

United States District Court
District of New Mexico

Republican Party of New Mexico, Republican Party of Doña Ana County, Republican Party of Bernalillo County, New Mexico Turn Around, New Mexicans for Economic Recovery PAC, Harvey Yates, Rod Adair, Conrad James, Howard James Bohlander, and Mark Veteto,

Plaintiffs,

v.

Gary King, in his official capacity, New Mexico Attorney General, **Dianna Duran**, in her official capacity, New Mexico Secretary of State, and District Attorneys **Kari Brandenburg, Janetta Hicks, Amy Orlando, and Angela R. “Spence” Pacheco**, in their official capacities,

Defendants.

Civ. No. _____

Verified Complaint for Declaratory and Injunctive Relief

Verified Complaint for Declaratory and Injunctive Relief

Plaintiffs the Republican Party of New Mexico, Republican Party of Doña Ana County, Republican Party of Bernalillo County, New Mexico Turn Around, Harvey Yates, New Mexicans for Economic Recovery PAC, Rod Adair, Conrad James, Howard James Bohlander, and Mark Veteto, complain against Defendants as follows:

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments and the Supremacy Clause of the Constitution of the United States, as well as 42 U.S.C. Section 1983. It concerns the constitutionality of contribution limits contained

in New Mexico's Campaign Reporting Act (hereinafter the "Act"). N.M. Stat. §§ 1-19-25 to -36.

Specifically, the Plaintiffs challenge the constitutionality of:

- the \$5,000 contribution limit in Sections 1-19-34.7(A)(1)(C) and (A)(2)(b) as applied to contributions made to a political party (*see* Count I);
 - the \$5,000 contribution limit in Section 1-19-34.7(A)(2)(b) as applied to contributions made by a national political party to a state party (*see* Count II);
 - the \$5,000 contribution limit in Section 1-19-34.7(A)(2)(b) as applied to contributions made by a state party to local, county parties (*see* Count III);
 - the \$5,000 contribution limit in Section 1-19-34.7(A)(2)(a) as applied to contributions a political party makes to its candidates or candidates' political committees (*see* Count IV);
- and
- the \$5,000 contribution limit in Sections 1-19-34.7(A)(1) and (A)(2) as applied to contributions made for the designated purpose of making independent expenditures (*see* Count V).

Jurisdiction and Venue

2. This action arises under 42 U.S.C. Section 1983, the First and Fourteenth Amendments to the Constitution of the United States, and the Supremacy Clause of the Constitution of the United States.

3. This Court has jurisdiction over all claims pursuant to 28 U.S.C. Sections 1331 and 1343(a). It also has jurisdiction pursuant to the Declaratory Judgment Act as codified at 28 U.S.C. Sections 2201 and 2202.

4. Venue is proper under 28 U.S.C. Section 1391(b) because the facts giving rise to this action occurred, and Defendants reside, in this District.

Parties

5. Plaintiff Republican Party of New Mexico (the “NM-GOP”) is registered with the Secretary of State as a political party headquartered in Albuquerque, Bernalillo County, New Mexico.

6. Plaintiff Republican Party of Doña Ana County is the local Republican Party of Doña Ana County, New Mexico. It is independent of the NM-GOP and is not controlled by it or any other political party.

7. Plaintiff Republican Party of Bernalillo County is the local Republican Party for Bernalillo County, New Mexico. It is independent of the NM-GOP and is not controlled by it or any other political party.

8. Plaintiff New Mexico Turn Around (“NMTA”) is registered with the Secretary of State as a political committee headquartered in Albuquerque, Bernalillo County, New Mexico.

9. Plaintiff New Mexicans for Economic Recovery PAC is registered with the Secretary of State as a political committee headquartered in Albuquerque, Bernalillo County, New Mexico.

