

**CASE NO. 21-2015**

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**COWBOYS FOR TRUMP, LLC. *et al*,**

*Plaintiffs – Appellants*

v.

**MAGGIE TOULOUSE OLIVER**, in her  
official capacity as Secretary of State of New Mexico,

*Defendant – Appellee.*

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On Appeal from the United States District Court for the District of New Mexico  
The Honorable Judge Gregory Faurat D.C. Case No.: 2:20-cv-0587 GJF/SMV

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**REPLY BRIEF OF APPELLANTS  
ORAL ARGUMENT REQUESTED**

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## SUMMARY OF THE CASE IN REPLY

The gravamen of this case exposes the unconstitutional efforts of Appellee, the Secretary of State of New Mexico (the “Secretary”), to obtain detailed personal information about a political opponent’s donors, and as is the Secretary’s practice, to make that personal information public. The Supreme Court last week made clear that blanket donor disclosure requirements are facially unconstitutional because they chill fundamental First Amendment rights of freedom of speech and association for the organization *and* its donors. *See Americans for Prosperity Foundation v. Bonta*, No. 19-251, --- S.Ct. ---, 2021 WL 2690268 (July 1, 2021) (“*Americans for Prosperity*”).

Appellants’ standing to raise these constitutional violations is now unequivocal. The New Mexico donor disclosure statute, and the Secretary’s actions thereunder – to require disclosure of donors’ names and addresses for posting on a public website – are facially unconstitutional. Appellants are entitled to the injunction and relief they seek, and all penalties against them must be vacated. The judgment of the district court<sup>1</sup> should be vacated and reversed, and the case remanded for further proceedings consistent with the Supreme Court’s decision in *Americans for Prosperity*.

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<sup>1</sup> All references to the district court are to U.S. District Court for the District of New Mexico (“New Mexico District Court”) and to the Honorable Magistrate Judge Gregory J. Fouratt, who presided over the proceedings by the consent of the parties.

## SUMMARY OF THE FACTS IN REPLY

Appellants are the founders of—and the entity—Cowboys for Trump, LLC (“C4T”). C4T is a New Mexico Limited Liability Company (“LLC”) formed in 2019 to “conduct educational advocacy” in support of policies of border enforcement, rights of the unborn, and the Second Amendment. App. 0060-61. Appellants—as many in support of Trump—have been targeted for abuse socially, economically, professionally, politically, and through our legal system.<sup>2</sup>

### New Mexico State Proceedings

In November 2019, the Secretary determined that C4T is a “political committee” under the New Mexico Campaign Reporting Act (“CRA”) and therefore was required to register with the Secretary and file “Campaign Finance Reports,” including sensitive personal information for certain donors (names, addresses, and amounts contributed)<sup>3</sup> to be posted and made publicly available on the Secretary’s

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<sup>2</sup> See *Black Trump supporter murdered in Milwaukee*, FOX 5 NEW YORK (July 25, 2020), available at: <https://www.fox5ny.com/news/black-trump-supporter-murdered-in-milwaukee>; Andy Ngo, *How a Portland radical murdered a Trump supporter – and became a hero for Antifa*, New York Post (Jan. 30, 2021), available at: <https://nypost.com/2021/01/30/how-a-portland-radical-murdered-a-trump-supporter/>; *Douglas Woman Charged with Attacking 73-Year Old Trump Supporter*, CBS Boston (Oct. 19, 2020), available at: <https://boston.cbslocal.com/2020/10/19/trump-supporter-attacked-vietnam-veteran-douglas-massachusetts-police-kiara-dudley/>.

<sup>3</sup> The New Mexico donor disclosure statute challenged here, N.M. Stat. § 1-19-27.3(C), (D), requires any “person” that makes “independent expenditures” of three thousand dollars (\$3,000) in a nonstatewide election or nine thousand dollars

website.<sup>4</sup> On January 15, 2020, the Secretary sent Appellants a “Notice of Final Action” informing them that the Secretary had confirmed that C4T had not filed Campaign Finance Reports due April 8, 2019, and October 15, 2019, and assessing fines for non-filing totaling \$7,800, as of the date of the notice.<sup>5</sup> *See* Add. 1 at 9-10 (“Verified Petition and Motion to Confirm an Arbitration Award into a Judgment” (“Petition”)).<sup>6</sup> He faces additional fines and possible prosecution for failing to file later reports. *Supra*, n. 5.

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(\$9,000) in a statewide election to disclose the name, address, and amount contributed by donors. Under N.M. Stat. § 1-19-27.3(C) and (D)(1), if the independent expenditures were made from a segregated bank account established for the purpose of making independent expenditures, the reporting person must report donor information for individuals who contributed \$200 in the election cycle. Under N.M. State § 1-19-27.3(D)(2), the donor information must be reported for individuals who contributed \$5,000 during the election cycle, subject to an exemption for contributors who “requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.”

<sup>4</sup> The Secretary publicly posts the Campaign Finance Reports, including the names and addresses of donors, through a publicly accessible portal available on the Secretary’s website, the New Mexico Campaign Finance Information System (“CFIS”), available at: <https://www.cfis.state.nm.us/> (last visited July 6, 2021). *See also* App. 0012 (discussion of CFIS in Complaint).

<sup>5</sup> Failure to file required reports under the CRA can result in fines of \$50 per day up to a maximum of \$5,000 per report. N.M. Stat. § 1.10.13.15(E). The Secretary imposed the maximum \$5,000 fine for the April 8, 2019 report, and \$2,800 for the October 15, 2019 report. *See* Add. 1 at 10. In addition, violations of the registration, reporting, or disclaimer requirements may also be subject to punishment as a misdemeanor with a \$1,000 fine or one year in jail or both. N.M. Stat. § 1-19-36.

<sup>6</sup> The Court may take judicial notice of the Secretary’s September 22, 2020 Petition filed in the New Mexico state court and the New Mexico State Court’s June 7, 2021

Under the CRA, the only means to protest the Secretary's determination is through binding arbitration, *see* N.M. Stat. § 1-19-34.4(D), which C4T requested on January 20, 2020.<sup>7</sup> *See* Add. 1 at 11. In its May 25, 2020, motion for summary judgment to the arbitrator, the Secretary explained that she determined that C4T is a "political committee" subject to the CRA's reporting and donor disclosure requirements because C4T "has expended more than \$5,000 in independent expenditures." Add. 1 at 21-22. On July 7, 2020, the arbitrator issued a one-page order, without making any findings of fact or providing any rationale for the

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"Final Judgment to Confirm Arbitration Award" attached hereto as Addendum 1 and 2, respectively. *See* Fed. R. Evid. 201 ("Judicial Notice of Adjudicative Facts"). They are referenced in the pleadings as well. *See, e.g.,* App. 0023-0024 (Secretary's September 22, 2020 Motion for Judgment on the Pleadings ("MJOP") noted that the Secretary's determination that C4T is a "political committee" "was upheld in binding arbitration, and [C4T] was ordered to register with the Secretary and pay fines for failing to comply with the CRA in the two previous election cycles.").

