



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2022-05**

April 1, 2022<sup>1</sup>

#### **QUESTION PRESENTED<sup>2</sup>**

1. May New Mexico political committees that make contributions to candidates, officeholders, and candidates solicit unlimited contributions from allowable persons on behalf of political committees that make only independent expenditures?
2. If the answer to question 1 is yes, may candidates and officeholders solicit unlimited contributions from allowable persons for an independent expenditure committee that will make expenditures to

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<sup>1</sup> This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” *See* NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On March 16, 2022, the Commission received a request for an advisory letter that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. The request was submitted by counsel for a political committee subject to the Campaign Reporting Act and, thus, could submit a request. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(B)(1) NMAC. The executive director provided an advisory letter in response to the request on March 25, 2022. Commissioner Bluestone subsequently requested that the advisory letter be converted into an advisory opinion. *See* 1.8.1.9(B)(3) NMAC. The Commission now issues the guidance as an advisory opinion. *See id.*

support the candidate or officeholder who is soliciting funds on the committee's behalf?

## ANSWERS AND ANALYSIS

1. ***May New Mexico political committees that make contributions to candidates, officeholders, and candidates solicit unlimited contributions from allowable persons on behalf of political committees that make only independent expenditures?***

**Yes.**

- A. A political committee (that is not a political party) may solicit unlimited contributions from allowable persons on behalf of a political committee that makes independent expenditures only.

The Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to -36 (1979, as amended through 2021), limits the amounts persons may contribute to candidates, candidates' campaign committees, and political committees to \$5,200 during a primary election cycle and \$5,200 during a general election cycle. *See* NMSA 1978, § 1-19-34.7(A)(1).<sup>3</sup> To ensure that persons who contribute money or other things of value to influence the outcomes of elections observe these limits, Section 1-19-34.7(E) further prohibits persons (including political committees) from knowingly soliciting or accepting contributions from other persons (including political committees) that exceed the \$5,200 limit per election cycle. § 1-19-34.7(E). These limits and prohibitions serve New Mexico's interests to deter *quid pro quo* corruption and the appearance thereof.

But Section 1-19-34.7's limits and prohibitions do not apply to all persons. Some persons participate in elections only by making "independent expenditures"—*i.e.*, payments for advertisements that support a candidate but are

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<sup>3</sup> The contribution limits are doubled for candidates seeking election to the office of governor, *see* Section 1-19-34.7(B), and the contribution amounts increase over time in step with inflation. *See* § 1-19-34.7(F). The per-election contribution limit is currently \$5,200. *See* New Mexico Secretary of State, Campaign Contribution Limits, <https://www.sos.state.nm.us/candidate-and-campaigns/how-to-become-a-candidate/campaign-contribution-limits/> (last accessed Mar. 18, 2022).

not coordinated with a candidate, a candidate’s campaign, or a political party.<sup>4</sup> In *Republican Party of New Mexico v. King*, the United States Court of Appeals for the Tenth Circuit—following the Supreme Court’s decision in *Citizens United*—held that New Mexico’s contribution limits and corresponding prohibitions on the solicitation and acceptance of contributions violated the First Amendment as applied to contributions to political committees where the contributions were “to be used *solely* for independent expenditures.” *Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013) (emphasis added); *see also Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010). To align the Campaign Reporting Act with these federal court decisions, in 2019, the Legislature enacted Senate Bill 3, providing that:

The limitations on contributions to political committees provided for in Subsection A of this section shall not apply to a political committee that makes only independent expenditures or to a contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.

2019 N.M. Laws, Ch. 262, § 12 (S.B. 3), *compiled at* § 1-19-34.7(I).

Given this background, the request’s first question asks whether political committees that contribute to candidates may solicit *unlimited* contributions on behalf of political committees that make independent expenditures only—also known as “Super PACs.”<sup>5</sup> To visualize the question, consider the following scene: At a fundraising gala attended by many business representatives and high-net-worth individuals, the president of “New Mexicans for New Mexico,” a political committee that contributes to the campaign of a candidate for governor, informs the assembled crowd that they each may contribute only \$5,200 during the primary election cycle to New Mexicans for New Mexico. But the president then asks the

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<sup>4</sup> The CRA provides a precise definition of “expenditure” and “independent expenditure.” *See* § 1-19-26(M) & (N). Roughly, an independent expenditure is a payment for election-related advertising made by a person other than a candidate or their campaign and which is not coordinated with the candidate, their campaign, or their political party. *See id.*

