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NEW MEXICO SECRETARY OF STATE

RULE HEARING

HELD JULY 13, 2017

State Capitol Building
491 Old Santa Fe Trail
Room 322

Santa Fe, New Mexico 87501

9:00 a.m. to 11:05 a.m.

REPORTED BY:

BELEN SOTO, NM CCR#106, RMR
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1 HEARING OFFICER LANGE: Bring the hearing
2 to order now. So the hearing will now come to order.
3 Today is July 13th, 2017. The time is 9:01 a.m. And we
4 are assembled at the State Capital Building, Room 322 in
5 Santa Fe, New Mexico. My name is Dylan Lange, I'm an
6 assistant attorney general, and I'll be acting as the
7 presiding officer for this public comment rule hearing.

8 The purpose of this hearing is for the
9 New Mexico Office of the Secretary State to receive
10 public comment, views, argument, testimony and data on
11 its proposed rule to be codified as 1.10.13 NMAC. The
12 Secretary of State welcomes everyone present at the
13 hearing whether in person or remotely.

14 MS. TOULOUSE OLIVER: Good morning. My
15 name's Maggie Toulouse Oliver, I'm Secretary of State.
16 I just wanted to say a brief welcome to all of you.
17 Thank you, all of you for being here, for taking the
18 time to give us your thoughtful and considered feedback
19 on this rule. It will help us do the best job that we
20 possibly can in -- in developing the rule. And just
21 really appreciate your participation in this process.
22 And then just want to thank all my staff for being here.
23 And Mr. Lange, thank you for conducting the hearing this
24 morning.

25 HEARING OFFICER LANGE: Thank you, Madam

1 Secretary.

2 This hearing is being conducted pursuant
3 and in accordance with NMSA 1978 Section 1-19-66.2,
4 which authorizes the secretary of state to adopt and
5 promulgate rules and regulations to implement the
6 provisions of the Campaign Reporting Act, also the APA
7 NMSA Chapter 12, Article 8 and the State Rules Act
8 Chapter 14, Article 4.

9 Public notice for this hearing was
10 advertised in the New Mexico Register on June 13th,
11 2017; in the Albuquerque Journal, the Santa Fe
12 New Mexican and the Las Cruces Sun-News on June 13th,
13 2017. Copies of the proposed rules have been available
14 at the secretary of state's office since the notice were
15 published. Copies of proposed rules were also published
16 on the secretary of state's website, and were available
17 to anyone who requested them as of June 13. Copies of
18 the proposed rules are also available for the public
19 attending this hearing on a table located near the door.
20 And this hearing's also being live streamed on the
21 secretary of state's website at
22 <http://www.sos.state.nm.us>.

23 May I remind everyone to please sign the
24 attendance sheet whether you plan to give testimony or
25 not. There is a attendance sheet for both individuals

1 wanting to give testimony on a specific part of the
2 rule, and the attendance sheet just, generally, for
3 being here. It's important for you to sign the
4 attendance sheet. This attendance sheet will be offered
5 as an exhibit to the rule hearing record.

6 Let the record show that staff from the
7 New Mexico Office of the Secretary of State is present.
8 The Secretary of State, Ms. Maggie Toulouse Oliver, is
9 here, Deputy Secretary John Blair, Elections Director
10 and Chief Information Officer Kari Fresquez, and Deputy
11 Elections Director Mandy Vigil along with other
12 secretary of state staff.

13 This is a formal proceeding, and the court
14 reporter has been designated to transcribe the
15 proceedings. The transcript from this hearing will
16 become part of the rule hearing record, therefore,
17 persons recognized to testify or offer comments are
18 asked to, number one, identify yourself each time you
19 speak and each time you address me as the presiding
20 officer, and speak loudly and clearly enough so that the
21 court reporter can hear you and members of the audience
22 can hear you. There are microphones set up. When you
23 do give your public comment, please, come forward, speak
24 into the microphones. You can either stand or sit,
25 whatever you require.

1 I ask that all cell phones be silenced at
2 this point, and ask if any extended conversations are
3 had, to please take them outside if you're not giving
4 testimony.

5 The hearing will be conducted in the
6 following manner. The secretary of state's office will
7 present exhibits to me, the presiding officer, and I'll
8 rule on admissibility of the exhibits. Exhibits offered
9 into evidence are available for review. After staff
10 offers exhibits and their admission has been ruled upon
11 I will open the hearing for testimony and comments from
12 the audience.

13 If you have indicated that you would like
14 to testify, you should have signed your name on the
15 corresponding attendance sheet. So if you intend to
16 speak on Part 7 - Definitions, you need to have signed
17 up for that attendance sheet. And the attendance sheet,
18 again, is by the door as you came in.

19 I'll be honest, I haven't seen the
20 attendance sheet. So just by show of hands, how many
21 people are intending to testify today?

22 Okay. We're encouraged by that number.
23 But due to the large amount of participants, we will
24 limit the testimony to three minutes. And after three
25 minutes has expired, you'll be asked to sit down.

1 Speakers will be given a 30 second warning before three
2 minutes are up. If you would like to submit written
3 testimony, we'll accept written testimony after the
4 conclusion of your three-minute public comment if you
5 weren't able to get through it all.

6 We'd also ask you to limit your testimony
7 to the particular section that we're on or the part that
8 we're on, you can have an additional three minutes if
9 you speak on a different part of the rule.

10 After a person has testified, any member
11 of the audience wishing to ask a question to that person
12 may do so after being recognized by me. Each person
13 recognized to speak shall identify him or herself for
14 the record. Questions will be limited to only
15 clarifying questions to the person who offered
16 testimony.

17 In asking clarifying questions, please be
18 aware that this hearing is scheduled for three hours,
19 and we need to be respectful of everyone's time and
20 opinion. This public hearing is intended to provide the
21 public with an opportunity to voice its opinions on the
22 proposed rule.

23 The public hearing is now open. Does the
24 secretary of state staff have any exhibits it would like
25 to introduce into evidence at this time?

1 MS. FRESQUEZ: Mr. Lange, I do have some
2 exhibits to enter into evidence. I have the legal
3 notice published in the New Mexico Register.

4 (Exhibit 1 marked)

5 MS. FRESQUEZ: I have the legal notice
6 published in the Albuquerque Journal.

7 (Exhibit 2 marked)

8 MS. FRESQUEZ: I have the legal notice
9 published in the Santa Fe New Mexican.

10 (Exhibit 3 marked)

11 MS. FRESQUEZ: And the legal notice
12 published in the Las Cruces Sun-News.

13 (Exhibit 4 marked)

14 MS. FRESQUEZ: And, finally, the proposed
15 rule to be codified as 1.10.13.1-.31 NMSC Campaign
16 Finance.

17 (Exhibit 5 marked)

18 HEARING OFFICER LANGE: Thank you
19 Ms. Fresquez. I'll admit Exhibits 1 through 5 into the
20 record.

21 Any person wishing to submit additional
22 documents, arguments or testimony shall do so after
23 they're recognized by the presiding officer, each
24 document shall be introduced as an exhibit in the
25 record. And upon the ruling of admissibility each

1 exhibit will be marked and numbered into the record. I
2 ask if there are any written public comments, to please
3 now present them to myself or to the secretary of state
4 staff, and we'll enter them into exhibits.

5 For instance, we have a written comment
6 received today, which I will mark as Exhibit 6, from
7 Rita Robbins.

8 (Exhibit 6 marked)

9 HEARING OFFICER LANGE: Are there any
10 other written comments that you would like me to
11 consider for admittance into evidence at this time,
12 members of the public? Please bring them forward.

13 MEMBER OF PUBLIC: Point of
14 clarification, sir?

15 HEARING OFFICER LANGE: Yeah.

16 MR. HAMILTON BROWN: My name's Hamilton
17 Brown from Arroyo Seco, New Mexico. If I'm going to
18 speak off my comment, do I submit at the time I make my
19 comment or now?

20 HEARING OFFICER LANGE: The choice is up
21 to you, but you should submit it after your statement.

22 MR. HAMILTON BROWN: Thank you.

23 HEARING OFFICER LANGE: Having seen no
24 offers of written -- oh, we have two, and I will mark
25 them as Exhibit 7 and Exhibit 8 and admit them.

1 (Exhibit 7 marked)

2 (Exhibit 8 marked)

3 MS. FRESQUEZ: Mr. Lange?

4 HEARING OFFICER LANGE: Yeah.

5 MS. FRESQUEZ: We have further comments.

6 HEARING OFFICER LANGE: Yes, sir?

7 MR. T.J. TRUJILLO: Mr. Hearing Officer,
8 just a quick procedural question. My name's
9 T.J Trujillo with the law firm Gallagher & Kennedy. Is
10 there going to be any additional evidence outside the
11 public comments at the next two public hearings that
12 will be submitted, or is all the evidence submitted on
13 behalf of the secretary of state's office going to be
14 done just in this proceeding today?

15 HEARING OFFICER LANGE: So thank you for
16 your question. We will admit written testimony up until
17 next Wednesday at 5:00 after the conclusion of the
18 Las Cruces public hearing. And oral testimony will also
19 be admitted at those two public hearings. And I'm being
20 told that maybe the secretary of state's office will not
21 submit any further evidence.

22 MR. T.J. TRUJILLO: Thank you,
23 Mr. Hearing Officer.

24 HEARING OFFICER LANGE: Having seen no
25 further offers of written testimony I ask that any

1 person who will testify or comment at this rule hearing
2 to please rise and be sworn in. Will you all raise your
3 right hand, please?

4 (ALL WITNESSES SWORN IN)

5 HEARING OFFICER LANGE: Do you solemnly
6 swear or affirm that the testimony or commentary you are
7 about to give will be the truth, the whole truth and
8 nothing but the truth?

9 ALL WITNESSES: I do.

10 HEARING OFFICER LANGE: Thank you.

11 Let the record show that all persons
12 intending to testify or comment at this hearing have
13 sworn or affirmed that his or her testimony or
14 commentary will be truthful.

15 The proposed rule has been introduced into
16 the record. I will now open the floor to the audience
17 for testimony and comments on each part of the rule.
18 The audience may ask clarifying questions to each person
19 after providing his or her testimony. One minute will
20 be allowed to respond to the positive clarifying
21 question.

22 So I will call now individuals up by how
23 they signed in on the attendance sheet. Please note
24 that we are starting with Section 7 which is entitled,
25 Definitions. If you have signed up for speaking for

1 definitions, please prepare yourself to give a
2 statement.

3 Our first person on the list is Mr. Tyler
4 Martinez. Please come forward and provide your public
5 testimony.

6 Oh, I'm sorry. And as you're preparing
7 yourself, Ms. Fresquez?

8 MS. FRESQUEZ: Section 7 is Definitions.
9 This section defines important terms used in the rule
10 and the Campaign Reporting Act, terms such as
11 advertisement, ballot measure, coordinated expenditure,
12 independent expenditure, loans, debts, treasure and
13 others.

14 HEARING OFFICER LANGE: Thank you.

15 MR. TYLER MARTINEZ: Mr. Hearing Officer,
16 my name is Tyler Martinez. I'm with the Center for
17 Competitive Politics. I did have one question for
18 clarification. We're starting with Section 7, not
19 Section 3, and I would like to, briefly, speak on
20 Section 3 if that is all right at some point, either
21 later today or now.

22 HEARING OFFICER LANGE: What would you
23 like to say, I guess? We normally just want it to be
24 specific to Section 7, but if you would like to speak,
25 briefly, on Section 3, you may.

1 MR. TYLER MARTINEZ: Thank you. I will
2 speak just very briefly on that.

3 I am, like I said, from the Center of
4 Competitive Politics. We are a 501(c)(3) nonprofit,
5 nonpartisan organization that focuses on First Amendment
6 rights for speech, petition and assembly. What does
7 that mean? We do campaign finance law. We eat,
8 breathe, sleep this stuff. We make campaign finance
9 jokes in the office or the functional equivalent. We
10 love this stuff. Thanks I appreciate that.

11 Just to briefly speak on Subsection 3 on
12 the statutory authority. The Center is not entirely
13 convinced that there is a statutory authority to
14 promulgate this rule in the -- in so much as that it
15 incorporates SB96. SB96 was a bill that was run by the
16 state legislature this session. It was ultimately
17 vetoed by the governor.