<sup>7</sup> The scope of review of the Secretary's determination is narrowly constrained by the New Mexico statute. In particular, as the Secretary explained in its motion for summary judgment in the arbitration proceeding, "[a]n arbitrator has no jurisdiction to decide the constitutionality of the CRA," and "no authority to determine whether the statutory scheme that governs campaign finance reporting is or is not constitutional." Add. 1 at 17. Further, the New Mexico Uniform Arbitration Act limits the scope of judicial review of an arbitrator's award to whether the award exceeds the arbitrator's authority or if the award was procured by impartiality, corruption, fraud or undue means. *See* Add. 1 at 4 (*discussing* N.M. Stat. § 44-7A024(a)(1)-(6)). Thus, the New Mexico process provides no opportunity to challenge the merits, or the constitutionality, of the arbitrator's award. Accordingly, the only option for meaningful judicial review and vindication of C4T's rights under the U.S. Constitution is in the federal courts, which is why C4T filed this lawsuit in the district court.



decision, granting the Secretary’s motion for summary judgment and granting “all relief sought in said motion,” including the fines detailed above. Add. 1 at 8.

On February 2, 2021, the Secretary filed its Petition against C4T seeking enforcement of the July 7, 2020 arbitrator’s award, including \$7,800 in fines for CRA non-compliance, in the State of New Mexico, County of Santa Fe, First Judicial District Court (“New Mexico State Court”). *See* Add. 1. On June 7, 2021, the New Mexico State Court issued a “Final Judgment to Confirm Arbitration Award,” in which it found C4T: (i) is subject to the CRA; (ii) must pay fines of \$7,800; (iii) must register with the Secretary as a “political committee” under the CRA; and, (iv) must file all delinquent reports and full donor disclosures for 2019 and 2020. *See* Add. 2.

### **District Court Proceeding**

On June 18, 2020, Appellants filed their complaint alleging constitutional and civil rights violations in the district court. App. 0006-0019. In its September 22, 2020 MJOP, the Secretary urged the district court to dismiss the complaint because Appellants alleged that they “have not and will not make any financial contributions or independent expenditures that would subject them to the CRA’s” requirements, App. 0027 (citations and quotations omitted). This position contradicted the Secretary’s own determination and representations to the arbitrator, and the binding arbitration applied the CRA to Appellants regardless.

On December 30, 2020, the district court dismissed the complaint. The court held that Plaintiffs did not have standing in their own right, or on behalf of their donors, because they had no injury in fact and had not suffered a “chilling effect” on their First Amendment rights. App. 0064. It also held that C4T cannot “assert the rights of C4T’s donors because Plaintiffs have not shown those donors have suffered an injury in fact.” App. 0067. In doing so, the district court relied on Appellants’ representation that they have not and will not make independent expenditures. The court ignored the Secretary’s imposition of fines for CRA non-compliance, in finding that C4T is “remove[d] ... entirely from the scope of actors whose conduct the CRA purports to govern.” App. 0066. The district court also brushed aside C4T’s citation to and reliance on *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) (“*NAACP*”). See App. 0067-0068. The court elided the determinative fact that the Secretary had already determined that C4T’s activities were subject to regulation as a political entity regardless of expenditures; assessed fines of \$7,800 against C4T; is actively and vigorously prosecuting C4T for CRA non-compliance, including compelling disclosure of detailed donor information. Thus, whether C4T “has not and will not make independent expenditures” is a red herring. App. 0066.

Moreover, Plaintiffs specifically and repeatedly pleaded the “chilling effect” now fully recognized by the Supreme Court to render the provisions and actions here unconstitutional. See, e.g., App. 0041, 0043-0044. Indeed, Appellants pleaded that

they would “be forced to silence their own speech and not engage in their desired communications” because of the CRA’s reporting and donor disclosure requirements and the Secretary’s actions against C4T. App. 0011.<sup>8</sup>

## **ARGUMENTS AND AUTHORITIES IN REPLY**

One week ago, the U.S. Supreme Court emphatically endorsed C4T’s position. Pursuant to *Americans for Prosperity*, the decision of the district court must be reversed, vacated, and the case remanded. Plaintiffs have standing to seek the relief they requested: The challenged provisions of the CRA must be declared unconstitutional, the penalties vacated, and an injunction entered to prohibit enforcement of the CRA against C4T.

### **I. Appellants and Their Donors Have Standing to Challenge the CRA’s Requirements as Violations of their First Amendment Rights.**

It is now beyond dispute that Appellants and their donors have standing. The New Mexico statute at issue here, the CRA, casts a wider net for smaller donors than the California regulation the Supreme Court found to be “facially unconstitutional”

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<sup>8</sup> Appellants further explained that “compelled disclosure of their donors could lead to substantial personal and economic repercussions for their supporters,” noting that throughout the United States, “individual and corporate donors to political candidates and issue causes are being subject to boycotts, harassment, protests, career damage, and even death threats for publicly engaging in the public square.” App. 0010. Accordingly, Appellants had legitimate “fears that their donors may also encounter similar reprisals from activists if their donations are made public,” and that the Secretary’s posting of reports on her publicly accessible web portal “makes this fear of harassment and retaliation all the more real.” *Id.*

in *Americans for Prosperity*, 2021 WL 2690268, at \*12. Such an “overbroad” statute, *id.*, at \*11, necessarily “chill[s] association” in violation of the First Amendment rights of an organization and its donors. *Id.*, at \*12.

**A. Appellants Have Suffered an Injury-in-Fact for Past and Future Conduct.**

Contrary to the district court’s misinterpretation of the law, *see* App. 0064, C4T has suffered an injury in fact from the enforcement of an unconstitutional statute. The Secretary has imposed \$7,800 in fines against C4T for failing to file the registration and detailed disclosures she demands, has obtained a court order reducing the arbitration award to a judgment by a New Mexico state court, and is seeking to collect that judgment from C4T. App. at 0024-0025.

The district court was also flat wrong when it asserted that C4T had failed to allege “that there exists a credible threat of enforcement” or that the CRA has “chilled Plaintiff’s speech.” It did so allege.<sup>9</sup> The Secretary is vigorously prosecuting C4T for past conduct, assessed a \$7,800 fine, *see* Add. 1, and the Secretary has not disavowed her intent to prosecute C4T or to enforce the CRA against C4T in the future. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 15-16, 130 S.Ct. 2705,

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<sup>9</sup> The Complaint alleges that C4T “would be forced to silence their own speech and not engage in their desired communications” because of the CRA’s reporting and donor disclosure provisions and the Secretary’s enforcement thereof against C4T, App. 0014, and the threats faced by donors from the Secretary’s public disclosure of their names and addresses. *Id.* 0013.

177 L.Ed.2d 355 (2010) (finding a credible threat of prosecution based, in part, where the “[t]he Government has not argued to this Court that plaintiffs will not be prosecuted if they do what they say they wish to do”).

These fines alone are sufficient for standing. “For standing purposes, a loss of even a small amount of money is ordinarily an ‘injury.’” *Czyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973, 983, 197 L.Ed.2d 398 (2017) (citing *McGowan v. Maryland*, 366 U.S. 420, 430-431, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961) (finding that appellants fined \$5 plus costs had standing)). Further, the burden of defending the prosecution in an administrative or judicial proceeding is also sufficient for standing. *See, e.g., Quik Payday, Inc. v. Stork*, 2006 WL 2792317, at \*3 (D. Kan. Sept. 26, 2006).

Plaintiffs also have standing to challenge the CRA based on a credible threat of future prosecution for past or future conduct or CRA non-compliance. The Tenth Circuit has adopted a three-part test for prospective relief:

(1) evidence that in the past they have engaged in the type of speech affected by the challenged government action; (2) affidavits or testimony stating a present desire, though no specific plans, to engage in such speech; and (3) a plausible claim that they presently have no intention to do so *because of* a credible threat that the statute will be enforced.

