

NEW MEXICO

CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 12/20/13. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

This guide summarizes key aspects of *state* campaign finance law and regulations. It is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

Table of Contents

- I. **Contribution Limits and Source Restrictions**
 - a. Contribution Limits Chart
 - b. Contributions from Regulated Industries
 - c. Utilities' Contributions to Public Regulations Commission Candidates
 - d. Contributions during Legislative Session
 - e. Anonymous Contributions
 - f. Contributions in the Name of Another
- II. **Communications**
 - a. Issue Advocacy vs. Express Advocacy
 - b. Membership Communications
 - c. Independent Expenditures
 - d. Disclaimers
 - i. Printed Materials
 - ii. Telephone Calls
- III. **Registration and Reporting Requirements**
 - a. Definition of Political Committee
 - b. PAC Administration
 - i. Treasurer
 - ii. Bank Account
 - c. Registration
 - i. General
 - ii. Out-of-State PACs
 - d. Corporate Support for a PAC
 - e. Reporting
 - i. General Requirements
 - ii. Non-Election Year Bi-Annual Reports
 - iii. Election Year Reporting
 - iv. Termination Report
 - f. Public Access to Reports
- IV. **Enforcement and Penalties**
 - a. Civil Penalties
 - b. Late Filing or Failure to File
 - c. Criminal Enforcement
- V. **Contact Information for State and Local Agencies**

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

Important Note:

In 2009, the New Mexico state legislature amended the campaign finance law, imposing limits on political contributions, effective following the November 2010 election. See [N.M. Stat. §§ 1-19-34.7, 34\(C\)](#). However, some of these limits were subsequently enjoined by a federal district court in January 2012. ([Republican Party of N.M. v. King](#), 2012 U.S. Dist. LEXIS 7225 (Jan. 5, 2012)).

As of the date of publication of this guide (7/13/12), certain provisions of the New Mexico Campaign Reporting Act as amended in 2009 pertaining to contribution limits are enjoined and not currently being enforced. Specifically:

- The provision imposing limits on contributions designated and segregated for use as independent expenditures is enjoined
- The provision imposing limits on contributions directed towards candidates in federal elections is enjoined (although contribution limits for these offices are imposed by the Federal Election Campaign Act)

The provision imposing limits on contributions for non-independent expenditures (including direct or coordinated contributions to state candidates) remain in effect.

This Preliminary Injunction shall remain in effect pending appeal unless stayed by the Tenth Circuit Court of Appeals.

Limits are per election, with primary and general elections counted separately.¹

From ↓	To Candidates			To Committees		To Ballot Measures
	Statewide including Governor	Non-statewide	Municipal ²	PACs	Parties	
Individuals	\$5,200	\$2,400	Some cities have own limits (e.g. Albuquerque)	\$5,200*	\$5,200	Unlimited
PACs	\$5,200	\$5,200	Some cities have own limits (e.g. Albuquerque)	\$5,200*	\$5,200	Unlimited

¹ On the day after each general election, the contribution amounts provided in Subsection A of this section shall be increased by the percentage of the preceding two calendar year's increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States Department of Labor. NMSA 1-19-34.7 (D)

² Some municipal jurisdictions such as Albuquerque have significant and detailed restrictions and reporting obligations with regard to contributions to individuals, committees, ballot measures or PACs. See <http://www.cabq.gov/clerk/elections/>.

Corporations	\$5,200	\$2,400 (see requirements for Public Regulation Commission)	Some cities have own limits (e.g. Albuquerque)	\$5,200*	\$5,200	Unlimited
--------------	---------	--	---	----------	---------	-----------

* PACs may accept unlimited contributions from individuals, corporations, and other PACs so long as those contributions are segregated and designated for use for independent expenditures only.

Contributions from Regulated Industries

- It is unlawful for an elected state official, public officer or employee who works for a regulatory office – or a candidate running for that office – to solicit contributions from a person who is “directly regulated” by the office. “Directly regulated” is narrowly defined to include only those persons whose charges are set or approved by the regulatory office or whose license to do business is approved by the regulatory office. [N.M. Stat. § 1-19-34.2](#).

Utilities’ Contributions to Public Regulation Commission (PRC) Candidates

- Contributions to PRC candidates are limited to \$500 per person per election. [N.M. Stat. § 8-8-19\(C\)](#).
- PRC candidates may not accept anything of value, directly or indirectly, from a person whose charges for services are regulated by the Commission. [N.M. Stat. § 8-8-19\(C\)](#).

