	<updated to Cleared> 3-1, 6-1, 2-1, 1-3	Rachel Ca	\$5,335.00	85	0.00
04/22/24 4:24:33 PM	Processed	<async process>	Jennifer Ji	\$5,335.00	85	0.00
04/22/24 4:16:25 PM	Approved		Rachel Ca	\$5,335.00	85	0.00
04/22/24 4:16:22 PM	Approval Workflow	[Centralized AR - Business Office Approval Needed Default]	Rachel Ca	\$6,335.00	85	0.00
04/22/24 3:27:31 PM	Approval Workflow	[Sales Manager - Ready Default]	Jeff Barry	\$5,335.00	85	0.00
04/22/24 3:21:25 PM	Ready for approval	new political order	Michelle Iv	\$5,335.00	85	0.00
04/22/24 1:47:37 PM	New order created	<new order>	Michelle Iv	\$0.00	0	0.00

[Sorted by: Date]

ORDER

Orders
Order / Rev: 1283286A
Alt Order #:
Product Desc: Political Issue 2024 Primary
Estimate:
Flight Dates: 04/23/24 - 06/04/24
Original Date / Rev: 04/22/24 / 04/22/24
Order Type: GENERAL
Primary AE: Michelle Miller
Sales Office: L-ALB
Sales Region: Local
KKOB-AM

Agency
Name: New Mexico Project, The
Buying Contact:
Billing Contact: Jeff Apodaca
8100 Wyoming Blvd NE
Albuquerque, NM 87113
Billing Type: Cash
Billing Calendar: Calendar
Billing Cycle: EOM/EOC
Agency Commission: 0%

Advertiser
Name: New Mexico Project, The
Demographic: A25-54
Product Codes: Issues/Propositions
Revenue Code 1: DIR
Revenue Code 2: POL-ISS
Revenue Code 3: POL-STATE
Priority: P-100
New Business End:
Advertiser External ID:
Agency External ID:
Unit Code: General
Order Separation: 00:15:00

Bill Plan

Start Date	End Date	# Spots	Gross Amount	Net Amount
04/01/24	04/30/24	23	\$1,535.00	\$1,535.00
05/01/24	05/31/24	52	\$3,235.00	\$3,235.00
06/01/24	06/04/24	10	\$565.00	\$565.00

Totals

Month	# Spots	Gross Amount	Net Amount	Rating
April 2024	23	\$1,535.00	\$1,535.00	0.00
May 2024	52	\$3,235.00	\$3,235.00	0.00
June 2024	10	\$565.00	\$565.00	0.00
Totals	85	\$5,335.00	\$5,335.00	0.00

Account Executives

Account Executive	Sales Office	Sales Region	Start Date / End Date	Order %
Michelle Miller	L-ALB	Local	Start Of Order - End Of Order	100%

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 1	KKOBA	04/23/24	05/12/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	1:00	3	\$125.00	P-50	0.00	NM	9	\$1,125.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					3	\$125.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					3	\$125.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					3	\$125.00		0.00			
N 2	KKOBA	04/23/24	05/12/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	:30	2	\$90.00	P-50	0.00	NM	6	\$540.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					2	\$90.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					2	\$90.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					2	\$90.00		0.00			
N 3	KKOBA	04/23/24	05/12/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	2	\$90.00	P-50	0.00	NM	6	\$180.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					2	\$90.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					2	\$90.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					2	\$90.00		0.00			
N 4	KKOBA	04/23/24	05/12/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	:30	2	\$25.00	P-50	0.00	NM	6	\$150.00

Order / Rev: 1283286A
 Alt Order #:
 Flight Dates: 04/23/24 - 06/04/24

Advertiser: New Mexico Project, The
 Product Desc: Political Issue 2024 Primary
 Estimate:
 KKOB-AM

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 5	KKOBA	04/23/24	05/12/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	:30	3	\$80.00	P-50	0.00	NM	9	\$720.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					2	\$25.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					2	\$25.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					2	\$25.00		0.00			
N 6	KKOBA	04/23/24	05/12/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	:30	3	\$40.00	P-50	0.00	NM	9	\$360.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					3	\$80.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					3	\$80.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					3	\$80.00		0.00			
N 7	KKOBA	05/13/24	06/04/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	1:00	1	\$125.00	P-50	0.00	NM	4	\$500.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					1	\$125.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					1	\$125.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					1	\$125.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					1	\$125.00		0.00			
N 8	KKOBA	05/13/24	06/04/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	:30	1	\$90.00	P-50	0.00	NM	4	\$360.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					1	\$90.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					1	\$90.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					1	\$90.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					1	\$90.00		0.00			
N 9	KKOBA	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	2	\$30.00	P-50	0.00	NM	8	\$240.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$30.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$30.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$30.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$30.00		0.00			
N 10	KKOBA	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	:30	2	\$25.00	P-50	0.00	NM	8	\$200.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$25.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$25.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$25.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$25.00		0.00			
N 11	KKOBA	05/13/24	06/04/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	:30	2	\$80.00	P-50	0.00	NM	8	\$640.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$80.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$80.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$80.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$80.00		0.00			
N 12	KKOBA	05/13/24	06/04/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	:30	2	\$40.00	P-50	0.00	NM	8	\$320.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$40.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$40.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$40.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$40.00		0.00			

*Tax 1 Note: Albuquerque 7.625%.

Totals 85 \$5,335.00

**ISSUE (Non-candidate) ADVERTISEMENT
AGREEMENT FORM**

I, Jeff Apodaca, hereby request station time as follows: See **Order** for proposed schedule and charges. See **Invoice** for actual schedule and charges.

Check one:

- Ad "communicates a message relating to any political matter of national importance" by referring to (1) a legally qualified candidate for federal office; (2) an election to federal office; (3) a national legislative issue of public importance (e.g., health care legislation, IRS tax code, etc.); or (4) a political issue that is the subject of controversy or discussion at the national level.
- Ad does NOT communicate a message relating to any political matter of national importance (e.g., relates only to a state or local issue).

ALL QUESTIONS/BLOCKS MUST BE COMPLETED

Station time requested by: The New Mexico Project

Agency name:

Address: 8100 Wyoming Blvd NE, M4-307 Albuquerque, NM 87113

Contact: Jeff Apodaca

Phone number: 310 488 9115

Email: Jeffapo@icloud.com

Name of advertiser/sponsor (list entity's full legal name as disclosed to the Federal Election Commission [for federal committees] with no acronyms; name must match the sponsorship ID in ad):

Name: TNMP Inc

Address: 8100 Wyoming Blvd NE M4-307 Albuquerque, NM 87113

Contact: Jeff Apodaca

Phone number: 310 488 9115

Email: Jeffapo@icloud.com

Station is authorized to announce the time as paid for by such person or entity.

List ALL chief executive officers, members of the executive committee and the board of directors or other governing group(s) of the advertiser/sponsor (Use separate page if necessary):

Healthcare, Crime, Jobs

By signing below, advertiser/sponsor represents that those listed above are the only executive officers, members of the executive committee and board of directors or other governing group(s).

If ad refers to a federal candidate(s) or federal election, list ALL of the following:

N/A

Name(s) of every candidate referred to: Healthcare, Crime, Jobs

Office(s) sought by such candidate(s) (no acronyms or abbreviations): Healthcare, Crime, Jobs

Date of election:

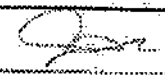
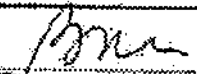
Clearly identify EVERY political matter of national importance referred to in the ad (no acronyms); use separate page if necessary:

N/A

Healthcare, Crime, Jobs

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The advertiser/sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, which may arise from the broadcast of the above-requested advertisement(s). For the above-requested ad(s), the advertiser/sponsor also agrees to prepare a script, transcript or tape, which will be delivered to the station by the log deadlines outlined in the station's disclosure statement.

Advertiser/Sponsor	Station Representative
Signature: 	Signature: 
Name: Jeff Apodaca	Name: Brenda Romero
Date of Request to Purchase Ad Time: 4/19/24	Date of Station Agreement to Sell Time: 4/22/2024

TO BE COMPLETED BY STATION ONLY

Ad submitted to station? Yes No Date ad received: 4-22-2024

Note: Must have separate PB-19 forms for each version of the ad (i.e., for every ad with differing copy).

If only one officer, executive committee member or director is listed above, station should ask the advertiser/sponsor in writing if there are any other officers, executive committee members or directors, maintain records of inquiry and update this form if additional officers, members or directors are provided.

Disposition:

Accepted

Accepted IN PART (e.g., ad not received to determine content)*

Rejected - provide reason:

*Upload partially accepted form, then promptly upload updated final form when complete.

Date and nature of follow-ups, if any:

Contract #: 1283280A	Station Call Letters: KKOB	Date Received/Requested: 4-22-2024
Est. #:	Station Location: Albuquerque	Run Start and End Dates: 4-23 - 6-4-2024

For national issue ads only (not required for state/local issue ads)

Upload order, this disclosure form and invoice (or traffic system print-out) or other material reflecting this transaction to the OPIF or use this space to document schedule of time purchased, when spots actually aired, the rates charged and the classes of time purchased (including date, time, class of time and reasons for any make-goods or rebates) or attach separately. If station will not upload the actual times spots aired until an invoice is generated, the name of a contact person who can provide that information immediately should be placed in the "Terms and Disclosures" folder in the OPIF.

Order #1283286B: New Mexico../New Mexico../Political ../

Date	Time	Action	Comments	By	Amount	Spots	Spots/Sec
04/22/24	4:52:55 PM	User Comment	pd via check 107006606 \$10,000 04/19/24	Rachel Ca	\$3,860.00	84	0.00
04/22/24	4:52:51 PM	CIA Spot status	<updated to Cleared> 2-1, 1-1, 4-2	Rachel Ca	\$3,860.00	84	0.00
04/22/24	4:20:25 PM	Processed	<async process>	Shevelta I	\$3,860.00	84	0.00
04/22/24	4:18:20 PM	Approved		Rachel Ca	\$3,860.00	84	0.00
04/22/24	4:18:18 PM	Approval Workflow	[Centralized AR - Business Office Approval Needed Default]	Rachel Ca	\$3,860.00	84	0.00
04/22/24	4:17:25 PM	Approval Workflow	[Sales Manager - Ready Default]	Jeff Berry	\$3,860.00	84	0.00
04/22/24	3:31:02 PM	Ready for approval	corrected lengths	Michelle N	\$3,860.00	84	0.00
04/22/24	3:21:37 PM	Ready for approval	new political order	Michelle N	\$3,860.00	84	0.00
04/22/24	2:07:07 PM	New order created	<new order>	Michelle N	\$0.00	0	0.00

[Sorted by: Date]

ORDER

Orders
Order / Rev: 1283286B
Alt Order #:
Product Desc: Political Issue 2024 Primary
Estimate:
Flight Dates: 04/23/24 - 06/04/24
Original Date / Rev: 04/22/24 / 04/22/24
Order Type: GENERAL
Primary AE: Michelle Miller
Sales Office: L-ALB
Sales Region: Local
KOBQ-FM

Agency
Name: New Mexico Project, The
Buying Contact:
Billing Contact: Jeff Apodaca
Address: 8100 Wyoming Blvd NE
 Albuquerque, NM 87113
Billing Type: Cash
Billing Calendar: Calendar
Billing Cycle: EOM/EOC
Agency Commission: 0%

Advertiser
Name: New Mexico Project, The
Demographic: A25-34
Product Codes: Issues/Propositions
Revenue Code 1: DIR
Revenue Code 2: POL-ISS
Revenue Code 3: POL-STATE
Priority: P-100
New Business End:
Advertiser External ID:
Agency External ID:
Unit Code: General
Order Separation: 00:15:00

Bill Plan					Totals					
Start Date	End Date	# Spots	Gross Amount	Net Amount	Month	# Spots	Gross Amount	Net Amount	Rating	
04/01/24	04/30/24	19	\$995.00	\$995.00	April 2024	19	\$995.00	\$995.00	0.00	
05/01/24	05/31/24	63	\$2,365.00	\$2,365.00	May 2024	53	\$2,365.00	\$2,365.00	0.00	
06/01/24	06/04/24	12	\$500.00	\$500.00	June 2024	12	\$500.00	\$500.00	0.00	
						Totals	84	\$3,860.00	\$3,860.00	0.00

Account Executives

Account Executive	Sales Office	Sales Region	Start Date / End Date	Order %
Michelle Miller	L-ALB	Local	Start Of Order - End Of Order	100%

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 1	KOBQ	04/23/24	05/12/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	1:00	2	\$65.00	P-50	0.00	NM	6	\$390.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					2	\$65.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					2	\$65.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					2	\$65.00		0.00			
N 2	KOBQ	04/23/24	05/12/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	4	\$45.00	P-50	0.00	NM	12	\$540.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					4	\$45.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					4	\$45.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					4	\$45.00		0.00			
N 3	KOBQ	04/23/24	05/12/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	1:00	2	\$65.00	P-50	0.00	NM	6	\$390.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					2	\$65.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					2	\$65.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					2	\$65.00		0.00			
N 4	KOBQ	04/23/24	05/12/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	1:00	4	\$45.00	P-50	0.00	NM	12	\$540.00

Order / Rev: 1283286B
 Alt Order #:
 Flight Dates: 04/23/24 - 06/04/24

Advertiser: New Mexico Project, The
 Product Desc: Political Issue 2024 Primary
 Estimate: KOBQ-FM

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 5	KOBQ	05/13/24	06/04/24	M-F AM Drive M-F	CM	8a-10a	MTWTF--	1:00	1	\$65.00	P-50	0.00	NM	4	\$260.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					4	\$45.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					4	\$45.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					4	\$45.00		0.00			
N 6	KOBQ	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	3	\$45.00	P-50	0.00	NM	12	\$540.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					3	\$45.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					3	\$45.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					3	\$45.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					3	\$45.00		0.00			
N 7	KOBQ	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	:30	2	\$20.00	P-50	0.00	NM	8	\$160.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$20.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$20.00		0.00			
N 8	KOBQ	06/13/24	06/04/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	1:00	2	\$65.00	P-50	0.00	NM	8	\$520.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$65.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$65.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$65.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$65.00		0.00			
N 9	KOBQ	05/13/24	06/04/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	1:00	2	\$45.00	P-50	0.00	NM	8	\$360.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$45.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$45.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$45.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$45.00		0.00			
N 10	KOBQ	05/13/24	06/04/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	:30	2	\$20.00	P-50	0.00	NM	8	\$160.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$20.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$20.00		0.00			

*Tax 1 Note: Albuquerque 7.525%

Totals 84 \$3,950.00

**ISSUE (Non-candidate) ADVERTISEMENT
AGREEMENT FORM**

I, Jeff Apodaca, hereby request station time as follows: See **Order** for proposed schedule and charges. See **Invoice** for actual schedule and charges.

Check one:

Ad "communicates a message relating to any political matter of national importance" by referring to (1) a legally qualified candidate for federal office; (2) an election to federal office; (3) a national legislative issue of public importance (e.g., health care legislation, IRS tax code, etc.); or (4) a political issue that is the subject of controversy or discussion at the national level.

Ad does NOT communicate a message relating to any political matter of national importance (e.g., relates only to a state or local issue).

ALL QUESTIONS/BLOCKS MUST BE COMPLETED

Station time requested by: The New Mexico Project

Agency name:

Address: 8100 Wyoming Blvd NE, M4-307 Albuquerque, NM 87113

Contact: Jeff Apodaca

Phone number: 310 488 9115

Email: Jeffapo@icloud.com

Name of advertiser/sponsor (list entity's full legal name as disclosed to the Federal Election Commission [for federal committees] with no acronyms; name must match the sponsorship ID in ad):

Name: TNMP Inc

Address: 8100 Wyoming Blvd NE M4-307 Albuquerque, NM 87113

Contact: Jeff Apodaca

Phone number: 310 488 9115

Email: Jeffapo@icloud.com

Station is authorized to announce the time as paid for by such person or entity.

List ALL chief executive officers, members of the executive committee and the board of directors or other governing group(s) of the advertiser/sponsor (Use separate page if necessary):

Healthcare, Crime, Jobs

By signing below, advertiser/sponsor represents that those listed above are the only executive officers, members of the executive committee and board of directors or other governing group(s).

If ad refers to a federal candidate(s) or federal election, list ALL of the following:

N/A

Name(s) of every candidate referred to: Healthcare, Crime, Jobs

Office(s) sought by such candidate(s) (no acronyms or abbreviations): Healthcare, Crime, Jobs

Date of election:

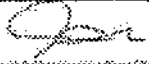
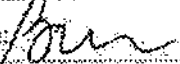
Clearly identify EVERY political matter of national importance referred to in the ad (no acronyms); use separate page if necessary:

N/A

Healthcare, Crime, Jobs

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The advertiser/sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, which may arise from the broadcast of the above-requested advertisement(s). For the above-requested ad(s), the advertiser/sponsor also agrees to prepare a script, transcript or tape, which will be delivered to the station by the log deadlines outlined in the station's disclosure statement.

Advertiser/Sponsor	Station Representative
Signature: 	Signature: 
Name: Jeff Apodaca	Name: Brenda Roman
Date of Request to Purchase Ad Time: 4/19/24	Date of Station Agreement to Sell Time: 4-22-24

TO BE COMPLETED BY STATION ONLY

Ad submitted to station? Yes No Date ad received: 4-22-2024

Note: Must have separate PB-19 forms for each version of the ad (i.e., for every ad with differing copy).

If only one officer, executive committee member or director is listed above, station should ask the advertiser/sponsor in writing if there are any other officers, executive committee members or directors, maintain records of inquiry and update this form if additional officers, members or directors are provided.

Disposition:

Accepted

Accepted IN PART (e.g., ad not received to determine content)*

Rejected - provide reason:

*Upload partially accepted form, then promptly upload updated final form when complete.

Date and nature of follow-ups, if any:

Contract #: 12832860B	Station Call Letters: RDBQ	Date Received/Requested: 4-22-2024
Est. #:	Station Location: Albuquerque	Run Start and End Dates: 4-23 - 6-4-2024

For national issue ads only (not required for state/local issue ads)

Upload order, this disclosure form and invoice (or traffic system print-out) or other material reflecting this transaction to the OPIF or use this space to document schedule of time purchased, when spots actually aired, the rates charged and the classes of time purchased (including date, time, class of time and reasons for any make-goods or rebates) or attach separately. If station will not upload the actual times spots aired until an invoice is generated, the name of a contact person who can provide that information immediately should be placed in the "Terms and Disclosures" folder in the OPIF.

Order #1283286C: New Mexico../New Mexico../Political../

Time	Comments	Amount	Balance	Balance
04/22/24 4:53:47 PM	User Comment: pd via check 107006506 \$10,000 04/19/24	Rachel Ca	\$5,800.00	84 0.00
04/22/24 4:53:26 PM	Put in Edit Mode	Rachel Ca	\$5,800.00	84 0.00
04/22/24 4:53:24 PM	CIA Spot status <updated to Cleared> 2-1; 4-2, 1-1	Rachel Ca	\$5,800.00	84 0.00
04/22/24 4:24:42 PM	Processed <async process>	Jennifer Ji	\$5,800.00	84 0.00
04/22/24 4:19:02 PM	Approved	Rachel Ca	\$5,800.00	84 0.00
04/22/24 4:18:59 PM	Approval Workflow [Centralized AR - Business Office Approval Needed Default]	Rachel Ca	\$5,800.00	84 0.00
04/22/24 4:16:27 PM	Approval Workflow [Sales Manager - Ready Default]	Jeff Barry	\$5,800.00	84 0.00
04/22/24 3:32:36 PM	Ready for approval corrected lengths	Michelle N	\$5,800.00	84 0.00
04/22/24 3:28:37 PM	Approval Workflow [Sales Manager - Ready Default]	Jeff Barry	\$5,800.00	84 0.00
04/22/24 3:21:50 PM	Ready for approval new political order	Michelle N	\$5,800.00	84 0.00
04/22/24 2:18:56 PM	New order created Copied from Order #1283286B	Michelle N	\$3,860.00	84 0.00

{Sorted by: Date}

ORDER

Orders	Order / Rev: 1283286C		
	Alt Order #:		
	Product Desc: Political Issue 2024 Primary		
	Estimate:		KRST-FM
	Flight Dates: 04/23/24 - 06/04/24	Primary AE: Michelle Miller	
	Original Date / Rev: 04/22/24 / 04/22/24	Sales Office: L-ALB	
	Order Type: GENERAL	Sales Region: Local	
Agency	Name: New Mexico Project, The		
	Buying Contact:	Billing Type: Cash	
	Billing Contact: Jeff Apodaca	Billing Calendar: Calendar	
	8100 Wyoming Blvd NE	Billing Cycle: EOM/EOC	
	Albuquerque, NM 87113	Agency Commission: 0%	
Advertiser	Name: New Mexico Project, The		
	Demographic: A25-54	New Business End:	
	Product Codes: Issues/Propositions	Advertiser External ID:	
	Revenue Code 1: DIR	Agency External ID:	
	Revenue Code 2: POL-ISS	Unit Code: General	
	Revenue Code 3: POL-STATE	Order Separation: 00:15:00	
	Priority: P-100		

Bill Plan

Totals

Start Date	End Date	# Spots	Gross Amount	Net Amount
04/01/24	04/30/24	18	\$1,540.00	\$1,540.00
05/01/24	05/31/24	53	\$3,530.00	\$3,530.00
06/01/24	06/04/24	12	\$730.00	\$730.00

Month	# Spots	Gross Amount	Net Amount	Rating
April 2024	18	\$1,540.00	\$1,540.00	0.00
May 2024	53	\$3,530.00	\$3,530.00	0.00
June 2024	12	\$730.00	\$730.00	0.00
Totals	84	\$5,800.00	\$5,800.00	0.00

Account Executives

Account Executive	Sales Office	Sales Region	Start Date / End Date	Order %
Michelle Miller	L-ALB	Local	Start Of Order - End Of Order	100%

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 1	KRST	04/23/24	05/12/24	M-F AM Drive M-F	CM	8a-10a	MTWTF--	1:00	2	\$100.00	P-50	0.00	NM	6	\$600.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>		<u>Spots/Week</u>		<u>Rate</u>		<u>Rating</u>					
		Week: 04/22/24	04/28/24	-TWTF--		2		\$100.00		0.00					
		Week: 04/29/24	05/05/24	MTWTF--		2		\$100.00		0.00					
		Week: 05/06/24	05/12/24	MTWTF--		2		\$100.00		0.00					
N 2	KRST	04/23/24	05/12/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	4	\$70.00	P-50	0.00	NM	12	\$840.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>		<u>Spots/Week</u>		<u>Rate</u>		<u>Rating</u>					
		Week: 04/22/24	04/28/24	-TWTF--		4		\$70.00		0.00					
		Week: 04/29/24	05/05/24	MTWTF--		4		\$70.00		0.00					
		Week: 05/06/24	05/12/24	MTWTF--		4		\$70.00		0.00					
N 3	KRST	04/23/24	05/12/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	1:00	2	\$100.00	P-50	0.00	NM	6	\$600.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>		<u>Spots/Week</u>		<u>Rate</u>		<u>Rating</u>					
		Week: 04/22/24	04/28/24	-TWTF--		2		\$100.00		0.00					
		Week: 04/29/24	05/05/24	MTWTF--		2		\$100.00		0.00					
		Week: 05/06/24	05/12/24	MTWTF--		2		\$100.00		0.00					
N 4	KRST	04/23/24	05/12/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	1:00	4	\$70.00	P-50	0.00	NM	12	\$840.00

Order / Rev.: 1283286C
 Alt Order #:
 Flight Dates: 04/23/24 - 06/04/24

Advertiser: New Mexico Project, The
 Product Desc: Political Issue 2024 Primary
 Estimate: KRST-FM

Ln	Ch	Start	End	Inventory Code	Break	Start/End Time	Days	Len	Spots	Rate	Pri	Rtg	Type	Spots	Amount
N 5	KRST	05/13/24	06/04/24	M-F AM Drive M-F	CM	6a-10a	MTWTF--	1:00	1	\$100.00P-50		0.00	NM	4	\$400.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 04/22/24	04/28/24	-TWTF--					4	\$70.00		0.00			
		Week: 04/29/24	05/05/24	MTWTF--					4	\$70.00		0.00			
		Week: 05/06/24	05/12/24	MTWTF--					4	\$70.00		0.00			
N 6	KRST	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	1:00	3	\$70.00P-50		0.00	NM	12	\$840.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					1	\$100.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					1	\$100.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					1	\$100.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					1	\$100.00		0.00			
N 7	KRST	05/13/24	06/04/24	M-F 5a-8p M-F	CM	5:00 AM-10:00 AM (5:00 AM-10:00 AM)	MTWTF--	:30	2	\$20.00P-50		0.00	NM	8	\$160.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$20.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$20.00		0.00			
N 8	KRST	05/13/24	06/04/24	M-F PM Drive M-F	CM	3p-7p	MTWTF--	1:00	2	\$100.00P-50		0.00	NM	8	\$800.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$100.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$100.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$100.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$100.00		0.00			
N 9	KRST	05/13/24	06/04/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	1:00	2	\$70.00P-50		0.00	NM	8	\$560.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$70.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$70.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$70.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$70.00		0.00			
N 10	KRST	05/13/24	06/04/24	M-F 5a-8p M-F	CM	3:00 PM-8:00 PM (3:00 PM-8:00 PM)	MTWTF--	:30	2	\$20.00P-50		0.00	NM	8	\$160.00
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>					<u>Spots/Week</u>	<u>Rate</u>		<u>Rating</u>			
		Week: 05/13/24	05/19/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/20/24	05/26/24	MTWTF--					2	\$20.00		0.00			
		Week: 05/27/24	06/02/24	MTWTF--					2	\$20.00		0.00			
		Week: 06/03/24	06/09/24	MT-----					2	\$20.00		0.00			

*Tax 1 Note: Albuquerque 7.625%

Totals 84 \$5,800.00

**ISSUE (Non-candidate) ADVERTISEMENT
AGREEMENT FORM**

I, Jeff Apodaca, hereby request station time as follows: See Order for proposed schedule and charges. See Invoice for actual schedule and charges.