18 We don't believe that simply incorporating
19 that language into a proposed rule making will -- will
20 be valid under state law. We believe that it violates
21 the State Rules Act, especially as it has been amended
22 by House Bill 58 also this year, that just passed this
23 year, which clarifies that there must be specific
24 statutory authority. Since the Campaign Reporting Act
25 says that the secretary may only write rules that

1 implement sections of the Campaign Reporting Act, adding
2 new disclosure is beyond the scope of the authority.

3 Now, getting to Subsection 7 so that we
4 can keep things moving along here. There is -- my
5 comments are rather long. My written comments, which
6 are already in the record and already on the website,
7 are rather long, they're 20 pages, and 125 beautiful end
8 footnotes that we, you know, worked really hard on. So
9 I would say, you know, of course, please read that.

10 But to get just to the issues on
11 definitions. The definition of advertisement in
12 Section 7(a) is extremely broad. It covers print,
13 broadcast, satellite, recorded phone messages, Internet
14 videos, recordings. So this is -- this is covering a
15 lot of different kinds of speech. And I would -- I
16 would suggest that the Secretary look towards the
17 federal rules on these which are highly tailored to only
18 cover certain major ads, the things that people worry
19 about, like television ads and scary music and that sort
20 of thing. And so I think that would be a little better.

21 The federal rules of the FEC specifically
22 exempt Internet communications because they are cheap
23 and they are very democratic in how they -- they
24 operate. So the secretary may want to think about
25 exempting Internet communications.

1 In Subsection 7 there's -- the definition
2 of coordinates expenditure is rather broad. It says
3 anything that's done with cooperation, in consultation
4 or in concert with a candidate. That's very broad.
5 And, again, I suggest the secretary look towards the
6 FEC's definition of coordination and how they regulate
7 coordination, that is 11CFR109.21.

8 Basically what the FEC does is highly --
9 things that they say, okay, there must be both conduct
10 and -- and some other showing of coordination. And they
11 do that because what you don't want is people who just
12 happen to be like-minded being caught up in the idea of
13 coordination. That is, sometimes people just really do
14 believe the same sorts of things. So what you want to
15 do is go after the backroom deals and not capture people
16 who are just talking about the same things all the time.

17 Additionally, in Subsections L and S,
18 which define general election cycle and primary election
19 cycle. There's no general definition for election
20 cycle, and that proves to be a problem when -- when you
21 talk about capital A, primary purpose, which I will talk
22 about later when we -- when we talk about that section.

23 But, one, I would suggest having a general
24 definition of election cycle. And, two, insofar as that
25 you use that to calculate primary purpose, I would

1 suggest that the secretary look for guidance from New
2 Mexico Youth Organized versus Herrera and the Campaign
3 Reporting Act, both of which state year not election
4 cycle.

5 I see I'm almost up with my time. The
6 last section I'd look at is, again, on primary purpose
7 which is Subsection T. And I've already discussed that,
8 so that worked out well.

9 Thank you very much, I'll see you all
10 later.

11 HEARING OFFICER LANGE: Thank you,
12 Mr. Martinez. Before you leave does anyone in the
13 audience have any clarifying questions for Mr. Martinez?

14 (No response.)

15 Seeing no hands, thank you very much.

16 MR. TYLER MARTINEZ: Thank you.

17 HEARING OFFICER LANGE: Next person on
18 the list is Douglas from the New Mexico Environmental
19 Law Center.

20 Please state your name.

21 MR. DOUGLAS MEILKLEJOHN: My name is
22 Douglas Meilkejohn. Good morning, Mr. Presiding
23 Officer, Madam Secretary of State. I'm the Director of
24 New Mexico Environmental Law Center, which is a private
25 nonprofit law office that provides free and low cost

1 legal services for the protection of environment and
2 communities in New Mexico. I'm also a lawyer.

3 The -- with respect to the definition of
4 advertisement which is the basis for the definition of
5 an independent expenditure, we would urge that there be
6 an exception for statements that are made in the course
7 of litigation.

8 Let me give you an example. We are
9 currently involved in a proceeding, both administrative
10 proceeding and a court proceeding, against Bernalillo
11 County Commission. One of the members of the Bernalillo
12 County Commission also happens to be a candidate for
13 Mayor of Albuquerque. If we say something about that
14 commissioner in the administrative proceeding or in the
15 court proceeding within 60 days of that election, which
16 I think is in October, there is an argument that that
17 could be construed to be an advertisement. And we might
18 say something about that commissioner.

19 In the past we've made a motion to
20 disqualify one of the other commissioners on the grounds
21 that that commissioner was biased. We might say
22 something like that about this commissioner. That
23 should not be allowed to be construed as an
24 advertisement.

25 The second point about this definition

1 relates to the use of the phrase membership
2 organization. A lot of nonprofits have members in the
3 sense of those people who support them financially, but
4 they are not membership organizations in the sense that
5 the members don't vote for board of directors. And so
6 there ought to be clarification about what is meant by a
7 "membership organization." And, perhaps, the insertion
8 of the word supporters after the phrase corporation or
9 to its current members or supporters or something like
10 that would serve that clarification.

11 I'll be glad to stand for any questions
12 that you have.

13 HEARING OFFICER LANGE: Thank you.

14 Any members from the audience have any
15 clarifying questions?

16 (No response.)

17 Thank you very much.

18 MR. DOUGLAS MEILKLEJOHN: Thank you.

19 HEARING OFFICER LANGE: Next on the list
20 is Viki Harrison.

21 MS. VIKI HARRISON: Good morning, Madam
22 Secretary, members of the committee. My name is Viki
23 Harrison. I'm with Common Cause New Mexico.

24 And, you know, I -- we're going to be
25 pretty much the opposite of some other discussion that

1 you hear today, because for us these rules are
2 drastically narrowing what our current Campaign
3 Reporting Act says because of court cases. So for the
4 definitions I'm just going to focus on one, you'll hear
5 from me again later.

6 So, for example, the definition of
7 independent expenditure in 7M, it drastically narrows
8 the unconstitutionally broad definition that is in
9 current law, and it brings that definition within
10 constitutional limits that many courts have established.
11 The current law requires registration as a political
12 committee and reporting for all contributions and
13 expenditures for any one who spends \$500 to publish any
14 ad that might influence an election, which is,
15 obviously, an overbroad definition that was held
16 unconstitutional in *New Mexico Youth Organized*.

17 The courts in that case and other recent,
18 in the last few years, Tenth Circuit decisions have made
19 it clear that disclosure can only be required for ads
20 that either expressly advocate the whole for or against,
21 or refer to a candidate or ballot measure just before
22 the election, which is where you'll hear the 30 or
23 60 days. That is the definition of independent
24 expenditures that is adopted by this proposed rule.
25 This definition together with the proposed rule in 11,

1 a nationwide nonprofit 501(c)(4) grassroots organization
2 advocating for issues that we believe in and the tens of
3 thousands of supporters here in New Mexico.

4 The language of the proposed rules from
5 Senate Bill 96 drafted by Common Cause on both sides of
6 the equation here with Governor Martinez viewing earlier
7 this year, Senate Bill 96 was deeply flawed, because it
8 allows for previous violations of privacy and may have
9 been subject to legal challenge for violating the First
10 Amendment, too. In light of this, your attempt to
11 implement Senate Bill 96 through Rule 19 is an
12 unconstitutional power grab.

13 New Mexico constitution invests the power
14 to pass legislation exclusively in the state legislature
15 and the power to approve legislation exclusively in the
16 governor. And I would submit that you are not above the
17 law, and that the secretary of state does not have
18 authority over the Supreme Court of New Mexico.

19 So with that said, also, I'd like to bring
20 in the NAACP versus the State of Alabama. It's a court
21 case settled in 1958 where the NAACP was under pressure
22 by the State of Alabama to disclose the donors, and I
23 ask you why did the State of Alabama want the NAACP's
24 donors in 1958. In '58 surrounded by violence, death,
25 intimidation and retaliation the NAACP stood before the

1 Supreme Court on behalf of their supporters. They
2 looked to the constitution and the justice system to
3 protect them from the government of the State of
4 Alabama. The government and its secretaries were trying
5 to bully the NAACP in giving over the names and
6 information of their members, so that they could be used
7 to continue the intimidation and targeting of those who
8 held the leads in opposition to the government.

9 The NAACP stood their ground on the merits
10 of the constitution and were justified in the protection
11 of the members when the Supreme Court unanimously upheld
12 that the NAACP was not required to give the government
13 of Alabama a list of supporters and members. Those
14 lists were private and personal and protected from
15 government reporting.

16 And we have seen the shootings of Planned
17 Parenthood clinics and the violence at DC ballgames
18 recently that clearly illustrate the dangers of forced
19 disclosure of our beliefs. Americans for Prosperity and
20 the tens of thousands of supporters that we represent
21 here in New Mexico exist to advocate for a free and open
22 society. There are those who oppose our efforts and do
23 not believe in a free and open society. Throughout
24 history those individuals have actively used powers
25 delegated by the people or taken powers they do not have

1 in order to intimidate, threaten and harass those they
2 oppose.

3 Those proposed rules will open the door to
4 a closed and discriminatory society and should be
5 abandoned. New Mexicans expect and deserve open debate
6 and dialogue conducted with respect and integrity. We
7 expect frequent thought and to support the diversity of
8 opinions that exist. Our First Amendment is vital as a
9 part of a thriving republic, and this rule will chill
10 the First Amendment rights of New Mexico citizens, hurt
11 those small nonprofits who are attempting to advocate on
12 the issues. And I urge you to drop these proposals.
13 Thank you.

14 HEARING OFFICER LANGE: Thank you,
15 Mr. Cain.

16 Does any member of the public have any
17 questions for Mr. Cain?

18 (No response.)

19 Thank you.

20 Next on the list is Paul Cortes.

21 MR. PAUL CORTES: Thank you, appreciate
22 it. Madam secretary, I'm just a concerned citizen, also
23 with Americans for Prosperity and grassroots supporter.

24 Everything that you just heard from
25 Mr. Burly Cain I support, I concur. I think this

1 maneuver is unconstitutional. I think it's going to
2 just complicate things and makes things more expensive
3 and discourage.

4 Thank you.

5 HEARING OFFICER LANGE: Thank you.

6 Any questions for Mr. Cortez?

7 (No response.)

8 All right. Thank you.

9 That's everyone who signed up for
10 Section 7. Has there been any other interested
11 individuals to speak on Section 7? Please -- please
12 come forward.

13 MR. RICHARD ELLENBERG: Thank you.
14 Richard Ellenberg with the Democratic Party of New
15 Mexico. I signed up for general comments, but I think
16 they're more appropriate here so -- which -- if that's
17 okay.

18 We filed written comments. We found a lot
19 of the rules as written would be very difficult for us
20 to understand how to implement. The advertisement rule
21 probably most so. You know, it exempts membership
22 lists. Our membership is technically all registered
23 Democrats. Our email list is certainly going to have
24 some Republicans, certainly some who are tracking us.
25 So it wouldn't just be all Democrats. So almost

1 everything we would send out is probably an
2 advertisement under the current rules. Almost anything
3 I sent out in the last 60 days of the campaign, in
4 particular, almost certain to be advertisement under the
5 rules.

6 I would think that the more common sense,
7 the better test is, are we spending new money on the
8 project. If it's just Internet email, yes, technically
9 we're spending half a cent on electricity and we have a
10 monthly subscription. But that, basically, it's
11 spending new money that ought to be the target like
12 Facebook for ads, for advertising things, would be a
13 much better line than the one in your proposed
14 amendments. Thank you.

15 HEARING OFFICER LANGE: Thank you.

16 Any members of the public with a comment?

17 MR. STEPHEN DESPIN: My name's Stephen
18 Despin. I just wanted to say that I agree with the
19 previous testimony made by Burly Cain. I feel that it's
20 controlling and restrictive by government. I feel that
21 it violates our constitutional right to freedom of
22 speech and leaves us vulnerable to retaliation for
23 organizations we support. That's all. Thank you.

24 HEARING OFFICER LANGE: Thank you.

25 Yes? Do you have a question for -- you

1 have a comment on the definition section?

2 MEMBER OF PUBLIC: Yes.

3 HEARING OFFICER LANGE: Please come
4 forward.

5 MS. CRISTY HOLDEN: My name is Cristy
6 Holden. I'm from Taos, New Mexico. I would just like
7 to speak in favor of the rules and specifically the
8 definitions of advertising.