Contributions during Legislative Session

- A state legislator or a candidate for the state legislature may not solicit a contribution for a political purpose while the legislature is in regular or special session. The prohibition period begins on January 1 prior to any regular session, and upon issuance of the Governor’s Proclamation for a special session, and it ends with adjournment. [N.M. Stat. § 1-19-34.1\(A\)](#).
- The Governor, his campaign and other agents may not solicit a contribution for a political purpose while the legislature is in regular or special session. For the Governor, the prohibition period is the same as for legislators, except that the period ends on the twentieth day after adjournment. [N.M. Stat. § 1-19-34.1\(B\)](#).

Anonymous Contributions

- No anonymous contributions may be accepted in excess of \$100. The aggregate amount of anonymous contributions received by a reporting individual during a primary or a general election or statewide special election may not exceed \$2,000 for statewide races or \$500 for all other races. [N.M. Stat. § 1-19-34\(B\)](#).

Contributions in the Name of Another

- It is unlawful for a person or a political committee to make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person. [N.M. Stat. § 1-19-34.3](#).

COMMUNICATIONS

Issue Advocacy vs. Express Advocacy

- New Mexico’s campaign finance law does not clearly define “express advocacy”. However, the law broadly regulates all activities carried out for a “political purpose,” which is defined as an attempt to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters. See [N.M. Stat. § 1-19-26\(A\), \(L\), \(J\), \(M\)](#).
- The term “political purpose” has been narrowly construed to regulate only “express advocacy” for the election or defeat of a clearly identified candidate, or its functional equivalent. *N.M. Youth Organized v. Herrera*, 611 F.3d 669 (10th Cir. 2010).³ This requires the use of “magic words” such as “vote for” or “oppose”, or the communication must otherwise be susceptible of no other reasonable interpretation than an appeal to vote for or against a specific candidate. See, *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Wisconsin Right for Life* 551 U.S. 449 (2007).

Membership Communications

- New Mexico law does not exclude membership communications from its definition of reportable expenditures. See [N.M. Stat. §§ 1-19-26\(J\), 1-19-31](#).

Independent Expenditures

- New Mexico’s campaign finance law does not explicitly define independent expenditures. However, entities – including individuals, PACs, and corporations – who engage in activities for a “political purpose” are required to register and file disclosure reports with the secretary of state.

Disclaimers

- Printed Materials
 - It is unlawful for any person, organization, or political committee to publish or print any campaign advertising or communication which does not specify the name or the name of a responsible officer who

³ Editor’s Note: However, the Secretary of State continues to enforce the ambiguous term and interprets the definition of political committee as spending more than \$500 for a “political purpose” despite the ruling in *N.M. Youth Organized v. Herrera*.

authorized the printing or publication of such material in any election. This prohibition extends only to handbills, petitions, circulars, letters, or similar written material. [N.M. Stat. § 1-19-16](#).

- Telephone Calls
 - If a campaign committee or political committee required to register pays for 500 or more telephone calls that are similar in nature, and the call advocates supporting or opposing a candidate or ballot measure, the caller must identify the entity paying for the call. The sponsor must maintain a record of the call script for at least 90 days. [N.M. Stat. § 1-19-26.3](#).

REGISTRATION AND REPORTING REQUIREMENTS

Definition of Political Committee

- A political committee is currently defined as two or more individuals (other than a candidate's immediate family or campaign committee, or husband and wife that make contributions out of a joint account) who are selected, appointed, chosen, associated, organized or operated *primarily* for a political purpose. [N.M. Stat. §§ 1-19-26\(L\)](#). "Political purpose" is defined as influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters. [N.M. Stat. §§ 1-19-26\(M\)](#).
- In order to be regulated as a political committee, a person (entity or individual), must receive or spend more than \$500 in a calendar year for political purpose.⁴
- However, in *N.M. Youth Organized v. Herrera*, 611 F.3d 669 (10th Cir. 2010), these provisions were deemed unconstitutional as applied to groups who did not have as their primary purpose the support or opposition of candidates.

PAC Administration

- Treasurer
 - Prior to accepting contributions or making expenditures in excess of \$500, a political committee must appoint and maintain a treasurer. All disbursements of money and receipts of contributions must be authorized by the treasurer. [N.M. Stat. §§ 1-19-34\(A\)](#).
 - The treasurer does not need to be a New Mexico resident.
- Bank Account

⁴ Note that if an organization spends more than \$500 on attempting to influence an election or measure, and its *primary purpose* is something other than influencing elections, the statute indicates the organization is a political committee.