Check one:

- Ad "communicates a message relating to any political matter of national importance" by referring to (1) a legally qualified candidate for federal office; (2) an election to federal office; (3) a national legislative issue of public importance (e.g., health care legislation, IRS tax code, etc.); or (4) a political issue that is the subject of controversy or discussion at the national level.
- Ad does NOT communicate a message relating to any political matter of national importance (e.g., relates only to a state or local issue).

ALL QUESTIONS/BLOCKS MUST BE COMPLETED

Station time requested by: <u>The New Mexico Project</u>		
Agency name:		
Address: <u>8100 Wyoming Blvd NE, M4-307 Albuquerque, NM 87113</u>		
Contact: <u>Jeff Apodaca</u>	Phone number: <u>310 488 9115</u>	Email: <u>Jeffapo@icloud.com</u>
Name of advertiser/sponsor (list entity's full legal name as disclosed to the Federal Election Commission [for federal committees] with no acronyms; name must match the sponsorship ID in ad):		
Name: <u>TNMP Inc</u>		
Address: <u>8100 Wyoming Blvd NE M4-307 Albuquerque, NM 87113</u>		
Contact: <u>Jeff Apodaca</u>	Phone number: <u>310 488 9115</u>	Email: <u>Jeffapo@icloud.com</u>
Station is authorized to announce the time as paid for by such person or entity.		
List ALL chief executive officers, members of the executive committee and the board of directors or other governing group(s) of the advertiser/sponsor (Use separate page if necessary):		
<u>Healthcare, Crime, Jobs</u>		
By signing below, advertiser/sponsor represents that those listed above are the only executive officers, members of the executive committee and board of directors or other governing group(s).		
If ad refers to a federal candidate(s) or federal election, list ALL of the following:		<input checked="" type="checkbox"/> N/A
Name(s) of every candidate referred to: <u>Healthcare, Crime, Jobs</u>		
Office(s) sought by such candidate(s) (no acronyms or abbreviations): <u>Healthcare, Crime, Jobs</u>		
Date of election:		
Clearly identify EVERY political matter of national importance referred to in the ad (no acronyms); use separate page if necessary:		<input type="checkbox"/> N/A
<u>Healthcare, Crime, Jobs</u>		

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The advertiser/sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, which may arise from the broadcast of the above-requested advertisement(s). For the above-requested ad(s), the advertiser/sponsor also agrees to prepare a script, transcript or tape, which will be delivered to the station by the log deadlines outlined in the station's disclosure statement.

Advertiser/Sponsor	Station Representative
Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>
Name: Jeff Apodaca	Name: <i>Brenda Romero</i>
Date of Request to Purchase Ad Time: 4/19/24	Date of Station Agreement to Sell Time: <i>4.22.24</i>

TO BE COMPLETED BY STATION ONLY

Ad submitted to station? Yes No Date ad received: *4.22.2024*

Note: Must have separate PB-19 forms for each version of the ad (i.e., for every ad with differing copy).

If only one officer, executive committee member or director is listed above, station should ask the advertiser/sponsor in writing if there are any other officers, executive committee members or directors, maintain records of inquiry and update this form if additional officers, members or directors are provided.

Disposition:

Accepted

Accepted IN PART (e.g., ad not received to determine content)*

Rejected -- provide reason:

*Upload partially accepted form, then promptly upload updated final form when complete.

Date and nature of follow-ups, if any:

Contract #: <i>1283286 C</i>	Station Call Letters: <i>KRST</i>	Date Received/Requested: <i>4.22.2024</i>
Est. #:	Station Location: <i>Albuquerque</i>	Run Start and End Dates: <i>4.23 - 6.4.2024</i>

For national issue ads only (not required for state/local issue ads):

Upload order, this disclosure form and invoice (or traffic system print-out) or other material reflecting this transaction to the OPIF or use this space to document schedule of time purchased, when spots actually aired, the rates charged and the classes of time purchased (including date, time, class of time and reasons for any make-goods or rebates) or attach separately. If station will not upload the actual times spots aired until an invoice is generated, the name of a contact person who can provide that information immediately should be placed in the "Terms and Disclosures" folder in the OPIF.

NAME TVMC Case 1:24-cv-00652-WJ-LF Document 1-2 Filed 06/26/24 Page 49 of 49

ACCOUNT NO. 809 633 3748

DATE 4/19/24

PAY TO THE ORDER OF

Cumulative

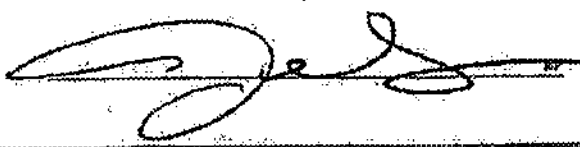
\$ 10,000.00

Ten thousand & no/100 Dollars

DOLLARS

BANK OF ALBUQUERQUE
Powered by BOA Financial

MEMO Dario Ho - Primary



⑆ 107006606⑆

MIME-Version:1.0
From:cmecfbb@mmd.uscourts.gov
To:cmecfto@nmcourt.uscourts.gov
Bcc:
--Case Participants: A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com)
--Non Case Participants:
--No Notice Sent:

Message-Id:13156466@mmd.uscourts.gov
Subject:Activity in Case 1:24-cv-00652 State Ethics Commission v. TNMP, Inc. et al Filing and Admin Fees Received
Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered by Dunn, A. on 6/26/2024 at 11:54 AM MDT and filed on 6/26/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652

Filer:

Document Number: No document attached

Docket Text:

Filing and Administrative Fees Received: \$ 405 receipt number ANMDC-9422298 re [1] Notice of Removal, filed by TNMP, Inc., Jeff Apodaca (Payment made via Pay.gov)(Dunn, A.)

1:24-cv-00652 Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

1:24-cv-00652 Notice has been delivered by other means to:

State Ethics Commission

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

BCC:

--Case Participants: Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com)

--Non Case Participants:

--No Notice Sent:

Message-Id:13156725@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-JFR-LF State Ethics Commission v. TNMP, Inc. et al
Add and Terminate Judges

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 6/26/2024 at 1:49 PM MDT and filed on 6/26/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-JFR-LF

Filer:

Document Number: No document attached

Docket Text:

United States Magistrate Judge John F. Robbenhaar and United States Magistrate Judge Laura Fashing assigned. (jg)

1:24-cv-00652-JFR-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

1:24-cv-00652-JFR-LF Notice has been delivered by fax to:

1:24-cv-00652-JFR-LF Notice has been delivered by USPS to:

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

Bcc:

--Case Participants: Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com)

--Non Case Participants:

--No Notice Sent:

Message-Id:13156727@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-JFR-LF State Ethics Commission v. TNMP, Inc. et al
Notice of Magistrate Judge Assignment (Text Only)

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 6/26/2024 at 1:50 PM MDT and filed on 6/26/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-JFR-LF

Filer:

Document Number: 2(No document attached)

Docket Text:

PLEASE TAKE NOTICE that this case has been randomly assigned to United States Magistrate Judge John F. Robbenhaar to conduct dispositive proceedings in this matter, including motions and trial. Appeal from a judgment entered by a Magistrate Judge will be to the United States Court of Appeals for the Tenth Circuit. It is the responsibility of the case filer to serve a copy of this Notice upon all parties with the summons and complaint. *Consent is strictly voluntary, and a party is free to withhold consent without adverse consequences. Should a party choose to consent, notice should be made no later than 21 days after entry of the Order setting the Rule 16 Initial Scheduling Conference.* For e-filers, visit our Web site at www.nmd.uscourts.gov for more information and instructions.

[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (jg)

1:24-cv-00652-JFR-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

1:24-cv-00652-JFR-LF Notice has been delivered by fax to:

1:24-cv-00652-JFR-LF Notice has been delivered by USPS to:

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

Bcc:

--Case Participants: Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn

(abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com)

--Non Case Participants: Case Reassignment (caseassign@nmd.uscourts.gov)

--No Notice Sent:

Message-Id:13156756@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-JFR-LF State Ethics Commission v. TNMP, Inc. et al

Refusal to Consent to Proceed Before a U.S. Magistrate Judge

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered by Dunn, A. on 6/26/2024 at 1:56 PM MDT and filed on 6/26/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-JFR-LF

Filer:

Document Number: 3(No document attached)

Docket Text:

REFUSAL TO CONSENT to Proceed before a U.S. Magistrate Judge (Dunn, A.)

[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.]

1:24-cv-00652-JFR-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com,
warba.llp.jared@gmail.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

1:24-cv-00652-JFR-LF Notice has been delivered by other means to:

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

Bcc:

--Case Participants: Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com), Chief District Judge William P. Johnson (wpjcmecf@nmd.uscourts.gov)

--Non Case Participants: CM Specialists (cm_specialists@nmd.uscourts.gov)

--No Notice Sent:

Message-Id:13157150@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-WJ-LF State Ethics Commission v. TNMP, Inc. et al

Notice of Judge Reassignment

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 6/26/2024 at 2:22 PM MDT and filed on 6/26/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-WJ-LF

Filer:

Document Number: 4(No document attached)

Docket Text:

PLEASE TAKE NOTICE that this case has been reassigned to Chief United States District Judge William P. Johnson as the trial judge.

Under D.N.M.LR-Civ. 10.1, the first page of each document must have the case file number and initials of the assigned judges.

Accordingly, further documents filed in this matter must bear the case number and the judges' initials shown in the case caption and the NEF for this document. Kindly reflect this change in your filings.

United States Magistrate Judge John F. Robbenhaar no longer assigned to this case.

[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (jg)

1:24-cv-00652-WJ-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

1:24-cv-00652-WJ-LF Notice has been delivered by fax to:

1:24-cv-00652-WJ-LF Notice has been delivered by USPS to:

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

STATE ETHICS COMMISSION,
Plaintiff,

v.

Case No. 1:24-cv-00652-WJ-LF

TNMP, INC., d/b/a "The New Mexico Project";
and JEFF APODACA,
Defendants.

INITIAL SCHEDULING ORDER

This case is assigned to me for scheduling, case management, discovery, and other non-dispositive motions. The Federal Rules of Civil Procedure and the Court's Local Rules of Civil Procedure will apply to this lawsuit.

The parties, appearing through counsel or *pro se*, will "meet and confer" no later than **Monday, August 05, 2024**, to formulate a provisional discovery plan. FED. R. CIV. P. 26(f). The time allowed for discovery is generally 120 to 150 days. The parties will cooperate in preparing a Joint Status Report and Provisional Discovery Plan ("JSR"). Please visit the Court's website, www.nmd.uscourts.gov, to download the standardized Joint Status Report and Provisional Discovery Plan form. The blanks for suggested/proposed dates are to be filled in by the parties. Actual dates will be promulgated by order of the Court shortly after the Rule 16 scheduling conference. Plaintiff, or defendant in removed cases, is responsible for filing the JSR by **Monday, August 12, 2024**.


Good cause must be shown and the Court's express and written approval obtained for any modification of the dates in the scheduling order that issue from the JSR.

Initial disclosures under FED. R. CIV. P. 26(a)(1) shall be made within fourteen (14) days of the meet-and-confer session.

A Rule 16 scheduling conference will be conducted by telephone on **Monday, August 19, 2024, at 2:00 p.m.** Counsel shall call my AT&T toll-free conference line at **1-888-363-4734** and dial access code **5407449** to be joined to the proceedings.

At the Rule 16 scheduling conference, counsel should be prepared to discuss discovery needs and scheduling, all claims and defenses, the use of scientific evidence and whether a *Daubert*¹ hearing is needed, initial disclosures, and the time of expert disclosures and reports under FED. R. CIV. P. 26(a)(2). We also will discuss settlement prospects and alternative dispute resolution possibilities and consideration of consent pursuant to 28 U.S.C. § 636(c). Client attendance is not required. All parties should review the Court's webpage at: <https://www.nmd.uscourts.gov/content/honorable-laura-fashing>, particularly noting the Procedures Tab and linked Guidelines for Proposed Protective Orders and Phone Conferences (to resolve minor discovery matters).

Plaintiff(s) shall serve a copy of this order on any parties that have been served but have not yet entered an appearance and shall file a certificate of service with the Court documenting such service. Plaintiff(s) shall serve a copy of this order on any parties not yet served along with the summons and complaint.



Laura Fashing
United States Magistrate Judge

¹ *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

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

STATE ETHICS COMMISSION,

Plaintiff,

v.

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

Defendants.

No. 1:24-cv-00652-WJ-LF

ENTRY OF APPEARANCE

COMES NOW Jeremy Farris and Walker Boyd and enter an appearance on behalf of Plaintiff State Ethics Commission in the above-captioned matter.

Respectfully submitted: June 28, 2024

By: /s/ Jeremy Farris

Jeremy Farris
Walker Boyd
800 Bradbury Dr. SE, Suite 215
Albuquerque, NM 87106
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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2024, I filed and served a true and correct copy of the foregoing on all counsel of record via filing with the CM/ECF filing system.

I further certify that on June 28, 2024, a true and correct copy of the foregoing was emailed to the following counsel of record”

A. Blair Dunn
Jared R. Vander Dussen
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Counsel for the Defendants

By: /s/ Jeremy Farris
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**IN THE UNITED STATES DISTRICT COURT
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No. 1:24-cv-00652-WJ-LF

**PLAINTIFF’S MOTION FOR REMAND AND ATTORNEYS’ FEES
AND COSTS UNDER 28 U.S.C. § 1447(c)¹**

Plaintiff New Mexico State Ethics Commission respectfully moves to remand this case to the Second Judicial District Court, State of New Mexico, because the Court lacks subject matter jurisdiction. The Commission’s well-pleaded complaint asserts state-law statutory claims only and does not raise a scintilla of a federal issue. In this action, the Commission asserts three statutory claims arising under New Mexico’s Campaign Reporting Act (“CRA”), N.M. Stat. Ann., §§ 1-19-25 to -37 (1979, as amended through 2024). *See* Ex. A. to Notice of Removal (“Compl.”), ¶¶ 36–57, filed Jun. 26, 2024 (Doc. 1-2). The Commission claims that Defendants violated the CRA by failing to register as a political committee with New Mexico’s Secretary of State and by failing to file required reports of its contributions and expenditures, either as a political committee or, alternatively, as an independent-expenditure maker. *See id.* In its complaint, the Commission seeks injunctive relief requiring Defendants to comply with the disclosure requirements that N.M.

¹ Pursuant to D.N.M.LR-Civ. 7.1, Plaintiff’s counsel contacted Defendants’ counsel to request Defendants’ position on this motion. Defendants’ counsel refused to provide a position and instead threatened to challenge undersigned counsel with a Rule 11 motion for filing this motion for remand. Ex. A, Eml. from B. Dunn, Counsel for Defendants, to J. Farris, Counsel for Plaintiff (Jun. 27, 2024). Undersigned counsel therefore believes this motion is opposed.

Stat. Ann. § 1-19-29 (2019) and N.M. Stat. Ann. § 1-19-31 (2019) impose on political committees or, alternatively, to disclose information relating to their independent expenditures as N.M. Stat. Ann. § 1-19-27.3 (2019) requires. *See* Compl., Prayer for Relief; *see also* Ex. B, Mot. for Prelim. Inj., *State Ethics Comm'n v. TNMP, Inc., et al.*, D-202-CV-2024-04341 (2d Jud. Dist. Ct., Jun. 24, 2024). The Commission's CRA claims are not federal claims, and whether Defendants violated the CRA does not turn on the resolution of any question of federal law.

Moreover, this matter is thoroughly a state concern: Defendants, a New Mexico domestic nonprofit corporation and a New Mexico citizen, made advertisements supporting at least 15 candidates for New Mexico legislative offices in the 2024 New Mexico primary and general elections. The Commission, a New Mexico constitutional agency, duly enabled by the New Mexico Legislature, filed a civil action to enforce the disclosure provisions of New Mexico's campaign finance reporting statute—a law at the core of New Mexico's sovereign power to regulate its own elections. The New Mexico courts are well able to decide alleged violations of New Mexico's CRA and any constitutional defenses that persons subject to the CRA's requirements might raise. This action, therefore, does not require the advantages inherent to a federal forum, especially in light of the “sensitive judgments about congressional intent, judicial power, and the federal system” incumbent upon the Court when “exploring the outer reaches of [28 U.S.C.] § 1331.” *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 810 (1986); *accord Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994).

This case is well beyond the “outer reaches” of federal question jurisdiction: no jurisdictional ground supports Defendants' removal. Furthermore, Defendants noticed removal two days after the Commission filed a motion for preliminary injunction to compel Defendants' lawful disclosure before New Mexico's November 5, 2024 general election. *See* Notice of

Removal, filed Jun. 26, 2024 (Doc. 1). Defendants removal therefore was objectively unreasonable. Accordingly, the Commission moves not only for remand but also for an award of attorneys' fees and costs. *See* 28 U.S.C. § 1447(c). In support of its motion, the Commission states as follows:

BACKGROUND

In the months before New Mexico's June 4, 2024 primary election, Defendant TNMP made advertisements supporting candidates seeking election for eight House districts and seven Senate districts. *See* Compl. ¶¶ 19–33. Yet, Defendant TNMP neither registered as a political committee nor filed any reports of its contributions and expenditures relating to those advertisements. *See* Ex. 2 to Ex. A, Aff. of Mandy Vigil, Election Dir. Office of the Sec'y of State (June 21, 2024). Indeed, Defendant Apodaca has maintained that TNMP is not required to disclose its donors, despite the 2019 amendments to the Campaign Reporting Act that clearly require such disclosure and despite recent pronouncements of the United States District Court for the District of New Mexico that “[d]isclosure requirements are ‘even more essential and necessary to enable informed choice in the political marketplace following *Citizens United*’s change to the political campaign landscape with the removal of the limit on corporate expenditures.” *Rio Grande Found. v. Oliver*, No. Civ. 1:10-cv-01174, 2024 WL 1345532, at *19 (D.N.M. Mar. 29, 2024) (quoting *Free Speech v. Fed. Elec. Comm’n*, 720 F.3d 788, 798 (10th Cir. 2013)). Consequently, the Commission demanded that TNMP comply with the CRA's basic requirements. TNMP refused, and the Commission filed a civil enforcement action in New Mexico's Second Judicial District Court against Defendants to compel their compliance with the CRA. In its complaint, the Commission asserted three alternatively pleaded claims: (i) that Defendant TNMP violated the CRA's registration and disclosure requirements for political committees under NM. Stat. Ann. §§ 1-19-

26.1 (2021), 1-19-29, and 1-19-31; (ii) that Defendant TNMP violated the CRA's disclosure requirements for independent expenditures under § 1-19-27.3; and (iii) that Defendant Apodaca violated the CRA's disclosure requirements for independent expenditures under § 1-19-27.3.

After the Commission filed suit, Defendant Apodaca publicly stated that TNMP will continue to make its campaign ads beyond the New Mexico primary election and into the general election.² Because of Defendants' continued refusal to make the required disclosures, *see* Ex. 2 to Ex. A, *Aff. of Mandy Vigil*, on June 24, 2024, the Commission filed a motion for a preliminary injunction to compel Defendants' statutorily required disclosures before the November 5, 2024 general election. Two days later, on June 26, 2024, Defendants improperly removed the case to federal court. Because the Court does not have jurisdiction for this matter, the Commission now moves for remand of the case to state court.

ARGUMENT

I. The Commission's well-pleaded complaint presents no claim arising under federal law and no substantial federal question that would ground the Court's jurisdiction.