9 I'm a member of an organization that has
10 more than 400 members called Taos United. These are
11 largely citizens that are relatively unexperienced in
12 the political process. As part of our education of
13 these citizens we strive to make sure that there is a
14 level playing field. While we all enjoy the right to
15 free speech, we do not have the right to cloak dark
16 money. These rules and the definitions that you have
17 provided for us, thank you, are broad and necessary.

18 HEARING OFFICER LANGE: Thank you.

19 Any questions from the audience?

20 (No response.)

21 Is there any further testimony to be given
22 on the definition section?

23 (No response.)

24 Any further written testimony on the
25 definition section you'd like to submit?

1 (No response.)

2 Okay. We will close that section on
3 definitions. And now we are moving on to Section 10
4 entitled, Political Committee Registrations.

5 The first on the list is Tyler Martinez.
6 Please come forward.

7 MS. FRESQUEZ: Mr. Lange, do you want me
8 to describe the section?

9 HEARING OFFICER LANGE: Please.

10 MS. FRESQUEZ: Section 10, Political
11 Committee Registrations. This section clarifies what
12 entities are considered political committees including
13 entities operating primarily for a political purpose and
14 the method these political committees shall use in order
15 to register with the secretary of state, and the
16 requirement for committees to keep treasurer and contact
17 information current with the office of the secretary of
18 state.

19 Mr. Lange, and did we not have testimony
20 for 8 and 9? Is that --

21 HEARING OFFICER LANGE: Thank you for the
22 clarification. We did not receive any people signing up
23 to speak on proposed parts 8 or 9, so we have not called
24 for public comment on those rules.

25 I know that Mr. Martinez is up here now.

1 Is there anyone in the public who would like to speak on
2 Section 8?

3 (No response.)

4 Okay. Is there any member of the public
5 that would like to speak on Section 9, Withdraw from
6 Candidacy?

7 (No response.)

8 Okay. Thank you -- I'm sorry. Thank you
9 for your patience. We're on Part 10.

10 MR. TYLER MARTINEZ: Thank you. Again, I
11 am Tyler Martinez from the Center for Competitive
12 Politics.

13 This section, Section 10, deals with
14 political committee registration. I just wanted to
15 highlight a few cases since that's what we do at the
16 Center for Competitive Politics. There are a handful of
17 cases that the secretary should be aware of. And I've
18 noticed that they were listed in the -- in the rule
19 anyway, but I wanted to highlight what these holdings
20 were.

21 Mostly, when looking at political
22 committee registration, the secretary should be aware
23 that the Tenth Circuit has been fairly consistent on not
24 allowing states to regulate small issue committees,
25 particularly ballot issue committees, but the small

1 committees, generally. Those are who will spend some
2 de minimis amount of money. Now, the problem is that
3 these cases which are Coalition for Secular Government,
4 which was a case run by the senate, and Sampson versus
5 Buescher, both of these deal with Colorado, but the
6 Tenth Circuit ruled on these only as apply.

7 So there's no -- there's no bright-line
8 test, unfortunately, from the Tenth Circuit. But what
9 they did say is, in Coalition for Secular Government, is
10 that when you're balancing the weight of how much it
11 takes to report and register, you know, report where you
12 bought your stamps from or who all your donors are or
13 whatever, you also have to look at the informational
14 interest that the state gains by demanding all this
15 disclosure and sometimes that can be outweighed. So the
16 Coalition for Secular Government case dealt about with
17 a -- an organization that was spending only \$3500, and
18 some of these definitions cover as little as \$3,000.
19 And so that -- I wanted to highlight that.

20 Now, the political committee itself, it
21 says \$5,000. But there's a footnote in the Coalition
22 for Secular Government case where they said, we don't
23 know, is 5,000 the limit? Is 10,000 the floor? We
24 don't know. So that's in flux right now and the
25 secretary should just be aware that, you know, the Tenth

1 Circuit's been fairly consistent on saying, okay, at
2 some point there's too -- it's too burdensome to require
3 political committees to register.

4 This goes all the way to Buckley versus
5 Valeo, which is the foundational case, of course, for
6 all campaign finance law. Thank you Richard Nixon for
7 being so corrupt that we have this case now. But --
8 but, anyway, it goes down to what is the major purpose
9 of the organization and how much its -- they're
10 spending, quite frankly. So I just -- again, my
11 comments are far more in-depth with lots of footnotes.
12 I -- I suggest you read them as always. Thank you very
13 much.

14 HEARING OFFICER LANGE: Thank you.

15 Any questions from the audience?

16 (No response.)

17 Thank you Mr. Martinez.

18 Next on the list is Viki Harrison.

19 MS. VIKI HARRISON: Thank you. Again,

20 Viki Harrison with Common Cause New Mexico.

21 We also cited the same cases you just
22 heard about, and we feel like by narrowing the
23 definition of a political committee, which these
24 proposed rules do in 10(a), you know, the groups that
25 must -- these are -- when we're talking about political

1 committees, we're talking about people that just do
2 politics. We're not talking about the nonprofits and
3 the NAACP in the 50s, we're talking about I'm doing all
4 politics all the time.

5 And so, obviously, in Youth Organized and
6 many other cases, which are also listed in our submitted
7 comments, they ruled that while we can require the
8 sponsor to report certain info about any ad that
9 constitutes express advocacy or election communication,
10 we can't require the sponsor to register as a political
11 committee and file periodic reports that contain all
12 contributions and all expenditures in the way that the
13 Campaign Reporting Act is currently, literally, says
14 right now, unless the publication of those -- such ads
15 is the primary purpose of the group sponsoring the ads.

16 So, again, we're not talking about
17 nonprofit. If your primary purpose is to do politics,
18 you've got much bigger issues with the IRS than I --
19 that -- it can't be your political purpose. If
20 you're -- particularly if you're a (c)(3), you can't
21 even do this work.

22 This rule would implement these court
23 decisions by narrowing the definition of political
24 committee to only cover political parties and groups
25 that have that primary purpose. Our written comments

1 have suggested adding a paragraph at the end of
2 Subsection A, 7(A), to make it clear and explicit that
3 in conformity to these court rulings these primary
4 purpose groups are the only ones who will be required to
5 register as political committees and comply with
6 literally all the reporting requirements. Thank you.

7 HEARING OFFICER LANGE: Any questions for
8 Ms. Harrison?

9 (No response.)

10 Thank you very much.

11 Is there anyone who has not signed up to
12 speak on this section who would like to give testimony
13 now? Please come forward.

14 MR. BURLY CAIN: Mr. Lange and members of
15 the committee.

16 Senate Bill 96 contains hypocrisy as well
17 as this current proposed rule. They're of similar
18 origins. And a stark awareness of the inherent danger
19 to the public that these unconstitutional paragraphs
20 represents. I could note that 15 members of the
21 New Mexico House and Senate voted yes to Senate Bill 96
22 in this fashion, and to force citizens to publicly
23 display their belief and private home address and
24 personal information at all times through government
25 reporting. They want to put it on a list, make their

1 information public, put it on the Internet where we all
2 know everything doesn't die, and subject them to
3 intimidation and harassment.

4 Those same 15 senators and representatives
5 did not, however, choose to display their home addresses
6 to the public. If you go to the New Mexico legislator's
7 page, you won't find anything but P.O. boxes. And I
8 think it's stark to understand that they realize what
9 happens when you put someone's home address in the
10 Internet, that you will find intimidation and
11 harassment.

12 The Speaker of the House, Randy Egolf,
13 listed the business called Parts Unknown. If you look
14 up the address on Google, no home address. The Majority
15 Whip, Michael Padilla, listed a P.O. box, not wanting
16 his home information for all to see. Javier Martinez, a
17 member of the ethics committee listed his P.O. box.
18 And, amazingly, Jim Smith, the co-sponsor of Senate
19 Bill 96 working closely with Common Cause trying to get
20 people to disclose their information personally on the
21 Internet, listed his P.O. box while attempting to force
22 New Mexicans to wear their beliefs on their arms and
23 their home address forever on the Internet.

24 The -- but that is not the worse one. In
25 fact, you madam secretary do not list your home address

1 exposed by this law that pertains to contributions only
2 is disingenuous.

3 As voters we do need to identify
4 ourselves. We do need to register. And those who want
5 to have financial influence in our campaigns must also
6 be required to register.

7 Thank you to the Secretary of State for
8 putting forward these laws.

9 MR. STEPHEN DESPIN: Hi. Again, my
10 name's Stephen Despin.

11 Again, I also agree with the statements
12 made by Burly Cain. I feel that this is a violation of
13 our privacy. And if the State of New Mexico feels the
14 need to disclose our own home address on the Internet, I
15 feel that our state officials should have to do the
16 same. Thank you.

17 HEARING OFFICER LANGE: Thank you.

18 Anyone further who'd like to give a
19 comment on this section?

20 And just, I'm going to use this as an
21 opportunity. We are talking about specific parts of the
22 Campaign Finance Rule that is being proposed. Please
23 limit all testimony to specific -- to that part. If
24 there is time after this rule hearing, we will have
25 general comments. I feel like we're veering off in --

1 into general comments. So thank you for respecting the
2 process and everyone's time here going forward.

3 Having seen that no one else has signed up
4 for Section 10 we will now move on to Section 11, which
5 is entitled, Reporting of Independent Expenditures.

6 Ms. Fresquez?

7 MS. FRESQUEZ: Mr. Lange, this section
8 clarifies how entities shall disclose independent
9 expenditures with the secretary of state including when
10 and how to disclose the source of the funds used for
11 advertisements as well as the dollar thresholds that
12 trigger the required disclosure. This section further
13 clarifies that candidates are not required to report on
14 independent expenditures.

15 HEARING OFFICER LANGE: Okay. The first
16 on the list is Mr. Martinez, Tyler Martinez.

17 MEMBER OF PUBLIC: Hello again. I'm
18 Tyler Martinez, again, from the Center for Competitive
19 Politics.

20 This is really the meat of the ruling.
21 Where a lot of people, I think, as you heard from the
22 prior section's testimony, people are having problems
23 with -- with how the proposed rule is going through.
24 The concern is -- and I take -- the drafters of that,
25 SB96, and, therefore, now the proposed rule, try to

1 exempt 501(c)(3) organizations. They said if it's a
2 voter guide, then we -- that does not count as something
3 that would need to be reported, and I -- we appreciate
4 that.

5 The problem is that the definition of
6 advertisement, which we discussed prior, is so -- so
7 expansive that even mentioning a candidate close in time
8 to an election, can require an IE report. And an IE
9 report still requires some -- some disclosure. And on
10 top of that, the disclosure that is required is not
11 necessarily earmarked for those who specifically gave
12 for that act.

13 So in federal law, for example, and in
14 Colorado law, both require that if you're going to
15 disclose vendors for an independent expenditure report,
16 those who are earmarked through -- earmarked their
17 money, said, I want you to run that ad that mentions
18 senator so-and-so or state representative so-and-so.
19 That -- and that's an important check, because those
20 people know that -- that their names might get
21 disclosed. Those who just generally give to an
22 organization do not know that they're going to,
23 necessarily, have their names disclosed, and they may
24 not even agree with the ad.

25 So in my written comments I gave some

1 examples of, you know, somebody who, for example, is a
2 member of the union who may be a Republican but likes
3 the fact that the union, you know, helps them get better
4 pay and better benefits and those sorts of things. But
5 all of a sudden, the union runs an ad against
6 Republicans for -- who want to change the right to work
7 laws here in -- in New Mexico, all of a sudden it looks
8 like they're anti-Republican even though they're
9 registered Republicans. That's just an example. But --
10 but it does come up. And so the -- having that -- that
11 earmark requirement is really, really important.

12 As far as disclosure itself, it's really
13 a -- and it is a harm to organizations. Americans for
14 Prosperity Foundation, which is 501(c)(3) in California,
15 has had problems with people like trying to infiltrate
16 their offices and find out what cars that the workers
17 there drive. And you can say, okay, that's -- that's
18 AFP, who cares. But the same thing happens to the New
19 York Civil Liberties Union. The same thing is happening
20 to newspapers that endorsed Hilary Clinton in the last
21 Democratic primary.