*Aptive Environmental, LLC v. Town of Castle Rock, Co.*, 959 F.3d 961, 976 (10th Cir. 2020) (“*Aptive*”) (emphasis in original) (citations omitted).

C4T satisfies all these requirements. First, it is undisputed that C4T has engaged in the type of speech affected by the challenged government action. C4T’s

educational and issues advocacy regarding border security, the Second Amendment, and abortion are the subject of Secretary's enforcement actions. Second, the complaint states Appellants' present desire, as of the date that the Complaint was filed, to continue to engage in protected speech. *See, e.g.*, App. 0006 (C4T "had planned to continue doing so for the duration of President Trump's time in office."). These issues remain of paramount importance to C4T and its supporters. Third, C4T and Mr. Griffin (and by extension C4T's donors) have been forced to stop their issue advocacy due to the Secretary's active prosecution, the assessment of \$7,800 in fines, *see* App. 0011 & Add. 1, and the credible threat of future prosecutions. *See Aptive*, 959 F.3d at 975-976 (the threat of enforcement was credible where the city had "not indicated it would not enforce" the statute against the plaintiff). The "chilling" effect alone provides standing. *Americans for Prosperity*, 2021 WL 2690268, at \*12.

#### **B. Appellants Also Meet Causation and Redressability Requirements.**

The Secretary is the state official responsible for CRA implementation, civil enforcement, and assessment of fines for non-compliance. *See generally* N.M. Stat. § 1.10.13.15. Accordingly, the Secretary has caused C4T's injury. Further, "[s]o long as the plaintiff faces a credible threat of enforcement, redressability is generally not an obstacle." *Consumer Data Industry Ass'n v. King*, 678 F.3d 898, 905 (10th Cir. 2012).

**C. Appellants Have Standing to Challenge CRA and the Secretary's Enforcement Actions on Behalf of C4T's Donors.**

*Americans for Prosperity* is dispositive of this issue. There, the Supreme Court held “facially unconstitutional” a California law that is nearly identical to the CRA provision compelling “blanket” and “indiscriminate” disclosure of sensitive and personal information for any donor who contributed \$5,000 or more during an election cycle. *Americans for Prosperity*, 2021 WL 2690268, at \*12.<sup>10</sup> And it did so for the same reasons and citing the same precedent Appellants did in the district court. “[C]ompelled disclosure of affiliation with groups engaged in advocacy,” and consequent fears or threats of reprisal or harassment, “may constitute as effective a restraint on freedom of association as [other] forms of government action.” *Id.* (quoting *NAACP*, 357 U.S. at 462); App. 0004 and 0011-0012 (relying on *NAACP* for First Amendment associational standing).

New Mexico’s CRA is an even more egregious violation of donor privacy than the California law at issue in *Americans for Prosperity*. California at least made a pretense of requiring this information to remain confidential. *Americans for*

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<sup>10</sup> While *Americans for Prosperity* addressed compelled disclosure of donors to charities, rather than campaign finance laws, the Supreme Court, emphasized that “‘it is immaterial’ to the level of scrutiny ‘whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters.’” *Americans for Prosperity*, 2021 WL 2690268, at \*7 (quoting *NAACP*, 357 U.S. at 460-461).

*Prosperity*, 2021 WL 2690268, at \*5. Appellee here, however, has a portal, the CFIS, which makes this donor information public. App. 0009.

The Supreme Court has squarely recognized the danger of such public disclosure and posting on the internet—where “anyone with access to a computer [can] compile a wealth of information” about donors, “including such sensitive details as a person’s home address or the school attended by his children.” *Americans for Prosperity*, 2021 WL 2690268, at \*12. The Court relied upon these dangers in finding that the California law “creates an unnecessary risk of chilling in violation of the First Amendment.” *Americans for Prosperity*, 2021 WL 2690268, at \*12 (internal citations and quotations omitted).<sup>11</sup> The threat of harassment and reprisals to donors, therefore, is more than sufficient to establish injury-in-fact and for C4T’s associational standing on behalf of its donors.

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<sup>11</sup> As Justice Thomas observed over a decade ago in *Citizens United v. FEC*, 558 U.S. 310 (2010) that, with the availability of publicly reported data with new tools such as online maps to target supporters and donors homes, businesses, and families, “[t]he success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to *pre-empt* citizens’ exercise of their First Amendment rights,” including the formation of organizations dedicated to confronting individual donors, “hoping to create a chilling effect that will dry up contributions.” *Id.* at 482 (Thomas, J., concurring in part and dissenting in part) (emphasis in original) (citations omitted). As shown *supra* in n. 2, the attacks on those holding different views have become increasingly violent.



## **II. The Challenged Donor Disclosure Provisions Are Unconstitutional Facially and As-Applied to Appellants and Their Donors.**

*Americans for Prosperity* makes plain that an organization has standing not only for itself but for its donors. The Court held that California’s “compelled disclosure requirement violated their First Amendment rights and the rights of their donors.” *Americans for Prosperity*, 2021 WL 2690268, at \*1. The Court could not have been more clear: The state may not “indiscriminately sweep[] up the information of *every* major donor” of \$5,000 or more per election cycle “with reason to remain anonymous.” *Id.* at \*12 (emphasis in original). Such a disclosure requirement is “facially unconstitutional.” *Id.* This finding must apply with all the more force to the CRA, which requires disclosure of sensitive donor information for donors giving as little as \$200 per election cycle, rather than \$5,000 per tax year, and that permits the Secretary to post all such reports on a publicly available website.

The Supreme Court decisively rejected the state’s intrusion on liberty because of the same authorities and rationale Appellants pressed in their complaint, briefs, and arguments opposing dismissal. The disclosure requirement “creates an unnecessary risk of chilling” in violation of the First Amendment. *Id.* (internal quotation and citation omitted).

When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual’s ability to join with others to further shared goals. The risk of a chilling effect on association is enough, ‘[b]ecause First Amendment freedoms need breathing space to survive.’

*Americans for Prosperity*, 2021 WL 2690268, at \*12 (quoting *NAACP v. Button*, 371 U. S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)). Not only has the Secretary denied C4T basic “breathing space,” she has demonstrated her determination to suffocate Appellants as individuals, C4T the entity, and even C4T’s small donors.

### **III. Federal Preemption Invalidates the Secretary’s Actions and Requires Reversal.**

Reversal is also required because, under the Supremacy Clause of the U.S. Constitution, federal law takes precedence over state laws. U.S. Const. art. VI, cl. 2. The provisions of the Federal Election Campaign Act of 1971 (“FECA”) expressly “supersede and preempt any provision of state law with respect to election to federal office.” 52 U.S.C.A. § 30143(a). The FECA’s legislative history confirms that Congress intended to “occup[y] the field with respect to reporting and disclosure” requirements for federal candidates and political committees. *See* S. Conf. Rep. No. 1237, 93d Cong., 2d Sess. (1974), *reprinted in* 1974 U.S.C.C.A.N. 5587, 5618, 5668. Consistent with the plain language of the statute and its legislative history, the FEC’s interpretive regulation provides that the FECA, and any FEC rules and regulations issued thereunder, preempt any state law “with respect to the election to federal office.” 11 C.F.R. § 108.7(a). This regulation further states that any state law is preempted that, like the CRA, concerns organization, registration, disclosure of receipts or expenditures, or limits on contributions or expenditures regarding federal candidates or political committees. 11 C.F.R. § 108.7(b).