10. Plaintiff Harvey Yates is an individual who resides in Albuquerque, Bernalillo County, New Mexico.

11. Plaintiff Rod Adair is an individual who resides in Chaves County, New Mexico.

12. Plaintiff Conrad James is an individual who resides in Albuquerque, Bernalillo County, New Mexico.

13. Plaintiff Howard James Bohlander is an individual who resides in Santa Fe, Santa Fe County, New Mexico.

14. Plaintiff Mark Veteto is an individual who resides in Hobbs, Lea County, New Mexico.

15. As New Mexico Attorney General, Defendant Gary King has enforcement power granted by the Act to “institute a civil action in district court,” assess fines, and institute criminal prosecutions for violations of the Act. N.M. Stat. §§ 1-19-34.6(A)–(C).

16. As New Mexico Secretary of State, Defendant Dianna Duran has enforcement power granted by the Act to: “adopt and promulgate rules and regulations” in order “to implement the provisions of the [Act];” “initiate investigations to determine whether any provision of the [Act] has been violated,” and to “conduct[] a thorough examination . . . of reports filed” in order “to determine compliance with the provisions of the [Act.]” *Id.* §§ 1-19-26.2, 1-19-32.1, 1-19-34.4.

17. Defendant District Attorneys, Kari Brandenburg, Janetta Hicks, Amy Orlando, and Angela R. “Spence” Pacheco, have enforcement power granted by the Act to “institute a civil action in district court” and assess fines for violations of the Act. *Id.* §§ 1-19-34.6(B)–(C). And they have authority to institute criminal prosecutions for violations of the Act. *Id.* § 1-19-36(A).

18. Defendants are sued in their official capacities.

Facts

19. The stated purpose of New Mexico’s Election Code is “to secure the secrecy of the ballot, the purity of elections and guard against the abuse of the elective franchise. It is also the purpose of the Election Code to provide for efficient administration and conduct of elections.”

N.M. Stat. § 1-1-1.1. The Election Code, N.M. Stat. Section 1-1-1 *et seq.*, applies to enumerated elections including primary and general elections. *Id.* § 1-1-19.

20. The Act is included within the New Mexico Election Code and lacks a separate stated purpose. *Id.* §§ 1-19-25 to -35.

21. In 2009, the New Mexico Legislature enacted Senate Bill 116, which “amended the Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to -36 (1979, as amended through 2009), to impose limits on campaign contributions.” (Advisory Opinion 10-03, Nov. 10, 2010, Ex. 1, at 2.) The contribution limits took effect November 3, 2010. (Ex. 1, at 2.)

22. As amended, the Act prohibits a “person,” defined as “an individual or entity,” *id.* § 1-19-26(K), from making contributions¹ to political committees,² which includes political parties,³ in amounts greater than \$5,000.⁴ It also prohibits political committees from making contributions

¹ Under New Mexico law, “‘contribution’ means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose . . .” N.M. Stat. § 1-19-26(F).

² A “political committee” “means two or more persons, . . . selected, appointed, chosen, associated, organized or operated primarily for a political purpose . . .” N.M. Stat. § 1-19-26(L).

³ The statutory definition of “political committee” expressly includes “political parties, political action committees or similar organizations . . . that raise[], collect[], expend[] or contribute[] money or any other thing of value for a political purpose.” N.M. Stat. § 1-19-26(L)(1).

⁴ The Act states:

The following contributions by the following persons are prohibited: (1) from a person, not including a political committee, to a: . . . (c) political committee in an amount that will cause that person’s total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election.

N.M. Stat. § 1-19-34.7(A)(1).

to other political committees or candidates in amounts greater than \$5,000.⁵ And it prohibits persons, including political committees, from soliciting or accepting contributions greater than \$5,000.⁶

23. The contribution limit applies to each “election,” which includes “any primary, general, or statewide special election in New Mexico.”⁷ *See id.* §§ 1-19-26(H); 1-19-34.7. So a \$5,000 contribution limit operates during a primary election. And a \$5,000 contribution limit operates during a general election.