"Federal courts are courts of limited jurisdiction; there is a presumption against removal jurisdiction, which the defendant seeking removal must overcome." *New Mexico ex rel. Balderas v. Monsanto Co.*, 454 F. Supp. 3d 1132, 1138 (D.N.M. 2020) (Johnson, C.J.) (citing *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001)). "It is well-established that statutes conferring jurisdiction upon the federal courts, and particularly removal statutes, are to be narrowly construed in light of [the federal courts'] constitutional role as limited tribunals." *Pritchett v. 4-95* (10th Cir. 2005) (alteration added). "Federal courts, therefore, are to strictly construe removal statutes and to resolve all doubts against removal."

² Ex. B, *Mot. for Prelim. Inj.*, 2 (citing *The TJ Trout Show, Jeff Apodaca*, 96.3 KKOB, at 13:28 (Jun. 11, 2024), <https://www.newsradiokkob.com/tj-trout/>).

Trujillo v. Reynolds, No. CIV 07-1077 JB/RLP, 2008 WL 2323521 at *2 (D.N.M. Jan. 17, 2008) (citing *Fajen v. Found. Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982)). “The removing party bears the burden of establishing the requirements for federal jurisdiction.” *Id.* (citing *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001)).

Defendants cannot carry this burden. Defendants incorrectly say that removal is proper under 28 U.S.C. § 1441(a) because the Court has subject matter jurisdiction under 28 U.S.C. § 1331.³ See Notice of Removal ¶ 6, at 2. The Tenth Circuit has clearly stated the test to determine whether this Court can exercise jurisdiction under § 1331:

[T]o find jurisdiction under 28 U.S.C. § 1331, two conditions must be satisfied. *First*, a question of federal law must appear on the face of plaintiff’s well-pleaded complaint. *Second*, plaintiff’s cause of action must either be (1) created by federal law, or (2) if it is a state-

³ Defendants do not argue there is any other basis for federal jurisdiction. See Notice Removal ¶¶ 2–7, at 1–2. A survey of other bases of federal subject matter jurisdiction confirms none apply: First, this Court lacks diversity jurisdiction because the parties are non-diverse. See 28 U.S.C. § 1332(a). Second, the Commission did not file a class action, and 28 U.S.C. § 1332(d) does not apply. Finally, preemption is not a basis for federal jurisdiction. Defendants removed this case before filing an answer and have not raised a preemption defense; even if they had, “the general rule [is] that a federal defense does not authorize the exercise of federal-question jurisdiction.” *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231, 1236 n.5 (10th Cir. 2013). Moreover, this general rule’s “very limited exception,” which is based on complete preemption, does not apply in this case. *Id.*; cf. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63–64 (1987) (“Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character.”). Congress has enacted no law that remotely (much less completely) preempts New Mexico’s campaign finance reporting statute, which is applicable only to New Mexico’s elections. See N.M. Stat. Ann., § 1-19-26(N) (2024). Relatedly, Congress created no federal cause of action that supplants the cause of action that is created by N.M. Stat. Ann., § 1-19-34.6 (2021). See *Dutcher v. Matheson*, 733 F.3d 980, 986 (10th Cir. 2013) (“The existence of a potential federal cause of action . . . may not be viable because it is preempted by a federal law—but only if federal law provides its own cause of action does the case raise a federal question that can be heard in federal court.”) (citation omitted); *United Ass’n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. of U.S. & Canada, Local No. 57 v. Bechtel Power Corp.*, 834 F.2d 884, 890 (10th Cir. 1987) (reversing district court and holding that plaintiffs’ state-law claims “are not preempted by § 301 of the LMRA, and the district court therefore lacked jurisdiction under 28 U.S.C. § 1331”). For example, there is no such cause of action in the Federal Election Campaign Act that preempts state campaign finance disclosure laws and related state-law causes of action. See 52 U.S.C. § 30101 *et seq.*

created cause of action, its resolution must necessarily turn on a substantial question of federal law. A court examining whether a case turns on a [substantial] question of federal law [must] focus on whether Congress evidenced an intent to provide a federal forum.

Nicodemus v. Union Pac. Corp., 318 F.3d 1231, 1235–36 (10th Cir. 2003) (alterations original) (emphasis added) (quotation marks and citations omitted), *opinion reinstated in part*, *Nicodemus v. Union Pac. Corp.*, 440 F.3d 1227 (10th Cir. 2006); *see also Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) (finding federal question jurisdiction where “a federal question is presented on the face of the plaintiff’s properly pleaded complaint”) (citing *Gully v. First Nat’l Bank*, 299 U.S. 109, 112–113 (1936)). In this case, neither condition is met.

A. *The Commission’s complaint asserts no federal claim and the resolution of the Commission’s state-law statutory claims do not necessarily turn on the resolution of any substantial federal question.*

On its face, the Commission’s complaint neither asserts any federal claim nor raises any issue of federal law. “[W]hether a claim ‘arises under’ federal law must be determined by reference to the ‘well-pleaded complaint.’” *Nicodemus*, 318 F.3d at 1236 (alterations original) (quoting *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986)). Defendants even concede that the Commission “asserts claims against Defendants ‘to compel TNMP’s compliance with the Campaign Reporting Act.’” Not. of Removal, ¶ 5 (quoting Compl. ¶ 7).

Looking to the complaint, the Commission asserted CRA claims against TNMP for violating the statute’s registration and disclosure requirements for political committees, *see* Compl. ¶¶ 36–42, and, alternatively, for violating the statute’s disclosure requirements related to independent expenditures, *see* Compl. ¶¶ 43–49. The Commission’s first claim that Defendants are in violation of the CRA’s registration and disclosure requirements for political committees requires proof that Defendant TNMP is, in fact, a political committee. That showing requires three elements: (i) that TNMP is an association of two or more persons; (ii) that TNMP received more

than \$5,000 in contributions or made independent expenditures of more than \$5,000 in the current election cycle; and (iii) that TNMP's primary purpose is to make independent expenditures. See N.M. Stat. Ann. § 1-19-26(U)(4) (2024) (defining "political committee"); see also Ex. B, at 4–7 (explaining that the Commission has a substantial likelihood to prevail on its claim that TNMP is a political committee). The Commission's second, alternative claim is that Defendant TNMP, even if it is not a political committee, violated § 1-19-27.3. This claim requires the Commission to prove that TNMP made aggregate independent expenditures in excess of \$1,000 in a nonstatewide election yet failed to report contributions made in response to a solicitation to fund independent expenditures. See Compl. ¶¶ 43–49; see also § 1-19-27.3; N.M. Stat. Ann. § 1-19-26(Q)(3) (2024). None of the elements of the Commission's two, alternatively pleaded CRA claims against TNMP necessarily depends on the resolution of a substantial question of federal law.

Defendants also say that the Commission asserts claims "against Defendant Apodaca for statements he made to the press." Not. of Removal, ¶ 5 (citing Compl. ¶¶ 5, 19, 22–24, 28, 34 & 35). Looking to the well-pleaded complaint, the Commission also pled an alternative count, pursuant to New Mexico Civil Rule 1-008(E)(2) NMRA, against Defendant Apodaca for failing to report independent expenditures as required by § 1-19-27.3, which, again, requires a showing that Defendant Apodaca made aggregate independent expenditures in excess of \$1,000 in a nonstatewide election yet failed to report contributions made in response to a solicitation to fund independent expenditures. The Commission's allegations of Defendant Apodaca's statements to the press are relevant to making that showing, as well as to proving that TNMP is, in fact, a political committee with the primary purpose to make independent expenditures. Nothing about the evidentiary weight of Defendant Apodaca's statements to the press necessarily turns on a substantial question of federal law or otherwise supports removal jurisdiction. *Cf. Anne Arundel*

Cnty., Maryland v. BP P.L.C., 94 F.4th 343, 351 (4th Cir. 2024) (citations omitted) (affirming a district court’s remand orders and explaining “[s]tate courts routinely hear libel, slander, and misrepresentation cases involving matters of public concern’ even though all such cases implicate federal constitutional issues.”). Whether Defendant Apodaca’s public remarks regarding his and TNMP’s activity is evidence supporting one or more elements of the Commission’s CRA claims is simply not a federal question, and the evidentiary weight of Defendant Apodaca’s remarks does not necessarily turn on any substantial question of federal law. As such, there is no federal question jurisdiction supporting removal. *See Nicodemus*, 318 F.3d at 1235–36. Moreover, Defendants’ implication that § 1331 confers jurisdiction for any state-law claim that is supported by a defendant’s public remark not only ignores the applicable standard, it also ignores the Tenth Circuit’s guidance that § 1331 should be “narrowly construed in light of [the federal courts’] constitutional role as limited tribunals.” *Pritchett*, 420 F.3d at 1094–95.

Nor do Defendants attempt to explain in their Notice of Removal why the merits of the Commission’s CRA registration and reporting claims necessarily turn on the resolution of any (much less a substantial) question of federal law. *See* Not. of Removal, ¶¶ 5–7, at 2. Defendants only say the Commission “asserts claims arising implicating [sic] the exercise of rights protected by the U.S. Constitution” and that the Commission’s “state law claims are based on Defendants’ exercise of rights protected by the United States Constitution[.]” *Id.* ¶¶ 6–7, at 2. Tellingly, Defendants fail to note which questions of federal constitutional law are in dispute, much less how the resolution of the Commission’s CRA claims (in contrast to any of Defendants’ defenses) turns on those federal questions. They do not, and Defendants thus fail to meet their “burden of establishing the requirements for federal jurisdiction.” *Trujillo*, 2008 WL 2323521 at *2 (citations omitted).

Accordingly, in view of its well-pleaded complaint, the Commission asserts no federal claim and none of its New Mexico statutory claims necessarily depends on the resolution of a question of federal law.

B. *Defendants’ anticipated federal constitutional defenses to the Commission’s state-law claims and Defendants’ anticipated federal counterclaims do not confer federal-question jurisdiction.*

Defendants’ anticipated federal constitutional defenses do not support § 1331 jurisdiction. When Defendants say that the Commission “asserts claims arising implicating [sic] the exercise of rights protected by the U.S. Constitution” and that the Commission’s “state law claims are based on Defendants’ exercise of rights protected by the United States Constitution,” Notice of Removal ¶¶ 6–7, at 2, they do not establish that the Commission’s CRA claims necessarily turn on a substantial question of federal law. Instead, Defendants merely preview their First Amendment defense to the Commission’s CRA claims. But “[i]t is well settled that ‘[a] defense that raises a federal question is inadequate to confer federal jurisdiction.’” *Nicodemus*, 318 F.3d at 1236 (quoting *Merrell Dow*, 478 U.S. at 808). “Federal-question jurisdiction is not present ‘even if the [federal] defense is anticipated in the plaintiff’s complaint, and even if both parties admit that the defense is the only question truly at issue in the case.’” *Id.* (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 14 (1983)). Accordingly, Defendants’ suggestion of a First Amendment or other federal constitutional defense to the Commission’s state-law claims does not confer federal-question jurisdiction. *See, e.g., Anne Arundel Cnty.*, 94 F.4th at 351 (citations omitted) (affirming district court’s remand order and concluding “[t]he First Amendment issues in these cases are not necessary elements of the local governments’ state-law claims: they are (constitutional) defenses . . . [a]nd to establish federal-question jurisdiction, ‘[i]t

is *not* enough that federal law becomes relevant by virtue of a defense,’ even if it is ‘anticipated in the plaintiff’s complaint’”).

Defendants also anticipate one or more federal counterclaims. See Ex. A, Eml. from B. Dunn, Counsel for Defendants, to J. Farris, Counsel for Plaintiff (Jun. 27, 2024). But it is well established that federal counterclaims do not provide a basis for removal jurisdiction. See, e.g., *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (“Nor can federal jurisdiction rest upon an actual or anticipated counterclaim. We so ruled, emphatically, in *Holmes Group*, 535 U.S. 826. Without dissent, the Court held in *Holmes Group* that a federal counterclaim, even when compulsory, does not ‘arising under’ jurisdiction.”); see also *Topeka Hous. Auth. v. Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005) (citations omitted) (“Absent circumstances not present here [i.e., application of the complete-preemption doctrine], a case may not be removed to federal court solely because of a defense or counterclaim arising under federal law.”); *Federated Towing & Recovery, LLC v. Praetorian Ins. Co.*, 283 F.R.D. 644, 669 (D.N.M. 2012) (citing *Vaden*, 556 U.S. at 60) (“Parties asserting or defending against even federal claims cannot necessarily litigate those claims in federal court in all instances, such as when there is a federal counterclaim but no basis in the plaintiff’s complaint for a federal court to exercise subject-matter jurisdiction.”); Wright, Miller, et al., 14C *Fed. Prac. & Proc. Juris.* 3d § 3722 (Rev. 4th ed.). Accordingly, Defendants’ anticipated federal counterclaims do not support removal.

C. *A federal tribunal is neither necessary nor, under principles of federalism, the proper forum to decide the Commission’s state-law statutory claims seeking injunctive relief to enforce compliance with state-law campaign finance disclosure requirements.*

Even if the Commission’s complaint implicated an issue of federal law—which it manifestly does not—there is no issue that is sufficiently substantial to justify the Court’s exercise of jurisdiction. “[T]he Supreme Court has ‘forcefully reiterated’ that district courts must exercise

‘prudence and restraint’ when determining whether a state cause of action presents a federal question because ‘determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system.’” *Trujillo*, 2008 WL 2323521, at *6 (quoting *Merrell Dow*, 478 U.S. at 810); *accord Morris*, 39 F.3d at 1111; *see also Merrell Dow*, 478 U.S. at 813 (“[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.”); *Nicodemus*, 440 F.3d at 1232 (“It is by now axiomatic that ‘federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.’”) (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 313 (2005)).

The prudential analysis that the Supreme Court emphasized in *Merrell Dow* confirms that there is no sound reason for the Court to attempt to exercise federal-question jurisdiction. Here, a New Mexico constitutional agency filed a civil action in New Mexico state court against a New Mexico nonprofit corporation and a New Mexico citizen to compel their compliance with a New Mexico statute, contained within New Mexico’s election code, requiring disclosure of advertisements related to elections for New Mexico legislative offices. A state’s regulation of its elections—including its regulation of disclosures related to advertisements seeking to influence state and local elections—is a traditional part of a state’s sovereignty. *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973) (quotation marks and citation omitted) (“[T]he Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections[.]”); *accord Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citation omitted) (recognizing “that States retain the power to regulate their own elections”).

It is axiomatic that state courts are competent to decide disputes arising from the application of state statutes. *See, e.g., McKesson v. Doe*, 592 U.S. 1, 5, (2020) (citation and quotation marks omitted) (“Our system of ‘cooperative judicial federalism’ presumes federal and state courts alike are competent to apply federal and state law.”). It is equally axiomatic that state courts are fully competent to decide federal constitutional defenses to state-law claims, including defenses grounded in the First Amendment. *Bd. of Cnty. Commissioners of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1267 (10th Cir. 2022) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)) (identifying “a tenet of dual sovereignty—that state courts ‘have inherent authority, and are thus presumptively competent’ to address federal issues, including federal defenses”). Viewed from the Sandia crest, this case does not require “the advantages thought to be inherent in a federal forum.” *Nicodemus*, 440 F.3d at 1232 (quoting *Grable & Sons*, 545 U.S. at 313).

Whether Defendants violated New Mexico’s CRA does not depend on any question of federal law, much less a substantial one. Accordingly, the Court lacks subject matter jurisdiction and, therefore, should remand this action to state court. *See* § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

II. In remanding this case to state court, the Court should award the Commission attorneys’ fees and costs under 28 U.S.C. § 1447(c).

Under § 1447(c), Plaintiffs are entitled to attorney’s fees and costs that Defendants’ objectively unreasonable removal has caused. “Section 1447(c) permits the district court to ‘require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.’” *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d 1225, 1250 (D.N.M. 2014) (citing § 1447(c)). “The appropriate test for awarding fees under § 1447(c) should recognize the desire to

deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 140 (2005). This Court may impose costs and fees in "those cases in which the removal was objectively unreasonable." *Aguayo*, 59 F. Supp. 3d at 1250 (citing *Garrett v. Cook*, 652 F.3d 1249, 1254 (10th Cir. 2011) ("[C]ourts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.")).

In this case, fees and costs are warranted because removal was objectively unreasonable. Defendants had no basis, much less an objectively reasonable basis, to remove this case to federal court and cause the Commission to prepare and file this motion for remand. First, the Defendants make scant efforts in their notice to meet their burden to overcome the presumption against removal. *See* Notice of Removal, ¶¶ 5–6. Second, the Commission's claims are obviously state-law, statutory claims the resolution of which does not turn on any federal question. Third, it is well-established, hornbook law that the presence of a federal defense to a plaintiff's state-law claim is not grounds for removal. *See Merrell Dow*, 478 U.S. at 808 (citing *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908)); *see also* 14C *Fed. Prac. & Proc. Juris.* § 3722 ("Nor can the federal issue appear for the first time in the defendant's answer, by way of defense." (citations omitted)). Fourth, it is equally well-established, hornbook law that a federal counterclaim (much less an anticipated federal counterclaim) is not grounds for removal. *Vaden*, 556 U.S. at 60 (citation omitted); *see also* 14C *Fed. Prac. & Proc. Juris.* § 3722 ("Neither is it sufficient for the federal issue to enter the case through a counterclaim asserted by the defendant." (citations omitted)). Fifth, the Defendants removed the matter two days after the Commission moved for a preliminary injunction in state court, in which the Commission seeks to obtain Defendant's

lawfully required disclosure before the November 5, 2024 general election. With respect to whether Defendants' removal was not objectively reasonable, this is an easy case, not an edge case. *Compare Sant v. Liberty Mut. Ins. Co., et al.*, No. 2:21-CV-00251-WJ-SMV, 2021 WL 3022130, at *6 (D.N.M. July 16, 2021) (Johnson, C.J.) (granting motion for fees under § 1447(c) where defendants had no objectively reasonable basis for seeking removal), *with Pub. Emps. Ret. Ass'n of N.M. v. Clearlend Sec.*, No. CIV 11-0931 JB/WDS, 2012 WL 2574819, at *35 (D.N.M. June 29, 2012) (granting motion to remand but denying motion for fees, explaining that "[w]hile the Court finds that the PERA is an arm of the state [and thus not a citizen for the purposes of diversity jurisdiction], the Court cannot say that it was objectively unreasonable for the Defendants to argue that the PERA was not). There being no reasonable basis for removal and an objectively unreasonable basis for removal, costs and fees are warranted.

CONCLUSION

The Court has no subject matter jurisdiction over this case. There is no basis that supports Defendants' improper removal. The Commission has incurred both costs associated with this motion to remand and unnecessary delay in obtaining the equitable relief it seeks. The delay matters because the New Mexico voters have an interest in the judicial resolution of the requested injunctive relief before the November 2024 general election. The Commission, therefore, respectfully requests that the Court not only remand the case to New Mexico's Second Judicial District Court, but also award attorney's fees and costs associated with this motion.

Respectfully submitted: June 28, 2024

By: /s/ Jeremy Farris
Jeremy Farris
800 Bradbury Dr. SE, Suite 215
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jeremy.farris@sec.nm.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2024, I filed and served a true and correct copy of the foregoing on all counsel of record via filing with the CM/ECF filing system.

I further certify that on June 28, 2024, a true and correct copy of the foregoing was emailed to the following counsel of record”

A. Blair Dunn
Jared R. Vander Dussen
400 Gold Ave. SW, Suite 1000
Albuquerque, NM 87102
(505) 750-3060
abdunn@ablairdunn-esq.com
warba.llp.jared@gmail.com

Counsel for the Defendants

By: /s/ Jeremy Farris
Jeremy Farris
800 Bradbury Dr. SE, Suite 215
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From: abdunn@ablairdunn-esq.com
To: [Farris, Jeremy, SEC; warba.llp.jared@gmail.com](mailto:Farris.Jeremy_SEC@warba.llp.jared@gmail.com)
Cc: [Ballou, Amy, SEC](mailto:Ballou.Amy_SEC)
Subject: [EXTERNAL] Re: SEC v. TNMP, et al., No. 1:24-cv-00652-WJ-LF: request for position on motion
Date: Thursday, June 27, 2024 4:05:22 PM

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

To be clear I am specifically going to challenge you with a Rule 11 motion and that I can't give you a position under 7.1 without more basis for remand offered.

Respectfully,
A. Blair Dunn, Esq.
WARBA, LLP
505-750-3060

From: abdunn@ablairdunn-esq.com <abdunn@ablairdunn-esq.com>
Sent: Thursday, June 27, 2024 4:01:30 PM
To: [Farris, Jeremy, SEC <Jeremy.Farris@sec.nm.gov>](mailto:Farris.Jeremy_SEC@sec.nm.gov); warba.llp.jared@gmail.com
<warba.llp.jared@gmail.com>
Cc: [Ballou, Amy, SEC <amy.ballou@sec.nm.gov>](mailto:amy.ballou@sec.nm.gov)
Subject: Re: SEC v. TNMP, et al., No. 1:24-cv-00652-WJ-LF: request for position on motion

Jeremy I think that is at best premature given that we have Constitutional defenses (federal question) and our counter claims will include both Section 1983 and NM Civil Rights Act claim as we stated in the notice. Filing such a motion unless you want to do a better job explaining your borders on a frivolous filing.

Respectfully,
A. Blair Dunn, Esq.
WARBA, LLP
505-750-3060

From: [Farris, Jeremy, SEC <Jeremy.Farris@sec.nm.gov>](mailto:Farris.Jeremy_SEC@sec.nm.gov)
Sent: Thursday, June 27, 2024 2:00:17 PM
To: abdunn@ablairdunn-esq.com <abdunn@ablairdunn-esq.com>; warba.llp.jared@gmail.com
<warba.llp.jared@gmail.com>
Cc: [Ballou, Amy, SEC <amy.ballou@sec.nm.gov>](mailto:amy.ballou@sec.nm.gov)
Subject: SEC v. TNMP, et al., No. 1:24-cv-00652-WJ-LF: request for position on motion

Dear Counsel,

Pursuant to D.N.M. Local Rule 7.1(a) please provide your clients' position on a motion for remand.

Sincerely,

Jeremy Farris, DPhil, J.D.
Executive Director
New Mexico State Ethics Commission
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www.sec.state.nm.us
(505) 490 0951 (mobile)
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STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

STATE ETHICS COMMISSION,

Plaintiff,

v.

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

Defendants.

No. D-202-CV-2024-04341

**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND
MEMORANDUM IN SUPPORT¹**

"Disclosure requirements are 'even more essential and necessary to enable informed choice in the political marketplace following *Citizen United's* change to the political campaign landscape with the removal of the limit on corporate expenditures.'" *Rio Grande Found. v. Oliver*, No. Civ. 1:10-cv-01174, 2024 WL 1345532, at *19 (D.N.M. Mar. 29, 2024) (quoting *Free Speech v. Fed. Elec. Comm'n*, 720 F.3d 788, 798 (10th Cir. 2013)). Given this necessity, Plaintiff State Ethics Commission respectfully requests a preliminary injunction requiring Defendant TNMP, Inc. ("TNMP") to register as a political committee with the secretary of state and to file reports of its contributions and expenditures, as required by the Campaign Reporting Act ("CRA"), NMSA 1978, Sections 1-19-25 to -37 (1979, as amended through 2024).