As explained throughout, C4T’s educational and issue advocacy solely concerned federal officeholders, candidates, and federal issues—an area where federal law “occupies the field.” Under these circumstances, a state may not invade that field to fill any “gaps,” or even to complement or assist, the federal regulatory scheme or regulator.<sup>12</sup> To the extent C4T may be regulated at all for such issue advocacy, it is by the FECA and FEC, and not the CRA or the Secretary.

Finally, Appellants’ preemption claim is not “moot” because “the duration of President Trump’s time in office has ended.” Answer Br. 26. Appellants seek to continue their advocacy on their issues of federal importance. “In considering mootness, [the Court] ask[s] whether granting a present determination of the issues offered will have some effect in the real world.” *Fleming v. Gutierrez*, 785 F.3d 442, 444-45 (10th Cir. 2015) (internal quotation). As long as the New Mexico law requiring disclosure stands – Secretary insists on enforcing the CRA and fines against C4T – this issue is not moot. Not only are the actions and laws of New Mexico unconstitutional violations of Appellants’ First Amendment rights of freedom of speech and association, but they are also preempted by federal law.

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<sup>12</sup> See, e.g., *Utah Coalition of La Raza v. Herbert*, 26 F.Supp.3d 1125, 1143 (D. Utah 2014) (“[w]here Congress occupies an entire field, ... even complementary state regulation is impermissible”) (quoting *Arizona v. U.S.*, 567 U.S. 387, 132 S.Ct. 2492, 2502, 183 L.Ed.2d 351 (2012)); *Northern Natural Gas Co. v. State Corp. Commission of Kansas*, 372 U.S. 84, 83 S.Ct. 646, 9 L.Ed.2d 601 (1963) (state laws that even indirectly regulate occupied field preempted because they “invalidly invade the federal agency’s exclusive domain”).

## **ORAL ARGUMENT REQUESTED**

Appellants have requested oral argument, however, in light of the Supreme Court's decision in *Americans for Prosperity*, the Appellants would not object to reversal on the record in a summary disposal that remanded the case to the district court with a finding of standing of all Appellants and for further proceedings consistent with this Court's and the Supreme Court's decisions. Appellants' suggestion above does not waive their request for argument or their interest in participating in it on these important constitutional issues.

## **CONCLUSION**

For these reasons, this Court should reverse the district court's dismissal of their claims, hold Appellants have standing, and remand this case with instructions that the district court address Plaintiffs' constitutional and legal claims in light the Supreme Court's decision in *Americans for Prosperity*, and for such other and further relief to which Appellants may show they are entitled—including attorneys' fees in the district court and on appeal.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

I hereby certify that this document, excluding the parts exempted by Fed. R. App. P. 32(f), contains 4,137 words and therefore complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B).

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/s/ Sidney Powell

**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2021, I served a copy of the foregoing Reply Brief electronically using the Tenth Circuit Court of Appeals ECF system, which caused an electronic copy to be served on all counsel of record in this appeal.

/s/ Sidney Powell

**ADDENDUM 1: VERIFIED PETITION AND MOTION TO CONFIRM AN  
ARBITRATION AWARD INTO A JUDGMENT**



FILED 1st JUDICIAL DISTRICT COURT

Santa Fe County

2/2/2021 9:58 AM

KATHLEEN VIGIL CLERK OF THE COURT

Liliana Villalobos

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**NEW MEXICO OFFICE OF THE  
SECRETARY OF STATE,**

**Petitioner,**

**v.**

Case assigned to Sanchez-Gagne, Maria  
**Case No.D-101-CV-2021-00192**

**COWBOYS FOR TRUMP, LLC,**

**Respondent.**

**VERIFIED PETITION AND MOTION TO CONFIRM AN  
ARBITRATION AWARD INTO A JUDGEMENT**

COMES NOW Petitioner, the New Mexico Office of the Secretary of State, by and through, Dylan K. Lange, General Counsel, and moves this Court, pursuant to NMSA 1978, Section 44-7A-23, for an Order to Confirm an Arbitration Award into a Judgment for all the granted relief against the Respondent, including registering as a political committee and the payment of a \$ 7,800. This Verified Petition and Motion ("Petition") is made on the grounds that an independent arbitrator has issued a written award determining the dispute between the parties arising out of the Campaign Reporting Act, NMSA 1978, Sections 1-19-1 to -37 ("CRA"). This Petition should be granted and the award confirmed into a judgment because the arbitration was proper, the award is final and binding, and the relief sought is mandatory by statute.

**PARTIES, JURISDICTION, AND VENUE**

1. The Secretary of State is the chief election and ethics officer of the state of New Mexico. The Secretary of State's Office is located at, 325 Don Gaspar Suite 300, Santa Fe, New Mexico.

2. Cowboys for Trump, LLC (“Respondent”), is registered as a Limited Liability Company and submitted Articles of Organization with the Business Services Division of the Office of the Secretary of State (“SOS”) on March 27, 2019. Respondent’s principal place of business is listed as 530-B Harkle Road STE 100, Santa Fe, New Mexico, 87505.

3. On July 7, 2020, a binding Arbitration Order was issued by independent arbitrator, Christian C. Doherty, granting the SOS’s requested relief. Specifically, that Respondent must:

- a) Register with the SOS as a political committee;
- b) File all delinquent expenditure and contribution reports with the SOS as required for the First and Second 2019 Biannual Reports, and all 2020 expenditures and contributions reports as required under Section 1-19-29(B); and
- c) Pay the fines imposed by the SOS for Respondent’s failure to register and file reports, in the amount of \$7,800. (See **Exhibit 1**, July 7, 2020 Arbitration Award).

4. Pursuant to NMSA 1978, Sections 44-7A-27 and 28, venue and jurisdiction is proper before this Court.

### **BACKGROUND**

5. On January 15, 2020, the SOS sent a Notice of Final Action informing Respondent that to comply with the CRA, they must register, file the required finance reports and pay the fines imposed for failure to register and report. The letter also offered Respondent an opportunity to request binding arbitration within ten days of the date of the final action letter. (See **Exhibit 2**, Notice of Final Action).

6. Respondent submitted a Request for Arbitration with the SOS on or about January 31, 2020, and selected Christian Doherty as the arbitrator from a list of five. (See **Exhibit 3**, Request for Arbitration).

7. A Notice of Arbitration was issued February 11, 2020, setting the date of the arbitration for February 28, 2020. Respondent requested an extension of time for the hearing and submitted a Waiver of the 30 Day Time Limit on February 14, 2020.

7. On February 14, 2020, the SOS sent formal discovery requests to Respondent; and on or about February 21, 2020, Respondent submitted a response with general objections to the discovery and declined to answer. A telephonic hearing was held on February 27, 2020, in which the Arbitrator instructed the SOS to submit a Motion to Compel Discovery. The SOS filed its Motion to Compel on March 13, 2020. No decision on the motion was rendered by the arbitrator.

8. Respondent was represented by the Barnett Law Firm, P.A. and briefed their argument. Petitioner was represented by their former General Counsel, Tonya Herring. On May 25, 2020, the SOS filed its Motion for Summary Judgment in the Arbitration.<sup>1</sup> (See **Exhibit 4**, MSJ). On or about June 13, 2020, Respondent filed their Response to the Motion for Summary Judgment. On June 15, 2020, the SOS filed its Reply in support of Summary Judgment.