⁵ The Act prohibits the making of contributions

(2) from a political committee to: (a) candidate for office, including the candidate’s campaign committee, in an amount that will cause the political committee’s total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or (b) another political committee in an amount that will cause that political committee’s total contributions to the political committee to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election.

N.M. Stat. § 1-19-34.7(A)(2).

⁶ “A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.” N.M. Stat. § 1-19-34.7(C).

⁷ Primary election “means the period beginning on the day after the general election for the applicable office and ending on the day of the primary for that office.” N.M. Stat. § 1-19-34(G)(1). And general election is defined as “the period beginning on the day after the primary for the applicable office and ending on the day of the general election for that office.” § 1-19-34(G)(2).

24. A violation of the Act carries civil and criminal penalties.⁸ The secretary of state, attorney general, and district attorneys may institute investigations and enforce these penalties. *Id.* §§ 1-19-34.6; 1-19-36.

25. New Mexico law prohibits a political party from making contributions to a candidate in an amount greater than \$5,000 per election. *Id.* § 1-19-34.7(A)(2)(a).

26. New Mexico law prohibits a political party from making contributions to another political party in an amount greater than \$5,000 per election. *Id.* § 1-19-34.7(A)(2)(b).

27. The NM-GOP, the Republican Party of Doña Ana County, and the Republican Party of Bernalillo County are each a political party, which is “[a]n organization of voters formed to influence the government’s conduct and policies by nominating and electing candidates to public office.” *Black’s Law Dictionary*, 7th Ed. 1179. Although they are each Republican parties, and so identify with the national Republican platform, they are independent parties that are autonomous from one another.

28. Organizing within a political party enables individual voters to amplify their voices and speak more effectively during an election. To this end, the NM-GOP nominates, endorses, supports, and makes contributions to candidates seeking elected office in the State of New Mexico particularly in competitive races. The Republican Party of Doña Ana County and the Republican Party of Bernalillo County likewise endorse, support, and make contributions to

⁸ Relief for a violation, might include “a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).” N.M. Stat. § 1-19-34.6(B). A knowing and willful violation of the Act is “a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.” *Id.* § 1-19-36.

candidates seeking elected office in the State of New Mexico. They, however, tend to focus on candidates for local races in their respective counties, as well as candidates for state office who will represent their respective counties.

29. The NM-GOP has made contributions in amounts greater than \$5,000 to its candidates and candidates' committees in the past and wants to make such contributions in the future. Examples of specific planned contributions the NM-GOP wishes to make include contributions greater than \$5,000 to candidates (and plaintiffs) Adair and James prior to the 2012 general election. Also, NM-GOP wants to make contributions in amounts greater than \$5,000 to other candidates running in statewide elections in the 2012 general election. The NM-GOP wants to make these contributions that are greater than \$5,000 to its candidates right now, and is ready, willing, and able to do so. The NM-GOP would make its planned contributions right now but for New Mexico's prohibition on and penalties for making such contributions.

30. Additionally, the NM-GOP has made coordinated expenditures with its candidates in amounts greater than \$5,000 in the past and wants to do so again prior to the 2012 general election. A coordinated expenditure is a contribution subject to New Mexico's \$5,000 contribution limit. *Id.* § 1-19-34.7(C). Thus, New Mexico law prohibits the NM-GOP from making, and a candidate from accepting, coordinated expenditures in amounts that cause the NM-GOP's total contribution to the candidate to be greater than \$5,000 per election. NM-GOP wants to make coordinated expenditures greater than \$5,000 with its candidates right now, and is ready, willing, and able to do so. The NM-GOP would make its planned coordinated expenditures right now but for New Mexico's prohibition on and penalties for making such expenditures.

31. Rod Adair and Conrad James have both run for election in the past and intend to do so again in 2012. They want to solicit and accept a contribution from the NM-GOP in an amount greater than \$5,000. However, New Mexico law prohibits the NM-GOP from making, and Mr. Adair and Mr. James from soliciting or accepting, contributions greater than \$5,000 per election. *Id.* §§ 1-19-34.7(A)(2), (C). Mr. Adair and Mr. James would solicit contributions greater than \$5,000 from the NM-GOP now, and would accept such contributions now or at any time in the future that the NM-GOP made them, but for the Act's contribution limit and the penalties it imposes.