22 And I -- and I walk through those examples
23 in my testimony. Like I said, if you want the cites,
24 you know, again, you'll see it. But -- but those are
25 the -- those are sort of the problems of the disclosure.

1 Additionally, there's a problem with
2 disclosure at thresholds that are too low. Quite
3 frankly, no one's going to really worry about if
4 somebody's giving \$300 to a candidate. It's -- well,
5 everyone who talks about what they, so-called dark
6 money, is really talking about some large billionaire.
7 Whether it's the Koch brothers on one side or George
8 Soros on another, it doesn't really matter. But we know
9 who gives, because they give so much anyway. So the
10 threshold should be much higher to not capture --

11 I thank you again.

12 HEARING OFFICER LANGE: Thank you,
13 Mr. Martinez.

14 Any questions from the public for
15 Mr. Martinez?

16 (No response.)

17 Thank you.

18 Next up is Ms. Harrison.

19 MS. VIKI HARRISON: Thank you, Mr. Lange.

20 I just wanted to make one point of
21 clarification before I move on to 11. And I should have
22 done it at the time, but there were numerous people.

23 The definition of advertisement, the one,
24 two, three and four are does not include. So everybody
25 who's worried about one through four, that doesn't

1 include that, that's an exception there.

2 And as an aside, if Common Cause
3 New Mexico had written Senate Bill 96 or these rules,
4 they would look drastically different. I would like to
5 say that one of the reasons this -- rules shows so much
6 from Senate Bill 96 is because Senate Bill 96 was
7 absolutely constitutional and valid. So it makes sense
8 that the secretary would use some of that language. But
9 I can assure you, had we written it, it would look
10 drastically different.

11 So for Section 11, again, this is
12 narrowing the reporting for independent expenditures.
13 Because right now independent expenditures under the CRA
14 are having to do all of that that I discussed on the
15 last section. So we're talking about those groups.
16 Whether we're talking about Common Cause New Mexico or
17 the Rio Grande Foundation or New Mexico Youth Organized,
18 these are people that don't have a primary purpose of
19 playing in elections. And as the courts have held,
20 these groups can only be required to report their
21 spending and certain information on their donors.
22 People who've either, as the previous speaker said,
23 earmarked it.

24 But you can't just control it just to
25 people who earmark it, because that's a huge loophole

1 right there. If you only report people, then they just
2 won't earmark it. And you'll still be able to spend
3 that money, but it won't be reported. That is just a
4 big loophole that -- you can't do that, in our opinion.
5 So, again, for us the effect of this rule is to narrow
6 the literal reporting. So now you're not giving all of
7 this information if you're an independent expenditure
8 committee.

9 Whereas, PACs, on the other hand, the
10 courts have upheld over and over again that we can ask
11 for this information from these -- from the political
12 action committees. In fact, Citizens United, the bane
13 of my existence, still had a secondary opinion in there,
14 eight to one, that said, but, of course, we're going to
15 know where the money comes from. Sure open the doors.
16 Let the money fly in. But of course you're going to
17 know. And eight to one of our Supreme Court justices
18 said that that is it.

19 So this is for the groups that do not have
20 a primary purpose. And it just -- but they're spending
21 a lot of money. All you have to do is go to the IRS and
22 see since 2010, when Citizens United was decided, how
23 many new (c)(4)s have popped in this country. And
24 because the IRSs now cannot even try to determine what a
25 primary purpose is, as well as the Tenth Circuit, as was

1 previously stated, never drawing a bright-line, these
2 thresholds are well above these previous court cases
3 that we have seen in our own Tenth Circuit. Thank you.

4 HEARING OFFICER LANGE: Thank you.

5 Any questions?

6 (No response.)

7 Thank you, Ms. Harrison.

8 Next is Mark Friedman.

9 MEMBER OF PUBLIC: Good morning, Madam
10 Secretary, members of the committee. My name is Mark
11 Friedman, and I'm a member of the Indivisible Group here
12 in Santa Fe.

13 And I'm here to speak in favor of the rule
14 requiring independent organizations to report how money
15 is spent. However, I do believe the \$200 threshold is
16 too low. What we're trying to do is deal with the fact
17 that while money is not speech, money is power. People
18 with disproportionate money have disproportionate power
19 in our election system.

20 Since the Citizens United decision, dark
21 money has infused and undermined our elections, may
22 constitute a greater threat to our society than Russia.
23 The Supreme Court issued that ruling with the assumption
24 that there would be imposed disclosure requirements.
25 However, congress never did this and so the states must.

1 And we support those actions that do so.

2 We need to know who makes donations, large
3 donations, to political causes, so we can make judgments
4 about special interests and determine their actions in
5 relation to the advertisements that they provide. So
6 very important that we ensure disclosure of donors for
7 large donations, and we applaud the proposal of the
8 secretary of state. Thank you very much.

9 HEARING OFFICER LANGE: Any questions?

10 (No response.)

11 Thank you, Mr. Friedman.

12 Mr. Cain, you're next on the list.

13 MR. BURLY CAIN: Mr. Lange, members of
14 the committee, Burly Cain again for Americans for
15 Prosperity.

16 I would just point out that the Supreme
17 Court, Tenth Circuit of Appeals, has severely limited
18 New Mexico's ability to compel disclosure, because it's
19 not campaign related. On the same note, too, the
20 secretary's authority to promulgate rules is limited to
21 implement the candidate according to -- law, and this
22 looks to do that. This is what we -- looks to be
23 unconstitutional, and, therefore, would be unlawful in
24 that capacity, so I would take that into account.

25 The -- the notion that money is -- is

1 power; government is power. And you are actively
2 working to take away the rights of people who speak
3 their mind. You're trying to say that the court has
4 weighed in that this does effect donors. It will effect
5 organizations. It will effect donations to
6 organizations. And you may decide who you think doesn't
7 have the right to disclose -- not disclose their
8 information. You may think that the government gets to
9 weigh in, choose who that is, but the free speech that
10 we have in this country, which is the First Amendment,
11 is vital to the democracy. And your rights don't -- are
12 not delegated to that capacity.

13 And the Supreme Court has held that you
14 need to be very careful in this situation, because the
15 rights of voters to freely speak their mind or to not
16 disclose their information is important. These
17 organizations work on issues, and your efforts to force
18 those organizations to not be able to speak about the
19 issues that are in dramatic affect to their purpose and
20 mission is going to dramatically effect the outcomes and
21 outcome of elections, potentially, on issues that matter
22 to organizations primarily that have nothing to do with
23 candidates.

24 These are -- these are people running for
25 offices, potentially, who have absolutely an inclination

1 MR. TOM GREER: Thank you committee and
2 Secretary of State. I'm Tom Greer. I'm field director
3 for the Concerned Veterans of America, a 501(c)(4).

4 But what I really wanted to talk about in
5 here was the lower levels of these. I know we're
6 talking about the dark money, the big money. But using
7 as examples and not speaking for these organizations I
8 wanted to -- I want to pose two of them that are some of
9 my favorites here in New Mexico, which are Horses for
10 Heros and Paws and Stripes, that provide services to our
11 disabled veterans. They are both nonprofit, both
12 (c)(3)s.

13 And they from time to time, because of
14 the -- of the things that are of interest to them and
15 the needs of the veterans, get involved, at least in
16 issue of advocacy in the definitions here. And the
17 concern that I have is that in order to comply, if they
18 find themselves having to report, they barely have the
19 resources to fund the programs that they're funding, as
20 well as to support the veterans that -- that they're
21 working for.

22 And the number of volunteers that they
23 have available to them probably are not skilled enough
24 to do all of the -- the complexity of doing all of the
25 continual reporting that's necessary in this at the

1 bottom end. And if that costs them money or if it costs
2 them volunteer time, it takes away from the specific
3 mission that those people have.

4 And so I'd kind of like to address that.
5 I think the minimum levels in here of where one has to
6 report, based on donations, it also chills if the -- if
7 a governor is working on -- working for a small
8 organization like that and giving money to them and
9 thinks that by that organization getting involved in
10 anything from issue advocacy or expressed advocacy or
11 getting involved in a local political race that they
12 think's important, and that they as a donor are going to
13 have to then be put into a filing, might chill their
14 willingness to contribute to some of these
15 organizations.

16 And these small organizations and these
17 nonprofits that we have are one of the core basis of --
18 of New Mexican society, not -- not the big huge
19 organizations, but all of these small nonprofits that
20 are out there helping, particularly in my case, our
21 veteran and disabled veterans population. Thank you.

22 HEARING OFFICER LANGE: Thank you.

23 Any questions for Mr. Greer?

24 (No response.)

25 Thank you.

1 Next on the list is Hamilton Brown.

2 Please come forward.

3 MR. HAMILTON BROWN: Thank you, sir.

4 Thank you secretary. My name's Hamilton Brown. I live
5 in Arroyo Seco, New Mexico. I'm a member of Taos
6 United. And these may be more general than specific to
7 specific topics. I'm a rookie in this business of
8 coming to these kinds of hearings.

9 I'm writing to voice my support to the
10 rules you are proposing for the better implementation of
11 the Campaign Reporting Act, NMSA 1978. One hundred
12 fifty-four years ago President Abraham Lincoln penned
13 this immortal, "Four score and seven years ago our
14 father's brought forth on this continent a new nation
15 conceived in liberty and dedicated to the proposition
16 that all men are created equal."

17 Now, 150 some years later we live in an
18 era of almost unprecedented inequality when the
19 wealthiest Americans confuse their own personal
20 self-interest with the best interest of all men, and the
21 best interest of our nation and the earth that we live
22 on. As a result of the Supreme Court decisions like
23 Citizens United and various other legal decisions and
24 legislations, our election process has been contaminated
25 by obscene amounts of contributions to candidates and to

1 independent entities that in some cases hide the sources
2 of their funds, dark money.

3 As a result, we have a government that is
4 no longer of the people, by the people and for the
5 people. The best we can do at this time is to make all
6 political contributions of whatever kind transparent, so
7 that we as voters can determine who and what entities
8 are trying to buy our elected officials.

9 According to Viki Harrison, Executive
10 Director of Common Cause, voters and businesses
11 overwhelmingly support the disclosure of dark money used
12 to sway elections. In January a poll taken by Research
13 and Polling for Common Cause New Mexico indicated that
14 nine in ten voters support required -- requiring all
15 independent groups who are spending money on campaigns
16 to report who their donors -- who are their donors. In
17 March of this year, 92 percent of business leaders
18 weighed in to support disclosure.

19 These rules, in my opinion, are carefully
20 thought out by joining overwhelming majority of New
21 Mexicans in support of your proposed campaign finance
22 transparency regulations. It is time to shed a public
23 light on all attempts to influence our elected officials
24 with dark money.

25 HEARING OFFICER LANGE: Thank you. Any

1 questions from the public?

2 (No response.)

3 Would you like to submit written
4 testimony?

5 MR. HAMILTON BROWN: I would, sir.

6 HEARING OFFICER LANGE: Please come
7 forward, give it to me. Thank you, Mr. Brown. I will
8 mark your written testimony as Exhibit 12.

9 (Exhibit 12 marked.)

10 HEARING OFFICER LANGE: Going forward,
11 again, I would like to see if I could limit the
12 testimony given to the particular section that we're on.
13 This is the second warning that I've given regarding
14 please keep your testimony specific to the particular
15 section that we're on.

16 Next up on the list -- yes?

17 MEMBER OF PUBLIC: Mr. Lange, may I ask a
18 point of clarification? Is there a live feed of this
19 hearing?

20 HEARING OFFICER LANGE: Yes, there is a
21 live feed on this hearing.

22 MR. HERMAN CAIN: Okay. That's -- sorry,
23 my name is Robert Cain, Herman Cain, for Americans for
24 Prosperity.

25 HEARING OFFICER LANGE: And that was -- I

1 didn't hear your question.

2 MR. HERMAN CAIN: My question was, where
3 do you -- can you find the information of the live feed?

4 HEARING OFFICER LANGE: The live feed was
5 posted on a press release and notice regarding this
6 hearing. It was announced in the beginning of this
7 hearing as well. And it's on the secretary's home page.