9. On July 7, 2020, based on an agreement by the parties to let the Arbitrator decide the case on the pleadings, the arbitrator issued an award granting all the SOS's relief requested in its MSJ, including the payment of a \$ 7,800 fine. The decision is final and binding pursuant to NMSA 1978, Section 1-19-34.4(F). A copy of the award is attached as **Exhibit 1**.

10. On or about July 10, 2020, the SOS sent Barnett Law Firm, P.A. a letter to collect the arbitration award and otherwise register under the CRA within fifteen days. A copy of the enforcement letter is attached as **Exhibit 5**.

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<sup>1</sup> The 363 pages of exhibits to the MSJ are not attached but available to the Court upon request.

11. On June 23, 2020 Respondent filed a federal lawsuit against Petitioner based on the same case and controversy that was the subject of the arbitration, *Cowboys For Trump, Inc et al v. Toulouse Oliver*, Case No. 2:20-cv-00587.

12. On December 30, 2020, the Federal District Court dismissed the complaint without prejudice, but the Court afforded Respondent until January 15, 2021, in which to file an amended complaint. No such amended complaint was filed and the Court in accordance with Federal Rule of Civil Procedure 58(a), entered Final Judgment and ordered the case dismissed without prejudice. (See **Exhibit 6**, Final Judgment).

13. To date, Respondent has not registered with the SOS or paid the \$7,800 awarded by the arbitrator.

14. Petitioner now moves this court confirm this award into a judgment, pursuant to Section 44-7A-23.

#### **AUTHORITY**

15. This Court is explicitly authorized to confirm the arbitration award issued in this matter, by motion, under Section 44-7A-23. Section 44-7A-23 of the New Mexico Uniform Arbitration Act, (“Arbitration Act”), NMSA 1978, Sections 44-7A-1 to -32 (2001, as amended), states that:

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 21 or 25 [44-7A-21 or 44-7A-25 NMSA 1978] or is vacated pursuant to Section 24 [44-7A-24 NMSA 1978].

16. Furthermore, upon granting an order confirming the award, “the court shall enter a judgment in conformity therewith.” (emphasis added.) Section 44-7A-26.

17. Accordingly, the Court has the obligation to confirm Petitioner's arbitration award into a judgment. *See K.L. House Constr. Co. v. City of Albuquerque*, 1978-NMSC-025, 91 N.M. 492 (announcing "the policy of New Mexico favors and encourages arbitration as a means of conserving the time and resources of the civil courts . . . and to this end the legislature has assigned the courts a minimal role in supervising arbitration practice and procedures" (citation omitted)); *United Technology*, 1993-NMSC-005, ¶ 11, 115 N.M. 1 (limitation on challenges to arbitration awards promote judicial economy); *Fernandez v. Famers Ins. Co. of AZ*, 1993 -NMSC- 035, 115 N.M. 622, 857 P.2d 22 ("the [arbitration] award is a final and conclusive resolution of the parties' dispute").

18. The standard of review of an arbitrator's decision by the Court is very narrow. *See Matter of Arbitration Between Town of Silver City & Silver City Police Officers Ass'n*, 1993-NMSC-037, ¶ 5, 115 N.M. 628, 631 (The grounds for vacating an arbitration award are limited by statute.). The Court will not examine the validity of the decision except to the extent that the award exceeds the authority of the arbitrator or if the award is procured by impartiality, corruption, fraud, or undue means. *See* Section 44-7A-24(a)(1)-(6). Section 44-7A-24(b) allows a party to file a motion to the District Court to vacate an award on these limited grounds; however, "a motion under this section must be filed within ninety days after the movant receives notice of the award."

19. In the present matter, the arbitrator, having considered the pleadings and other evidence presented at the arbitration, determined that Respondent was subject to the CRA and liable to Petitioner for \$ 7,800. There are no grounds present for vacating this award pursuant to the Arbitration Act, and Respondent has not made any such motion to this Court to vacate this award within the statutorily proscribed 90 days. At this point, any such motion by Respondent would be untimely pursuant to the Arbitration Act. *See In re Deerman*, 2012, 482 B.R. 344 (Under

New Mexico law, a party who fails to timely file an action seeking to vacate, modify, or correct an arbitration award cannot later contest the award.).

WHEREFORE, Petitioner respectfully requests an Order confirming an arbitration award into a judgment for all the granted relief against the Respondent, including registering as a political committee and for the payment of a \$ 7,800; and award costs of suit for bringing this action and undertaking collection efforts by Petitioner.

Respectfully submitted by:

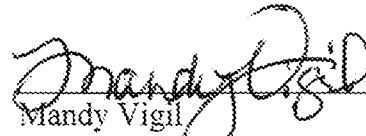
MAGGIE TOULOUSE OLIVER  
NEW MEXICO SECRETARY OF  
STATE

/s/ Dylan K. Lange  
Dylan Kenneth Lange  
General Counsel  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87501  
(505) 827-3600 – Telephone  
Dylan.Lange@state.nm.us  
*Attorney for Petitioner*

VERIFICATION

I, Mandy Vigil, state and affirm that I am a representative of Petitioner in this matter and have read the Verified Petition and Motion to Confirm an Arbitration Award into a Judgment and to the best of my knowledge it is correct, true, and accurate.

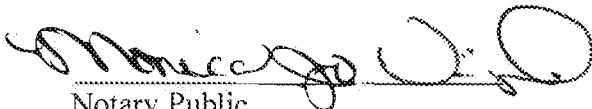
DATE: 1-31-21



Mandy Vigil  
State Election Director  
Office of the New Mexico Secretary of State

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

Subscribed and sworn to me this 31<sup>st</sup> day of January, 2021.



Notary Public  
State of New Mexico

My commission expires: May 15<sup>th</sup>, 2022



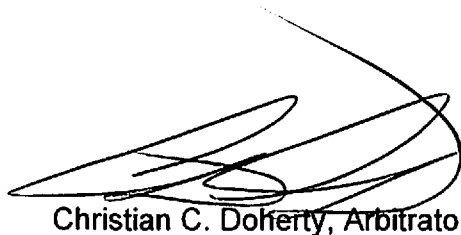
**IN THE MATTER OF THE ARBITRATION OF  
THE OFFICE OF THE STATE AND COWBOYS FOR TRUMP**

**ARBITRATOR'S ORDER GRANTING THE SECRETARY OF STATE'S MOTION FOR  
SUMMARY JUDGMENT**

This matter having come before Arbitrator Christian C. Doherty, Esq., pursuant to NMSA 1978, § 1-19-34.4, on Cowboys for Trump's (C4T) January 31, 2020 Request for Arbitration to the Secretary of State (SOS), the SOS having submitted a Motion and Memorandum in Support of Summary Judgment, C4T having submitted a response, the issues having now been fully briefed, and the parties having stipulated that this Arbitrator may decide this matter on the pleadings, and the Arbitrator being fully advised, FINDS good cause for granting the Secretary of State's motion.

It is therefore the decision of this Arbitrator that the Secretary of State's Motion for Summary Judgment is GRANTED including all relief sought in said motion.

Pursuant to NMSA 1978, § 1-19-34.4(F), this decision shall be final and binding.

A handwritten signature in black ink, appearing to read 'Christian C. Doherty', is written over a horizontal line.