- A political committee or candidate must maintain a separate bank account in which it deposits all receipts and from which it makes all disbursements. The account must be in the name of the candidate or political committee. [N.M. Stat. §§ 1-19-34\(A\)\(3\)](#).
- A political committee's bank account does not need to be located in New Mexico.

Registration

- A political committee must register with the Secretary of State within ten days of receiving, contributing or spending more than \$500. [N.M. Stat. § 1-19-26.1\(A\)](#). The statute does not limit this only to spending for a political purpose, and the Political Committee Registration Form similarly states that political committees must register within 10 days of “receiving or spending \$500”, indicating that this \$500 threshold includes *any* contributions or expenditures, not only *political* contributions or expenditures.
- To register, political committees must pay a \$50 filing fee and file Political Committee Registration Form (“statement of organization”) with the Secretary of State (2012 version available [here](#)). The Statement of Organization requires:
 - the name of the committee, which must “fairly and accurately reflect” the identity of the committee and of any sponsoring organization;
 - the purpose,
 - the relationship of any “connected or associated organization or entity” and its address;
 - the names and addresses of the officers; and
 - the identification of the bank used by the committee for all expenditures or contributions made or received.

[N.M. Stat. § 1-19-26.1](#).

- Out-of-State PACs
 - Federal PACs do not need to register if they report all of their New Mexico activity on their Federal Election Commission reports and submit to the Secretary of State either the full reports or the cover page and the pages detailing the PAC's New Mexico receipts and expenditures. These reports must be filed on the schedule required by the FEC. [N.M. Stat. § 1-19-26.1\(C\)](#).

Corporate Support for a PAC

- An organization may sponsor a PAC and pay the PAC's administrative and solicitation expenses without those payments counting as a reportable contribution or expenditure. [N.M. Stat. §§ 1-19-26\(F\), \(J\)](#).

- The state does not restrict whom the PAC may solicit. A corporate-sponsored PAC may raise money from members and non-members alike.

Reporting

- General Requirements
 - Political committees file period disclosure reports with the Secretary of State. [N.M. Stat. § 1-19-27](#).
 - Reports must be filed electronically ([N.M. Stat. § 1-19-29\(J\)](#)), but electronic filing may be waived in cases of hardship ([N.M. Stat. § 1-19-29\(K\)](#)). [New Mexico Campaign Finance Information System](#).
 - [2012 Campaign Reporting Schedule](#), published by the New Mexico Secretary of State.
- Non-Election Year Bi-annual Reports
 - A political committee must file a report by 5:00 p.m. on the second Monday in April and October, detailing all contributions received and expenditures made on or before the first Monday of those months and not previously disclosed. [N.M. Stat. § 1-19-29\(A\)](#).
- Election Year Reporting
 - During election years, political committee must file reports detailing contributions received and expenditures made or, if applicable, statements of no activity, on the following schedule:
 - by 5:00 p.m. on the second Monday in April (covering the period on or before the first Monday in April and not previously reported;
 - by 5:00 p.m. on the second Monday in May (covering the period on or before the first Monday in May and not previously reported;
 - by 5:00 p.m. on the second Monday in September (covering the period on or before the first Monday in September and not previously reported;
 - by 5:00 p.m. on the second Monday in October (covering the period on or before the first Monday in October and not previously reported;
 - by 5:00 p.m. on the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election.

[N.M. Stat. § 1-19-29\(B\).](#)

- *24-Hour Reports:* Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election for \$500 or more for legislative or non-statewide judicial elections, or \$2,500 or more for statewide elections, must be reported within 24 hours of receipt, or in the report to be filed by 5:00 p.m. on the Thursday before the election. Any such contributions or pledges received after 5 p.m. on the Friday before the election may be reported by noon on the Monday before the election. [N.M. Stat. § 1-19-29\(B\)\(5\).](#)
- *Post-Election Reports:* A report is due by 5 p.m. on the 30th day after a primary, general or statewide special election, reporting all expenditures made and contributions received on or before the 25th day after the election that have not been previously disclosed. [N.M. Stat. § 1-19-29\(B\)\(6\).](#)
- *Certified Candidate Reports:* Political committees making expenditures to influence a race involving a “certified candidate” shall report all previously unreported transactions through 5:00 p.m. two days before the report is due, and must be submitted on the following schedule:
 - For the primary election – by 5:00 p.m. on the second Monday in May, on the eleventh day before the election, and on the Thursday before the election.
 - For the general election – by 5:00 p.m. on the first Tuesday in October, on the eleventh day before the election, and on the Thursday before the election.