8 MR. HERMAN CAIN: Very good, thank you.

9 HEARING OFFICER LANGE: Next on the list
10 is --

11 MR. JOHN BLAIR: Real quick, just to
12 clarify. I'm John Blair, I'm a deputy secretary. The
13 press release went out to all media with a link to the
14 live feed yesterday. It's posted on the secretary of
15 state's website. A Facebook post today went out with
16 the link of the live feed encouraging people to tune in,
17 and the link was also Tweeted out, as well.

18 MR. HERMAN CAIN: Thank you.

19 HEARING OFFICER LANGE: Thank you.

20 Mr. Montes is next, David Montes.

21 MR. DAVID MONTES: Thank you, committee
22 and Madam Secretary.

23 So under this section it says, "Although,
24 the courts have determined that persons making
25 independent expenditures do not fall within the

1 categories enumerated, cannot be constitutionally
2 compelled to comply with registration and reporting of
3 requirements imposed on political committees," it says
4 they can go ahead and do reporting anyway.

5 Under the other paragraphs it shows a B
6 with Sections 1 and 2, shall file a report independent
7 expenditure, the name and address of the person who made
8 the independent expenditure, the name and address of the
9 person whom the independent expenditure was made,
10 amounts, date, purpose, the source of contributions.
11 There's B, C, D all the way through G with some
12 subparagraphs in between. So that's -- that's actually
13 a lot of compliance and a lot of requirements.

14 Now I'll read, very briefly, from the New
15 Mexico's state constitution under Section 17, Freedom of
16 Speech and Press. "Every person may freely speak, write
17 and publish his sentiments on all subjects being
18 responsible for the use of that right, and no law shall
19 be passed to restrain or bridge the liberty or speech --
20 their speech."

21 Now, such a law was recently proposed,
22 SB96. It was vetoed. And now it seems that the Madam
23 Secretary has been end-run around the democratic
24 process. Essentially, what we're looking at here isn't
25 dark money. Dark money can be, like I said, it's either

1 big money or it's hidden money. And Section G says,
2 well, you can't make contributions with an intent to
3 conceal the names of the persons. So if somebody's
4 really going to do real true dark money, we'll never
5 know about it. What this actually will do is impact the
6 individual.

7 Returning very quickly back to the
8 definition section. Independent expenditure means that,
9 number one, "made by a person other than a candidate or
10 candidate committee." We keep talking about these
11 political groups and their purposes to do elections and
12 election hearing campaigning, if I'm a big -- if I'm a
13 movie theater owner and my local city councilman has a
14 new tax or regulation or requirement or something I
15 disagree with, I might run that radio spot, and I might
16 run a radio spot within the 60 days or 30 days.

17 And now, guess what, I have to -- going
18 back to this section -- comply with A through G,
19 establish a segregated banking account; report the name
20 and address and amount of each contribution made by
21 contributor. Basically create, the private individual,
22 into some sort of organization.

23 Going back to Section 8 of the New Mexico
24 constitution, Freedom of Elections, "All elections shall
25 be free and open. No power, military or civil, shall at

1 any time interfere to prevent the free exercise to the
2 right of suffrage." This is -- this is how this was
3 going to work in reality. It's an invasion of privacy
4 that discourages speech, that's going to discourage the
5 contributions to groups or individuals. It
6 disenfranchises voters by denying their right to
7 information. This really helps incumbents and
8 politicians most. Thank you very much.

9 HEARING OFFICER LANGE: Thank you,
10 Mr. Montes. Any questions for Mr. Montes?

11 (No response.)

12 Seeing no questions, next on the list is
13 Dave Kraig.

14 MR. DAVE KRAIG: I'm Dave Kraig from
15 Pojoaque, New Mexico. These might be construed as
16 general, but they speak to the philosophy and the
17 compromise that I think you've tried to strike in these
18 proposed rule changes.

19 HEARING OFFICER LANGE: And before you
20 begin, then, Mr. Kraig, can you please try to focus on
21 independent expenditures? That's the section that we
22 are on.

23 MR. DAVE KRAIG: Correct.

24 I support this to make the process of
25 independent expenditures more transparent and

1 accountable. And rather than stifling the free speech,
2 I think you could change it, in fact, could serve to
3 reduce the corrosive effect on free speech that
4 unaccountable corporate and other political atrimonies
5 have on our democracy.

6 Contraire to what the opponents are
7 saying, there's nothing in this section that would
8 stifle freedom of association. Every citizen has the
9 right to know how political actors and causes are being
10 funded. And that funding is often an accurate predictor
11 of how the elected official will act and to whom he or
12 she is indebted and beholden.

13 There's no attempt to silence anyone or
14 slant the political process in one way or another.
15 These requirements treat all political finances and
16 players, regardless of affiliation, equally. The result
17 would enable independent observers to understand the
18 financial drivers behind any political individuals and
19 organizations, that cannot help but foster a stronger
20 and freer democracy. And that should always be the
21 objective of the secretary of state and campaign rules.

22 I support this draft, campaign report
23 for -- requirement, and I thank you for the opportunity
24 to comment.

25 HEARING OFFICER LANGE: Thank you. Any

1 questions of Mr. Kraig?

2 (No response.)

3 If you'd like to submit that as written
4 testimony? Thank you, sir. I'll mark that, your
5 written comment, as Exhibit 13. Thank you very much.

6 (Exhibit 13 marked)

7 HEARING OFFICER LANGE: Next on the list
8 is Cristy Holden -- Cristy Holden. Please come forward.

9 MS. CRISTY HOLDEN: Cristy Holden, a
10 member of Taos United.

11 I speak in favor of the proposed rule.
12 Transparency is essential to democracy. American
13 history is based on courageous free speech, not on
14 anonymous attack. These rules that are proposed help us
15 to ensure that all Americans have a level playing field
16 regardless of our economic means.

17 Our freedom of speech is guaranteed. Our
18 right to privacy does not extend to freedom of speech.
19 In fact, it is a duty of responsible citizens to accept
20 the accountability of their words, of their political
21 donations and of their political actions.

22 Thank you Secretary of State. Thank you
23 all for committing to this.

24 HEARING OFFICER LANGE: Thank you.

25 Next on the list is Daniel Pritchard.

1 MR. DANIEL PRITCHARD: Good morning. My
2 name's Daniel Pritchard. I'm from Taos, New Mexico.

3 Point of clarification. I didn't see
4 anything in the definitions regarding the definition of
5 a person or a political committee.

6 I think the core issue here is not the
7 identification of individuals who make small donations
8 to their candidates of choice, there are laws against
9 harassment, I think the issue is persons and
10 corporations who have the resources to make large
11 contributions or expenditures and do so as an exercise
12 of influence and power, which is very different than
13 simply free speech.

14 Specifically, the Paragraph G
15 of Section 11 that we're talking about in this section,
16 it talks to "no person may make contributions or
17 expenditures with an intent to conceal the names of
18 persons or true source of funds." I submit that it
19 would be appropriate to add corporations, trusts or any
20 legal entity.

21 So, please, listen to the citizens of
22 New Mexico, and be leaders in this nation and stand up
23 for what is right in terms of transparency and
24 appearance of citizens. Thank you very much.

25 HEARING OFFICER LANGE: Thank you.

1 Any questions for Mr. Pritchard?

2 (No response.)

3 Thank you.

4 Next on the list is Diane Gledhill.

5 MS. DIANE GLEDHILL: Can we put that in
6 general comments, please?

7 HEARING OFFICER LANGE: Okay.

8 MS. DIANE GLEDHILL: Thank you.

9 HEARING OFFICER LANGE: We can move you.
10 Thank you.

11 Judy Williams?

12 MS. JUDY WILLIAMS: Sir, I'd like to move
13 under general comments.

14 HEARING OFFICER LANGE: Okay.

15 Richard Ellenberg?

16 MR. RICHARD ELLENBERG: Thank you.

17 Richard Ellenberg with the Democratic Party of
18 New Mexico.

19 The Citizens United and the huge amount of
20 money it has released is a cancer on our democracy. It
21 has allowed the Koch brothers and other entities such as
22 Americans for Prosperity to do a fairly successful job
23 of buying our government. The one restriction that we
24 have on it right now, possible, is exposure. And we
25 strongly support this. Our national and state --

1 strongly support it. Our federal delegation has
2 introduced legislation for this purpose.

3 While I'm here, there's a lot being made
4 in the fact that the governor vetoed the bill. We also
5 need to know that nobody even introduced a bill to keep
6 the secretary from regulating this topic. The whole
7 concept of the regulatory scheme is the legislature
8 could come in and grant or not grant powers to the
9 secretary. But until those passed and signed it does
10 not impact the secretary's power.

11 The other sort of what I consider cute
12 word game here is that some people use their P.O. boxes.
13 And every elect -- every elected official's a registered
14 voter and the registered voter's address is public
15 record. That's a cute word game and doesn't give the
16 substance of the issues here. Thank you.

17 HEARING OFFICER LANGE: Thank you,
18 Mr. Ellenberg.

19 Any questions for Mr. Ellenberg? Yeah.

20 MEMBER OF PUBLIC: Can I reply?

21 HEARING OFFICER LANGE: Well, you can ask
22 a clarifying question.

23 MEMBER OF PUBLIC: Yeah, never mind.

24 HEARING OFFICER LANGE: Next on the list
25 is Bruce Berlin.

1 MR. BRUCE BERLIN: Good morning, Madam
2 Secretary. My name is Bruce Berlin. I'm a retired
3 ethics attorney from the New Mexico Public Education
4 Department, but I don't speak for the department. And
5 I'm also the founder of New Mexicans for Money Out of
6 Politics, and a author of Breaking Big Money's Grip on
7 America.

8 A few things. I think one of the main
9 purposes here is to try to level the playing field
10 through disclosure and opening up the process. And
11 when -- money is clearly influence. If you have -- if I
12 contribute \$10,000, I'd certainly have a lot more
13 influence with my politicians and elected officials than
14 if I contribute 100 or \$200.

15 I totally agree with Ms. Harrison's
16 remarks and Ms. Jeffreys' remarks. And, specifically,
17 regarding sections -- or Subsection B and C. I'm not
18 sure I understand the difference here. It seems like if
19 I have a -- if I contribute more than a thousand
20 dollars, I'd need to report these things under 1, 2
21 and 3. And under C, the limit is \$200.

22 And there are some differences, but it
23 seems like we might be clearer -- in fact, I would
24 recommend, for the average citizen these -- these --
25 this regulation is very, very difficult to decipher, and

1 I would say -- I would hope that there would be some
2 shorter, clearer, simpler explanation of them for the
3 average citizen.

4 But, perhaps, the DNC might be clearer or
5 more incongruent if it was \$500 in D, exceeding the
6 number, its reporting requirement if you exceed \$500 and
7 the same in C. Although, I may be misreading this as
8 well. But I would certainly hope that this somehow
9 could be, not necessarily the regulation itself, but
10 some explanation be simplified for the average citizen.

11 And I believe that's it. Thank you.

12 HEARING OFFICER LANGE: Thank you.

13 Any questions for Mr. Berlin?

14 (No response.)

15 Thank you.

16 Next on the list is Stephen Despin.

17 MR. STEPHEN DESPIN: Hi. My name is
18 Stephen Despin.

19 And, again, I'd like to say that the
20 requirement to disclose addresses to be put on the
21 Internet, again, is a violation of privacy. It's a
22 violation of our right to free speech, which is designed
23 to protect us against -- to be able to fight against
24 tyrannical government, it causes it to become so. I
25 feel that the need to have something that violates that

1 right is unnecessary by government, and it is a clear
2 form of control and restriction on behalf of government.

3 I feel that by requiring this and as for
4 the recommend -- the statement made earlier as far as
5 transparency, that should also be done on the behalf of
6 government as well, which many of our government
7 officials do not disclose their own home addresses, yet,
8 require us to do so. I feel that that's also
9 unnecessary, and, again, violates our right to privacy
10 and leaves us open to retaliation on the part of both
11 individuals and by government. Thank you.

12 HEARING OFFICER LANGE: Thank you.

13 Any questions for Mr. Despin?

14 (No response.)

15 Now, next on the list is Mr. Gessing.

16 MR. PAUL GESSING: Good morning. I'm
17 Paul Gessing, President of Rio Grande Foundation. Rio
18 Grande Foundation is a nonprofit 501(c)(3) organization
19 based in Albuquerque. We're a nonpartisan policy
20 research organization dedicated to economic liberty.
21 We've been in existence since the year 2000. I've been
22 its head since 2006.