BACKGROUND

Defendant TNMP has solicited contributions and made substantial expenditures supporting candidates for elected office in New Mexico. As such, the CRA requires TNMP to register with the secretary of state and disclose its contributions and expenditures. Because New Mexico voters have a right to know who funds independent expenditures seeking to influence

¹ Pursuant to Rule 1-007.1 NMRA, the Commission has determined that this motion is opposed. While counsel for defendants have yet to enter an appearance in this matter, the Commission, through undersigned counsel, sought the concurrence of Defendants via publicly available email addresses for Defendant Apodaca.

their votes, the Commission demanded that TNMP comply with the CRA's basic requirements. See Ex. 1, Correspondence from J. Farris to J. Apodaca (May 15, 2024). TNMP refused, and the Commission filed this lawsuit to force disclosure. See Compl. (filed May 24, 2024). TNMP continues its refusal to make required disclosures. See Ex. 2, Aff. of Mandy Vigil, Election Dir., Office of the Sec'y of State (June 21, 2024) (establishing that TNMP has neither registered with the secretary of state nor filed a required report of contributions and expenditures). Yet, in a recent radio interview, Defendant Apodaca confirmed that TNMP will continue to make its dark-money campaign ads beyond the primary election and into the general election:

INTERVIEWER: So are you guys done, now? Are you going to continue?
APODACA: Oh no, we're going to continue.
INTERVIEWER: Because I heard the ads last week. . . . Are we going to hear from your group going forward to the general [election]?
APODACA: Absolutely. And in the future.

Ex. 3-A, The TJ Trout Show, *Jeff Apodaca*, 96.3 KKOB, at 13:28 (June 11, 2024), <https://www.newsradiokkob.com/tj-trout/>.² A preliminary injunction is necessary to effectuate the CRA's requirement that political committees, like TNMP, disclose basic information about who is funding their advertisements to influence New Mexican voters, before they vote.

ARGUMENT

To obtain a preliminary injunction, "a movant must show that '(1) the [movant] will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the [adversary]; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood [movant] will prevail on the merits.'" *Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 20 (alterations original) (quoting *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314). All four factors support a

² Exhibit 3 is a disk containing all of the audiorecorded interviews referenced in this motion (in .mp3 format) and all of TNMP's radio advertisements (in .wav format) referenced in this motion. The Commission will provide the Court with a disk containing the audio exhibits contemporaneous to the filing of this motion, and the Commission provided Defendants with disks containing the audio exhibits concurrently with the service of this motion.

preliminary injunction requiring TNMP to register as a political committee with the secretary of state and to file required reports of its contributions and expenditures.

I. The Commission will suffer irreparable harm in the absence of injunctive relief.

Absent a preliminary injunction, the Commission will suffer irreparable harm. A state agency generally suffers an irreparable injury where it is prevented from effectuating the statutes it is tasked to enforce.³ Similarly, where the threatened harm “would impair the court’s ability to grant an effective remedy, there is a need for preliminary relief.” 11A Wright & Miller, *Federal Practice and Procedure*, § 2948.1 (3d ed. 2013). The Commission has the constitutional and statutory authority to ensure compliance with the CRA, including the authority to commence a civil action seeking a “permanent or temporary injunction.” NMSA 1978, § 1-19-34.6(C) (2021); *see also* N.M. Const., art. V, § 17(C); NMSA 1978, § 10-16G-9(A)(1) & (F) (2021). Defendant TNMP has solicited contributions and made independent expenditures supporting candidates in the 2024 primary and general elections, yet openly refuses to report its contributions and expenditures. TNMP’s refusal violates the CRA and frustrates the law’s basic purpose to require information regarding who seeks to influence New Mexicans’ votes. Absent a preliminary injunction, Defendants will deprive New Mexicans of their right to know who, by funding TNMP’s independent expenditures, seeks to influence their votes in the 2024 primary election *and the 2024 general election*, irreparably harming the Commission’s (and the Court’s) ability to remedy Defendant’s violations of the CRA. That harm “cannot be compensated” and, therefore, is necessarily irreparable. *See Orion Tech. Res., LLC v. Los Alamos Nat. Sec., LLC*, 2012-NMCA-097, ¶ 31 (citation omitted).

³ *See N.M. Dep’t of Game and Fish v. U.S. Dep’t of the Interior*, 854 F.3d 1236, 1255 (10th Cir. 2017) (“Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (quoting *Maryland v. King*, 567 U.S. 1301 (2012)); *Planned Parenthood of Greater Texas Surgical Health Servs v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013) (recognizing “the irreparable harm of denying the public interest in the enforcement of its laws.”); *cf. also Starbucks Corp. v. McKinney*, No. 23-367, 2024 WL 2964141, at *11 (U.S. June 13, 2024) (Jackson, J., concurring) (“In the context of the NLRA, permitting an alleged unfair labor practice to reach fruition and thereby render meaningless the Board’s remedial authority is irreparable harm.”) (quotation marks and citations omitted).

II. There is a substantial likelihood the Commission will prevail on the merits.

The Commission is substantially likely to succeed on the merits of its claim that Defendants violated the CRA by refusing to register as a political committee and to report their contributions and expenditures. A “political committee” is “an association that consists of two or more persons whose primary purpose is to make independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions *or* made independent expenditures of more than five thousand dollars (\$5,000) in the election cycle.” NMSA 1978, § 1-19-26(U)(4) (2024) (emphasis added). Under the CRA, a political committee must appoint a treasurer, file a statement of organization with the secretary of state, pay a \$50 filing fee, and, during an election year, make several reports of all contributions received and expenditures made. *See* NMSA 1978, §§ 1-19-26.1 (2021), 1-19-29 (2019) & 1-19-31 (2019). Defendant TNMP is a political committee.

A. Defendant TNMP is an association consisting of two or more persons.

TNMP is a domestic nonprofit corporation with three directors: Defendant Apodaca, TNMP’s president; Ron Marquez, TNMP’s vice president; and Robert James Montoya, TNMP’s secretary. *See* Ex. 4, TNMP Inc., N.M. Sec’y of State, Corporations Div., at 2, (retrieved May 1, 2024). TNMP and its directors and officers are an association of two or more persons.

B. Defendant TNMP has received more than \$5,000 in contributions *or* made independent expenditures of more than \$5,000 in the current election cycle.

Defendant TNMP has received more than \$5,000 in contributions. On April 17, 2024, TNMP received a \$15,000 contribution from NM NAIOP PAC, which NM NAIOP PAC duly reported as an expenditure in its required filings. *See* Ex. 5, NM NAIOP PAC Second Primary Report, at 2, Office of the Secretary of State (May 13, 2024). Moreover, Defendant Apodaca has publicly stated that the New Mexico Project received “close to \$1 million” in contributions. *See* Ex. 6, New Mexico Politics with Joe Monahan (Apr. 24, 2024), <https://joemonahansnewmexico.blogspot.com/> (“Apodaca says the group has already raised ‘close to \$1 million,’ all from within the state.”); *see also* Ex. 3-B, Bob Clark Show, *The New*

Mexico Project, 96.3 KKOB, at 11:30 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (“Let me make this very clear: We’re raising money, we’ve done some good raising money, we’ve collected probably half of what we need to raise.”); *id.* at 13:08 (“All the money we’ve raised is from local industries, local New Mexicans, and local individuals from New Mexico. One hundred percent of the money we’ve raised is from New Mexicans, right, whether it is industries, businesses or individuals.”).

While NM NAIOP PAC’s report is conclusive of the monetary-threshold element for being a political committee, TNMP has also made independent expenditures of more than \$5,000 in the current election cycle. Under the CRA, an “independent expenditure” is

an expenditure that is . . . (3) made to pay for an advertisement that:

(a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;

(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or

(c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot[.]

NMSA 1978, § 1-19-26(Q)(3) (2024). An “advertisement,” in turn, “means a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, or by printed materials, including mailers, handbills, signs and billboards” NMSA 1978, § 1-19-26(A) (2024). Considering TNMP’s website, radio advertisements, and Facebook advertisements, TNMP has made in excess of \$5,000 in independent expenditures supporting its preferred candidates.

To further its primary objective to “educate moderate Latino voters on the best candidates to vote for,” Defendants made expenditures to launch TNMP’s website.

<https://thenewmexicoproject.com/> The website mainly consists of a “Priority Candidates” page, in which TNMP “identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state,” pointing to eight (8) candidates for election to House districts and seven (7) candidates for election to Senate districts.⁴

Next, TNMP has paid at least \$10,000 to Cumulus Media to place radio advertisements from April 22, 2024 to June 4, 2024 with KKOB-AM (2 spots), KRST-FM (84 spots), KOBQ-FM (84 spots), and KKOB-FM (85 spots).⁵ In the memo field of its check to Cumulus Media, TNMP’s own stated purpose of the payment was for “Radio Ad – Primary,” reinforcing the point that its expenditures were made for a “political purpose” and therefore were subject to reporting under the CRA.⁶ These radio advertisements urge New Mexico voters to “vote for the moderate candidate that will support our needs” and directs voters to “[v]isit thenewmexicoproject.com or on Facebook for candidates who share our values.” Ex. 3-C to 3-F, TNMP Radio Advertisements; *see also* Ex. 3-B, Bob Clark Show, *The New Mexico Project*, 96.3 KKOB, 21:04 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (“The radio commercial just ran. We’re telling people go to thenewmexicoproject.com, take a look at the candidates that we’re supporting.”).

In addition to its radio advertisements, as of June 11, 2024, the New Mexico Project has paid Meta at least \$4,142 for at least 37 Facebook advertisements supporting its “priority candidates.” *See* Ex. 7, “The New Mexico Project,” Meta Ad Library Excerpts, www.facebook.com/ads/library (retrieved June 18, 2024). The New Mexico Project’s Facebook advertisements started running on or about May 17, 2024 or May 18, 2024. *See id.* Depending

⁴ *See* Ex. 1 to Compl. (filed May 24, 2024), The New Mexico Project, Our Priority Candidates (House), <https://thenewmexicoproject.com/priorities> (retrieved May 10, 2024); Ex. 2 to Compl. (filed May 24, 2024), The New Mexico Project, Our Priority Candidates (Senate), <https://thenewmexicoproject.com/priorities> (retrieved May 10, 2024).

⁵ *See* Ex. 3 to Compl. (filed May 24, 2024), Licensing & Databases Public Inspection File for The New Mexico Project, at 2, 6-7, 11-12, 16-17, 20, Federal Communications Commission (retrieved May 9, 2024).

⁶ *Id.* at 20.

on the advertisement, the estimated audience size varies from 1,000 to 5,000 Facebook users to 10,000 to 50,000 Facebook users, and as of June 17, 2024, the ads' impressions (*i.e.*, the number of times the advertisement appeared on a screen) ranged from fewer than 1,000 to up to 30,000. *See id.*

Based on the above-described expenditures alone, the aggregate amount of Defendants' independent expenditures in the 2024 election cycle already exceeds \$5,000.

C. Defendant TNMP's primary purpose is to make independent expenditures.

Defendant Apodaca has indicated that TNMP's primary purpose is to make "independent expenditure[s]" in support of candidates for elected office. *See* Ex. 3-B, The Bob Clark Show, *The New Mexico Project*, 96.3 KKO, at 20:10 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> ("We're an educational *independent expenditure*. So we're going in and educating the voters on what we need to do to get out and vote and vote for the right candidates.") (emphasis added). His other public statements confirm the same. In an April 23, 2024 radio interview, for example, Defendant Apodaca described TNMP as "basically focused on getting the word out about candidates that are pro-business, moderate candidates, that are going to help us bring more doctors, and better healthcare here, that are going to bring more business, and be business friendly." Ex. 3-G, The TJ Trout Show, *The New Mexico Project*, 96.3 KKO, at 04:58 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project>. To that end, Defendant TNMP says it targets Latino and moderate communities and communicates with them via advertisements urging support for "pro-business, pro-moderate candidates."⁷

⁷ Ex. 3-G, The TJ Trout Show, *The New Mexico Project*, 96.3 KKO, at 4:06 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project>; *see also, e.g.*, Ex. 3-B, The Bob Clark Show, *The New Mexico Project*, 96.3 KKO, at 7:20 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> ("So really The New Mexico Project is to basically support pro-business, moderate candidates, and it's time to start fighting back against the progressive candidates that are out there."); Ex. 3-G, The TJ Trout Show, *The New Mexico Project*, 96.3 KKO, at 05:50 (Apr. 23, 2024), <https://omny.fm/shows/tj-trout/new-mexico-project> ("We just go out and educate moderate Latino voters on the best candidates to vote for."); *see also* Ex. 3-B, The Bob Clark Show, *The New Mexico Project*, 96.3 KKO, at 24:40 (May 1, 2024), <https://omny.fm/shows/the-bob-clark-podcast/the-new-mexico-project> (same); Ex. 8, Jeff Apodaca, Letter to the Editor, *New Mexico Project points toward state's moderate roots*, SANTA FE NEW MEXICAN, May 4, 2024 ("The New Mexico Project is actively informing New Mexicans that our Latino leaders and communities are under siege by out-of-state, ultra-liberal progressives more concerned with their political careers than with our community and state.").

TNMP's website confirms that its primary purpose—and seemingly its only purpose—is to make independent expenditures. From the day it launched and continuing through June 17, 2024, TNMP's website is comprised of *only* (i) a landing page; (ii) a “Priority Candidates” page; and (iii) a “Get Involved” page, directing visitors to a third-party donation form.⁸

D. Even if TNMP were not a political committee, it violated Section 1-19-27.3 by failing to disclose information regarding its independent expenditures.

Even if it were not a political committee, TNMP still violated its reporting obligations. The CRA is meant to be gapless and consequently requires “[a] person who makes an independent expenditure *not otherwise required to be reported*” to disclose information regarding the source of contributions used to make the independent expenditure. NMSA 1978, § 1-19-27.3(A) (2019) (emphasis added). Because TNMP made an independent expenditure that “by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars (\$1,000) in a nonstatewide election,” § 1-19-27.3(A)(1), the CRA required TNMP to report information about its independent expenditures, *see* NMSA 1978, § 1-19-27.3(B)-(C) (2019). TNMP failed to do so. *See* Ex. 2, Aff. of M. Vigil.

III. The harm to the Commission and the public outweighs any harm to Defendants.

The balance of the equities favors a preliminary injunction.⁹ Absent a preliminary injunction, the Commission and the public cannot effectuate the purposes of campaign finance disclosure law, such as the CRA: “providing the electorate with relevant information about the candidates and their supporters; deterring actual corruption and discouraging the use of money for improper purposes; and facilitating enforcement of the prohibitions in the [Campaign

⁸ Compare Ex. 1 to Compl. (filed May 24, 2024), The New Mexico Project, Our Priority Candidates (House), <https://thenewmexicoproject/priorities> (retrieved May 10, 2024), and Ex. 2 to Compl. (filed May 24, 2024), The New Mexico Project, Our Priority Candidates (Senate), <https://thenewmexicoproject/priorities> (retrieved May 10, 2024), with Ex. 9, The New Mexico Project, Our Priority Candidates, <https://thenewmexicoproject.com/priorities> (retrieved June 18, 2024).

⁹ When deciding a motion for preliminary relief, courts often consider the balance of harms in view of whether the movant is likely to succeed on the merits. *See, e.g., O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1002 (10th Cir. 2004) (Seymour J., concurring and dissenting in part) (“[T]he more likely a movant is to succeed on the merits, ‘the less the balance of irreparable harms need favor the [movant’s] position.’” (second alteration original) (quoting *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001))).

Reporting] Act.” *McConnell v. Federal Election Comm’n*, 540 U.S. 93, 121 (2003); *see also Rio Grande Found. v. Oliver*, No. 1:19-cv-01174, 2020 WL 6063442, at *6 (D.N.M. Oct. 14, 2020) (recognizing “informational interest in disclosures of contributions designed to influence elections” and rejecting First Amendment challenge to the CRA). By contrast, no harm redounds to TNMP from the requested injunction. The Commission applies for an injunction requiring TNMP to do no more than what TNMP is already required to do under the law: register with the secretary of state as a political committee and file reports of its contributions and expenditures. Making lawful disclosures under the CRA is not a harm; nor does it offend TNMP’s First Amendment rights. *See Rio Grande Found.*, 2024 WL 1345532, at *9–*19 (upholding against a First Amendment challenge the CRA’s requirement for disclosures related to independent expenditures referring to clearly identifiable candidates shortly before an election). Accordingly, in the federal campaign finance arena, federal courts frequently award injunctive relief requiring the defendant to comply with the reporting, contribution, and expenditure requirements.¹⁰ The Court should do so here.

IV. The requested injunctive relief will serve the public interest.

The public has a strong interest in requiring political committees to disclose the source of funds used to influence an election, as well as the broad interest in enforcing the law. As the United States District Court for the District of New Mexico explained when upholding the CRA’s disclosure rules from constitutional challenge, the rules:

bring[] more transparency and inform[] the electorate of special interests seeking to influence candidate elections[,] . . . [and] help[] citizens evaluate who stands to gain and lose from the election or defeat of candidates or from proposed legislation. State and local

¹⁰ *See, e.g., Fed. Election Comm’n v. Comm. of 100 Democrats*, 844 F. Supp. 1 (D.D.C. 1993) (failure to comply with settlement agreement and possibility of future violations sufficient to justify injunction requiring registration); *Fed. Election Comm’n v. Kazran*, No. 3:10-cv-1155-J-37JRK, 2011 WL 13323115 (M.D. Fla. Aug. 29, 2011) (injunction prohibiting defendant from making contributions to candidates in the name of another person); *Fed. Election Comm’n v. Defend Louisiana PAC*, No. 21-CV-00346-BAJ-SDJ, 2022 WL 2911665 (M.D. La. July 22, 2022) (injunction requiring defendant to file reports of expenditures and correct previously-filed reports that did not contain sufficient information).

governments have passed disclosure requirements to try to limit the impact of “dark money” and the disproportionate effect that wealthy individuals or entities may have on an election. As the Supreme Court noted in a case in which it upheld a corporation’s right to spend money to publicize its views on a ballot question, “[i]dentification of the source of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected.”

Rio Grande Found., 2020 WL 6063442, at *4 (quoting *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 767-69, 792 n.32 (1978)); see also *Republican Party of N.M. v. Torrez*, 687 F. Supp. 3d 1095, 1150 (D.N.M. 2023) (“[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.”) (quoting *Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310, 368 (2010)).

In this matter, the public interest in preliminary injunctive relief is especially pronounced because the current election cycle is underway. Voters are now deciding which candidate to support in the general election, yet Defendants have confirmed that they intend to continue to make independent expenditures while flouting the CRA’s disclosure rules. Absent a preliminary injunction, Defendant TNMP will continue to make substantial expenditures on its efforts to influence the vote through the general election while openly withholding from New Mexicans information about who is paying to influence their votes. This is an unacceptable affront to the CRA and to New Mexico’s democracy.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests the Court to issue a preliminary injunction requiring Defendants to register TNMP as a political committee with the secretary of state and file all reports of contributions and expenditures required for the 2024 election cycle.

STATE ETHICS COMMISSION

By: /s/ Jeremy Farris

Jeremy Farris

Walker Boyd

800 Bradbury Dr. SE, Suite 215

Albuquerque, NM 87106

(505) 827-7800

jeremy.farris@sec.nm.gov

walker.boyd@sec.nm.gov

CERTIFICATE OF SERVICE

Pursuant to Rule 5 NMRA, I certify that I caused to be served upon each of the Defendants via First Class Mail, on June 24, 2024, a copy of the foregoing Plaintiff's Motion for Preliminary Injunction and Memorandum in Support and an enclosed compact disk containing the audio files in Exhibit 3 to the motion, at the following addresses:

To: Defendant TNMP, Inc. d/b/a The New Mexico Project
c/o Andrew G. Thornton, Registered Agent
The New Mexico Project
1213 San Pedro Dr. NE
Albuquerque, NM 87110

To: Defendant Jeff Apodaca
The New Mexico Project
8100 Wyoming Blvd NE, M4-307
Albuquerque, NM 87113

/s/ Jeremy Farris

State Ethics Commission



STATE ETHICS COMMISSION

Jeremy Farris, Executive Director
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505.490.0951 | jeremy.farris@sec.nm.gov

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

Jeremy D. Farris, Executive Director

May 15, 2024

Via electronic mail only

Jeff Apodaca
The New Mexico Project
8100 Wyoming Blvd NE, M4-307
Albuquerque, NM 87113
Jeffapo@icloud.com
(310) 488 9115



Re: Letter regarding violations of the Campaign Reporting Act and offer of settlement

Dear Mr. Apodaca,

My name is Jeremy Farris. I am the director of the State Ethics Commission, an independent state agency established by Article V, Section 17(A) of the New Mexico Constitution with constitutional and statutory authority to enforce New Mexico's ethics and disclosure laws, including the Campaign Reporting Act, NMSA 1978, §§ 1-19-26 to -36 (1979, as amended through 2024). It has come to my attention that the domestic nonprofit corporation of which you are the President (or of which you are the alter ego), TNMP, Inc. d/b/a "The New Mexico Project," has not registered as a political committee. Nor has TNMP filed reports of its contributions and expenditures, which the Campaign Reporting Act requires for both political committees and persons making independent expenditures.

Based on expenditures that TNMP likely made for its website and the expenditures TNMP made to Cumulus Media to place radio ads from April 22, 2024 to June 4, 2024, TNMP has made aggregate independent expenditures in excess of \$1,000 dollars in a nonstatewide election. TNMP's independent expenditures require TNMP generally to disclose the persons to whom the independent expenditures were made and the source of contributions used to make the independent expenditures, including the name and address of each contributor and the amount of the contribution. *See* NMSA 1978, § 1-19-27.3(B)-(D) (2019). TNMP had a duty to report its expenditures and contributions on the New Mexico Campaign Finance System potentially by April 8, 2024, and by no later than May 13, 2024. *See* NMSA 1978, § 1-19-29(B)(1)-(2) (2019). On information and belief, TNMP did not do so, and its omission contravenes the Campaign Reporting Act.¹

¹ If TNMP not only has made independent expenditures in excess of \$5,000 but also its primary purpose is to make independent expenditures, then TNMP is a political committee and is subject to registration, filing-fee, and disclosure requirements under NMSA 1978, Section 1-19-26.1 (2021) and 1-19-31 (2019). If you or TNMP filed expenditure and contribution disclosure reports on the New Mexico Campaign Finance System on or before May 13, 2024, and those reports are simply not appearing on the system, please furnish copies in response to this letter

State Ethics Commission
To: Jeff Apodaca
May 15, 2024
Page 2 of 3

On May 1, 2024, you represented to Mr. Bob Clark that TNMP does not have to disclose its donors. This view is inaccurate. In 2019, the Legislature amended the Campaign Reporting Act to shine light on “dark money” in state elections, requiring persons that pay for advertisements or advocacy in support of candidates to be minimally transparent about who funds those advertisements and advocacy efforts. The 2019 amendments to the Campaign Reporting Act require groups that are advocating for or opposing an identified candidate to register and disclose their expenditures and the sources of contributions used to fund those expenditures. *See* Laws 2019, ch. 262, §§ 1-18; *see also* NMSA 1978, §§ 1-19-26.1 (requiring registration of political committees); 1-19-27.3 (requiring disclosures related to independent expenditures); & 1-19-31 (requiring disclosures of political committees *inter alia*).