<sup>5</sup> In the federal context, political committees that make independent expenditures only have come to be known as “Super PACs.” *See, e.g., Fund for Louisiana’s Future v. Louisiana Bd. of Ethics*, 17 F. Supp. 3d 562, 565 (E.D. La. 2014). In this advisory opinion, we refer to political committees that make independent expenditures only as “Super PACs” or “IE-only political committees.”

attendees also to give additional contributions—*at any amount*—to “Super New Mexicans for New Mexico,” a political committee that makes independent expenditures only. The request queries whether the CRA allows that latter fundraising ask.

It does. Ordinarily, Section 1-19-34.7(E) prohibits one political committee from soliciting, on behalf of another political committee, contributions in excess of contribution limits. § 1-19-34.7(E). But those limits “[do] not apply to a political committee that makes only independent expenditures . . .” § 1-19-34.7(I). Thus, an IE-only political committee may indirectly solicit unlimited contributions through a political committee that makes contributions to candidates. And, looking to the other side of the same coin, a political committee that makes contributions to candidates may solicit unlimited contributions on behalf of an IE-only political committee. *See* §§ 1-19-34.7(E) & (I).<sup>6</sup>

B. Subject to the caveats outlined in this opinion, an officeholder and candidate may solicit unlimited contributions from allowable persons on behalf of a political committee that makes independent expenditures only.

For similar reasons, an officeholder and a candidate may ask third-party donors to contribute at any amount to a political committee that makes independent expenditures only. Section 1-19-34.7(E) contemplates that a person, which the CRA defines as “an individual or entity,” may solicit contributions directed to another person, but subject to contribution limits. *See* §§ 1-19-26(P); 1-19-34.7(E). Because Section 1-19-34.7’s contribution limits and associated prohibitions on the solicitation of contributions beyond those limits do not apply to IE-only political committees, persons may solicit unlimited contributions to IE-

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<sup>6</sup> This conclusion is consistent with the development of campaign finance law as to “hybrid PACs,” which are political committees that, from one bank account, make contributions to candidates and, from a segregated bank account, make independent expenditures. *See, e.g.*, § 1-19-34.7(I) (allowing political committees to have segregated bank accounts “that may only be used to make independent expenditures”). In *Republican Party of New Mexico*, the Tenth Circuit overturned limits on contributions to a hybrid PAC for independent expenditures but noted that hybrid PACs “must respect both direct contribution limits and anti-coordination laws.” 741 F.3d at 1101. As a result, a hybrid PAC could solicit (i) contributions up to the limit for the bank account it uses for contributions for candidates and, then, (ii) unlimited amounts for its segregated bank account, from which it makes “independent expenditures” only. This ability of a hybrid PAC—recognized both by the *Republican Party of New Mexico* and Section 1-19-34.7(I)—is consistent with the ability of one political committee, which makes contributions, to raise funds at any amount for another political committee, which makes independent expenditures only.

only political committees. *See* §§ 1-19-34.7(E), (I). “Persons” include candidates and officeholders and, unlike federal law as to federal elections, the CRA does not specifically limit the amount of contributions candidates and officeholders can solicit for political committees in regard to New Mexico elections. *Compare* § 1-19-34.7, *with* 52 U.S.C. § 30125(e)(1), *and* 11 CFR § 300.61.

The significance of this implication, however, ultimately depends on whether the political committee’s expenditures are “independent expenditures” under Section 1-19-26(N) or coordinated expenditures under Section 1-19-26(I). To be sure, one category of a political committee’s potential expenditures are unquestionably “independent expenditures” and not “coordinated expenditures”—namely, those expenditures to pay for advertisements advocating for the passage or defeat of a clearly identified ballot question. The definition of “independent expenditure” encompasses such payments, whereas the definition of “coordinated expenditure” does not. *Compare* § 1-19-26(N), *with* § 1-19-26(I).