23 We're concerned about the proposal as a
24 whole and especially Section 11. The primary
25 substantive issue involves individuals and organizations

1 that may broadly define independent expenditures or
2 publish information that simply mentions the name of a
3 candidate in a specific window before a primary or
4 general election.

5 These provisions would chill protected
6 speech by mandating disclosure of donors and groups like
7 Rio Grande Foundation that's engaged solely and
8 constitutionally protected issue advocacy. Our
9 opposition to these disclosure requirements is informed
10 by recent efforts to comply with campaign finance laws
11 already on the books in the City of Santa Fe, and our
12 efforts to educate Santa Feans on the recently defeated
13 sugary drinks tax and they are well within the bounds of
14 a standard 501(3)(c) educational activity.

15 We were told that we would be forced to
16 disclose names, addresses and donation amounts of our
17 supporters for over \$250 on the impact of that proposed
18 policy. This led us to constrain our activities in an
19 effort to comply both with our promise of donor privacy
20 to our supporters under our 501(c)(3) charter as well as
21 locally imposed rules and regulations.

22 Rio Grande Foundation prides itself on
23 focusing on issues not individuals. We have worked and
24 will continue to work with policymakers and citizens
25 from all parties and walks of life to advance our vision

1 of increased economic freedom to run their government.

2 Thank you for your time.

3 HEARING OFFICER LANGE: Any questions for
4 Mr. Gessing?

5 (No response.)

6 Thank you. As a point of clarification,
7 the next person on the list is Jason --

8 MR. JASON VALLENCOURT: Vallencourt.

9 HEARING OFFICER LANGE: -- Vallencourt.
10 You said that you wanted to speak on Section 1. And do
11 you want to speak on Section 11?

12 MR. JASON VALLENCOURT: Yeah, I -- yeah,
13 I apologize. I would actually like to be moved to
14 general comments.

15 HEARING OFFICER LANGE: I'll move you to
16 general comments. Thank you very much.

17 That's everyone who is signed up for
18 Section 11. Is there anyone else who has -- would like
19 to provide testimony who hasn't on -- specifically on
20 Section 11? Please come -- we've got -- first we'll
21 hear from this gentleman (indicating). Please state
22 your name for the record.

23 MR. JEFFERY SMITH: My name is Jeffrey
24 Smith.

25 HEARING OFFICER LANGE: I'm sorry, can

1 you say that again for the court reporter?

2 MR. JEFFERY SMITH: Jeffrey Smith.

3 Yeah, this is really the section I had the
4 most problems with. I think it's too broad and
5 overreaching. Like the previous speaker said, it
6 focuses too much on the individual, I think. It gets --
7 it gets far and away from the dark money, if you will.
8 And it goes way too far into the personal lives. Thank
9 you.

10 HEARING OFFICER LANGE: Thank you. Any
11 further interested parties who haven't testified on
12 Section 11?

13 (No response.)

14 Thank you. We will now move on to
15 Section 12. Section 12 is entitled, General Reporting
16 Rules.

17 MS. FRESQUEZ: Mr. Lange, this section
18 clarifies general rules on what shall be reported in the
19 campaign finance information system for both candidates
20 and political committees. It clarifies that reporting
21 is required even after the loss of an election if funds
22 remain in a campaign account and until such time as a
23 candidate files a final report. It also clarifies that
24 reports will be accepted up to midnight on the day of a
25 report deadline before fines will accrue. And, finally,

1 the section defines the process that candidates may use
2 in order to file a hardship waiver in order to file a
3 paper disclosure report in lieu of an electronic report.

4 HEARING OFFICER LANGE: Thank you.

5 First on the list is Mr. Ellenberg for
6 Section 12.

7 MR. RICHARD ELLENBERG: I'll pass on
8 that. Thank you.

9 HEARING OFFICER LANGE: Okay. There's no
10 one further signed up. Is there anyone else who would
11 like to speak specifically on Section 12?

12 (No response.)

13 Seeing none, we'll move on to the next
14 section. No one signed up for Section 13, to comment on
15 Section 13, entitled, Candidate Designations of
16 contributions over the limit. Is someone here now who
17 wants to specifically testify to Section 13?

18 (No response.)

19 Seeing none, we'll move to Section 14.
20 Again, no one has signed up to speak for Section 14
21 entitled, Supplemental Reports. Would someone now like
22 to give a comment on Section 14, Supplemental Reports?

23 (No response.)

24 Seeing none, I'll move to Section 15. No
25 one has signed up for Section 15. It is entitled, Late

1 Filing of Reports. Is there someone now who would like
2 to speak on Section 15?

3 (No response.)

4 Seeing none, I'm moving to Section 16
5 entitled, Loans. No one has signed up to give public
6 comment for this section. Is there anyone here who
7 would like to sign up and speak on behalf of Section 16?

8 (No response.)

9 Seeing none, I'll move to Section 17
10 entitled, Campaign Debts. No one has signed up for
11 campaign debts. Is there someone here who would like to
12 give public comment on campaign debts?

13 (No response.)

14 Seeing no one, I'll move to Section 17
15 entitled -- or I guess that was entitled Campaign
16 Debt -- Section 18, In-kind Contributions. No one has
17 signed up for in-kind contributions. Is there someone
18 who would like to testify on in-kind contributions?

19 (No response.)

20 Seeing none, I will move to Section 19.
21 Section 19 is entitled, Volunteers. No one has signed
22 up for public comment. Is there anyone who would like
23 to give public comment on Section 19?

24 (No response.)

25 Seeing none, I will move on to Section 20,

1 contributions. No one has signed up to give testimony
2 on Section 20, Part 20. Is there someone now who would
3 like to give testimony on 20?

4 (No response.)

5 Seeing none, I'll move on to Section 21
6 entitled, Candidate Designations of Contributions Over
7 the Limit. No one has signed up to give testimony on
8 Section 21. Is there someone now who would like to give
9 testimony on that section?

10 (No response.)

11 Seeing none, I'll move to Section 22,
12 Excessive and Prohibited Contributions. No one has
13 signed up to give comment. Is there someone now who
14 would like to give comment on Section 22?

15 (No response.)

16 Seeing none, I'll move on to Section 23
17 entitled, Date the Contribution was Made Versus Date of
18 Receipt. No one has signed up to give public comment on
19 this section. If someone now would like to give
20 comment, please state and make yourself available.

21 (No response.)

22 Seeing none, I'll move on to Section 24
23 entitled, Earmarking.

24 Ms. Fresquez, will you introduce
25 earmarking?

1 MS. FRESQUEZ: Mr. Lange, Section 24,
2 Earmarking, this section clarifies what constitutes
3 earmarking, which is prohibited by the Campaign
4 Reporting Act.

5 HEARING OFFICER LANGE: Thank you.

6 Ms. Viki Harrison is the first person
7 signed up to give testimony on this section.

8 MS. VIKI HARRISON: Thank you, Mr. Lange,
9 Madam Secretary and staff.

10 Section 24 is the contribution in someone
11 else's name. And we in the campaign finance world tend
12 to call this the Russian doll problem where you keep
13 peeling off the layers and trying to find out where the
14 money really came from. And we feel like this language
15 is incredibly important to be in here. Other states
16 have been able to use language like this to really find
17 out where the money is coming from, which, of course, is
18 the biggest problem with the (c)(4)s who do dabble a
19 little bit into electoral politics.

20 It's the reason I mentioned earlier, that,
21 you know, we have so many new (c)(4)s being formed, they
22 don't have to disclose the donors. And for us, this
23 way, if you don't have -- I mean, it's explicit in the
24 rules that you can't do that with a wink, with a nod,
25 with a little text to somebody.

1 So we feel like this is an important piece
2 to have in here not only for the clarifying rules for
3 the public, but also for the enforcement of this act
4 through the secretary of state and attorney general.
5 Thank you.

6 HEARING OFFICER LANGE: Any questions for
7 Ms. Harrison on earmarking?

8 (No response.)

9 Thank you very much.

10 Any further comments on this section?
11 Please come forward.

12 MR. TYLER MARTINEZ: Thank you. I'm
13 Tyler Martinez for the Center of Competitive Politics,
14 again.

15 I just wanted to touch on earmarking,
16 generally. Of course, contributions in the name of
17 another have always -- have long been banned by federal
18 law, and that -- that's perfectly fine. That's not
19 something that we have a particular problem with right
20 now.

21 The only issue I wanted to highlight was
22 in Subsection C, it says, "All contributions made by a
23 person either directly or indirectly, including
24 contributions that are in any way earmarked or otherwise
25 directed to another person can be treated as

1 up?

2 (No response.)

3 Seeing none, we will move on to the next
4 section, 25, Candidate Expenditures. No one has signed
5 up to speak on candidate expenditures. Is there someone
6 here who would like to give public comments specifically
7 on candidate expenditures? Yes, please come forward and
8 identify yourself for the record.

9 MEMBER OF PUBLIC: My name is --

10 HEARING OFFICER LANGE: I'm sorry, we
11 will introduce this section before you give your
12 comments. Thank you.

13 MEMBER OF PUBLIC: Oh, yeah, go ahead.

14 HEARING OFFICER LANGE: Thank you.

15 MS. FRESQUEZ: Apologize.

16 Section 25, Candidate Expenditures. This
17 section provides guidance to candidates on how to report
18 expenditures of a campaign in order to promote
19 transparency in their report. It further provides that
20 expenses that would exist for a person, even if they
21 were not a candidate or public official, are not
22 allowable. It provides guidance regarding tracking and
23 reporting mileage and per diem, and provides for a
24 mechanism for a candidate to seek an agency opinion or a
25 declaratory ruling on the lawfulness of a particular

1 expenditure.

2 HEARING OFFICER LANGE: Thank you.

3 MS. DEDE FELDMAN: Thank you.

4 Mr. Hearing Officer and Madam Secretary. My name is
5 Dede Feldman, and I was a member of the New Mexico State
6 Senate for 16 years. And I thought I'd testify on this
7 section just to liven things up from the perspective of
8 a -- somebody who's actually run for election.

9 And my basic message is one of thanks,
10 because this will make it easier for candidates. It
11 will clarify what is permitted; what is not permitted.
12 There's been great confusion in terms of the use of
13 personal credit cards, the use of personal vehicles, and
14 I want to thank you for clarifying that.

15 And, also, just for the few sections that
16 were mentioned above that nobody testified on, thank you
17 also for mentioning the bank accounts of the candidates,
18 which now are not required to be scrutinized routinely
19 by the secretary of state but do hold the answers to a
20 lot of questions that the public has. So thank you.

21 HEARING OFFICER LANGE: Any questions?

22 (No response.)

23 Seeing none, are there any other people
24 interested in speaking on -- on this Section 23,
25 Candidate Expenditures?

1 (No response.)

2 Seeing none, we will move on to Section 26
3 entitled, Charitable Donations. No one has signed up
4 for such a section. If someone now would like to give
5 public comment, please make yourself available.

6 (No response.)

7 Seeing none, we'll move on to Section 27
8 entitled, Primary and General Election Cycles for the
9 Purposes of Contribution Limits. No one has signed for
10 this section. Is there interest now on giving public
11 comment in this section?

12 (No response.)

13 Seeing none, we will move to Section 28
14 entitled, Coordinated Expenditures.

15 Ms. Fresquez, will you introduce
16 Coordinated Expenditures, please?

17 MS. FRESQUEZ: Mr. Lange, Section 28,
18 Coordinated Expenditures. This section clarifies how a
19 campaign shall report coordinated expenditures as
20 in-kind contributions and further activities which do
21 not constitute a coordinated expenditures.

22 HEARING OFFICER LANGE: Mr. Martinez,
23 you're first on the list. Thank you.

24 MEMBER OF PUBLIC: Hello again. Tyler
25 Martinez Center for Competitive Politics, we've stated a

1 lot today.

2 I wanted to just, briefly, touch on
3 coordination, and this also somewhat ties into the
4 things I've been hearing today. It's troublesome to
5 write a rule that attempts to vaguely prohibit First
6 Amendment activity such as speaking on public policy
7 issues or supporting a candidate. And what you really
8 want to do is tie -- is keep the law tailored to the
9 state interest of disclosure of campaign, you know,
10 campaign spending. And that is well and good.