The State Ethics Commission has filed lawsuits to enforce the Campaign Reporting Act. *See, e.g.,* Compl., *State Ethics Comm’n v. Working Families Org. d/b/a Unemployed Workers United*, D-506-CV-2022-00942 (Nov. 2, 2022, 5th Jud. Dist. Ct.); Compl., *State Ethics Comm’n v. Council for a Competitive N.M.*, D-202-2020-06718 (Dec. 11, 2020, 2d Jud. Dist. Ct.) I am prepared to request the Commission’s authorization to file a civil action against both TNMP and you. However, to avoid expensive and potentially bruising civil litigation, I offer the following proposed settlement agreement in lieu of further action:

In exchange for:

- (i) your signature below, which signifies an agreement to the foregoing;
- (ii) the filing on New Mexico Campaign Finance System, <https://login.cfis.sos.state.nm.us/#/index>, of reports of TNMP’s expenditures and contributions, as required by Section 1-19-27.3(B) through (D), with a copy to ethics.commission@sec.nm.gov, by no later than 9:00am on Monday, May 20, 2024; and
- (iii) the payment of \$1,000, corresponding to the civil penalty for one violation of the Campaign Reporting Act,

and upon a vote by the Commission to approve this proposed settlement agreement, the Commission will agree not to file a civil action seeking civil penalties, equitable relief, or other relief for the violations described in this agreement. The Commission will further agree that your violations were not knowing and willful, avoiding any potential criminal referral, and will state the same in any press release concerning this agreement. If approved by the Commission, this agreement also would be a public record under NMSA 1978, Section 10-16G-13(A) (2019). Again, at this point, the State Ethics Commission would have to approve this settlement

and any correspondence you might have had with the Office of the Secretary of State regarding those reports.

State Ethics Commission
To: Jeff Apodaca
May 15, 2024
Page 3 of 3

agreement in order for it to be effective. If you agree to these terms, I will recommend that it do so at its next scheduled meeting on Friday, May 24, 2024.

If, however, you do not agree to these terms, I will request the Commission's authorization to file a civil action against TNMP and you to enforce the Campaign Reporting Act's disclosure requirements and seek all available remedies under law.

Very truly yours,

/s/ Jeremy Farris
Jeremy Farris
Executive Director
State Ethics Commission

cc: William F. Lang, Chair, State Ethics Commission (via electronic mail).

I AGREE:

Jeff Apodaca



AFFIDAVIT OF MANDY VIGIL

STATE OF NEW MEXICO)

COUNTY OF SANTA FE)

I, Mandy Vigil, being duly sworn, state and declare as follows:

1. I have personal knowledge of the matters set forth below, am over the age of eighteen, and am otherwise competent to make this affidavit.

2. I currently serve as the Director of the Elections Division in the Office of the Secretary of State for the State of New Mexico.

3. In my position, I am thoroughly familiar with the Campaign Finance Information System (CFIS), which the Office of the Secretary of State implemented and utilizes to receive and maintain filings that reporting individuals and independent-expenditure makers submit pursuant to the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 to -37 (1979, as amended through 2024).

4. The filings received by the Secretary of State's CFIS system are made with information transmitted to the Secretary of State by someone with knowledge of the filings' contents. Pursuant to NMSA 1978, Section 1-19-27(B) (2016), these filings are kept by the Secretary of State's Office in the regular course of business, as required by law, and are otherwise public records, maintained on CFIS as required by Section 1-19-27(B).

5. As of the date of this affidavit, The New Mexico Project has not:

- a. Filed a statement of organization as a political committee with the Office of the Secretary of State;
- b. Informed the Office of the Secretary of State of its appointment of a treasurer;

- c. Paid a filing fee of fifty dollars (\$50.00);
- d. Filed with the Office of the Secretary of State any report of contributions received or expenditures made; or
- e. Filed with the Office of the Secretary of State any report of information regarding independent expenditures made by the New Mexico Project, including names and address of persons to whom any independent expenditure was made or the sources of contributions used to make independent expenditures.

6. As of the date of this affidavit, and separate and apart from the candidate committee Jeff Apodaca for NM, Jeff Apodaca, acting on his own behalf or on behalf of the New Mexico Project, has not:

- a. Filed a statement of organization as a political committee with the Office of the Secretary of State related to The New Mexico Project;
- b. Informed the Office of the Secretary of State of the New Mexico Project's appointment of a treasurer related to The New Mexico Project;
- c. Paid a filing fee of fifty dollars (\$50.00) related to The New Mexico Project;
- d. Filed with the Office of the Secretary of State any report of contributions received or expenditures made related to The New Mexico Project; or
- e. Filed with the Office of the Secretary of State any report of information regarding independent expenditures made by the New Mexico Project or by himself, including names and address of persons to whom any

independent expenditure was made or the sources of contributions used to make independent expenditures.

7. The above statements are true and correct to the best of my knowledge.

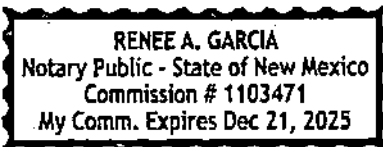
FURTHER AFFLIANT SAYETH NAUGHT.

Date: 6/21/24

Signed: Mandy Vigil

Mandy Vigil
Director of Elections Division

Subscribed and sworn to me by Mandy Vigil on this 21st day of June, 2024.



Renee A Garcia
Signature of notarial officer

My commission expires: 12/21/25



HOME

Search Information

Search By Officer(s)/ Director(s)/ Registered Agent Information

Home

Entity Details

Business ID#: 7396171	Status: Active
Entity Name: TNMP, Inc.	Standing: Good Standing
DBA Name: Not Applicable	

Entity Type and State of Domicile

Entity Type: Domestic Nonprofit Corporation	State of Incorporation: New Mexico
Benefit Corporation: No	Statute Law Code: 53-8-1 to 53-8-99

Formation Dates



Date of Incorporation in NM: 09/13/2023	Date of Organization in NM: Not Applicable
Date of Formation in State of Domicile: Not Applicable	Date of Authority in NM: Not Applicable
Date of Registration in NM: Not Applicable	Management Type: N/A

Reporting Information



Report Due Date: 05/15/2025	Next Annual Meeting Date: 12/01/2024
Suspension Expiration Date:	

Period of Existence and Purpose and Character of Affairs



Period of Duration: **Perpetual**

Business Purpose: **Promote social welfare**

Benefit Purpose: **Not Applicable**

Character Of Affairs: **Activities in accordance with the non-profit corporation act**

Outstanding Items

Reports:

No Pending Reports.

Registered Agent:

No Records Found.

License:

No Records Found.

Contact Information

Mailing Address: **8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113**

Principal Place of Business in New Mexico: **8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113**

Secondary Principal Place of Business in New Mexico:

Principal Office Outside of New Mexico: **Not Applicable**

Registered Office in State of Incorporation:

Principal Place of Business in Domestic State/ Country: **Not Applicable**

Principal Office Location in NM: **Not Applicable**

Registered Agent Information

Name: **Andrew G. Thornton**

Geographical Location Address:

Physical Address: **1213 San pedro dr. ne, Albuquerque, NM 87110**

Mailing Address: **NONE**

Date of Appointment: **09/13/2023**

Effective Date of Resignation:

Director Information

Title	Name	Address
Director	Jeff Apodaca	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113
Director	Robert James Montoya	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113
Director	Ron Marquez	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113

Officer Information

Title	Name	Address
President	Jeff Apodaca	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113
Secretary	Robert James Montoya	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113
Vice President	Ron Marquez	8100 Wyoming blvd. ne ste. M4-307, Albuquerque, NM 87113

Organizer Information

Not Applicable

Incorporator Information

Title	Name	Address
Incorporator	Andrew Thornton	1213 San pedro dr. ne, Albuquerque, NM 87110

Trustee Information

Not Applicable

Filing History



Filing Date	Filing Type	Fiscal Year End Date	Post Mark	Survivor/ Re-Domesticated Entity	Instrument Text	Processed Date	Filing #
09/13/2023	Business Formation	12/31/2024				10/13/2023	2393489

License History



Filing Date	Filing Number	License Start Date	License End Date
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No records to view.



OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
 Phone: (505) 827-3600 Toll-Free: (800) 477-3632
 Fax: (505) 827-8403

Second Primary Report

FORM A

Political Committee's Name NM NAIOP PAC
 Date Submitted: 5/13/2024 Date Due: 5/13/2024

1.	Political Committee Complete Name NM NAIOP PAC	Office Sought or Held
	Mailing Address PO Box 27156	City, State & Zip Code Albuquerque, NM 87107
	Phone # (505) 980-8892	Fax #
2.	Name of Principal Officer, if any	Phone #
	Mailing Address	City, State & Zip Code Fax #
3.	Full name of Treasurer David Leith	Phone # (505) 842-8290
	Mailing Address 6501 Americas Parkway NE, Suite 500	City, State & Zip Code Fax # Albuquerque, NM 87110
	Name & Street Address of Financial Institution Where bank account is maintained (Bank Account Located in New Mexico) Wells Fargo Bank, 200 Lomas #1, Albuquerque, NM 87102	

4.	FINANCIAL SUMMARY	Opening Balance
a.	OPENING BALANCE for reporting period ("0" if first report, or CLOSING BALANCE FROM LAST REPORT)	\$71,843.89
b.	Total Monetary Contributions this Reporting Period (Form B1 + Form B3)	\$750.00
c.	Total Expenditures this Reporting Period (Form C+ Form C1)	\$16,129.16
d.	Total Amount Raised from one or more Special Events Special Event Worksheet(s) attached Yes X No	\$0.00
e.	Closing Balance this Reporting Period (4a + 4b + 4d - 4c)	\$56,464.73
f.	Total Loans To the Committee this Reporting Period (Form A1)	\$0.00
g.	Total Unpaid Campaign Debt (Form A1)	\$0.00
h.	Total In-Kind Contributions this Reporting Period (Form B2)	\$0.00

Second Primary Report

Report of Expenditures and Contributions

**FORM C
EXPENDITURES**

Political Committee's Name NM NAIOP PAC
 Date Submitted: 5/13/2024 Date Due: 5/13/2024

DATE	NAME and ADDRESS of PAYEE	PURPOSE	Type	AMOUNT
4/2/2024	Intuit Online, Online Unknown, NM 12345 QBO monthly fee	Office expenses	Expenditure	\$64.58
4/17/2024	The New Mexico Project 8100 Wyoming Blvd. NE, M4-307 Albuquerque, NM 87122 contribution to PAC	Contribution (explain nonmonetary)*	Expenditure	\$15,000.00
4/24/2024	Committee to Elect William J Walker for County Commissioner District 2 3936 Clinton Blvd SW ALBUQUERQUE, NM 87105 campaign contribution	Contribution (explain nonmonetary)*	Expenditure	\$1,000.00
5/2/2024	Intuit Online, Online Unknown, NM 12345 QBO monthly fee	Office expenses	Expenditure	\$64.58
TOTAL				\$16,129.16

Republicans, moderates, liberal and right wingers! During elections you hear the terms progressive, moderates, right wingers but once they get to the legislature they all take care themselves!



A CHANGING DISTRICT



Rep. Rehm

Michael Corwin writes of the GOP House District 31 June 4 primary in ABQ's far-NE Heights. Rep. Bill Rehm is retiring and three Republicans are running in the GOP primary in what is the only House District in ABQ that has a GOP state rep:

Hey Joe, In 2004, when I ran in that district as a Democrat in a spirited campaign against my now friend and then-Republican Greg Payne, the Democratic voting performance was only 31%. I still managed to garner 42% of the vote. And I did that despite Greg out raising and outspending me 5-1. The demographics have changed significantly since I ran. The registered Dems have closed the gap quite a bit with the GOP and the independent numbers have exploded. Democrats can win that district. But they have to put in the hard work of door to door canvassing. My campaign focused on GOP crossover votes and meeting them in person helped me to get a fair amount of them. I didn't run again after 2004, but no Democratic candidate for the district since then ever knocked on my, or my neighbors' doors. I would urge the Democrats to not just run someone, but run to win, Get the candidate the resources necessary to make the contacts with the voters.

In that GOP primary the candidates are Nicole Chávez, Sarah Jane Allen and Patrick Huested. The lone Democrat running in the primary is Vicky Estrada-Bustillo.

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(c)NM POLITICS WITH JOE MONAHAN 2024

Posted by: Joe Monahan / Thursday, April 25, 2024

Wednesday, April 24, 2024

New Anti-Progressive Group Goes On Warpath; Claims An "Attack On Latinos And Our Culture"; The New Mexico Project Fields A Slate Of Primary Candidates And Says Its Raised "Close To" \$1 Million

An advocacy group called The New Mexico Project is unleashing vigorous attacks against the state's progressive Democrats and advocating for a field of conservative candidates in the June 4 primary.

Their message is that the dominant progressives have failed to improve the state despite having the reins of power in Santa Fe and elsewhere and in the process have sidelined Hispanic voices:



Jeff Apodaca

The group is the brainchild of businessman Jeff Apodaca, son of former Gov. Jerry Apodaca who served one term ('75-'79).

Jeff Apodaca, a moderate Democrat like his father, unsuccessfully sought the 2018 Dem gubernatorial nomination.

In an interview he unloaded the frustration that conservative and moderate Dem Hispanics (or Latinos) have expressed among themselves. However, Apodaca says his group is nonpartisan and represents not only Hispanic Dems but also frustrated Republicans and independents:

Progressives have been attacking Latinos and electing candidates in the last three elections that do not reflect our communities. I give them credit for getting their vote out but their policies have caused more crime, fewer job opportunities and a failure to deliver on healthcare. They are attacking our Latino candidacies, culture and legacy and it's time for us to respond by getting our vote out not just in presidential elections but all elections.

The NM Project is organized as a federal 501(c)(4) which limits how much political activity they can conduct but the regulations for that have been interpreted loosely.

Apodaca says the group has already raised "close to \$1 million," all from within the state. That can't be fact-checked because money flowing to the group is not required to be reported to the state or FEC as is the case for the many dark money progressive groups operating here.

Says Apodaca:

The vast majority of the progressive money attacking our Latino candidates is coming from out of state and it appears the various groups--including Better Future for NM) run by consultant Amanda Cooper--will raise \$2 million or more for the primary.

ON THE AIR



The NM Project is already up with 60 second radio ads narrated by Apodaca. A sample:

Our political landscape in New Mexico has been increasingly divided by the far-left progressives and the ultra-right pulling us in opposing directions. But there's a powerful force waiting to be unleashed--the moderate Latino voter. We are the majority. We make up 53 percent of the voters when we vote. Whether you identify yourself as moderate Democrat, Republican or independent, it's a must we come together to support candidates that reflect our shared values--like pro-healthcare, business, education and public safety.

The ultra-liberal progressive agenda pushed by outsiders has neglected the needs of the Latino community. The far-right rhetoric has brought further division, threatening our heritage. But we, the Latino voter, have the power to shape the future of our state by voting in the upcoming primaries. We can elect leaders in New Mexico who will bridge the political divide.

Apodaca says recent polling reveals that healthcare--and specifically the lack of doctors--is the top issue among Hispanic voters with

crime, job opportunities and education next.

He says the Project's legislative agenda includes increased Medicaid payments for doctors, a revamp of the gross receipts tax to aid small business and support of a pre-trial detention bill that has stalled out in Santa Fe and that he says would cut crime

He adds that the group is also supportive of the oil and gas industry, noting that "forty-four percent of the workers in that industry are Latino."

THE SLATE

The screenshot shows a website layout with the following sections:

- NM House**
 - Democrat Primary
 - HD9 - Patricia Lundstrom
 - HD16 - Marsella Duarte
 - HD27 - Martin Matthews
 - HD53 - Willy Madrid
 - HD69 - Harry Garcia
 - HD70 - Ambrose Castellano
 - Republican Primary
 - HD31 - Nicole Chavez
 - HD52 - Catherine Cullen
 - HD68 - Jared Tombrack
 - BernCo Commission
 - District 2
 - District 3
- NM Senate**
 - Democrat Primary
 - SD4 - George Munoz
 - SD8 - Pete Campos
 - SD9 - Heather Babist
 - SD3 - Bill O'Neil
 - SD13 - Daniel Ivey Soto
 - SD26 - Annette Marshall
 - SD30 - Clemente Sanchez
 - Republican Primary
 - SD21 - Nicole Toblason
- What are your priority races?** (with a magnifying glass icon)
- Legend: *Redistricted **Open Seat ***Challenge

Posted is the slate of candidates that the Project will be working to advance in the June 4 primary. (Click to enlarge).

They include Dem Sen. Daniel

Ivey-Soto who is locked in a heated battle with progressive Heather Berghmans in ABQ and Rep. Ambrose Castellano from the Las Vegas area who is being challenged by progressive Anita Gonzales. Rep. Patty Lundstrom, the de facto leader of the House conservatives, is also getting aid from the group for her primary challenge.

Apodaca sees local elections as the key to reversing progressive dominance by having an influx of moderate Latino voters. He singled out Santa Fe Mayor Alan Webber because, he says, Webber has been attentive to the needs of the Anglo, wealthy and progressive Eastside but not the city's Hispanic majority.

Apodaca says MLG and the Legislature have given the cities plenty of money to figure out the crime problem but progressive policies have thwarted any success,

There are mayoral elections in Santa Fe and ABQ next year. Webber is term limited but ABQ Mayor Keller is running for a third term. Apdoaca says his group hopes to be involved in both elections.

Progressives rose to the peak of their power following the 2020 primary elections where they ousted several longtime conservative Democratic senators including John Arthur Smith. Since then the Senate has drifted more liberal but nothing like the House where progressives took a commanding lead.

The defeat of a family medical leave bill in the House his past session gave rise to conservative Dem hopes that the progressive era has peaked and there will be a swing back toward the middle.

The NM Project has the money and the message to push such a change. Whether the voters are ready is the question.

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(c)NM POLITICS WITH JOE MONAHAN 2024

Last day	Last 7 days	Last 30 days	Last 90 days	All dates
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EXHIBIT
7

Spending by advertiser

Mar 18 - Jun 15, 2024

See spending totals by specific Facebook Pages and disclaimers for the selected date range. You can sort the results.

The New Mexico Project

Page name	Disclaimer	Amount spent	Number of ads in Library
The New Mexico Project	The New Mexico Project	\$4,142	37

Spending by location

Mar 18 - Jun 15, 2024



Ads About Audience

-37 results

These results include ads about social issues, elections or politics.

Launched June 2024

Filters Save search Save summary Export CSV Sort by

Library ID: 46907099405502
 Inactive
 Jun 3, 2024 - Jun 4, 2024
 Platforms
 Categories
 2 ads use this creative and text

See summary details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Re-elect Bill O'Neill to Senate District 13 on June 4th. He's working for safer, fairer, and more prosperous New Mexico through criminal justice and voter rights reform!

Library ID: 486054760376152
 Inactive
 Jun 3, 2024 - Jun 4, 2024
 Platforms
 Categories
 2 ads use this creative and text

See summary details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Re-elect Bill O'Neill to Senate District 13 on June 4th to continue fighting for criminal justice reform, voting rights, and consumer protections.

Library ID: 473649083515551
 Inactive
 Jun 3, 2024 - Jun 3, 2024
 Platforms
 Categories
 2 ads use this creative and text

See summary details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Vote Clemente Sanchez for Senate District 30 on June 4th! His experience and commitment to healthcare, education, and veterans will make a positive impact.

Library ID: 482708477650266
 Inactive
 Jun 3, 2024 - Jun 4, 2024
 Platforms
 Categories
 2 ads use this creative and text

See summary details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Clemente Sanchez is focused on bringing resources and growth to Senate District 30. Vote for him on June 4th to secure better healthcare, education, and veteran support!

Launched May 2024

Library ID: 1786386916185314
 Inactive
 May 18, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K

See ad details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Library ID: 983879339453936
 Inactive
 May 18, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 5K - 10K

See ad details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Library ID: 451850433044733
 Inactive
 May 18, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 2K - 3K

See ad details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Library ID: 77669271268069
 Inactive
 May 18, 2024 - Jun 8, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K

See ad details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Library ID: 96992234637655
 Inactive
 May 18, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 5K - 9K

See ad details

The New Mexico Project
 Sponsored - Paid for by The New Mexico Project

Pete Campos has always put Senate District 8 first. Vote to keep him working for education, rural healthcare, and infrastructure growth.

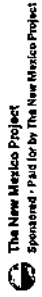


Learn more

Library ID: 102763874205073

Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 60K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K

See ad details



Sponsored - Paid for by The New Mexico Project
 June 4th is election day! Vote for Daniel Ivey-Soto in Senate District 15 to keep emergency healthcare, public safety, and economic development.

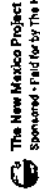


Learn more

Library ID: 966217995143792

Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K

See ad details



Sponsored - Paid for by The New Mexico Project
 Elect Antonio Maresias to Senate District 26 on June 4th. His vision for a thriving west side includes strong education, economic development, and public safety.

Vote on June 4th to reelect Pete Campos for Senate District 8. He's dedicated to quality education, economic growth, and rural healthcare success.

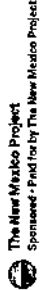


Learn more

Library ID: 94972993465081

Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$200 - \$299
 Impressions: 20K - 25K

See ad details



Sponsored - Paid for by The New Mexico Project
 Vote on June 4th for Daniel Ivey-Soto to continue his proven leadership in Senate District 15 for public safety, healthcare, and economic growth!

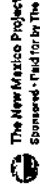


Learn more

Library ID: 1860515581001325

Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$5100
 Impressions: 4K - 5K

See ad details



Sponsored - Paid for by The New Mexico Project
 June 4th is election day! Reelect Javed Hameed in House District 59 to keep protecting jobs, promoting safer communities, and defending our rights.

Antonio Castellano leads by example in House District 70 to keep our community, jobs, and education strong. Vote on June 4th to keep him leading for education, business, and veterans!