Suppose that “Super New Mexicans for New Mexico” makes expenditures to support a ballot question—a constitutional amendment to allow for legislative compensation or the repeal of the Anti-Donation Clause, for example. Super New Mexican’s expenditures are independent expenditures and, because they concern a ballot question, cannot be coordinated expenditures. *See* § 1-19-26(N)(3). So even if a candidate or officeholder who agrees with Super New Mexicans on the ballot question fundraises for Super New Mexicans, that fundraising cannot make the expenditures coordinated. By the CRA’s definitions and independent of the status of Super New Mexican’s fundraisers, because Super New Mexican’s expenditures support a ballot question, they are “independent expenditures.”

If a candidate, however, raises funds for a political committee that makes expenditures for the purpose of supporting or opposing the nomination or election of a candidate, whether the candidate may solicit *unlimited* contributions for that political committee depends on whether the political committee’s expenditures are coordinated under Section 1-19-26(I)(2). We turn to this topic next.

**2. *If the answer to question 1 is yes, may candidates and officeholders solicit unlimited contributions from allowable persons for an independent expenditure committee that will make expenditures to support the candidate or officeholder who is soliciting funds on the committee's behalf?***

**No.**

A. A candidate may not solicit unlimited contributions for a political committee that makes expenditures to support the candidate's election.

The request next queries whether a candidate may solicit unlimited contributions to an IE-only political committee that will use those contributions to pay for advertisements supporting the candidate's election. To picture the question, return to the hypothetical fundraising gala: May the gubernatorial candidate address the room, asking attendees to give contributions—*at any amount, including amounts exceeding the CRA's contribution limits*—to “Super New Mexicans for New Mexico,” where Super New Mexicans will make expenditures to support the candidate's election? The answer is no.

The CRA's contribution limits and associated prohibitions on fundraising do not apply to IE-only political committees. But if a candidate solicits contributions to be given to a political committee, and the political committee uses contributions to pay for advertisements supporting the candidate's election (or opposing her opponent's election), then the political committee no longer makes independent expenditures only—it has made a coordinated expenditure.

Under the CRA, an “independent expenditure” is defined to *exclude* “a coordinated expenditure.” § 1-19-26(N). And a “coordinated expenditure” is defined as:

[A]n expenditure that is made:

(1) by a person other than a candidate or campaign committee;

(2) *at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign*

committee or *political party* or any agent or representative of a candidate, campaign committee or political party; and

(3) for the purpose of:

(a) supporting or opposing the nomination or election of a candidate; or

(b) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot.

§ 1-19-26(I) (emphasis added). There are many ways a political committee might coordinate expenditures with a candidate, a campaign committee, or a political party.<sup>7</sup> When a political committee coordinates its expenditures with a candidate, the law generally treats the coordinated expenditures as contributions from the political committee to the candidate. *See, e.g.*, § 1-19-26(H)(2) (defining “contribution” to include a coordinated expenditure).

If (i) a candidate (or their campaign committee, political party or agent thereof) asks persons to make contributions to a political committee and (ii) the political committee uses those contributions to pay for advertisements that support the candidate, then the political committee makes expenditures “at the . . . suggestion of” or “in . . . concert with” the candidate (or their campaign committee, political party or agent thereof). § 1-19-26(I)(2). This sequence of the candidate’s solicitation and the political committee’s expenditure of received funds on advertisements supporting the candidate’s election constitutes coordination—*even if* the candidate is not involved in the creation, production, or placement of the advertisements and has not communicated with the political committee about

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<sup>7</sup> Here is a sampling of different kinds of coordination: (i) the candidate plays a role in the design or placement of the advertisement; (ii) the political committee pays for the advertisement following a discussion with the candidate; (iii) the political committee makes expenditures to a commercial vendor that the candidate or the candidate’s campaign committee has also paid to support the candidate’s election; and (iv) the political committee pays a commercial vendor to use information in advertisements that the vendor previously used in advertisements supporting the candidate’s election. *See, e.g.*, 1.10.13.28(D) NMAC; *see also* 11 CFR § 109.21(d)(2)–(4).

those topics.<sup>8</sup> The text and purpose of Section 1-19-26(I)(2) and the accompanying NMAC provision support the conclusion that the political committee’s expenditure under those circumstances is a coordinated expenditure, for three reasons.