Christian C. Doherty, Arbitrator

Dated: July 7, 2020





STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

January 15, 2020

Couy Griffin, Manager  
Cowboys for Trump  
530-B Harkle Road, STE 100  
Santa Fe, NM 87505  
[cgriffin@co.otero.nm.us](mailto:cgriffin@co.otero.nm.us)

Kay Griffin, Manager  
Cowboys for Trump  
530-B Harkle Road, STE 100  
Santa Fe, NM 87505

VIA Certified Mail No: 7014 0510 0000 9533 4671

And U.S. First Class Mail and Email:

**RE: Registration and Campaign Finance Report Due on April 8, 2019 and October 15, 2019: Notice of Final Action**

Dear Cowboys for Trump:

Pursuant to NMSA 1978, Section 1-19-34.4, the purpose of this correspondence is to provide you with notice of final action regarding the above-referenced Campaign Finance Reports due in April and October of 2019. In the Office of the Secretary of State's ("SOS") correspondence to you dated November 12, 2019 and to your attorney, Colin Hunter, dated December 4, 2019, we provided you with notification of your failure to comply with the Campaign Reporting Act ("CRA"), and requested your voluntary compliance with the CRA by registering your political organization and by filing your delinquent Reports. Additionally, the SOS notified you that fines would continue to accrue should you not come into compliance with the CRA.

The SOS has confirmed that Cowboys for Trump has not registered as a political committee as required pursuant to NMSA 1978, Section 1-19-26.1, nor has Cowboys for Trump filed its 2019 First or Second Biannual Reports, statutorily required under Section 1-19-29 (2019), although the SOS has documents demonstrating Cowboys for Trump was operating as a political action committee prior to March of 2019.

**ADDENDUM 2: FINAL JUDGMENT TO CONFIRM ARBITRATION AWARD**

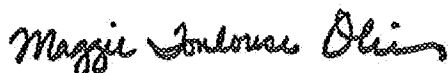
Pursuant to NMSA 1978, Section 1-19-35 the statutory amount for filing a late campaign finance report is fifty dollars (\$50) per working day, beginning on the day after the report is due and ending on the date the report is filed, up to a maximum fine of five thousand dollars (\$5,000). The First Biannual report was due April 8, 2019 and the Second Biannual Report was due October 18, 2019.

Thus, in order to be in compliance with the CRA, Cowboys for Trump must register, file all required finance reports, and pay the fines owed of \$5,000 for the non-filed First Biannual Report and \$2,800 as of the date of this letter for the non-filed Second Biannual Report. (The fine will continue to accrue until paid.) You may remit payment in the form of a check or money order made payable to the Office of the Secretary.

Pursuant to NMSA 1978, Section 1-19-34.4(D) upon receipt of this Notice of Final Action, you may protest the determination of this office by submitting a written request for binding arbitration within ten working days of the date of this correspondence.

Your immediate attention to this matter is required. Failure to timely act upon this notice may result in referral to the Attorney General or the State Ethics Commission. Failure to act may also result in additional civil or criminal penalties provided under by law.

Regards,



Maggie Toulouse Oliver  
Secretary of State

cc: Colin L. Hunter  
Barnett Law Firm, P.A.  
1905 Wyoming Blvd. NE  
Albuquerque, NM 87112  
[colin@theblf.com](mailto:colin@theblf.com)



Office of the New Mexico Secretary of State

325 Don Gaspar, Suite 300 | Santa Fe, NM 87501

(505) 827-3617 | [sos.ethics@state.nm.us](mailto:sos.ethics@state.nm.us)

RECEIVED

20 JAN 31 AM 11:07

REQUEST FOR ARBITRATIONOFFICE OF  
SECRETARY OF STATE

Name of Candidate / Political Committee:

Cowboys For Trump, LLC, c/o The Barnett Law Firm, P.A.

Name

1905 Wyoming Blvd. NE, Albuquerque, NM 87112

Address

(505) 275-3200

City/Zip Code

[info@theblf.com](mailto:info@theblf.com)

Phone Number

Email Address

- ☒ I acknowledge receipt of the notice of final action finding a violation of the Campaign Reporting Act and imposing a fine. Date of notice of final action: 01/15/2020

*Please note: Request must be filed within ten working days of the date of notice of final action.*

- ☒ I hereby protest the imposition of a fine and request binding arbitration pursuant to NMSA 1978, § 1-19-34.4.

The grounds for my protest are:

Cowboys for Trump, LLC, Respondent to the January 15, 2020 Notice of Final Action, by and through it's attorney, The Barnett Law Firm, P.A., protests the imposition of any and all fines and request arbitration. The proteset is based on the following grounds: (1) the Campaign Reporting Act, as applied to Cowboys for Trump, violates the First Amendment of the United States Constitution, as incorporated against the States and (2) Cowboys for Trump, LLC does not meet the definition of a "political committee" under NMSA 1978, Section 1-19-26(Q).  
Cowboys For Trump, LLC reserves the right to supplement its grounds for protest.

*Additional pages may be attached, if necessary.*

Please select an arbitrator from the list below:

- ☒ Christian C. Doherty  
☐ Dana Grubestic  
☐ Lucinda R. Silva  
☐ Michael Bones  
☐ Elizabeth Glenn

Respectfully Submitted, The

Barnett Law Firm, P.A.

/s/ Colin L. Hunter

Colin L. Hunter

Jordy L. Stern

Attorney for Cowboys for Trump, LLC

Requestor

Date

1/26/20

Please remit your completed protest to: New Mexico Secretary of State's Office

Email is preferred: [sos.ethics@state.nm.us](mailto:sos.ethics@state.nm.us) | Mailing address: 325 Don Gaspar, Ste. 300 Santa Fe, New Mexico 87501

Exhibit 3

**IN THE MATTER OF THE ARBITRATION  
OF THE OFFICE OF THE SECRETARY OF STATE AND COWBOYS FOR TRUMP**

**SECRETARY OF STATE’S MOTION AND MEMORANDUM IN SUPPORT OF  
SUMMARY JUDGMENT**

**COMES NOW** the Secretary of State, represented by its General Counsel, Tonya Noonan Herring and moves the Arbitrator for summary judgment in favor of the Secretary of State, and for its Motion and Memorandum in Support of Summary Judgment states as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

***A. The Complaints***

In January and February 2019, two complainants, Ashley Dickenson and Denise Lang, filed formal complaints with the Office of the Secretary of State (“SOS”) alleging that Couy Griffin used his public office as an Otero County Commissioner for improper and unlawful political purposes and established a GoFundMe account to raise money for Cowboys for Trump. **[SOS EX.’s A and B]** Mr. Griffin responded that he did film a video on Otero County property, but stated he did not say the horseback ride was sponsored by the County; he admitted that in the video he introduced himself as a County Commissioner. **[SOS EX. A: 004] and [SOS EX. B: 007; SOS EX: C: 011]** Two different complainants, Stephanie DuBois and Carolyn Dittmer, filed one complaint, also alleging that Couy Griffin had used his public office as Commissioner to solicit funds for Cowboys for Trump by recording a video promoting Cowboys for Trump in the room used for meetings by the Otero County Commission. **[SOS EX. C: 003]** The Complainants included a screen shot of the Cowboys for Trump GoFundMe account which showed \$13, 975 had been raised. **[SOS EX. C: 008]** Mr. Griffin responded to this Complaint that he had filmed the video on County Property but did not intend the video be associated with Otero County. **[SOS EX. C: 011].**

In July 2019, Jeff Swanson, filed an informal complaint against Cowboys for Trump, asserting that Cowboys for Trump was a PAC ( political action committee) and had not registered and reported pursuant to the Campaign Reporting Act. **[SOS EX. D: 002]** In September of 2019, Jeff Swanson filed a formal complaint, which reiterated his concerns that Cowboys for Trump was a political committee and was not reporting as required under the CRA. **[SOS EX. D: 003]** Mr. Swanson provide over 130 pages of documentation supporting his allegations that Cowboys for Trump raises political funds and engages in political activities. **[SOS EX. D: 004-131]**.