11 When it comes to coordination, I would
12 suggest, as I said before in the definition section,
13 look to the federal government. Why do I keep saying
14 that? Well, I keep saying "look to the federal
15 government," because, quite frankly, the federal
16 election commission has been sued quite a lot. And a
17 lot of the law has been sort of settled out and it's
18 mettle has been tested and there's regulations that
19 reflect all of this learned experience. And I think
20 New Mexico could benefit greatly from looking at what --
21 what the federal government does.

22 When it -- as it applies to coordination,
23 as I said in the definition section, I believe the
24 definition section is too broad. And what really the
25 federal government does is have content standards, which

1 among other things is when a -- a supposedly independent
2 group republishes or redistributes campaign materials,
3 references candidates or political parties by --
4 performed election or expressly advocates for those
5 candidates.

6 But that's not enough. You also have to
7 have conduct, and that is, specifically, when a
8 candidate or party requests such -- such an
9 advertisement or -- or communication, having material
10 involvement in its creation or having a substantial
11 discussion with a candidate beforehand. Thankfully,
12 you've already borrowed a lot from the federal
13 definition of coordination, which is -- which is already
14 helpful. For example, one candidate endorsing another
15 is not counted as coordination, that's very, very
16 helpful.

17 The -- the proposed rule does not follow
18 the federal system in one aspect, which is the federal
19 rule exempts when a candidate is identified only in his
20 or her capacity as the owner or operator of a business
21 that existed prior to their candidacy. That, of course,
22 not being like -- so long as you're not also promoting
23 or attacking or -- or posing or whatever the candidate
24 itself. So if you're just talking about their business
25 or something like that, that also is a coordination.

1 And I think that's an important aspect to have,
2 particularly for local elections when you're talking
3 about somebody who's in a contractor business or
4 something like that.

5 Otherwise, thank you very much for having
6 us here. And I would like to have -- I'll just put my
7 name on the list for general comments too. Thank you.

8 HEARING OFFICER LANGE: Thank you.

9 Any questions for Mr. Martinez?

10 (No response.)

11 Seeing none, next on the list is
12 Ms. Harrison.

13 MS. VIKI HARRISON: I'm wondering if
14 Mr. Martinez and I should take this on the road. Viki
15 Harrison, Common Cause New Mexico.

16 The coordinated expenditure definition and
17 clarification here is incredibly important, otherwise
18 contribution limits are worthless. You could just get
19 around contribution limits all day long by saying, oh,
20 you want to help me out but you've already hit that,
21 well, here, let me give you the bill to my yard signs
22 and you just go right on ahead and pay the printer,
23 which happens, and it's really frustrating.

24 And until we can fix what the Campaign
25 Reporting Act currently allows candidates to do in

1 giving their money to everyone else and doing all the
2 things that the contributors never expected, this is
3 something that we feel is really critical. Our written
4 comments that we submitted to the secretary suggest a
5 rewording of 28(a), which we think will make it a little
6 more clear exactly when a coordinated expenditure will
7 be treated as a contribution and from whom and to whom
8 the contribution will be deemed to have been made. We
9 think it just simply clears that up a little bit, and
10 makes it to where it falls under the Campaign Reporting
11 Act and is clear so you don't have this coordination.

12 I mean, B -- B, C and D, and E actually,
13 are very clear in what is not coordination. And it's
14 nice to hear the previous speaker see that -- say that
15 this was -- language came from federal election code and
16 not Common Cause. Again, if this had come from Common
17 Cause, it would be drastically different. So I think
18 that, you know, it's very clear in here that this does
19 not -- this is not considered a coordinated expenditure.
20 This is not considered a coordinated expenditure.

21 And I think that that's critical, because
22 what we're talking about is we're not trying to capture
23 every single thing. If you see an ad that you like and
24 you repost it, that's not coordination. Coordination is
25 figuring out a way to get around contribution limits so

1 these PACS who have -- and that's one of the reasons why
2 this Super PAC can raise as much money and they have no
3 contribution limits, is because there's supposed to be
4 no coordination. If there's coordination, that's when
5 contribution limits kick in.

6 And so for us to have this -- you know, we
7 feel like that the law could already have been argued
8 that it would be an in-kind contribution, because how
9 else could you have defined that help. And so thank you
10 very much for this one, we think it's really important.

11 HEARING OFFICER LANGE: Any questions for
12 Ms. Harrison?

13 (No response.)

14 Seeing none, that's everyone who signed up
15 for Section 28. Is there someone in the audience who
16 would also like to give public comment on Section 28?

17 (No response.)

18 Seeing none, we will move to Section 29
19 entitled, Record Retention. No one has signed up to
20 provide comment for record retention. Is there someone
21 in the audience now who would like to give comment?

22 (No response.)

23 Seeing none, we will move to Section -- or
24 Part 30 entitled, Random Report Selection and Report
25 Review Process. Is there anyone who would like to give

1 testimony on this topic?

2 (No response.)

3 Seeing none, we will move to Section 31
4 entitled, Disclaimer Notices on Advertisements.

5 Ms. Fresquez, will you introduce
6 Section 31, please?

7 MS. FRESQUEZ: Mr. Lange, Section 31
8 entitled, Disclaimer Notices on Advertisements provides
9 for guidance in regards to when printed disclaimers on
10 campaign advertisements are required for a candidate or
11 independent expenditures.

12 HEARING OFFICER LANGE: Thank you.

13 Ms. Harrison is the first on the list.

14 MS. VIKI HARRISON: Thank you, Mr. Lange,
15 Madam Secretary.

16 Disclaimers have been upheld over and over
17 again. We know there's a 1997 AG opinion, we actually
18 disagree with that opinion. We think that it misread
19 the McIntyre. And, you know, again, there's nothing in
20 these proposed rules that prevent anyone from exercising
21 their constitutional right to free speech. Both the
22 court decisions that we've all discussed today as well
23 as the proposed rules here state that anyone can speak
24 and spend all they want in our elections. But if they
25 tell the voters how to vote, they must also tell them

1 who they are and where they're getting their money.

2 Free speech is vital to our democracy as
3 is the public's right to know where these messages came
4 from and who is paying for them. Thank you, Madam
5 Secretary.

6 HEARING OFFICER LANGE: Thank you.

7 Any questions for Ms. Harrison?

8 (No response.)

9 That's everyone who signed up for
10 Section 31. Is there someone in the audience who would
11 like to sign up for Section 31 and give public comment?

12 (No response.)

13 Seeing none, we will close that part of
14 the public comment section on particular sections, and
15 now allow for general comments regarding the Campaign
16 Finance Law generally. How many individuals would like
17 to give general comments about the law?

18 Due to the fact that there are about ten
19 of you, it seems like we will limit the public comment
20 period to two minutes? Three minutes? We can do it?
21 We have enough time? Okay. Yeah, so --

22 MR. HERMAN CAIN: Mr. Lange, could I
23 mention we have about an hour and 15 minutes left.

24 HEARING OFFICER LANGE: So we won't limit
25 it, and I'll call up first Ms. Diane Gledhill to give a

1 comment. Thank you.

2 MS. DIANE GLEDHILL: Madam Secretary,
3 Chairman. My name is Diane Gledhill. I am a member of
4 a group called the Action Alliance of the Embudo Valley.
5 We're about a hundred people in the Dickson/Embudo
6 Valley area.

7 I am -- we are -- I am here just to say
8 that we support the proposed rules on campaign
9 transparency. The additions as suggested by Common
10 Cause and the Common -- and support the comments of
11 Common Cause, of United New Mexico Indivisible --
12 Politics, some of our comrades up in Arroyo Seco. Thank
13 you so much.

14 HEARING OFFICER LANGE: Thank you.

15 Next is Judy Williams.

16 MS. JUDY WILLIAMS: Good morning, Madam
17 Secretary. My name is Judy Williams. I'm President of
18 the League of Women Voters of New Mexico. The league is
19 a nonprofit, nonpartisan organization that neither
20 supports nor opposes political candidates or parties.

21 The League wants to commend the secretary
22 for issuing these long overdue regulations to clarify
23 the Campaign Reporting Act that governs campaign finance
24 disclosure and coordinated expenditures in New Mexico.
25 Clarification of campaign financing and reporting rules,

1 we believe, is within the purview of the secretary of
2 state. And by the way, we did submit in writing some
3 minor comments online.

4 We believe that we cannot continue
5 elections with so little transparency, and we applaud
6 the fact that the regulation also defines coordinated
7 expenditures, thus, hopefully, removing from the shadows
8 so-called independent PACS and the candidates they
9 support.

10 The League of Women Voters believes that
11 an open transparent government including the running and
12 financing of political campaigns is key to a healthy
13 democracy. The secretary's done a good job of
14 interpreting existing laws to arrive at a clear and
15 sensible disclosure of rules. Thank you.

16 HEARING OFFICER LANGE: Thank you.

17 Next is Jason Vallencourt.

18 MR. JASON VALLENCOURT: Good morning,
19 Madam Chairman, Chairman.

20 I would like to also go back in history a
21 little bit. I appreciated the gentlemen who spoke about
22 Abraham Lincoln, so I'm going to talk about the guys
23 that came before him who all signed the Declaration of
24 Independence. By doing so, they basically signed their
25 death warrants. Okay. And I think that that has to be

1 put into perspective today.

2 I understand the intention of this, and I
3 don't oppose people having information that helps them
4 make better decisions. What I do oppose is my name as a
5 single father and as a resident of the State of New
6 Mexico and as somebody who might be crazy on a topic or
7 two in his lifetime to have the right to my privacy.
8 And I also believe in this process that was started all
9 those years ago by those guys, and I think that this is
10 a circumvention of that process.

11 And I think that we as a community, as a
12 state, have the ability to actively participate in
13 legislation. And that is not what is happening here.
14 That part came and went. And now we are, in my opinion,
15 trying to legislate by fiat. And you may not see it the
16 same way that I do. I'm not a professional politician.
17 This is not my job. But this is how your citizens do
18 see some of this.

19 And I want to encourage everybody in this
20 room on both sides of the fence to recognize that, that
21 Citizens United as awful and as the bane of existence to
22 everybody who's involved in politics didn't stop Bernie
23 Sanders from raising unbelievable amounts of money, nor
24 did it stop Ron Paul from raising unbelievable amounts
25 of money. Oaky. And all of those donations were small

1 and little.

2 So dark money is having an influence in
3 our politics across the country. But what is more
4 affecting the politics in this country is political
5 correctness and division. And that's what I've seen all
6 morning, is the ability of this body to somehow do
7 something politically correct that is going to divide
8 people. I ask you to think about that when you're
9 making these decisions.

10 I don't envy you all. Nobody does. I
11 don't think that you guys have these jobs that everybody
12 envies. I think they're thankless, and I appreciate you
13 all. But, please, listen to the people, all of them,
14 who have come before you. And, please, understand that
15 privacy with political speech is important. And I defy
16 the idea that these men who were brave enough to sign
17 the Declaration of Independence weren't also private
18 about some of their political leanings, and they have
19 the right to be.

20 And both Jefferson and Adams owned
21 newspapers and they constantly went after each other,
22 darkly. Okay. So politics is dark in its own nature,
23 and it's up to us to get the darkness out. Not a rule.
24 Okay. So that's my point, and I appreciate your time.

25 HEARING OFFICER LANGE: Thank you.

1 Next in line was Mr. Martinez. If you'd
2 like to give general comment, please come forward.

3 MR. TYLER MARTINEZ: Thank you. I
4 believe this will be the last time I say, I'm Tyler
5 Martinez from the Center for Competitive Politics.

6 I just wanted to wrap up. There's a lot
7 of discussion getting into a lot of these different
8 sections, and so that's the reason I wanted to talk
9 generally to sort of wrap up what's going to the thrust
10 of my comments, and to not read 20 pages into the
11 record. So I promise not to do that.

12 My comments, though, my written comments,
13 can be summed up this way. The center believes that the
14 legislators clearly mandated that the -- under -- in the
15 AK and the State Rules Act that the secretary is allowed
16 to write rules that interpret existing statutes, but not
17 write substantive new legislation. And that -- we're
18 worried that that's what happened here.

19 The legislature has, therefore, has not
20 delegated to this office the authority to promulgate the
21 rule that has failed to pass -- that has failed to pass
22 the political process. In a similar vein, the Campaign
23 Reporting Act's intelligible principle is that the
24 secretary has promulgated rules that are -- only
25 implement the existing law as it stands right now, not

1 as we would wish them to be. The proposed rule is,
2 therefore, probably beyond the secretary's authority to
3 promulgate.