[N.M. Stat. § 1-19A-9\(F\).](#)

- Termination Report
 - PACs are required to submit reports until the treasurer has delivered a report to the Secretary of State confirming there are no outstanding campaign debts, all monies have been expended in accordance with law and the bank account has been closed. [N.M. Stat. § 1-19-29\(G\).](#)

Public Access to Reports

- All documents filed with the Secretary of State concerning contributions and expenditures are public documents available for inspection, as are advisory opinions or arbitration opinions. [N.M. Stat. § 1-19-32\(A\).](#)

- The Secretary of State is required to provide for electronic access to all reports of expenditures and contributions and such electronic access shall include access via the internet and shall be “in an easily searchable format.” [N.M. Stat. § 1-19-32](#).
- [New Mexico Campaign Finance Information System](#).

ENFORCEMENT AND PENALTIES

Civil Penalties

- If the Secretary of State reasonably believes that a violation has occurred, the Secretary of State shall refer the matter to the Attorney General or a district attorney. [N.M. Stat. § 1-19-34.6](#).
- The Attorney General or district attorney may institute a civil action to prevent a violation of the Campaign Reporting Act that involves an unlawful solicitation of the making or acceptance of an unlawful contribution. Civil penalties may include a \$250 fine for each violation, not to exceed \$5,000, and forfeiture of any contribution received as a result of unlawful solicitation or unlawful contribution. [N.M. Stat. § 1-19-34.6](#).
- Violations of the Campaign Reporting Act other than unlawful solicitation or contribution are subject to civil penalties subject to restraining orders and/or civil penalties of up to \$50 for each violation, not to exceed a total of \$5,000. [N.M. Stat. § 1-19-34.6](#).

Late Filing or Failure to File

- Filing a late, false or incomplete campaign report may result in a penalty of up to \$50 per day, to a total of \$5,000. [N.M. Stat. § 1-19-35\(A\)\(B\)](#).
- The failure to file or late filing of a 24-hour pre-election report may trigger a penalty equal to the amount of each unreported or late-reported contribution. [N.M. Stat. § 1-19-35\(C\)](#).

Criminal Enforcement

- Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both. The Act may be enforced by the Attorney General or the appropriate district attorney. [N.M. Stat. § 1-19-36](#).

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

New Mexico Secretary of State

www.sos.state.nm.us

New Mexico State Capitol
325 Don Gaspar, Suite 300
Santa Fe, NM 87501

Phone: 505.827.3600/800.477.3632

Fax: 505.827.8403

Email: nm.sos@state.nm.us

[Diana J. Duran](#), Secretary of State
[Bobbi Shearer](#), Director, Bureau of
Elections

Santa Fe City Clerk

www.santafenm.gov

Yolanda Vigil, City Clerk

Phone: 505.955.6521

Fax: 505.955.6910

yyvigil@ci.santa-fe.nm.us

Albuquerque City Clerk

www.cabq.gov/clerk/elections/

Amy Bailey, City Clerk

Telephone: (505) 924-3650

Fax: (505) 924-3660

cityclerk@cabq.gov

Bernalillo County Clerk

www.bernco.gov/clerk/

Maggie Toulouse Oliver, County Clerk

Phone: 505-468-1290

Fax 1: 505-468-1293 (Bureau of
Elections)

Fax 2: 505-468-1294 (Recording and
Filing)

clerk@bernco.gov

Written by Joe Goldberg and John Boyd, 20 First Plaza, Ste. 700, P.O. Box 25326, Albuquerque, NM 87102

© Copyright 2007. These materials are copyrighted and may not be reproduced without permission.

FOR FURTHER ASSISTANCE

For assistance regarding these resources or for more information about federal law, please contact our attorney one-on-one counseling service:

**Email: advocacy@afj.org
Telephone: 1-866-NPLOBBY
(675-6229)**

For assistance regarding state law in New Mexico, please contact:

**Sara Berger, Attorney at Law, LLC
600 Central Ave SE, Suite 237, P.O. Box 7808
Albuquerque, NM 87194
505-842-5074
sara@sarabergerlaw.com**