In November 2019, Alexis Romo filed a Complaint against Couy Griffin alleging he had set up a GoFundMe account to collect money for a horseback ride for Cowboys for Trump, and that he originally set up the account under the name of Otero County Commissioner Couy Griffin. **[SOS EX. E: 004-005]** Complainant also complained that Otero County had reimbursed Mr. Griffin's travel expenses for a trip to Washington D.C. in which Mr. Griffin drove a truck with the C4T logo on the truck and combined C4T political activities with a Regional Conference for County Commissioners. **[SOS EX. E: 006-024]**

### ***B. The SOS's Determination and Arbitration***

After its own investigation, the SOS sent a determination letter to Cowboys for Trump, LLC ("C4T"), on November 12, 2019, informing C4T that it was in violation of the registration and reporting requirements of the Campaign Reporting Act ("CRA"), and requested voluntary compliance. **[SOS EX: F]** The SOS made a final determination that C4T is a political committee and is required to register and file reports electronically with the SOS through the Campaign Finance Information System ("CFIS") pursuant to the CRA. **[SOS EX: G]**

On January 15, 2020, the SOS sent a Notice of Final Action informing C4T that to comply with the CRA, C4T must register, file the required finance reports and pay the fines imposed for

failure to register and report. **[SOS EX: G]** The letter also offered C4T an opportunity to request binding arbitration within ten days of the date of the final action letter. C4T submitted a Request for Arbitration with the SOS on or about January 31, 2020. **[SOS EX: H].**

A Notice of Arbitration was issued February 11, 2020 setting the date of the arbitration for February 28, 2020. **[SOS EX I]** C4T requested an extension of time for the hearing and submitted a Waiver of the 30 Day Time Limit on February 14, 2020. **[SOS EX J]**

On February 14, 2020, the SOS sent formal discovery requests to C4T; and on or about February 21, 2020, C4T submitted a response with general objections to the discovery and declined to answer. In its Response to the SOS's discovery requests C4T also asserted that the CRA does not apply to C4T because the Act does not apply to independent expenditures made to federal candidates. *See* [C4T Response to SOS Discovery filed with Arbitrator]. A telephonic hearing was held on February 27, 2020 in which the Arbitrator instructed the SOS to submit a Motion to Compel Discovery. The SOS filed its Motion to Compel on March 13, 2020. No decision on the motion was rendered by the arbitrator.

## **II. STANDARD OF REVIEW**

Summary Judgment is appropriate where there are no genuine issues as to any material fact and the movant is entitled to judgment as a matter of law. Rule 1-056(C) NMRA. An issue of fact is "genuine" if the evidence before the court considering a motion for summary judgment would allow a hypothetical fair-minded fact finder to return a verdict favorable to the non-movant on that particular issue of fact. *Romero v. Philip Morris*, 2009-NMCA-022, ¶ 12, 145 N.M. 658 (internal citations omitted). An issue of fact is "material" if the existence (or non-existence) of the fact is of consequence under the substantive rules of law governing the parties' dispute. *Id.* (internal citations omitted).

Movants for judgment are obligated to make a prima facie showing of entitlement to summary judgment. *Rivera v. Brazos Lodge Corp.*, 1991-NMSC-030, ¶ 5, 111 N.M. 670. The movant need not demonstrate beyond all possibility that no genuine issue of fact exists. *Id.* “Upon such a prima facie showing, the burden shifts to the party opposing summary judgment to show specific evidentiary facts in the form of admissible evidence that require a trial on the merits.” *Hernandez v. Wells Fargo Bank*, 2006-NMCA-018, ¶ 5, 139 N.M. 68, 128 P.3d 496. (citations omitted). If the facts are not in dispute, but only the legal effects remain to be determined, then summary judgment is proper. *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331.

### III. UNDISPUTED MATERIAL STATEMENT OF FACTS

1. Cowboys for Trump, LLC registered as a Limited Liability Company and submitted Articles of Organization with the Business Services Division of the Office of the Secretary of State (“SOS”) on March 27, 2019. **[SOS EX. K:001-010]**
2. Cowboys for Trump, LLC’s “purpose” as stated in its March 27, 2020 Articles of Organization is “political.” **[SOS EX. K: 004].**
3. The NAICS Code (North American Industry Classification System) reported by Cowboys for Trump in its original Articles of Organization is 813940, which is further defined in the Articles of Organization as Sub Code; “political organizations.” **[SOS EX. K: 004].**
4. The NAICS definition for the Code 813940 “political organization” is as follows: “This industry comprises establishments primarily engaged in promoting the interests of national, state, or local political parties or candidates. Included are political groups organized to raise funds for a political party or individual candidates.”  
<https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=813940&search=2017+NAICS+Search&search=2017>  
**[SOS EX. L:001]**
5. Cowboys for Trump solicits donations/contributions on its website:  
<https://www.cowboysfortrump.org> in “Faithful Support of Our President & Country.”  
**[SOS EX. M: 0001-0004]** ([info@cowboysfortrump.org](mailto:info@cowboysfortrump.org)) **[SOS EX. N 002]** (webpages from web.archive.org/web/20190713161941/https://cowboysfortrump.org from July 13, 2019); **[SOS EX. O: 001]** (webpages from [www.cowboysfortrump.org](http://www.cowboysfortrump.org) from 2/12/2020).  
*See also*, **[SOS EX’s C: 008; SOS EX. D: 032-033; and SOS EX. E:004-006]**



6. Cowboys for Trump advertises that it is not a non-profit organization and “when you give to C4T you will not have the option to write anything off on your taxes.” **[SOS EX. M: 001]**
7. Cowboys for Trump sold merchandise on its website, such as T-shirts, hats, calendars, and decals with its logo “Cowboys for Trump.” **[SOS EX. N: 005-008] [SOS EX. O: 003-011]**
8. Cowboys for Trump made an eight day horseback ride from Cumberland Maryland to the White House in February 2019. **[SOS EX N: 020-25] and [SOS EX. O: 016-022][SOS EX D: 020]**  
<https://wtop.com/dc/2019/02/cowboys-for-trump-finish-8-day-ride-to-the-white-house/slide/1/>
9. According to Mr. Griffin, there are three main policy issues at the center of the Cowboys for Trump platform: right to life, right to bear arms and securing the border. **[SOS EX. D-015] [SOS EX. N:043] [SOS EX. O:040]**
10. Cowboys for Trump collected monetary and in-kind contributions for the horseback ride from Cumberland Maryland to Washington D.C. in February 2019 in support of President Trump. **[SOS EX. N:025 ] website pages [SOS EX. O: 022; 040-41] [SOS EX. D:075]**
11. Cowboys for Trump organized a rally in March 2019 at the Capitol in Santa Fe, New Mexico for its “Circle the Wagons Tour” to highlight issues such as undocumented immigrants, abortion and gun control. <https://www.abqjournal.com/1290457/cowboys-for-trump-will-ride-into-santa-fe-on-tuesday-with-a-hat-for-governor.html>
12. Cowboys for Trump advocates against the reintroduction of the Grey Wolf in New Mexico. **[SOS EX. N: 0001-0005]** See <https://cowboysfortrump.org/grey-wolf-issue>.
13. In 2019, Cowboys for Trump received over \$30,000 in donations. **[SOS EX. Q: 001-005]** ([www.gofundme.com/f/cowboys-for-trump](http://www.gofundme.com/f/cowboys-for-trump))
14. In 2019, Cowboys for Trump spent over \$30,000 for its various activities.
15. Cowboys for Trump has not registered with the New Mexico SOS as a political committee.
16. Cowboys for Trump has not registered with the federal election commission.