4 But even if it were not, even if it did
5 not fail under administrative law, it still fails under
6 the First Amendment scrutiny while failing to achieve
7 its aims. There's been a lot of talk of terms of art
8 here, exacting scrutiny, expressed advocacy, those sorts
9 of things, and that's because there's a lot of case law
10 dealing with this. But the Tenth Circuit's been
11 pretty -- pretty consistent on protecting small
12 organizations and those who only incidentally talk about
13 law and issues and politics, generally.

14 So overall, the proposed rule makes
15 disclosure information less meaningful, though, by
16 broadly capturing activity of smaller inconsequential
17 contributors rather than the big money people that
18 people are worried about anyway.

19 I wanted to just also take the time to say
20 thank you to the staff who have been very nice and have
21 given me the opportunity to come out here, because I
22 love green chili, and so I'm going to totally go get
23 lunch after this. So thank you very much.

24 HEARING OFFICER LANGE: Thank you.

25 Now, there is no sign-in sheet, so

1 whoever'd like to come give public comment, we'll just,
2 I guess, move from the front of the room back. So
3 please come forward. Remember, please, state your name.

4 MR. JOHN OTTER: My name is John Otter.
5 I haven't had a chance to study this thoroughly, but
6 I -- I am unclear as to the status of 501(c)(3)
7 organizations in this regard. Normally, they're not to
8 engage in any political activity, so that maybe they are
9 exempted from this rule. However, I believe there is
10 a -- a certain possibility that a minor amount of
11 activity might be engaged by those, so I don't know
12 whether any of this applies to them or not.

13 I am in favor of this rule, generally.
14 One thing that I think might be considered is that
15 there's a lot of dollar amounts stated in the rule,
16 \$1,000, \$3,000, \$200, and those amounts are fixed. But
17 I can see, perhaps, 20 years from now, hopefully this
18 rule will still be in effect, that inflation or
19 deflation may have changed the worth of a dollar
20 considerably, and that there's no provision in here to
21 account for re-examining that value of the dollar due to
22 inflation or whatever. So that might be something that
23 might be included in here, periodic review of the dollar
24 amounts. Thank you.

25 HEARING OFFICER LANGE: Thank you.

1 Next?

2 MS. REBECCA EGG: My name is Rebecca Egg,
3 and I live in El Prado, New Mexico. And I speak here in
4 support of these new rules.

5 The Supreme Court has ruled that political
6 contributions are speech. If political contributions
7 are speech, then I think the citizens must have the
8 right to know who is speaking. I would say to opponents
9 of the secretary's new rules, if you are unwilling to
10 own your own words, then just be quiet.

11 As a good citizen of the State of New
12 Mexico and of this nation I have courage enough to have
13 my name attached to any of my points of view. Thank
14 you.

15 HEARING OFFICER LANGE: Thank you. Next?
16 Any other people for public comment?

17 MR. PAUL GESSING: Thank you. Again, my
18 name is Paul Gessing. I'm President of Rio Grande
19 Foundation.

20 And the topic of anonymity and public
21 speech and political speech is very important and,
22 obviously, very central to this whole discussion. As a
23 head of a 501(c)(3) our donors are anonymous. But I
24 want to read a quick statement from the Electronic
25 Frontier Foundation, a major national organization, not

1 specifically on this issue, but it does apply.

2 "Anonymous communications have an
3 important place in our political and social discourse.
4 The Supreme Court has ruled repeatedly that the right to
5 anonymous free speech is protected by the First
6 Amendment. A frequently cited 1995 Supreme Court ruling
7 in McIntyre versus Ohio election commission reads,
8 'anonymity is a shield from the tyranny of the majority.
9 It does -- exemplifies the purpose behind the Bill of
10 Rights and the First Amendment in particular to protect
11 unpopular individuals from retaliation at the hand of an
12 intolerant society.'"

13 And I would just add that at this time of
14 campus protests and all the various things going on that
15 it only exemplifies and heightens the need for more
16 anonymous speech.

17 And then the statement from -- again,
18 that, of course, was quoting a Supreme Court case. This
19 is a statement from that organization, "The tradition of
20 anonymous speech is older than the United States.
21 Founders, Alexander Hamilton, James Madison and John J.
22 wrote the Federalist Papers under the pseudonym Publius
23 and the Federal Farmer spoke up in rebuttal. The US
24 Supreme Court has repeatedly recognized rights to speak
25 and anonymously derived from the First Amendment."

1 So if John J., James Madison and Alexander
2 Hamilton don't know about the constitution and what it
3 should or should not protect, no one does. Thank you.

4 HEARING OFFICER LANGE: Thank you.
5 Mr. Cain?

6 MR. HERMAN CAIN: Thank you Mr. Lange and
7 members of the committee, Secretary of State, for having
8 me here and entertaining my opinions and the opinions of
9 our supporters in that we may proceed forward in your
10 choices ahead.

11 I would like to say that we urge you to
12 not receive these rules. They are impermissibly going
13 to infringe on New Mexico -- New Mexican's
14 constitutional rights to freely speak and associate.
15 They will directly deter citizens from exercising their
16 First Amendment right to associate and advocate on
17 important public policy issues. They'll diminish their
18 ability to communicate their ideas to their fellow
19 citizens and invade citizen's privacy.

20 Further, the rules are exceedingly vague
21 and overbroad in several key respects. The rules also
22 fail to comply with the 2010 Federal Appellate Court
23 ruling in that's directly binding on the secretary and
24 contravenes the Campaign Reporting Act.

25 Now, we've had a lot of discussion about

1 who's effected by this and by how many voters you're
2 going to drag into public disclosure and who should be
3 singled out as a human being with Social Security
4 number, who is the person who's causing what you
5 perceive to be problems on either side of an issue that
6 you think have unjust influence. And, you know, the
7 dark money, people of the constitution, they were all
8 really wealthy. They were probably the dark money
9 people of their time if you're going to call people who
10 have wealth, people who should be isolated because they
11 have an opinion and are willing to put their resources
12 forward, that they've earned over time.

13 So on that note, it's very careful in the
14 conversations you have about who you involve in this.
15 The -- personally as an organization I'm also the state
16 director for 501(c)(3) Americans for Prosperity
17 Foundation. And in California the state attorney
18 general has demanded that the Americans for Prosperity
19 Foundation, our -- the sister organization AFP, and
20 other nonprofits turn over their confidential IRS
21 Form 990, Schedule Bs to the AG's office, and thereby --
22 thereby, providing the private information of
23 organizations afforded to the state.

24 This was an unprecedented request for
25 information. And, although, the attorney general's

1 office promised that this sensitive information of every
2 single supporter was -- would remain out of the public
3 view and only in the state's hands, the data of numerous
4 charitable organizations who complied with the demand
5 ended up on a publicly accessible website. Okay. That
6 is, in fact, what we're looking at here.

7 You are may say that it's for good
8 intention. You may say it's for what you expect to be
9 good outcomes, and you know the issues that are being
10 challenged incorrectly. And you're looking at the
11 situation where you are going to dump conversation,
12 public -- private speech on to public lists because you
13 feel that that better influences the way that people
14 perceive issues. And I think you're wrong.

15 After AFP refused to comply with the
16 demand and brought a federal lawsuit to protect its
17 donors private information, the United States District
18 Court for the Central District of California permanently
19 enjoined the California Attorney General from demanding
20 Schedule B forms and concluded that disclosure
21 requirements were unconstitutional.

22 And there are a number of points of
23 controversy in the proposed rules that I feel compelled
24 to narrow our discussion back down to the core issue
25 that campaign finance line drawing is given solely to

1 legislature. We have seen already that this legislation
2 has been tried through the will of the people in their
3 vote into the legislative body and it failed in the
4 process. That is what the voters chose through their
5 representatives and the outcome of the general election,
6 and the secondary clause -- or secondary point of the
7 process where the governor has a vote from a statewide
8 perspective to say this is good or bad.

9 And you may disagree with it. You may not
10 like it. And you may feel like you need to see some
11 other change, but you don't have the authority to do
12 this. This has been looked at. If rules are put into
13 place, prepare for litigation, essentially. I expect
14 that you guys will get litigation on this, because these
15 rules are in direct violation of the binding law that is
16 in place. The court determined, however, that such line
17 drawing is a matter of legislative judgment. So you
18 guys are outside of your authority. You don't have the
19 authority to do this, and I would suggest that you step
20 back. If you want to work with legislators to continue
21 to pause Senate Bill 96 ad, then that's something to do.
22 There are a lot of good people who work with
23 organization that support us, and they would be
24 wholeheartedly in opposition to what you're trying to do
25 in violating their rights. And you don't have the

1 authority at the end of the day. So thank you for your
2 time.

3 HEARING OFFICER LANGE: Thank you.

4 Any further public comment? Seeing no --
5 oh, yeah.

6 MR. STEPHEN DESPIN: Hi. Again, my
7 name's Stephen Despin.

8 We've had a lot of talk today about the
9 dangers of dark money. But what I find to be much more
10 dangerous is that of the government violating the rights
11 of the citizens. This bill clearly violates our right
12 to freedom of speech. It violates our right to privacy.
13 And that is much more dangerous, in my opinion, to allow
14 than the worry of dark money. Thank you.

15 HEARING OFFICER LANGE: Thank you.

16 Any further comment?

17 (No response.)

18 Seeing none, we will close the hearing.
19 Has everyone present be -- signed the attendance sheet
20 along with their address or contact information? Okay.
21 At this time, then, I would like to move for the
22 admittance of the attendance sheet and shall mark it as
23 an exhibit into the record. We have both the public
24 comments sign-in sheet and the sign-in sheet generally.
25 We will mark those as Exhibit 14 and Exhibit 15.

1 (Exhibit 14 marked)

2 (Exhibit 15 marked)

3 HEARING OFFICER LANGE: Is there any
4 questions about the attendance sheet?

5 (No response.)

6 Okay. The hearing is now closed and no
7 further oral testimony will be heard today on the issue.
8 However, the written comment period will be expanded by
9 the secretary of state's office up until July 19th, 2017
10 at 5:00 p.m.

11 Also, all written comments received by the
12 secretary of state's office on this issue will be
13 admitted into the record after the Las Cruces hearing,
14 public hearing in Las Cruces.

15 The data, the arguments, the testimony
16 submitted during this rule hearing, will be duly
17 considered by the secretary of state's office. The
18 secretary of state's office is having two other public
19 comment hearings next week, one in Albuquerque and one
20 in Las Cruces. Members of the public including those
21 present today are invited to attend those hearings,
22 which will be scheduled and noticed for 9:00 a.m. to 12
23 in Albuquerque at the Joint County Commission, City
24 Council, Vincent E. Griego Chambers of the Albuquerque,
25 Bernalillo County Government Center, Concourse R2. One

1 Civic Plaza Northwest, Albuquerque, New Mexico. And in
2 Las Cruces on Wednesday, July 19th, at the Doña Ana
3 County Governmental Center at 845 North Motel Boulevard,
4 Las Cruces, New Mexico.

5 Any rules adopted by the secretary of
6 state will be filed at the state Records and Archive
7 Center in accordance with the State Rules Act and the
8 New Mexico Registrar publication deadlines. Adoption of
9 the rules become effective 30 days after filing under
10 the State Rules Act.

11 Any rules are -- any rule not amended may
12 be postponed for future discussion at a definite time in
13 the future.

14 I would like to thank you all and all the
15 members of the public for your attendance and
16 participation today. Let the record reflect that this
17 hearing was adjourned at 11:05 a.m. on July 13th, 2017.
18 Thank you.

19 (Exhibits 9, 10, 11 & 12 marked by Staff.)

20 (Fair Hearing Concluded at 11:05 a.m.)

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REPORTER'S CERTIFICATE

I, BELEN A. SOTO, NM CSR No. 106, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth, at which time
the witnesses were put under oath by the Hearing Office
Dylan K. Lange;

That the testimony of the witness, the questions
propounded, and all statements made at the time of the
examination were recorded stenographically by me and
were thereafter transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws
of New Mexico that the foregoing is true and correct.

Dated this 20th day of July, 2017.

BELEN A. SOTO, NM CSR. NO. 106