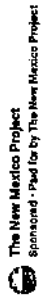


Learn more

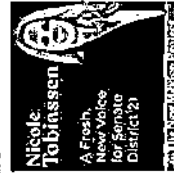
Library ID: 3380448248915674

Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 4K - 6K

See ad details



Sponsored - Paid for by The New Mexico Project
 June 4th is election day! Elect Nicole Tobasson to Senate District 21 for business growth, healthcare reform, and crime prevention.

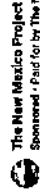


Learn more

Library ID: 1100591801198577

Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$5100
 Impressions: 10K - 15K

See ad details



Sponsored - Paid for by The New Mexico Project
 Javed Hameed has a clear vision for House District 59. Vote on June 4th to keep him working for secure jobs, safe neighborhoods, and personal freedoms!

June 4th is election day! Reelect Ambrose Castellano to House District 70 for stronger education, job opportunities, and veteran support.

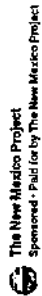


Learn more

Library ID: 144519538944378

Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K

See ad details



Sponsored - Paid for by The New Mexico Project
 Nicole Tobasson is ready to lead Senate District 21 with innovative solutions. Vote for her on June 4th to prioritize business growth, healthcare, and security!

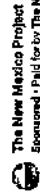


Learn more

Library ID: 110704891918268

Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$5100
 Impressions: 4K - 5K

See ad details



Sponsored - Paid for by The New Mexico Project
 June 4th is election day! Vote for John D'Amico in House District 57 for continued progress in education, public safety, and economic development.

June 4th is election day! Reelect Ambrose Castellano to House District 70 for stronger education, job opportunities, and veteran support.

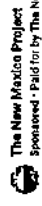


Learn more

Library ID: 845468074086786

Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$200 - \$299
 Impressions: 20K - 25K

See ad details



Sponsored - Paid for by The New Mexico Project
 Vote Antonio Maresias for Senate District 26 on June 4th to keep his leadership in education funding, economic development, and safety for the west side.

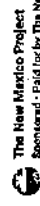


Learn more

Library ID: 351529201648175

Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$5100
 Impressions: 10K - 15K

See ad details



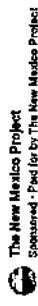
Sponsored - Paid for by The New Mexico Project
 John D'Amico is dedicated to making House District 57 a better place for everyone. Vote on June 4th to support his vision for a safe, more prosperous district.



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 1371230150229886
 Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 8K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Let's reelect Patty Lundstrom, a proven leader with an unwavering commitment to improving roads, schools, and healthcare for House District 9.

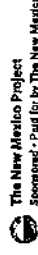
Library ID: 96590866157063
 Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$200 - \$399
 Impressions: 25K - 30K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 652427142740760
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 15K - 20K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Early voting is happening now! Patty Lundstrom has spent over two decades fighting for better infrastructure, education, and healthcare in House District 9. Vote to keep her leadership working for our community!

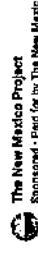
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 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$200 - \$399
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 3426761210948746
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Reelect Willie Marfield for House District 53 to keep building stronger foundations in Chaparral with better schools, family support, and improved infrastructure.

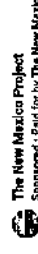
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 Inactive
 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 1K - 5K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 355947957504660
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Willy Marfield is a true champion for Chaparral. Vote on June 4th to keep him working for stronger schools, better infrastructure, and thriving families in House District 53!

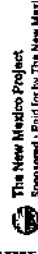
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 May 17, 2024 - Jun 5, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 1491006584937043
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Vote for Marcella Duarte, a fresh voice committed to education reform, economic growth, and better healthcare in House District 16.

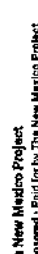
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 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 1491006584937043
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Vote for Marcella Duarte, a fresh voice committed to education reform, economic growth, and better healthcare in House District 16.

Library ID: 43332577835441
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 1491006584937043
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Vote for Marcella Duarte, a fresh voice committed to education reform, economic growth, and better healthcare in House District 16.

Library ID: 43332577835441
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

Library ID: 1491006584937043
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 10K - 50K
 Amount spent (USD): \$100 - \$199
 Impressions: 10K - 15K
 See ad details



Learn more

THE NEW MEXICO PROJECT
 Sponsored - Paid for by The New Mexico Project

June 4th is election day! Vote for Marcella Duarte, a fresh voice committed to education reform, economic growth, and better healthcare in House District 16.

Library ID: 43332577835441
 Inactive
 May 17, 2024 - Jun 4, 2024
 Platforms
 Categories
 Estimated audience size: 5K - 10K
 Amount spent (USD): \$100 - \$199
 Impressions: 7K - 8K
 See ad details



George Munoz
Proven Leadership For Senator District 4

[Learn more](#)

Library ID: 7257472057499239

Inactive

May 17, 2024 - Jun 4, 2024

Platforms

Categories

Estimated audience size: 1K - 6K

Amount spent (USD): \$100 - \$199

Impressions: 10K - 15K

[See ad details](#)



The New Mexico Project

Sponsored - Paid for by The New Mexico Project

George Munoz has proven he's ready to keep fighting for Gallup. Vote on June 4th to re-elect him for Senate District 4 and ensure we have better healthcare, education, and economic growth.



George Munoz
Proven Leadership For Senator District 4

[Learn more](#)

System status

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Nicole Chavez
Proven Leadership For House District 31

[Learn more](#)

Library ID: 259786572029703

Inactive

May 17, 2024 - Jun 4, 2024

Platforms

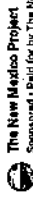
Categories

Estimated audience size: 1K - 5K

Amount spent (USD): \$200 - \$299

Impressions: 15K - 20K

[See ad details](#)



The New Mexico Project

Sponsored - Paid for by The New Mexico Project

George Manos understands Santa Fe District 4 needs quality healthcare, education, and a thriving economy. Vote on June 4th to keep him working for a better future!



George Manos
Proven Leadership For House District 4

[Learn more](#)



Nicole Chavez
Proven Leadership For House District 31

[Learn more](#)

Library ID: 360791373647613

Inactive

May 17, 2024 - Jun 4, 2024

Platforms

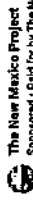
Categories

Estimated audience size: 1K - 5K

Amount spent (USD): < \$100

Impressions: 5K - 7K

[See ad details](#)



The New Mexico Project

Sponsored - Paid for by The New Mexico Project

June 4th is election day! Re-elect Marian Matthews to House District 27 to keep fighting for safer streets, better healthcare, and improved education in Albuquerque.



Marian Matthews
Fighting for Safer Streets, Better Healthcare, and Improved Education in Albuquerque

[Learn more](#)



Harry Garcia
A Dedicated Leader for District 69

[Learn more](#)

Library ID: 1097420046010442

Inactive

May 17, 2024 - Jun 5, 2024

Platforms

Categories

Estimated audience size: 1K - 5K

Amount spent (USD): \$100 - \$199

Impressions: 9K - 10K

[See ad details](#)



The New Mexico Project

Sponsored - Paid for by The New Mexico Project

Marian Matthews is committed to making House District 27 safer and more prosperous. Vote for her on June 4th to continue her work for our community!



Marian Matthews
Making House District 27 Safer and More Prosperous

[Learn more](#)



https://www.santafenewmexican.com/opinion/my_view/new-mexico-project-points-toward-states-moderate-roots/article_e27d64d4-0967-11ef-8b34-fb170f77ef91.html

MY VIEW JEFF APODACA

New Mexico Project points toward state's moderate roots

By Jeff Apodaca
May 4, 2024

Your recent article (“Failed candidate hopes to influence primaries,” Ringside Seat, May 1) launched a significant attack against me and the New Mexico Project, primarily focusing on my 2018 gubernatorial campaign. During that campaign, my platform was dedicated to enhancing the New Mexico economy, increasing wages and fostering state prosperity. Rehashing these past policies now overlooks the critical importance of the upcoming primary elections — an event our Latino community is particularly tuned into.

It comes as no surprise that Editor Phill Casaus, alongside columnist Milan Simonich, crafted a hit piece. This is a familiar tactic from Simonich and *The New Mexican* when facing any opposition to your political movement — a tactic that distorts the truth. How does this align with traditional New Mexican values?

As a 15th-generation native New Mexican, I possess a deep understanding of Santa Fe, Northern New Mexico and the heart of its true residents — something Simonich and the *The New Mexican* will never grasp.

The anxiety your article conveys suggests I’ve resonated with the very liberal progressive wing of the Democratic Party that you endorse. Why is it inflammatory for me to alert our Latino community that they are being targeted by the progressive leadership in Santa Fe and within our own Democratic Party? Rather than attempting to collaborate with us, you have chosen to attack our beliefs, work ethic and cultural values. It’s evident they do not regard us as suitable leaders for our state.

The New Mexico Project is actively informing New Mexicans that our Latino leaders and communities are under siege by out-of-state, ultra-liberal progressives more concerned with their political careers than with our community and state.

Simonich is completely off-base in his portrayal of my 2018 platform and my role with the State Investment Council. It appears neither he nor your editors grasp our state constitution. The SIC, led by the governor, has complete authority over the investment of our \$34 billion funds. Alarming, 99.98% of these funds are invested outside New Mexico, providing no benefit to our local businesses, industries or communities.

I'm particularly concerned by your editorial choices, especially since your team did not reach out for my side of the story, despite my attempts to return a call.

It is shocking that your publication continues to support state and Santa Fe progressive leaders who have funneled millions into our elections. Since 2018, we have estimated progressive leadership has raised over \$6 million through four 501(c)(4) organizations, with 83% of these funds coming from cities like San Francisco, New York and Washington, D.C. These funds have been used primarily to challenge Latino candidates who represent New Mexico's values, with 87% of such actions targeting our community. Why not fact-check these figures and report on them? Your newspaper's financial interests seem to align with these out-of-state contributions.

If progressive policies truly benefited our Latino communities or all New Mexicans, we would be supportive. Yet, after 20 years, these policies have done little but neglect our community. New Mexico remains one of the lowest-ranked states in health care. Education and crime rates are also areas where we lag significantly, not to mention our struggles with job creation.

The New Mexico Project is committed to steering our state back to its moderate roots. New Mexico values resilience, hard work and self-reliance — values that have been historically promoted by a diverse Democratic Party that uplifted Latino leadership and our cultural heritage. Today, however, these values are being systematically erased by ultra-liberal progressives, fracturing our community.

We recognize our own community's disengagement from voting in primaries and local elections has allowed this shift, and the New Mexico Project aims to reverse this trend.

Your newspaper may dismiss my ideas as "silly," but what then of the current policies that fail our people? New Mexico deserves leadership that honors our values and prioritizes prosperity over national identity politics.

Your portrayal of me as a "silly, unknowing" individual may be penned by a liberal outsider, but I wear that as a badge of honor for my state. I remain a proud Latino, family man, sportsman, businessman and above all, a native New Mexican.

Get Involved

From the Statehouse to the County Seat:
The New Mexico Project's Strategic
Priorities



The New Mexico Project has identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state. By focusing our efforts on these critical battlegrounds, we aim to empower the moderate Latino electorate and ensure their voices are heard at every level of governance.

REGIONS

**Winning Where It Counts:
Focusing on Pivotal Elections**

NM House NM Senate

PROTECT

**House District 9
Patty Lundstrom**

REGISTRATION

Location
McKinley

Registered Voters
16,318



PATTY LUNDSTROM

FLIP

**House District 16
Marselia Duarte**

REGISTRATION

Location
Bernalillo

Registered Voters
19,889



MARSELIA DUARTE

PROTECT

**House District 27
Marian Matthews**

REGISTRATION

Location
Bernalillo

Registered Voters
22,820



MARIAN MATTHEWS

PROTECT

House District 53

Willie Madrid

Location
Donat Ana, Otero

Registered Voters
16,688



WILLIE MADRID

OPEN SEAT

House District 57

John D'Antonio

Location
Sandoval

Registered Voters
22,155

REGISTRATION



JOHN D'ANTONIO

PROTECT

House District 59

Jared Hembree

Location
Chaves

Registered Voters
17,802

REGISTRATION



JARED HEMBREE

PROTECT

House District 69

Harry Garcia

Location
Bernalillo, Cibola, McKinley, San Juan, Socorro, Valencia

Registered Voters
16,666

REGISTRATION



HARRY GARCIA

PROTECT

House District 70

Ambrose Castellano

Location
San Miguel, Tarrant

Registered Voters
19,859

REGISTRATION



AMBROSE CASTELLANO



Together, we can shape the future of our state - but we need your support.

Get Involved

From the Statehouse to the County Seat: The New Mexico Project's Strategic Priorities

The New Mexico Project has identified key state and county races as strategic priorities, where our influence can sway pivotal outcomes and shape the future political landscape of the state. By focusing our efforts on these critical battlegrounds, we aim to empower the moderate Latino electorate and ensure their voices are heard at every level of governance.

INSIGHTS

Winning Where It Counts: Focusing on Pivotal Elections

NM House NM Senate

PROTECT
Senate District 4

REGISTRATION

George Munoz
Location
Cibola, McKinley & San Juan
Registered Voters
30,159



GEORGE MUNOZ

PROTECT
Senate District 8
Pete Campos

REGISTRATION

Location
Dofax, Guadalupe, Harding, Mora, Quay, San Miguel & Taos
Registered Voters
34,798



PETE CAMPOS

PROTECT
Senate District 13
Bill O'Neill

REGISTRATION

Location
Bernalillo
Registered Voters
30,183



BILL O'NEILL

PROTECT

Senate District 15
Daniel Ivey-Soto

Location
Bernalillo

Registered Voters
51,188

REGISTRATION



DANIEL IVEY-SOTO

PROTECT

Senate District 21
Nicole Tobassen

Location
Bernalillo

Registered Voters
39,617

REGISTRATION



NICOLE TOBASSEH

PROTECT

Senate District 26
Antonio "Moe" Maestas

Location
Bernalillo

Registered Voters
29,988

REGISTRATION



ANTONIO "MOE"
MAESTAS

OPEN SEAT

Senate District 30
Clemente Sanchez

Location
Cibola, McKinley, Socorro & Valencia

Registered Voters
28,710

REGISTRATION



CLEMENTE SANCHEZ



Together, we can shape the future
of our state - but we need your
support.

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

BCC:

--Case Participants: Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com), Chief District Judge William P. Johnson (wpjcmecf@nmd.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id:13163377@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-WJ-LF State Ethics Commission v. TNMP, Inc. et al Order

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 7/1/2024 at 11:58 AM MDT and filed on 7/1/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-WJ-LF

Filer:

Document Number: 8(No document attached)

Docket Text:

ORDER by Magistrate Judge Laura Fashing VACATING the [5] Initial Scheduling Order due to the pending [7] Opposed MOTION to Remand to State Court filed by State Ethics Commission. Pursuant to Fed. R. Civ. P. 16 (b)(2), the Court finds good cause to delay entering a scheduling order at this time due to the pending dispositive motion (Doc. 7). The Rule 16 Initial Scheduling Conference set for 8/19/2024 at 02:00 PM in Albuquerque and all associated deadlines are VACATED and will be reset, if necessary. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (amf)

1:24-cv-00652-WJ-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

1:24-cv-00652-WJ-LF Notice has been delivered by fax to:

1:24-cv-00652-WJ-LF Notice has been delivered by USPS to:

**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

400 Gold Ave SW, Suite 1000

Albuquerque, NM 87102

(505) 750-3060

abdunn@ablairdunn-esq.com

warba.llp.jared@gmail.com

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](#)

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



From: Tom Garrity <tom@garritypr.com>
Sent: Wednesday, May 22, 2024 7:02 PM
To: Kirkpatrick, Jane, SEC <jane.kirkpatrick@sec.nm.gov>
Cc: Farris, Jeremy, SEC <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

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

Mr. Garrity,

EXHIBIT A

DNM 141

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
7103 4th Street NW, Suite 4
Los Ranchos, New Mexico 87107

Office | 505.898.8689 Mobile | 505.710.6567

[Website](#) | [Blog](#) | [Twitter](#) | [Sign-Up for our Newsletter](#)

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

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

To: Tom Garrity <tom@garritypr.com>

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





STATE ETHICS COMMISSION

Caroline "KC" Manierre, Chief Compliance Counsel
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505.362.9617 | 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

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,


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](#)

Dear Media Contacts,

Attached to this email please find a press release issued by the Commission today, May 24, 2024, regarding the Commissions 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



EXHIBIT C

800 Bradbury Dr. SE
Suite 217
Albuquerque, NM 87106
www.sec.nm.gov



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

STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

Ethics.commission@sec.nm.gov
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.

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For more information about the State Ethics Commission, please visit sec.nm.gov.



STATE ETHICS COMMISSION
Jane Kirkpatrick, Communications and Administrative
Manager
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
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 Solomon
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



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

STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

6/25/2024

Jane Tabet-Kirkpatrick
Communications Manager
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.

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

STATE ETHICS COMMISSION,
Plaintiff,

v.

No. 1:24-cv-00652-WJ-LF

TNMP, INC. d/b/a "The New Mexico Project";
and JEFF APODACA,
Defendants.

ORDER SCHEDULING MOTION HEARING

NOTICE is given that the Court will hold a hearing on Plaintiff's Motion to Remand (**Doc. 7**) and Defendants' Response. The parties should be prepared to discuss what effect, if any, Defendants' counterclaim and/or third-party complaint (**Doc. 9**) has on this Court's original jurisdiction to resolve federal questions under Section 1331. Additionally, the parties should familiarize themselves with the precedents under: *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231 (10th Cir. 2003), *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005), and *Gunn v. Minton*, 568 U.S. 251 (2013).

The Motion Hearing is scheduled **July 19th, 2024 at 1:30p.m.** in Albuquerque - 560 Cimarron Courtroom before Chief District Judge William P. Johnson.

IT IS SO ORDERED.

/s/

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

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; WILLIAM F. LANG;
JEFFREY L. BAKER; STUART M. BLUESTONE;
CELIA CASTILLO; TERRY MCMILLAN;
RONALD SOLIMON; JUDY VILLANUEVA,

Third Party Defendants,

**AMENDED 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 statutory

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. Following the filing of the original Answer, Doc. 9, the IPRA custodian for the Plaintiff transmitted correspondence admitting that the Plaintiff had failed to provide the complete record and transmitted the same. *See* Exhibit G, Email with BCC Recipients in PDF.

43. The Plaintiff also respond to this request on June 12, 2024 providing some requested records by email, but stated that:

Some records responsive to this request are being denied pursuant to NMSA 1978, § 14-2-1(G) & (L) (2023):

...

• Responsive records are complaints, reports, files, records or communications collected or generated by the commission that pertain to alleged violations. *See* NMSA 1978 § 10-16G-13(C)(2019).

See Exhibit H (emphasis in original).

44. On June 28, 2024, Plaintiff filed of record with this Court its pending Motion for Remand, Doc. 7 and attached to the Motion was a proposed settlement demand, (ostensibly transmitted, but never received by Defendant Apodaca), Exhibit I.

45. The correspondence, Exhibit I, was responsive the IPRA request, but cannot be located in the records transmitted to Defendants and appears to have been denied as noted in ¶43 above.

COUNTER COUNT 1

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

46. Defendants herein incorporate all the foregoing paragraphs.

47. 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.

48. 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.

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

50. Plaintiff's actions to authorize and condone its Executive Director's actions to attempt to extort a \$1000 civil penalty in exchange for foregoing seeking criminal prosecution, *see* Exhibit I, pg 2, violated Defendants rights to substantive process.

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

52. 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

53. 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.

54. 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.

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

55. Defendants herein incorporate all the foregoing paragraphs.

56. 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”).

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

58. 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).

59. 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.

60. 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.

61. 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.

62. 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; DENIAL OF PROCEDURAL DUE PROCESS; SUPERVIORY LIABILITY (MONELL) AND CIVIL RICO

FACTUAL BACKGROUND

63. 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.

64. 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.

65. On May 15, 2024, Third-Party Defendant Farris, transmitted correspondence to Mr. Apodaca at an obscure and unreliable email address. *See* Exhibit I.

66. That correspondence attempted to extort monies from TNMP and Mr. Apodaca, as well as foregoing his rights to dispute the constitutionality of the Commission's demand for foregoing First Amendment protected associational rights for TNMP and its donors, in exchange for avoiding civil litigation and criminal prosecution for a matter for which, upon information and belief, no complaint had been received by or initiated by a 5 commissioner vote of the New Mexico State Ethics Commission as required by law, stating:

I am prepared to request the Commission's authorization to file a civil action against both TNMP and you. However, to avoid expensive and potentially bruising civil litigation, I offer the following proposed settlement agreement in lieu of further action:

In exchange for:

- (i) your signature below, which signifies an agreement to the foregoing;
- (ii) the filing on New Mexico Campaign Finance System, <https://login.cfis.sos.state.nm.us/#/index>, of reports of TNMP's expenditures and contributions, as required by Section 1-19-27.3(B) through (D), with a copy to ethics.commission@sec.nm.gov, by no later than 9:00am on Monday, May 20, 2024; and
- (iii) the payment of \$1,000, corresponding to the civil penalty for one violation of the Campaign Reporting Act,

and upon a vote by the Commission to approve this proposed settlement agreement, the Commission will agree not to file a civil action seeking civil

penalties, equitable relief, or other relief for the violations described in this agreement. The Commission will further agree that your violations were not knowing and willful, avoiding any potential criminal referral, and will state the same in any press release concerning this agreement.

Exhibit I.

67. On June 28, 2024, Third-Party Defendant Farris knowingly and maliciously published the settlement correspondence with the threat of potential referral for criminal prosecution to the public in this Court's record.

68. Upon information and belief, Third-Party Defendant Farris has a pattern of threatening potential criminal referral to extort civil settlements from members of the public.

69. Upon information and belief, Third-Party Defendants Commissioner Does 1-7 have instigated a policy of authorizing and condoning Third-Party Defendant Farris's actions to extort civil settlements in their supervision of him as the Executive Director for the New Mexico State Ethics Commission as evidence by the carbon copy of Exhibit I to William F. Lang, Chair, State Ethics Commission. *See* Exhibit I, pg 3.

70. 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.

71. 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

72. 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.

73. 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.

74. 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

75. 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.

76. 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.

77. Third-Party Defendants William F. Lang, Jeffrey L. Baker, Stuart M. Bluestone Celia Castillo, Terry McMillan, Ronald Solimon, and Judy Villanueva are 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 and are responsible for the supervision of Jeremy Farris as the executive director, authorizing by policy and practice his actions.

**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)**

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

79. 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.

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

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

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

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

84. 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.

85. 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.

86. 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.

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

88. 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 – CIVIL RICO (As to Third-Party Defendant Farris)

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

90. 18 U.S.C.A. § 1962 declares that "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal

within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

91. Third-Party Defendant Farris has violated the Hobbs Act, 18 U.S.C.A. § 1951, as well as NMSA 1978 § 30-16-9, to attempt to extort a civil settlement from Mr. Apodaca, and, upon information and belief, others, under threat of seeking a criminal prosecution acted unfairly and deceptively in a scheme, such that Third-Party Defendant Farris has engaged in racketeering activity for substantial profits to the state of New Mexico as defined by 18 U.S.C.A. § 1961.