First, by expressly soliciting funds for a political committee whose purpose includes making expenditures to support the candidate’s election (and, as the request posits, “will” make those expenditures), the candidate indirectly “suggest[s]” to contributors and to the political committee that those contributions be used on expenditures that support her election. § 1-19-26(I)(2). A suggestion need not be overt to constitute coordination. Moreover, by soliciting funds for a political committee that makes expenditures to support her election, the candidate consents to the political committee’s using the funds she raises on its behalf for expenditures supporting her election. *Cf. Buckley v. Valeo*, 424 U.S. 1, 47 n.53 (1976) (concluding that the coordination standard of the Federal Election Campaign Act (“FECA”) treats “all expenditures placed in cooperation with or with the consent of a candidate . . . as contributions subject to [contribution] limitations”); *cf. also McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 221–22 (2003), *overruled on other grounds by Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010) (“[E]xpenditures made after a ‘wink or nod’ often will be ‘as useful to the candidate as cash.’ For that reason, Congress has always treated expenditures made ‘at the request or suggestion of’ a candidate as coordinated.” (citations omitted)).

Second, when the political committee makes expenditures supporting the candidate’s election after receiving contributions the candidate solicited, the political committee makes those expenditures “in . . . concert with” the candidate. § 1-19-26(I)(2). The candidate’s solicitation of funds for the political committee and the political committee’s expenditures to support the candidate’s elections are actions that are in “concert” under a normal and traditional meaning of the term. *Id.*; *see also Concert*, Merriam-Webster’s Collegiate Dictionary (10th ed.) (“to make a plan for; to act in harmony or conjunction”). The candidate asks donors to

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<sup>8</sup> If the candidate and the political committee have communicated about those topics related to the political committee’s expenditures and the candidate then solicits funds for the political committee, then there is also coordination. *See* § 1-19-26(N). The request, in framing its second question, posits that the political committee “will make expenditures to support the candidate or officeholder who is soliciting funds on the committee’s behalf.” Request, Mar. 16, 2022 (emphasis added). The premise suggests that the candidate knows the political committee plans to spend funds to support her candidacy; if so, the grounds of the candidate’s knowledge likely satisfy Section 1-19-26(I)(2)’s definition of coordination in other ways.



make contributions and the political committee receives those contributions from donors to fund expenditures supporting the candidate. These actions in conjunction further a shared goal of the candidate's election to office and thus are in concert. Because the political committee makes expenditures that are in concert with the candidate, those expenditures are coordinated expenditures. § 1-19-26(I)(2).

Third, when considering whether an expenditure is coordinated, 1.10.13.28(D)(6) NMAC instructs consideration of:

whether the reporting individual [i.e., the candidate] and the person making the expenditure [i.e., the political committee] have each . . . been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

1.10.13.28(D)(6) NMAC.<sup>9</sup> The Office of the Secretary of State, in promulgating this rule, framed it broadly enough to capture the circumstance of a candidate fundraising for a political committee that makes expenditures supporting her election.<sup>10</sup> The candidate and the political committee communicate with the same third-party donors: the candidate solicits their contributions, and the political committee receives them. *See id.* And where the political committee's purpose is to make expenditures supporting her election, the candidate should know that her solicitations to the third-party donors will "result in expenditures to benefit [her]." *Id.*

Consistent with this interpretation of the CRA, local campaign finance ordinances in New Mexico and statutes of other states provide that coordinated expenditures include an entity's expenditures in support of a candidate's election where those expenditures are derived from funds the candidate raises for the

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<sup>9</sup> This factor is just one in a series of "non-exhaustive" factors that may be considered in determining whether an expenditure is coordinated. *See* 1.10.13.28(D) NMAC.

<sup>10</sup> In this advisory opinion, we do not address the circumstance of a candidate fundraising for a political committee that makes expenditures only supporting the election of *another* candidate.

entity.<sup>11</sup> The provisions of campaign finance law that outline coordinated expenditures—together with both the definition of “contribution” to include coordinated expenditures and contribution limits—work to deter *quid pro quo* corruption and the appearance thereof. If a candidate asks a wealthy individual to contribute sums in excess of contribution limits to a political committee that will expend those sums on advertisements supporting her election (as the request posits), and if the individual does as the candidate asks, then the individual, at the candidate’s solicitation, has effectively circumvented the contribution limits. In that instance, the public might reasonably suspect that when the candidate wins election and the government acts in favor of that individual, the state action was based on a *quid pro quo* agreement. *Cf. Citizens United*, 558 U.S. at 345 (“The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger the expenditures will be given as a *quid pro quo* for improper commitments from the candidate.” (quoting *Buckley*, 424 U.S. at 47)); *Republican Party of N.M.*, 741 F.3d at 1102 (“As long as the PAC does not . . . coordinate with candidates in making expenditures, there is no possibility that unlimited contributions for independent expenditures will enable donors to skirt otherwise valid contribution limits.”). Like with other jurisdictions’ campaign finance laws, the CRA’s purpose to prevent such corruption and its appearance supports the foregoing interpretation of “coordinated expenditure.” § 1-19-26(I).