32. In order to support and advance candidates who hold principles in common with the NM-GOP, the NM-GOP raises money by soliciting and accepting contributions from individuals and entities. In the past, the NM-GOP has solicited and accepted contributions from individuals and entities in amounts greater than \$5,000 per election. The NM-GOP does not allow contributors to earmark contributions for particular candidates. Rather, the NM-GOP determines how contributions made to it will be used, and which candidates it will support. The NM-GOP wants to again solicit and accept contributions from individuals, entities, and political committees in amounts greater than \$5,000 right now to support its efforts for the 2012 primary and general elections. It would do so right now, but for the Act's contribution limit and the penalties for violating it.

33. Mr. Harvey Yates, Jr. wants to make a contribution right now to the NM-GOP in an amount greater than \$5,000. He is ready, willing, and able to do so. And the NM-GOP wants to solicit and accept Mr. Yates' contribution, right now, in an amount greater than \$5,000. But New Mexico law prohibits soliciting, accepting or making such a contribution. *Id.* § 1-19-34.7(A)(1).

34. The NM-GOP wants to solicit and accept contributions right now from the Republican National Committee (the “RNC”) in an amount greater than \$5,000. This money would be used to support candidates for election to Federal office. But New Mexico’s contribution limits prohibit the solicitation, making, or acceptance of contributions greater than \$5,000. *Id.* §§ 1-19-26; 1-19-34.7(A)(2)(b). The NM-GOP would solicit and accept contributions from the RNC in amounts greater than \$5,000 right now but for the Act’s contribution limit and the penalties for violating it.

35. Opinion Number 10-03 states “[T]he [Act] prohibits the Republican National Committee from contributing to the NM-GOP in an amount greater than five thousand dollars during a primary election or during general election.” (Ex. 1, at 3.)

36. However, federal law permits a transfer of money from a national political party to a state political party in an unlimited amount. Federal law states:

(4) The limitations on contributions contained in [cite statute Sections 441(a)(1) and (2)] do not apply to *transfers* between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party.

2 U.S.C. Section 441(a)(4) (emphasis added).

37. Additionally, federal regulations state that subject to certain provisions of the United States Code, “transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under [Federal Regulations] and whether or not such committees are affiliated.” 11 C.F.R. § 102.6.

38. The Federal Elections Campaign Act preempts application of the Act Section 1-19-34.7 to monetary transfers from a national party to the state party entity where the money is to be used in federal campaigns. 2 U.S.C. § 453.

39. The NM-GOP wants to make contributions right now that are greater than \$5,000 to the Republican Party of Doña Ana County and the Republican Party of Bernalillo County to aid them in their efforts to elect Republican candidates representing their districts. The Republican Party of Doña Ana County and the Republican Party of Bernalillo County want to receive such contributions. But New Mexico law limits contributions from the NM-GOP to the other political parties, including the Republican Party of Doña Ana County and the Republican Party of Bernalillo County, to no more than \$5,000 each per election.

40. The NM-GOP is ready, willing, and able to make its desired contributions right now in an amount greater than \$5,000 to the Republican Party of Doña Ana County and the Republican Party of Bernalillo County. And the Republican Party of Doña Ana County and the Republican Party of Bernalillo County are ready, willing, and able to accept such contributions right now. The NM-GOP would make its planned contributions, and the Doña Ana County and the Republican Party of Bernalillo County would each accept them, but for the contribution limit and the penalties for violating it.