92. Pursuant to 18 U.S.C.A. § 1964, a person who sustains injury or damages as a result of practices prohibited by 18 U.S.C.A. § 1962 may sue for equitable relief and to recover damages. Plaintiffs sustained injury and damages by receiving less for their cattle than they would have in fair competition that disclosed the actual origin of the beef the consumers bought.

93. Third-Party Plaintiff is entitled to:
- a. injunctive or equitable relief;
 - b. actual damages
 - c. threefold the damages sustained; and
 - d. attorneys' fees and cost.

18 U.S.C.A. § 1964.

COUNT IV - 42 U.S.C § 1983 – MUNICIPAL & SUPERVISORY LIABILITY FOR VIOLATIONS OF FEDERAL CONSTITUTIONAL RIGHTS (As to Third-Party Defendants Lang, Baker, Bluestone, Castillo, McMillan, Solimon, and Villanueva(“Commissioner Third-Party Defendants”))

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

95. Commissioner Third-Party Defendants are authorized policymakers and responsible for creating, and adhering to, policies, procedures, and customs for the State Ethics Commission. Further, they are responsible for the hiring, supervision, and training of the State Ethics Commission's employees, contractors and agents.

96. Commissioner Third-Party Defendants created a climate or directly authorized actions and expenditure of funds that led Third-Party Defendant Farris and others employed or contracted by the State Ethics Commission to believe that they could act with impunity, violate civil rights, illegally extort civil settlements, unconstitutionally attack members of the public in paid media campaigns or otherwise conduct themselves in the manner described herein.

97. Commissioner Third-Party Defendants failed to properly train, supervise, and admonish Third-Party Defendant Farris.

98. There is a causal connection between Commissioner Third-Party Defendants failure to train, supervise, and admonish their employees including Third-Party Defendant Farris under their direct supervision leading to the violation of Mr. Apodaca's and TNMP's constitutional rights.

99. Commissioner Third-Party Defendants failure to properly train, supervise, and admonish their employees against retaliating against the protected conduct of Mr. Apodaca and other citizens amounts to deliberate indifference, if not outright maliciousness.

100. The policies, customs, decisions and practices of State Ethics Commission that promoted retaliation against an outspoken citizen engaged in advocacy, along with their failure to train, supervise, and admonish, were willful, wanton, obdurate and in gross and reckless disregard of Plaintiff's rights.

101. Commissioner Third-Party Defendants' acts and omissions caused Mr. Apodaca

to suffer reputational injury and attorneys' fees and costs.

COUNT III – FOR PRELIMINARY AND PERMANENT INJUNCTION

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

103. 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.

104. 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

400 Gold Ave SW, Suite 1000

Albuquerque, NM 87102

(505) 750-3060

abdunn@ablairdunn-esq.com

warba.llp,jared@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 4, 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](#)

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



From: Tom Garrity <tom@garritypr.com>
Sent: Wednesday, May 22, 2024 7:02 PM
To: Kirkpatrick, Jane, SEC <jane.kirkpatrick@sec.nm.gov>
Cc: Farris, Jeremy, SEC <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

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

Mr. Garrity,

EXHIBIT A

DNM 175

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
7103 4th Street NW, Suite 4
Los Ranchos, New Mexico 87107

Office | 505.898.8689 Mobile | 505.710.6567

[Website](#) | [Blog](#) | [Twitter](#) | [Sign-Up for our Newsletter](#)

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

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

To: Tom Garrity <tom@garritypr.com>

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





STATE ETHICS COMMISSION

Caroline "KC" Manierre, Chief Compliance Counsel
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505.362.9617 | Caroline.Manierre@sec.nm.gov

Hon. William F. Lang (Chair)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Calia Castillo
Hon. Dr. Terry McMillan
Ronald Salinas
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

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,


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](#)

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



EXHIBIT C

300 Bradbury Dr. SE
Suite 217
Albuquerque, NM 87106
www.sec.nm.gov



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

STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

Ethics.commission@sec.nm.gov

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 corporation, 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.

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For more information about the State Ethics Commission, please visit sec.nm.gov.



STATE ETHICS COMMISSION
Jane Kirkpatrick, Communications and Administrative
Manager
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
506.554.7706 | 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

800 Bradbury Dr. SE
Suite 217
Albuquerque, NM 87106
www.sec.nm.gov



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

STATE ETHICS COMMISSION

CONTACT:

For Immediate Release:

6/25/2024

Jane Tabet-Kirkpatrick
Communications Manager
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.

From: Kirkpatrick, Jane, SEC
Cc: Commission, Ethics, SEC
Bcc: algernon@lascrucesbulletin.com; ccook@abqjournal.com; Corral, Juan (Ruidoso/Alamacordo); Daniel Chacon (dchacon@sfnewmexican.com); gwynethd@unm.edu; Julia Goldberg (juliagoldberg@sfireporter.com); Lee, Morgan; Marjorie Childress (marjorie@nminddepth.com); Matthew Narvaiz; Megan Gleason; Micahel Hodock; nbrown@sfnewmexican.com; Phaedra Haywood (phaywood@sfnewmexican.com); psmith@abqjournal.com; rboetel@abqjournal.com; Robert Nott; Ruidoso News; Farris, Jeremy, SEC; Tom Garrity
Subject: State Ethics Commission: Press Release, Commission announces lawsuit against The New Mexico Project
Date: Friday, May 24, 2024 2:23:00 PM
Attachments: [2024-05-24 SEC v. TNMP Press Release \(1\).pdf](#)
[image001.png](#)

Dear Media Contacts,

Attached to this email please find a press release issued by the Commission today, May 24, 2024, regarding the Commissions 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

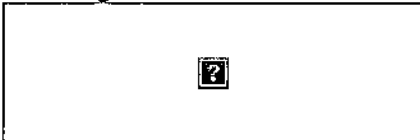


EXHIBIT G



STATE ETHICS COMMISSION
Jane Kirkpatrick, Communications and Administrative
Manager
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
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 Solomon
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

June 12, 2024

Via Electronic Mail

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

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

Dear Mr. Dunn:

On May 28, 2024, we received your request to review certain records:

- 1. 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.*

Some records responsive to this request are being provided through emailed attachments.

Some records responsive to this request are 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)(2023).
- 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 are complaints, reports, files, records or communications collected or generated by the commission that pertain to alleged violations. *See* NMSA 1978 § 10-16G-13(C)(2019).

EXHIBIT H

State Ethics Commission
June 12, 2024
Page 2 of 2

2. *Any information pertaining to the organization called Advanced Legislative Leadership Servies or ALLS.*

Records responsive to this request are being denied pursuant to NMSA 1978, § 14-2-1(L) (2023):

- Responsive records are complaints, reports, files, records or communications collected or generated by the commission that pertain to alleged violations. *See* NMSA 1978, §10-16G-13(C)(2019).
- 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).

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



STATE ETHICS COMMISSION

Jeremy Farris, Executive Director
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505.490.0951 | jeremy.farris@sec.nm.gov

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

Jeremy D. Farris, Executive Director

May 15, 2024

Via electronic mail only

Jeff Apodaca
The New Mexico Project
8100 Wyoming Blvd NE, M4-307
Albuquerque, NM 87113
Jeffapo@icloud.com
(310) 488 9115



Re: Letter regarding violations of the Campaign Reporting Act and offer of settlement

Dear Mr. Apodaca,

My name is Jeremy Farris. I am the director of the State Ethics Commission, an independent state agency established by Article V, Section 17(A) of the New Mexico Constitution with constitutional and statutory authority to enforce New Mexico’s ethics and disclosure laws, including the Campaign Reporting Act, NMSA 1978, §§ 1-19-26 to -36 (1979, as amended through 2024). It has come to my attention that the domestic nonprofit corporation of which you are the President (or of which you are the alter ego), TNMP, Inc. d/b/a “The New Mexico Project,” has not registered as a political committee. Nor has TNMP filed reports of its contributions and expenditures, which the Campaign Reporting Act requires for both political committees and persons making independent expenditures.

Based on expenditures that TNMP likely made for its website and the expenditures TNMP made to Cumulus Media to place radio ads from April 22, 2024 to June 4, 2024, TNMP has made aggregate independent expenditures in excess of \$1,000 dollars in a nonstatewide election. TNMP’s independent expenditures require TNMP generally to disclose the persons to whom the independent expenditures were made and the source of contributions used to make the independent expenditures, including the name and address of each contributor and the amount of the contribution. See NMSA 1978, § 1-19-27.3(B)–(D) (2019). TNMP had a duty to report its expenditures and contributions on the New Mexico Campaign Finance System potentially by April 8, 2024, and by no later than May 13, 2024. See NMSA 1978, § 1-19-29(B)(1)–(2) (2019). On information and belief, TNMP did not do so, and its omission contravenes the Campaign Reporting Act.¹

¹ If TNMP not only has made independent expenditures in excess of \$5,000 but also its primary purpose is to make independent expenditures, then TNMP is a political committee and is subject to registration, filing-fee, and disclosure requirements under NMSA 1978, Section 1-19-26.1 (2021) and 1-19-31 (2019). If you or TNMP filed expenditure and contribution disclosure reports on the New Mexico Campaign Finance System on or before May 13, 2024, and those reports are simply not appearing on the system, please furnish copies in response to this letter

EXHIBIT I

State Ethics Commission
To: Jeff Apodaca
May 15, 2024
Page 2 of 3

On May 1, 2024, you represented to Mr. Bob Clark that TNMP does not have to disclose its donors. This view is inaccurate. In 2019, the Legislature amended the Campaign Reporting Act to shine light on “dark money” in state elections, requiring persons that pay for advertisements or advocacy in support of candidates to be minimally transparent about who funds those advertisements and advocacy efforts. The 2019 amendments to the Campaign Reporting Act require groups that are advocating for or opposing an identified candidate to register and disclose their expenditures and the sources of contributions used to fund those expenditures. *See* Laws 2019, ch. 262, §§ 1-18; *see also* NMSA 1978, §§ 1-19-26.1 (requiring registration of political committees); 1-19-27.3 (requiring disclosures related to independent expenditures); & 1-19-31 (requiring disclosures of political committees *inter alia*).

The State Ethics Commission has filed lawsuits to enforce the Campaign Reporting Act. *See, e.g.,* Compl., *State Ethics Comm’n v. Working Families Org. d/b/a Unemployed Workers United*, D-506-CV-2022-00942 (Nov. 2, 2022, 5th Jud. Dist. Ct.); Compl., *State Ethics Comm’n v. Council for a Competitive N.M.*, D-202-2020-06718 (Dec. 11, 2020, 2d Jud. Dist. Ct.) I am prepared to request the Commission’s authorization to file a civil action against both TNMP and you. However, to avoid expensive and potentially bruising civil litigation, I offer the following proposed settlement agreement in lieu of further action:

In exchange for:

- (i) your signature below, which signifies an agreement to the foregoing;
- (ii) the filing on New Mexico Campaign Finance System, <https://login.cfis.sos.state.nm.us/#!/index>, of reports of TNMP’s expenditures and contributions, as required by Section 1-19-27.3(B) through (D), with a copy to ethics.commission@sec.nm.gov, by no later than 9:00am on Monday, May 20, 2024; and
- (iii) the payment of \$1,000, corresponding to the civil penalty for one violation of the Campaign Reporting Act,

and upon a vote by the Commission to approve this proposed settlement agreement, the Commission will agree not to file a civil action seeking civil penalties, equitable relief, or other relief for the violations described in this agreement. The Commission will further agree that your violations were not knowing and willful, avoiding any potential criminal referral, and will state the same in any press release concerning this agreement. If approved by the Commission, this agreement also would be a public record under NMSA 1978, Section 10-16G-13(A) (2019). Again, at this point, the State Ethics Commission would have to approve this settlement

and any correspondence you might have had with the Office of the Secretary of State regarding those reports.

State Ethics Commission
To: Jeff Apodaca
May 15, 2024
Page 3 of 3

agreement in order for it to be effective. If you agree to these terms, I will recommend that it do so at its next scheduled meeting on Friday, May 24, 2024.

If, however, you do not agree to these terms, I will request the Commission's authorization to file a civil action against TNMP and you to enforce the Campaign Reporting Act's disclosure requirements and seek all available remedies under law.

Very truly yours,

/s/ Jeremy Farris
Jeremy Farris
Executive Director
State Ethics Commission

cc: William F. Lang, Chair, State Ethics Commission (via electronic mail).

I AGREE:

Jeff Apodaca

MIME-Version:1.0

From:cmecfbb@nmd.uscourts.gov

To:cmecfto@nmcourt.uscourts.gov

Bcc:

--Case Participants: James Walker Boyd (walker.boyd@sec.nm.gov), Jared Robert Vander Dussen (warba.llp.jared@gmail.com), Jeremy Daniel Farris (jeremy.farris@sec.nm.gov, jnh@fbdlaw.com), A. Blair Dunn (abdunn@ablairdunn-esq.com, warba.llp.jared@gmail.com, warba.llp@gmail.com), Chief District Judge William P. Johnson (wpjcmecf@nmd.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id:13180031@nmd.uscourts.gov

Subject:Activity in Case 1:24-cv-00652-WJ-LF State Ethics Commission v. TNMP, Inc. et al
Summons Issued

Content-Type: text/html

U.S. District Court

United States District Court – District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 7/12/2024 at 11:06 AM MDT and filed on 7/12/2024

Case Name: State Ethics Commission v. TNMP, Inc. et al

Case Number: 1:24-cv-00652-WJ-LF

Filer:

Document Number: No document attached

Docket Text:

Summons Issued as to Jeffrey L. Baker, Stuart M. Bluestone, Celia Foy Castillo, Jeremy Farris, William F. Lang, Terry McMillan, Ronald Solimon, Judy Villanueva on Third Party Complaint. (dr)

1:24-cv-00652-WJ-LF Notice has been electronically mailed to:

A. Blair Dunn abdunn@ablairdunn-esq.com, warba.llp@gmail.com, warba.llp.jared@gmail.com

James Walker Boyd walker.boyd@sec.nm.gov

Jeremy Daniel Farris jeremy.farris@sec.nm.gov, jnh@fbdlaw.com

Jared Robert Vander Dussen warba.llp.jared@gmail.com

1:24-cv-00652-WJ-LF Notice has been delivered by fax to:

1:24-cv-00652-WJ-LF Notice has been delivered by USPS to:

**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; WILLIAM F. LANG;
JEFFREY L. BAKER; STUART M. BLUESTONE;
CELIA CASTILLO; TERRY MCMILLAN;
RONALD SOLIMON; JUDY VILLANUEVA,**

Third Party Defendants,

RESPONSE TO MOTION FOR REMAND AND ATTORNEYS’ FEES AND COSTS

COME NOW, Defendants, through undersigned counsel, and provide their Response to the Plaintiff’s Motion for Remand, Doc. 7, in this matter as follows:

INTRODUCTION

The Court identified in its Order, Doc. 10, the precedent the Court wished for the parties to consider in relation to the Motion, Doc. 7, and the Answer, Counterclaims, and Third-Party Complaint, Doc. 9. as *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231 (10th Cir. 2003), *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005), and *Gunn v. Minton*,

568 U.S. 251 (2013). This Response addresses and applies that precedent to support that removal was proper, being therefore not objectively unreasonable and that Court having jurisdiction should retain the matter, not just because of the substantial questions of federal law at issue in the defenses, counterclaims and third-party claims, but because the Plaintiff's state filed complaint, though artfully pleaded to avoid federal jurisdiction, facially invokes substantial questions of federal law concerning the effects of donor disclosure under New Mexico law on First Amendment protected associational rights. Additionally, the Complaint facially targets Defendant Apodaca for statements made to the press. Finally, rather than conferring in good faith under LR 7.1 to better understand Defendants' position supporting removal, Plaintiff hastily (as is consistent with previous conduct in bringing this litigation) filed the instant motion which attacks counsel and Defendants as being objectively unreasonable in removing this matter based largely upon Plaintiff's assumptions of Defendants' motives.

ARGUMENT

Initially, Defendants respectfully offer that it is facially apparent from the Complaint, Doc 1-1, that what Plaintiff seeks is to require donor disclosure that implicates an unsettled question of federal law yet confronting our Federal Judiciary. The openness of the question should be well-known and understood by the Plaintiff here, as the case law from the Supreme Court and the Tenth Circuit delineate that the enforcement sought by Plaintiff here implicates a case by case fact specific review of this type of forced disclosure under a more stringent review. *See Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 607, 141 S. Ct. 2373, 2383, 210 L. Ed. 2d 716 (2021) (“To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.’ *Ibid.* (internal quotation marks omitted). Such scrutiny, we have held, is appropriate given the ‘deterrent effect on the

exercise of First Amendment rights' that arises as an 'inevitable result of the government's conduct in requiring disclosure.' *Buckley*, 424 U.S., at 65, 96 S.Ct. 612."); *see also Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1244 (10th Cir. 2023)("We therefore consider whether the Secretary has demonstrated a substantial relation between the disclosure system's burdens and an important governmental interest. We pay particular attention to whether Wyoming narrowly tailored the law to that interest. And because the Secretary appeals the district court's determination that the law is unconstitutional as applied to WyGO, we consider the law given the 'particular circumstances of the case.' *United States v. Carel*, 668 F.3d 1211, 1217 (10th Cir. 2011)"). Thus, the facially implicated review of requiring the disclosure of The New Mexico Project's (an IRS registered non-profit 501(c)(4) engaged in a primary purpose of independent expenditures for the general issue of encouraging moderate Latino voters to vote, based primarily as denoted in the exhibits to Plaintiff's complaint (radio ads targeting issues not supporting any particular candidate) on advocacy for issues that should be important to those voters) donors necessarily implicates a significant federal question conferring and warranting the exercise of jurisdiction by this Court.

As requested here by the Court, *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231 (10th Cir. 2003) is instructive, but not for the bright line warranting an imposition of fees and costs as argued by Plaintiff, where the Tenth Circuit stated:

Federal-question jurisdiction also exists, however, where "it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims." *Franchise Tax Bd.*, 463 U.S. at 13, 103 S.Ct. 2841; *see, e.g., Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921).⁶ But the "mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." *Merrell Dow*, 478 U.S. at 813, 106 S.Ct. 3229. In considering whether a substantial federal question exists, we must exercise "prudence and restraint." *Id.* at 810, 106 S.Ct. 3229. After *Merrell Dow*, "[a] court examining whether a case turns on a [substantial] question of federal law should focus on whether Congress evidenced

an intent to provide a federal forum.” *Morris*, 39 F.3d at 1111.

Id. at 1236. Without question Congress has evinced an intent to provide a federal forum under 42 U.S.C. §1983, to address actions like the ones here undertaken by state governments that violate rights protected by the United States Constitution. That point does not get any more obvious than the inclusion of the Third-Party Complaint brought under Section 1983¹ in Docs. 9 and 11.

But, putting aside the invocation of the Third-Party Complaint brought under Section 1983, the well-pleaded complaint at issue in this matter still supports federal jurisdiction for the substantial First Amendment question that necessarily appears on the face of the Complaint for the relief sought by Plaintiff. Moreover, this Court in finding federal question jurisdiction, because of a substantial federal question and warranting this Court exercise of that jurisdiction, would be applying *Nicodemus* consistent with the Supreme Court’s admonishment that courts should consider if “a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314, 125 S. Ct. 2363, 2368, 162 L. Ed. 2d 257 (2005). Applying *Grable* the Supreme Court later further clarified that federal jurisdiction would be proper if four conditions were met stating:

That is, federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. Where all four of these requirements are met, we held, jurisdiction is proper because there is a “serious federal interest in claiming the advantages thought to be inherent in a federal forum,” which can be vindicated without

¹ A point that would have been explained had counsel for Plaintiff but taken the moment to confer about the basis in the instant motion instead of ignoring that request in the haste to proceed to file.

disrupting Congress's intended division of labor between state and federal courts. *Id.*, at 313–314, 125 S.Ct. 2363.

Gunn v. Minton, 568 U.S. 251, 258, 133 S. Ct. 1059, 1065, 185 L. Ed. 2d 72 (2013). Here the disclosure of donors to The New Mexico Project: (1) necessarily implicates whether requiring disclosure violates First Amendment freedom, *see Wyoming Gun Owners* at 1243 “(Campaign finance regulations implicate treasured freedoms central to political participation.”), (2) that question is disputed as unsettled and requires examination of the particular facts and circumstances, *see Wyoming Gun Owners* at 1244, (3) the loss of First Amendment freedoms is well recognized in the Tenth Circuit as supporting a preliminary finding of irreparable harm, *see Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1190 (10th Cir. 2003) (*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)), and (4) does not disrupt the federal state balance that Congress established by legislating a federal cause of action under 42 U.S.C. §1983 to address violations of constitutional freedoms by the states.

Additionally, the Complaint facially attacks Mr. Apodaca’s exercise of protected political speech made to the media as a factual basis supporting its enforcement of campaign finance law against him (including a later discovered threat of criminal prosecution if he did not comply and pay a \$1000 fine) which militates that this Court must therefore scrutinize the complaint in the this removed case to determine whether the action, though ostensibly grounded solely on state law, is actually grounded on a claim in which federal law is the exclusive authority. *See Sheeran v. General Electric Co.*, 593 F.2d 93, 96 (CA9), *cert. denied*, 444 U.S. 868, 100 S.Ct. 143, 62 L.Ed.2d 93 (1979); *North American Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 233–234 (CA2 1978); *New York v. Local 144, Hotel Nursing Home and Allied Health Services Union*, 410 F.Supp. 225, 226–229 (SDNY 1976).

All told, despite the negative inferences from Plaintiff’s Motion, that removal

accomplished in a timely fashion was objectively unreasonable despite the cited holdings noted above, because Plaintiff did so after a motion for preliminary injunction was filed in state court before the deadline for removal or responsive pleading, it is clear not only that there exists multiple substantial federal questions, but this precisely a scenario where Congress intended to provide for federal court resolution of the same.

CONCLUSION

The Court should deny the Motion for Remand and retain jurisdiction of the matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 12, 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

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

STATE ETHICS COMMISSION,

Plaintiff,

v.

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

Defendants.