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<sup>11</sup> *See, e.g.*, City of Santa Fe Municipal Code § 9-2.3(K)(2)(c) (“Coordinated expenditure means an expenditure made: . . . [i]n cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his/her representatives or agents or the candidate’s political committee, including but not limited to, the following examples . . . : *The candidate, candidate’s political committee or his/her representatives or agents has solicited funds or engaged in other fundraising activities on behalf of the person or entity making the expenditure during the twelve-month (12) period preceding the date of the expenditure.* Fundraising activities include, but are not limited to, exchanging names of potential donors or other lists to be used in engaging in fundraising activity, regardless of whether or not the individual or entity pays fair market value for the names or lists provided; or being a featured guest or speaker at a fundraising event for the benefit of the entity making the expenditure.” (emphasis added)); *see also, e.g.*, Conn. Gen. Stat. Ann. § 9-601c(c)(3) (“[T]he following shall not be presumed to constitute evidence of consent, coordination or consultation within the meaning of subsection (a) of this section: . . . financial support for, or solicitation or fundraising on behalf of the entity by a candidate or an agent of the candidate, *unless the entity has made or obligated to make independent expenditures in support of such candidate in the election or primary for which the candidate is a candidate.*”(emphasis added)).

- B. If a candidate raises funds for a political committee that spends those funds to support the candidate’s election, then the political committee does not make independent expenditures only and, therefore, the contribution limits apply when the candidate or other persons raise funds on the political committee’s behalf.

“Coordinated expenditure” reaches coordinated fundraising and expenditures between a candidate and a political committee that supports her election, and therefore entails consequences under the CRA for the political committee’s other fundraising activities. If a candidate raises funds for a political committee that spends those funds to support the candidate’s election, then the political committee makes *some* coordinated expenditures and, therefore, does not make independent expenditures *only*. Because it does not make independent expenditures only, the exception to contribution limits that Section 1-19-34.7(I) reserves for IE-only political committees does not apply. Consequently, Section 1-19-34.7(A)’s contribution limits apply to that political committee, as do Section 1-19-34.7(E)’s prohibitions on the solicitation and acceptance of contributions. As a result, the candidate and other persons may still solicit funds for the political committee that makes expenditures to support the candidate’s election, but subject to the contribution limits. *See* § 1-19-34.7(E).

- C. This analysis differs from Federal Election Commission Advisory Opinion 2011-12, which considered a separate question.

The request cites the Federal Election Commission’s Advisory Opinion 2011-12. In Advisory Opinion 2011-12, the Federal Election Commission (“FEC”) concluded that candidates for federal office remain subject to the FECA limitations and source prohibitions when they solicit contributions on behalf of IE-only political committees. *See* Fed. Elec. Comm’n, AO 2021-11, 2011 WL 2662413, at \*1. The FEC noted that Section 441i of the Federal Election Campaign Act limits the amount of contributions that a candidate for federal office may solicit in connection with an election for federal office (\$5000 per calendar year). *See id.* at \*3; *see also* 52 U.S.C. § 30125(e)(1)(A). The FEC reasoned that, because Section 441i was not abrogated by *Citizens United* or the federal court decisions in its wake, Section 441i’s limitations continue to apply; accordingly, federal candidates “may only solicit contributions of up to \$5000 from individuals (other than foreign nationals or [f]ederal contractors) and [f]ederal political action committees for an [independent expenditure-only political committee].” 2011 WL 2662413, at \*3. Given these limitations, when a candidate for federal office raises money for Super PACs at a fundraising event at which individual, corporate and

labor organizations contributions are solicited in unlimited amounts, the candidate for federal office must be careful to limit their solicitation to contributions of \$5000 or less. *See id.* at \*3–\*4; *see also* Fed. Elec. Comm’n, “Fundraising for Super PACs by federal candidates,” available at <https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/fundraising-super-pacs-federal-candidates-nonconnected-pac/> (last accessed Mar. 24, 2022). In sum, the FEC concluded that FECA’s limits on a federal candidate’s solicitation of *contributions* from individuals and political committees for a Super PAC continue to apply, because *Citizens United* and its progeny did not disturb those limits.