41. While New Mexico law does not define “independent expenditure,” Advisory Opinion Number 10-03 states: “For purpose of this opinion, we assume the question above concerns what are often referred to as ‘independent expenditures.’ Under the [Act], an expenditure made by a person separately and independently of a candidate, even for a political purpose, is not, without more, a contribution to a candidate.” (Ex. 1, at 5.) Thus, New Mexico law recognizes independ-

ent political expenditures as distinct and separate from coordinated expenditures or other contributions.

42. The New Mexicans for Economic Recovery PAC (“NMER PAC”) is an independent expenditure PAC organized by the NM-GOP to shape the future of economic development in the State of New Mexico. (Ex. 2, *New Mexicans for Economic Recovery PAC Registration Form*). It operates completely independently of the NM-GOP, candidates, officeholders, NM-GOP officers and staff, NM-GOP’s Executive Committee, and the NM-GOP chairman. Board members of the independent expenditure political committee are solely responsible for making the independent expenditures and do so independently of NM-GOP or any candidate direction or control. It will make only independent expenditures, and will not make any other expenditures or contributions.

43. NMER PAC wants to solicit and accept contributions in an amount greater than \$5,000, right now, solely for the purpose of making independent expenditures. NMER PAC would solicit and accept such contributions right now, but for New Mexico’s prohibition on soliciting or accepting such contributions and the penalties for doing so. *Id.* § 1-19-34.7(A).

44. Mr. Mark Veteto wants to make a contribution in an amount greater than \$5,000 right now to NMER PAC. Mr. Veteto is a ready, willing, and able to do so. Mr. Veteto would make such a contribution right now but for New Mexico law.

45. New Mexico Turn Around (“NMTA”) is a New Mexico Political Committee that was founded in 2001 as an tax exempt organization under Section 527 of the U.S. Internal Revenue Code of 1986. As a nonprofit organization, NMTA reports to the New Mexico Public Regulation Commission. Additionally, NMTA is regulated as a “political committee” under New Mexico

law and as such reports to the New Mexico Secretary of State. NMTA supports and opposes only candidates for state offices.

46. NMTA's purpose includes supporting change in New Mexico, promoting honesty in campaigns, and promoting honesty in government. To further this stated purpose, NMTA makes contributions to candidates and provides professional political assistance to candidates. Additionally, NMTA engages in both issue advocacy, through which it educates citizens, and express advocacy, through which it voices support for or opposition to particular candidates. Finally, NMTA provides citizens with analysis of candidates, including voting records.

47. To advance its stated purpose and support candidates who agree with its purpose, NMTA wants to solicit and accept contributions right now from individuals and entities in amounts greater than \$5,000 for the purpose of making independent expenditures. However, because NMTA falls within the definition of a political committee, it is prohibited from soliciting or accepting contributions in amounts greater than \$5,000. *Id.* § 1-19-34.7(A)(1).

48. NMTA has established a segregated account into which contributions for the designated purpose of making independent expenditures will be deposited. This account is maintained solely for the purpose of making independent expenditures. And it will remain segregated from monies able to be used for candidate contributions.

49. NMTA wants to make independent expenditures in 2012 general election. In order to fund these independent expenditures, NMTA wants to solicit and accept contributions right now, in amounts greater than \$5,000 from individuals, entities and other political committees, for the designated purpose of making independent expenditures. It would do so, but for the Act's contribution limit and the penalties it imposes. *See, id.* §§ 1-19-34.7(A)(1)–(2).

50. Mr. Howard Bohlander wants to make a contribution to NMTA right now in an amount greater than \$5,000, designated and earmarked for the purpose of independent expenditures. He is a ready, willing, and able to do so. Mr. Bohlander would make his contribution right now, and NMTA would accept such a contribution right now, but for the contribution limit and the penalties for violating it.

51. In addition to the planned activity recited herein, Plaintiffs intend to do materially similar future activity.

52. Plaintiffs have no adequate remedy at law.

Count 1
Sections 1-19-34.7(A)(1)(C) and (A)(2)(b)
Are Unconstitutional As Applied To Contributions Made to Political Parties.

53. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

54. Section 1-19-34.7(A)(1)(C) prohibits a person from making a contribution to political parties in an amount greater than \$5,000 during a primary election or \$5,000 during a general election. And Section 1-19-34.7(A)(2)(b) prohibits a political committee from making a contribution to a political party in amounts greater than \$5,000 during a primary election or \$5,000 during a general election.

55. The contribution limit in Sections 1-19-34.7(A)(1)(C) and (A)(2)(b) as applied to contributions made by individuals, entities and political committees to a political party is unconstitutional because it burdens and chills First Amendment speech and associational rights without adequate justification and is not properly tailored, thereby failing constitutional scrutiny. *Buckley v. Valeo*, 424 U.S. 1 (1976); *Randall v. Sorrell*, 548 U.S. 230 (2006).

56. The contribution limit in Sections 1-19-34.7(A)(1)(C) and (A)(2)(b) as applied to contributions to a political party is also unconstitutional because it prevents candidates, especially challengers, from amassing the resources necessary to mount effective campaigns in violation of the Supreme Court's holding in *Randall*, 548 U.S. 230.

Count 2

Section 1-19-34.7(A)(2)(b) Is Unconstitutional As Applied to Contributions Made By a National Political Party to a State Political Party.

57. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

58. The Act prohibits the NM-GOP from soliciting or accepting contributions from a national political party in an amount greater than \$5,000. (Ex. 1, at 2.)

59. The contribution limit in Sections 1-19-34.7(A)(2)(b) is unconstitutional as applied to transfers of money or contributions made by a national political party to a state political party because it burdens and chills First Amendment speech and associational rights without adequate justification and is not properly tailored, thereby failing constitutional scrutiny. *Buckley v. Valeo*, 424 U.S. 1 (1976); *Randall v. Sorrell*, 548 U.S. 230 (2006).

60. The contribution limit in Sections 1-19-34.7(A)(2)(b) as applied to transfers of money or contributions made by a national political party to a state political party is also unconstitutional because it is allowed under federal law, which preempts New Mexico state law. Federal law permits transfers of money from a national political party to a state political party in an unlimited amount. 2 U.S.C. § 441(a)(4); *see also* 11 C.F.R. § 102.6. Federal law states:

(4) The limitations on contributions contained in [cite statute Sections 441(a)(1) and (2)] do not apply to *transfers* between and among political committees which

are national, State, district, or local committees (including any subordinate committee thereof) of the same political party.

2 U.S.C. § 441(a)(4) (emphasis added). The Federal Elections Campaign Act “supersedes and preempts any provision of State law with respect to elections for Federal office.” 2 U.S.C. § 453. Applying New Mexico’s contribution limit to contributions or transfers from a national political party to a state political party violates the Supremacy Clause of the Constitution of the United States.

61. The contribution limit in Sections 1-19-34.7(A)(2)(b) as applied to transfers of money or contributions made by a national political party to a state political party is also unconstitutional because it prevents candidates, especially challengers, from amassing the resources necessary to mount effective campaigns in violation of the Supreme Court’s holding in *Randall*, 548 U.S. 230.

Count 3

Section 1-19-34.7(A)(2)(b) Is Unconstitutional As Applied to Contributions from a State Political Party to Local Political Parties.

62. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

63. Section 1-19-34.7(A)(2)(b) prohibits a political committee (including political parties) from making contributions to another political committee in amounts greater than \$5,000 during a primary election or \$5,000 during a general election.

64. The contribution limit in Section 1-19-34.7(A)(2)(b) is unconstitutional as applied to transfers of money or contributions made by a state political party to local political parties because it burdens and chills First Amendment speech and associational rights without adequate

justification and is not properly tailored, thereby failing constitutional scrutiny. *Buckley*, 424 U.S. 1; *Randall*, 548 U.S. 230.