No. 1:24-cv-00652-WJ-LF

**PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR REMAND
AND ATTORNEYS' FEES AND COSTS UNDER 28 U.S.C. § 1447(c)**

Defendants' Response to Motion to Remand and Attorneys' Fees and Costs (Doc. 12) ("Resp.") provides no sound basis for the Court to exercise jurisdiction over the Commission's state-law civil enforcement action. In reply, the Commission states as follows:

ARGUMENT

I. The Commission's claims are not removable because they arise under state law.

A case may be removed to federal court if the plaintiff could have brought it in federal district court originally, as a civil action "arising under" federal law. 28 U.S.C. §§ 1331, 1441(a). "[A] case can 'arise under' federal law in two ways." *Gunn v. Minton*, 568 U.S. 251, 257 (2013). First, "a case arises under federal law when federal law creates the cause of action asserted." *Id.* (citation omitted). In this matter, New Mexico's Campaign Reporting Act, NM Stat. Ann. §§ 1-19-25--1-19-37 (West 2024), creates the Commission's three claims against Defendants. *See* NM Stat. Ann. §§ 1-19-27.3, 1-19-31 & 1-19-34.6(C). While Defendants call the Commission's assertion of Campaign Reporting Act claims "artful[] plead[ing] to avoid federal jurisdiction," Resp. at 2, the Commission simply filed a civil action to enforce one of the statutes the New

Mexico Legislature placed within the agency's remit, *see* N.M. Stat. §§ 1-19-34.6(C) (2021) & 10-16G-9(A) (2021). Indeed, the Commission could not have asserted federal claims even if it had wanted to do so: the Legislature did not enable the Commission to assert claims under or to otherwise enforce federal law. *See* N.M. Const. art. V, § 17(C); § 10-16G-9(A) (enumerating the state laws for which Commission may assert civil enforcement actions). Because the Commission's civil enforcement action does not assert any claim arising under federal law, there was no basis to remove the Commission's lawsuit.

II. This case does not fall within the “special and small category” of removable state-law claims.

For Justice Holmes, the absence of any claim arising under federal law in the Commission's complaint would be the end of the jurisdictional inquiry. *See Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 214 (1921) (Holmes, J., dissenting); *see also Am. Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (limiting § 1331 jurisdiction to cases in which federal law creates the cause of action pleaded on the face of the plaintiff's complaint). Since *Smith*, however, the Supreme Court has recognized a “special and small category” of cases where federal jurisdiction lies even though state law creates the claim. *Gunn*, 568 U.S. at 258 (quotation marks and citation omitted). This case is not remotely within the contours of the “slim category” of claims that, although created by state law, nevertheless warrant “arising under” jurisdiction.

Federal jurisdiction over a state-law claim—like the Campaign Reporting Act claims here—“will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn*, 568 U.S. at 258 (emphasis added); *see also Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313–14 (2005); *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231, 1235–36 (10th Cir. 2003).

Defendants cannot meet their burden of establishing the first requirement. To establish its first Campaign Reporting Act claim, the Commission must show that (i) Defendant TNMP is an association of two or more persons; (ii) that TNMP received more than \$5,000 in contributions or made independent expenditures of more than \$5,000 in current election cycle; and (iii) that TNMP's primary purpose is to make independent expenditures. *See* N.M. Stat. § 1-19-26(U)(4) (2024) (defining "political committee").¹ Alternatively, if Defendant TNMP is not a political committee as that term is defined in the Campaign Reporting Act, the Commission must show that Defendants made independent expenditures in excess of \$1,000 in a nonstatewide election. N.M. Stat. Ann. § 1-19-27.3 (2019). There is no embedded federal issue in any element of the Commission's claims.

To see that the Commission's state-law claims do not necessarily raise a federal question, the Court need only compare the Commission's claims and the state-law claims at issue in the precedents cited in the Court's July 2, 2024 Order Scheduling Motion Hearing (Doc. 10). The state-law claims at issue in each of those precedents contain an embedded federal issue:

- In *Gunn*, the plaintiff's state-law legal malpractice claim invoked a "case within a case" analysis of whether the plaintiff would have prevailed on his federal patent

¹ Defendants concede that Defendant TNMP is "an IRS registered non-profit 501(c)(4) engaged in a primary purpose of independent expenditures for the general issue of encouraging moderate Latino voters to vote . . ." Resp. at 3 (emphasis added). Beyond that concession, Defendants' averments to the Court make no sense. An organization's federal tax status has absolutely no bearing on its disclosure obligations under state campaign finance law. *See, e.g., Delaware Strong Fams. v. Att'y Gen. of Delaware*, 793 F.3d 304, 308–09 (3d Cir. 2015) (reversing district court, holding that Delaware Elections Disclosure Act is constitutional as applied to communications of a 501(c)(3) entity, and concluding "that it is the conduct of an organization, rather than an organization's status with the Internal Revenue Service, that determines whether it makes communications subject to the Act"). Furthermore, an IRS registered non-profit 501(c)(4) social welfare organization cannot, consistent with that tax exempt status, have a "primary purpose" to engage in independent expenditures. *See* 26 C.F.R. § 1.501(c)(4)-1(a)(ii) ("The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."). Defendants' concession not only supports their liability under New Mexico's Campaign Reporting Act as a non-compliant political committee, it also jeopardizes their purportedly registered status with the IRS as a 501(c)(4) social welfare organization.

infringement claim had his attorneys made an experimental-use argument. 568 U.S. at 259.

- In *Grable*, the plaintiff’s state-law quiet title action necessarily turned on whether the IRS gave proper notice under federal law before seizing and selling real property to satisfy a federal tax lien. *See* 545 U.S. at 311.
- In *Nicodemus*, state-law trespass and unjust enrichment claims against a railroad defendant turned in part on the interpretation of defendants’ rights-of-way created by federal law. *See* 318 F.3d at 1238.

In each case, the courts identified an embedded federal question and then conducted a prudential analysis to determine whether the case warranted “arising under” jurisdiction for the state-law claim, weighing the importance of a federal resolution of the federal question against any impact on the federal-state balance of judicial power.² Here, however, that prudential analysis is unnecessary: the Commission’s campaign-finance disclosure claims contain no embedded federal issue—much less a substantial one requiring an analysis of the Congressional policies underlying § 1331.

A. Whether the state-law claims burden Defendants’ First Amendment rights is not an issue that grounds removal jurisdiction.

Instead of working with the precedents, Defendants say that the Commission’s disclosure claims invoke substantial federal issues because state-law campaign finance disclosure statutes touch on associational rights guaranteed by the First Amendment. *See Resp.* at 2, 5. They then

² *See Gunn*, 568 U.S. at 260 (concluding that although the state-law malpractice claim necessarily raised a federal issue, the federal courts lacked jurisdiction because the embedded federal issue was not “substantial in the relevant sense”); *Grable*, 545 U.S. at 315 (holding federal jurisdiction for the quiet-title claim containing an embedded federal question about proper notice for IRS seizures because “federal jurisdiction to resolve genuine disagreement over federal tax title provisions will portend only a microscopic effect on the federal-state division of labor”); *Nicodemus*, 318 F.3d at 1238 (affirming the district court’s *sua sponte* dismissal for lack of subject matter jurisdiction where plaintiffs’ tort actions involve subjects traditionally relegated to state law and the federal land grant statutes evince no congressional intent to provide a federal forum).

contend that “arising under” jurisdiction is warranted because “the particular facts and circumstances” of this case demonstrate an impact on those rights. *See* Resp. at 5 (quoting *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1244 (10th Cir. 2023)). But whether Defendants’ First Amendment right of association precludes the enforcement of New Mexico’s campaign finance disclosure duties is not a question that must be resolved for a court to decide the merits of the Commission’s claims. Rather, it is an affirmative *defense*. *See* Am. Ans., Counterclaims & Third-Party Compl., at p. 4, filed July 4, 2024 (Doc. 11) (“Affirmative Defense V[:] Plaintiff’s Complaint violations the civil rights of Defendants.”); *see also* *Defense*, BLACK’S LAW DICTIONARY (12th ed. 2024) (noting that an “affirmative defense” is “[a] defendant’s assertion of facts and arguments that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all the allegations in the complaint are true”). For more than a century, the Supreme Court has recognized that federal defenses to state law claims do not ground federal “arising under” jurisdiction. *See Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (“A defense that raises a federal question is inadequate to confer federal jurisdiction.” (citing *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908))). Defendants cannot overcome this rule with conclusory assertions that the “particular facts and circumstances” surrounding their affirmative defenses somehow make this case unique. *See Gunn*, 568 U.S. at 263 (“Such ‘fact-bound and situation-specific’ effects are not sufficient to establish federal arising under jurisdiction.” (citation omitted)).

The cases that Defendants cite to support their view that the Commission’s state-law claims contain an embedded federal issue are unavailing. *See* Resp. at 5. In *Sheeran v. General Electric Co.*, the court concluded that General Electric’s removal was proper because the plaintiff employees could have originally brought their collective bargaining agreement claims under the Taft-Hartley Act. 593 F.2d 93, 97 (9th Cir. 1979). In both *North American Phillips Corp. v.*

Emery Air Freight Corp. and New York v. Local 144, Hotel Nursing Home and Allied Health Services Union, the courts concluded that removal jurisdiction for state-law claims was based on complete preemption by federal law. *See North American*, 579 F.2d 229, 234 (2d Cir. 1978); *State of N.Y.*, 410 F. Supp. 225, 229 (S.D.N.Y. 1976). Not only are these preemption cases doctrinally unrelated to the precedents the Court identified, but they are also inapposite. Congress enacted no law (including the Federal Election Campaign Act) that completely preempts state campaign finance disclosure laws and related state-law causes of action. Defendants' suggestion that removal is proper because the Commission's state-law claims are completely preempted by federal law is unsound.

B. Defendants' third-party complaint asserting violations of 42 U.S.C. § 1983 does not ground removal jurisdiction.

Unable to demonstrate that the Commission's state-law claims contain an embedded federal question, Defendants fall back on their third-party complaint, which asserts claims under 42 U.S.C. § 1983 against the Commission, the seven Commissioners, and the Commission's Executive Director, and a federal claim for violations of Racketeer Influenced and Corrupt Organizations Act ("RICO") against undersigned counsel, the Commission's Executive Director. But just as for defenses and counterclaims, it is well established that claims asserted in a third-party complaint do not ground "arising under" jurisdiction. *See Kislak Co. v. Prominent Properties LLC*, No. 23-2718, 2024 WL 3292755, at *2 (3d Cir. July 3, 2024) (concluding that "[a]s the District Court explained, it has long been well-established that a state court defendant cannot remove an action to federal court based on a federal question appearing in a counterclaim, crossclaim, or *third-party complaint*" (emphasis added) (citations omitted));³ *Malanca v. Worth*,

³ In *Kislak*, the Third Circuit Court of Appeals affirmed an award of cost and fees under § 1447(c) where the defendants removed the case to federal court and indicated in their notice of removal that they "would be filing a third-party

No. 3:11CV0056 SRU, 2011 WL 941371, at *1 (D. Conn. Mar. 16, 2011) (granting plaintiff's motion to remand and concluding that defendants' removal and subsequent filing of federal counterclaims and third-party complaint alleging violations of 42 U.S.C. § 1983 and RICO did not ground federal jurisdiction) (citations omitted); *In re Whatley*, 396 F. Supp. 2d 50, 53–50 (D. Mass. 2005) (granting motion to remand and holding defendants' counterclaim under § 1983, filed after removing the proceeding to federal court, did not establish federal-question jurisdiction).

Against the numerous federal precedents foreclosing their argument, Defendants posit that, by enacting § 1983, Congress intended to open a federal forum for state campaign-finance disclosure claims whenever a party subject to those laws asserts some burden on their federal rights. See Resp. at 4–5. But § 1983 is not itself a jurisdictional statute. When considering the relevance of a § 1983 counterclaim or third-party claim for actual jurisdictional statutes, there are many reasons why Defendants' reliance on their § 1983 third-party claims fails.

First, Defendants' § 1983 claims are not “necessarily raised” within *Gunn*'s and *Grable*'s test for “arising under” jurisdiction for state-law claims. To establish a violation of the Campaign Reporting Act, the Commission is not required to prove a negative—namely, that Defendant's third-party § 1983 claims fail. Because the refutation of a § 1983 third-party claim is not an element of the Commission's state-law claims, there is no federal-question jurisdiction for the state-law claims.

Second, even ignoring the first essential attribute of the “slim category” of state-law claims grounding “arising under” jurisdiction, *Gunn*, 568 U.S. at 258, a prudential analysis forecloses federal jurisdiction for third-party § 1983 claims. By enacting § 1983, Congress did not evince

complaint asserting various federal counterclaims against [the plaintiff], and that removal was jurisdictionally proper because the counterclaims involved various federal questions, including under the Fair Debt Collections Practices Act and Fair Credit Reporting Act.” 2024 WL 3292755, at *4.

“an intent to provide a federal forum” for all § 1983 counterclaims and third-party claims asserted in response to a state-law cause of action. *Nicodemus*, 318 F.3d at 1237 (quoting *Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994) (citation omitted)). A rule allowing jurisdiction for any state-law claim that, after the filing of the complaint, prompts a defendant to file § 1983 third-party claims or counterclaims would “herald[] a potentially enormous shift of traditionally state cases into federal courts.” *Grable*, 545 U.S. at 319. Such jurisdiction would severely “disrupt[] the federal-state balance approved by Congress.” *Gunn*, 568 U.S. at 258. This is especially true where the state-law claims are to enforce the State’s own elections code and where the state courts adjudicating those claims are presumed competent also to adjudicate Defendants’ federal-law affirmative defenses, counterclaims, and third-party claims. *See* Pl.’s Mot. for Remand and Attorneys’ Fees & Costs under 28 U.S.C. § 1447(c), at 11–12 (Doc. 7) (citing cases).⁴ No reading of the *Gunn/Grable* test for federal-question jurisdiction over a state-law claim supports Defendants’ contention that the Court has jurisdiction for this case simply because Defendants filed § 1983 third-party claims after removal.

⁴ A look to jurisdictional statutes other than § 1331 supports this analysis. Following *State of Georgia v. Rachel*, 384 U.S. 780 (1966), Congress did not amend 28 U.S.C. § 1443 to expand removal jurisdiction for civil actions implicating all federal rights enforceable through § 1983. *Rachel* and its progeny have repeatedly held that § 1443 does *not* support removals for alleged denials of federal rights enforceable through § 1983. *See Rachel*, 384 U.S. at 792; *see also generally J.O. v. Alton Cmty. Unit School Dist. 11*, 909 F.2d 267, 269 n.2 (7th Cir. 1990). Notably, the Defendants did not rely on § 1443(1) in their notice of removal. To do so would have been objectively unreasonable. Section 1443 does not support removal jurisdiction in this case because Defendants did not assert claims under federal law “providing for specific civil rights stated in terms of racial equality” (such as the Civil Rights Act of 1964) and nothing in New Mexico’s Campaign Reporting Act would prevent the New Mexico state courts from enforcing any asserted federal rights to racial equality. *See Johnson v. Mississippi*, 421 U.S. 213, 219 (1975) (quoting *Rachel*, 384 U.S. at 792). Even though Defendants have made both inapposite allegations about the race of the Commissioners, their appointing authorities, and their employees, and false allegations that the Commission was “racially motivated,” Am. Ans., Counterclaims and Third-Party Compl., ¶ 34 (Doc. 11), those allegations cannot not support federal jurisdiction under § 1443. *See, e.g., Johnson*, 421 U.S. at 219. Moreover, Congress’s decision not to amend § 1443 after *Rachel* provides further evidence that, by enacting § 1983 (originally on April 20, 1871), Congress did *not* intend to open a federal forum for all § 1983 counterclaims and third-party claims that a defendant asserts in response to a state-law civil enforcement action that may be brought exclusively in state court. That was not Congress’s purpose in 1871 or since.

Last, another line of “arising under” precedent forecloses Defendants’ argument. In *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, the Supreme Court explained why “arising under” jurisdiction cannot be based on claims other than those asserted in a plaintiff’s well-pleaded complaint:

Allowing a counterclaim to establish ‘arising under’ jurisdiction would also contravene the longstanding policies underlying our precedents. First, since the plaintiff is ‘the master of the complaint,’ the well-pleaded-complaint rule enables him, ‘by eschewing claims based on federal law, . . . to have the cause heard in state court.’ The rule proposed by respondent, in contrast, would leave acceptance or rejection of a state forum to the master of the counterclaim. It would allow a defendant to remove a case brought in state court under state law, thereby defeating a plaintiff’s choice of forum, simply by raising a federal counterclaim. Second, conferring this power upon the defendant would radically expand the class of removable cases, contrary to the ‘[d]ue regard for the rightful independence of state governments’ that our cases addressing removal require. And finally, allowing responsive pleadings by the defendant to establish ‘arising under’ jurisdiction would undermine the clarity and ease of administration of the well-pleaded-complaint doctrine, which serves as a ‘quick rule of thumb’ for resolving jurisdictional conflicts.

535 U.S. 826, 831–32 (2002) (citations omitted). Given the reasoning in *Holmes Group*, there is no meaningful distinction between a counterclaim and a third-party complaint, and numerous courts have recognized as much. See, e.g., *HCR Manorcare Health Services-Chevy Chase v. Salakpi*, No. 09-CV-2614 RWT, 2010 WL 1427428, at *2 (D. Md. April 8, 2010) (“Of course, when there is no subject-matter jurisdiction over the original action between plaintiff and defendant, it cannot be created by adding a third-party claim over which there is jurisdiction.” (quoting 6 Wright, Miller, et al., *Fed. Prac. & Proc.* § 1444)); *Cross Country Bank v. McGraw*, 321 F. Supp. 2d 816, 820 (S.D. W. Va. 2004) (granting a motion for remand and concluding that “this Court fails to find a distinction between a counterclaim and a third-party complaint that would

enable a cause of action contained in the latter to create federal question jurisdiction” (citation omitted)). Defendants do not attempt to meet the reasoning of *Holmes Group* and, accordingly, their third-party complaint asserting violations of 42 U.S.C. § 1983 does not ground removal jurisdiction.

III. Costs and fees are warranted.

All of this law was available for Defendants to read before they noticed their removal. Most of it is available in treatise or textbook form in Wright and Miller or Hart and Wechsler. The Court even pointed out the central precedents in the order scheduling a hearing, giving Defendants ample opportunity to explain how their removal was somehow proper. Instead, Defendants largely ignore the central precedents and stand on the conclusory and deficient assertions contained in their notice of removal.

An award of costs and fees in these circumstances is well-supported by federal appellate precedent. The Third Circuit recently affirmed the district court’s award of costs and fees for a notice of removal premised on the assertion that the defendants “would be filing a third-party complaint asserting various federal counterclaims against [the plaintiff], and that removal was jurisdictionally proper because the counterclaims involved various federal questions[.]” *Kislak*, 2024 WL 3292755, at *4. Defendants’ removal is not meaningfully different. And this is not the first time that parties represented by defense counsel have been sanctioned under § 1447(c) for removing a state civil enforcement action on specious federal-question grounds. *See New Mexico ex rel. Balderas v. Valley Meat Co., LLC*, No. 14-CV-1100 JB/KBM, 2015 WL 3544288, at *26 (D.N.M. May 20, 2015), *reconsideration denied*, 2015 WL 9703255 (D.N.M. Dec. 14, 2015). For all these reasons, the Court should award costs and fees against Defendants for their objectively unreasonable removal. *See* 28 U.S.C. § 1447(c).

CONCLUSION

The Court should grant the Commission's motion for remand and award costs and fees under § 1447(c).

Respectfully submitted: July 16, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2024, I filed and served a true and correct copy of the foregoing on all counsel of record via filing with the CM/ECF filing system.

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

STATE ETHICS COMMISSION,

Plaintiff,

v.

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

Defendants.

No. 1:24-cv-00652-WJ-LF

PLAINTIFF'S NOTICE OF COMPLETION OF BRIEFING

COMES NOW Plaintiff State Ethics Commission, through the undersigned counsel, and under D.N.M.LR-Civ. 7.4(e), submits this Notice of Completion of Briefing on Plaintiff State Ethics Commission's Motion for Remand and Attorney's Fees and Costs Under 28 U.S.C. § 1447(c). Briefing for this motion consists of:

1. Plaintiff's Motion for Remand and Attorney's Fees and Costs under 28 U.S.C. § 1447(c), filed June 28, 2024 (Doc. 7);
2. Defendants' Response to Motion for Remand and Attorney's Fees and Costs, filed July 12, 2024 (Doc. 12); and
4. Plaintiff's Reply in Support of its Motion for Remand and Attorney's Fees and Costs under 28 U.S.C. § 1447(c), filed July 16, 2024 (Doc. 13).

This briefing is now complete, and the above-referenced motion is ready for decision.

Respectfully submitted: July 16, 2024

By: /s/ Jeremy Farris

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2024, I filed and served a true and correct copy of the foregoing on all counsel of record via filing with the CM/ECF filing system.

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

STATE ETHICS COMMISSION,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs,

And

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

JEFF APODACA,

Third Party Plaintiff,

v.

JEREMY FARRIS; WILLIAM F. LANG;
JEFFREY L. BAKER; STUART M. BLUESTONE;
CELIA CASTILLO; TERRY MCMILLAN;
RONALD SOLIMON; JUDY VILLANUEVA,

Third Party Defendants.

NOTICE OF ENTRY OF APPEARANCE

Long, Komer & Associates, P.A. (Nancy R. Long and Jonas M. Nahoum) hereby enters its appearance as counsel of record in this matter for Plaintiff/Counter-Defendant State Ethics Commission.

LONG, KOMER & ASSOCIATES, P.A.
Attorneys for Plaintiff/Counter-Defendant SEC

/s/ Nancy R. Long
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July 2024, I filed the foregoing pleading electronically through the CM/ECF system, which caused all counsel of record to be served electronically, as more fully reflected on the Notice of Electronic Filing.

/s/ Nancy R. Long
Nancy R. Long

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

Clerk's Minutes

Before the Honorable Chief Judge William P. Johnson

Case No.: CV24-652 WJ/LF

Date: 7/19/2024

Parties: State Ethics Commission v. TNMP, Inc. et al and Jeff Apodaca

Courtroom Clerk/Law Clerk: R. Garcia/none

Court Reporter: M. Loughran

Interpreter: N/A

Type of Proceeding: Hearing on (Doc. 7) Plaintiff's Motion to Remand and (Doc. 9) Defendants Counterclaim and/or Third-Party Complaint

Place of Court: Albuquerque

Total time in Court: 33 minutes

Evidentiary Hearing: NO

Attorneys Present for Plaintiff(s):

Jeremy Farris, James Boyd and
Jonas Nahoum,

Attorneys Present for Defendant(s):

Jared Vander Dussen and A. Bair Dunn

Proceedings:

1:35 Court in session; counsel enter appearances.

The Court takes-up motions.

Mr. Farris addresses the Court re Plaintiff's Motion to Remand to state court, including Defendants' counter claims and third-party claims; requests expeditious remand to including costs and fees.

1:44 Mr. Dunn responds on behalf of Defendants.

2:00 Mr. Farris replies.

2:06 Court takes a short break.

2:15 Court back in session.

The Court makes findings and grants plaintiff's motion for remand; Court's opinion will issue today or Monday.

2:17 Court in recess.