The analysis under New Mexico law differs. In Section 1-19-34.7(E), New Mexico has an analogous provision to Section 441i(e)(1)(A) of FECA.<sup>12</sup> But unlike with FECA, New Mexico amended Section 1-19-34.7 in 2019 to align New Mexico statutory law with federal court decisions in *Citizens United* and *Republican Party of New Mexico*. To this end, the Legislature added Subsection 1-19-34.7(I), which provides that “[t]he limitations on contributions to political committees . . . shall not apply to a political committee that makes only independent expenditures . . .” § 1-19-34.7(I). Accordingly, unlike the FEC’s analysis of the effect of *Citizens United* on extant federal statutes, this advisory opinion does not directly consider what effect *Citizens United* had on New Mexico law. Rather, this advisory opinion focuses on the application of what the Legislature enacted because of *Citizens United*—namely, Section 1-19-34.7(I)—and whether, under that provision, a political committee makes an “independent expenditure” when the political committee expends contributions, which a candidate solicited on its behalf, to support that candidate’s election. Because those expenditures are “coordinated expenditures” and thus not “independent expenditures,” the political committee does not make independent expenditures “only,” and therefore the CRA’s limitations regarding the amount of contributions that a candidate may solicit on the political committee’s behalf continue to apply. *See* § 1-19-34.7(A) & (E).

The request also notes that federal law differs from New Mexico law “in that federal campaign law places restrictions on officeholders and candidates raising or

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<sup>12</sup> Compare 52 U.S.C. § 30125(e)(1)(A) (“A candidate . . . shall not . . . solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act”), with § 1-19-34.7(E) (“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.”).

spending money as well as restrictions on the source of such contributions.” It is true that the federal law is more stringent, both as to contribution limits (\$2,900 per election), and who may not directly contribute to candidates (including for-profit corporations, nonprofit corporations, and labor organizations). See 11 CFR § 114.2; see also generally Federal Election Commission, “Who can and can’t contribute,” available at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/> (last accessed Mar. 24, 2022). By contrast, New Mexico has higher contribution limits (\$5,200 per election) and, unlike federal law, does not impose absolute prohibitions on direct contributions from corporations and labor organizations to candidates. See §1-19-34.7; 1.10.13.20 NMAC. It is unclear, however, that these differences alter our analysis regarding when, following fundraising efforts by a candidate, a political committee’s expenditure to support that candidate constitutes a coordinated expenditure.

- D. This analysis does not address when a candidate (or officeholder) asks third-party donors to contribute to a political committee that will make expenditures supporting another candidate in another election.

Our analysis focuses on the question the request poses: whether a candidate may solicit unlimited contributions on behalf a political committee that makes expenditures supporting that same candidate. This analysis does not address whether a candidate (or officeholder) may solicit unlimited funds on behalf of a political committee that makes expenditures supporting another candidate. Whether a candidate (or officeholder) may solicit unlimited funds depends, again, on whether the political committee’s expenditures are independent or coordinated. That question, however, depends on a factual analysis that would consider the conduct of (i) the candidate (or officeholder) soliciting the funds, (ii) the political committee expending the funds, and (iii) the candidate(s) who benefit from the political committee’s expenditures. And that conduct—including conduct related to the fundraising—would be considered in the light of the definition of coordination in Section 1-19-26(I)(2), the factors outlined in 1.10.13.28(D) NMAC, and the other indicia of coordination, see, e.g., 11 CFR § 109.21.

## CONCLUSION

For the foregoing reasons and subject to the caveats expressed above, New Mexico political committees that make contributions to candidates, officeholders, and candidates may solicit unlimited contributions from allowable persons on behalf of IE-only political committees. A candidate, however, may not solicit

unlimited contributions from allowable persons for a political committee that will make expenditures to support that same candidate who is soliciting funds on the political committee's behalf.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. GARREY CARRUTHERS, Commissioner**

**HON. CELIA FOY CASTILLO, Commissioner**

**JUDY VILLANUEVA, Commissioner**