65. The contribution limit in Sections 1-19-34.7(A)(2)(b) as applied to transfers of money or contributions made by a state political party to local political parties is also unconstitutional because it prevents candidates, especially challengers, from amassing the resources necessary to mount effective campaigns in violation of the Supreme Court's holding in *Randall*, 548 U.S. 230.

Count 4

Section 1-19-34.7(A)(2) Is Unconstitutional as Applied To Contributions Made by NM-GOP To Its Candidates or Candidates' Committees.

66. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

67. New Mexico law prohibits contributions from a political party to its candidates or candidates' committees in amounts greater than \$5,000. N.M. Stat. §§ 1-19-34.7(A)(2)(a); 1-19-26(L)

68. The contribution limit in Section 1-19-34.7(A)(2) is unconstitutional as applied to contributions made by NM-GOP to its candidates or candidates' committees because it burdens and chills First Amendment speech and associational rights without adequate justification and is not properly tailored, thereby failing constitutional scrutiny. *Buckley*, 424 U.S. 1; *Randall*, 548 U.S. 230.

69. The contribution limit in Section 1-19-34.7(A)(2) as applied to contributions made by NM-GOP to its candidates or candidates' committees is also unconstitutional because it prevents

candidates, especially challengers, from amassing the resources necessary to mount effective campaigns in violation of the Supreme Court's holding in *Randall*, 548 U.S. 230.

Count 5

Sections 1-19-34.7(A)(1) and (A)(2) Are Unconstitutional as Applied to Contributions Made for Independent Expenditures.

70. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

71. Contributions to political committees in amounts greater than \$5,000 per election are prohibited by New Mexico law. N.M. Stat. §§ 1-19-34.7(A)(1)–(2).

72. The State has no constitutionally cognizable interest in limiting contributions to independent expenditure committees, or to other political committees when those contributions are earmarked for independent expenditures. The contribution limit is therefore unconstitutional when applied to contributions to political committees making only independent expenditures, as well as contributions to all political committees when those contributions are earmarked for independent expenditures. *Citizens United v. FEC*, 130 S. Ct. 876 (2010); *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001); *FEC v. Nat'l Conservative PAC*, 470 U.S. 480 (1985); *Buckley*, 424 U.S. 1; *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); *Emily's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009).

Prayer for Relief

Wherefore, Plaintiffs request the following relief:

73. Declare Sections 1-19-34.7(A)(1)(C) and (A)(2)(b) unconstitutional as applied to contributions made to the Republican Party of New Mexico and all others similarly situated, and enjoin their enforcement;

74. Declare Section 1-19-34.7(A)(2)(a) unconstitutional as applied to transfers of funds and contributions from a national political party to a state political party and enjoin its enforcement;

75. Declare Section 1-19-34.7(A)(2)(a) unconstitutional as applied to transfers of funds and contributions from a state political party to local political parties and enjoin its enforcement;

76. Declare Section 1-19-34.7(A)(2)(a) unconstitutional as applied to contributions the NM-GOP and others similarly situated make to their candidates or candidates' committees and enjoin its enforcement;

77. Declare Sections 1-19-34.7(A)(1) and (A)(2) unconstitutional as applied to contributions made to committees like New Mexicans for Economic Recovery PAC making only independent expenditures and all other political committees similarly situated and enjoin their enforcement;

78. Declare Sections 1-19-34.7(A)(1) and (A)(2) unconstitutional as applied to contributions earmarked for independent expenditures that are made to New Mexico Turn Around and all other political committees similarly situated and enjoin their enforcement;

79. Grant Plaintiffs their costs and attorneys fees under 42 U.S.C. Section 1988 and any other applicable authority, and

80. Grant any and all other such relief as this Court deems just and equitable.

Dated: October 7, 2011

Respectfully Submitted,

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*Pro hac vice application to be filed when docket number is available.

/s/ Submitted Electronically 10/7/2011
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Verifications for Plaintiffs

Exhibit 1: Advisory Opinion 10-03, Nov. 10, 2010

Exhibit 2: New Mexicans for Economic Recovery PAC Registration Form