#### **IV. LEGAL ARGUMENTS**

In its Request for Arbitration C4T asserted that it was not required to register and submit finance reports because 1) the CRA as applied to C4T violates the First Amendment of the United States Constitution; and 2) C4T does not meet the definition of a “political committee” under NMSA 1978, Section 1-19-26(Q). In its Response to the SOS’s discovery requests, C4T also asserted that 3) the CRA does not apply to C4T because the Act does not apply to independent expenditures made to federal candidates.

The only issue in the purview of the arbitrator is whether C4T is a political committee and subject to the registration and reporting requirements that govern political committees under the CRA. The arbitrator has no jurisdiction to decide the constitutionality of the CRA because that issue was decided prior to the legislative enactment of the Campaign Reporting Act; nonetheless, the SOS will address this issue briefly.

##### **A. THE ARBITRATOR DOES NOT HAVE JURISDICTION TO DECIDE A FEDERAL CONSTITUTIONAL CHALLENGE TO THE CAMPAIGN REPORTING ACT.**

Arbitrations under the Campaign Reporting Act (“CRA”) are statutory. An arbitrator cannot provide relief outside the scope of his authority. “An arbitrator may impose any penalty the secretary of state is authorized to impose.” NMSA 1978, § 1-19-3.4(F) (1997). The only decision an arbitrator is statutorily authorized to make is whether any penalty or fine imposed by the SOS is warranted by applying the statutory requirements of the CRA. Had C4T desired to challenge the constitutionality of the fines imposed by the SOS, it could have brought its case in district court. Instead C4T voluntarily choose to arbitrate the matter and has subjected itself to binding arbitration. *See* NMSA 1978, § 1-19-34.4(F). An arbitrator has no authority to determine whether the statutory scheme that governs campaign reporting is or is not constitutional.

The New Mexico legislature enacted the CRA based on the Federal Election Campaign Act which has been determined by the United States Supreme Court to pass constitutional muster. The Federal Election Campaign Act of 1971, the Bipartisan Campaign Reform Act of 2002, and a series of federal court cases, including *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976) and *Citizens United v. Federal Election Commission*, 558 U.S. 510, 130 S. Ct. 876 (2010), together form the foundation of federal campaign finance law. The Seventh Circuit Court of Appeals on discussing this exact challenge summed up its conclusion as follows:

Campaign finance disclosure requirements have existed at the federal level since 1910. The modern federal disclosure regime was part of the Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-225, 86 Stat. 3, as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (2002) (codified as amended at 2 U.S.C. §§ 431-34). Because the Supreme Court has upheld FECA's disclosure requirements, we need not invent the wheel in this case.

*Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 480 (Seventh Cir. 2012) (internal authorities omitted). New Mexico's registration and disclosure requirement track the federal requirements and like the federal disclosure requirements, are not unconstitutional

Generally, the Supreme Court has upheld the constitutionality of disclaimer and disclosure requirements against First Amendment challenges as substantially related to the governmental interest of safeguarding the integrity of the electoral process by promoting transparency and accountability. Thus, there is no need to re-litigate in this arbitration the constitutionality of the requirement that political committees must disclose and report political contributions and expenditures.

C4T argues that the disclosure requirements in the CRA violate its First Amendment rights. The First Amendment protects political association as well as political expression; *see Buckley v. Valeo*, 424 U.S. 1, \*15, 96 S. Ct. 612, 633 (1976). Nonetheless, everyone has a right to know who is trying to influence our views and our representatives. *See Republican Party of New Mexico v.*

*King*, 741 F.3d 1089, 1094, fn 3 (10th Cir. 2013) (“The Court upheld disclosure requirements at issue in *Citizens United* because they provided the electorate with information about the identity of the speaker and did not impose a chill on political speech, even for independent expenditures.”)

In the landmark case of *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court found that statutory limits on campaign contributions were not violations of the First Amendment freedom of expression but that statutory limits on campaign **spending** were unconstitutional. *Buckley* also established the constitutionality of disclosure of contributions and expenditures, with the Court ruling that such disclosure was necessary to detect and prevent fraud and to ensure compliance with campaign rules. *Buckley*, 424 at 72. The USSC in *Buckley* held that the individual and political committee contribution limits, the **disclosure and reporting provisions**, and the public financing scheme were justified by weighty interests in restricting influences stemming from the dependence of candidates on large campaign contributions. *See Buckley*, 424 at 72. (“the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged”).

The *Buckley* Court rejected a challenge to a Federal Election Campaign Act (FECA) provision requiring individuals and groups that expressly advocated for the election or defeat of candidates for federal office to file reports detailing contributions and expenditures with the Federal Election Commission. The disclosure provisions of the Act under review by the *Buckley* Court required each political committee to register with the Federal Election Commission, and to keep detailed records of both contributions and expenditures. *See Buckley*, 424 at 62. These records must include the name and address of everyone making a contribution in excess of \$10, along with the date and amount of the contribution. *Buckley*, 424 at 63. If a person's contributions

aggregate more than \$100, his occupation and principal place of business are also to be included.  
*Id.*

In weighing the benefits of disclosure against the burdens to First Amendment protection, the Court found that the requirements serve to deter corruption by allowing interested parties to follow the flow of money through contributions and expenditures, provide information helpful to voters, and aid in the enforcement of other campaign finance laws. *Buckley*, at 66-67. Therefore, the *Buckley* Court held that the government's interests are sufficiently important to justify the disclosure requirements' imposition on speech.

Likewise, in *Citizens United*, the Court upheld disclosure requirements at issue because they provided the electorate with information about the identity of the speaker and did not impose a chill on political speech, even for independent expenditures. Unlike restrictions on campaign spending, disclosure requirements "impose no ceiling on campaign-related activities and do not prevent anyone from speaking." *Citizens United*, 558 U.S. 310, 366, (internal citations and quotations omitted). Accordingly, the Supreme Court in *Citizens United* held that the "Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether." *Id.* at 319. "[D]isclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." *Buckley*, 424 U.S. at 68.

In *McConnell v. FEC*, 540 U.S. 93, 196, 124 S. Ct. 619, 690 (2003), the Supreme Court agreed with the federal district that the important state interests that prompted the *Buckley* Court to uphold FECA's **disclosure requirements**--providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions--apply in full to the Bipartisan Campaign Reform Act.

Accordingly, *Buckley* amply supports application of FECA § 304's **disclosure requirements** to the entire range of "electioneering communications."

Thus, there is no authority that supports C4T's assertions that the disclosure requirements under New Mexico's CRA are unconstitutional. New Mexico's campaign disclosure laws do not offend First Amendment rights and will withstand constitutional scrutiny. Regardless, the arbitrator should **not** entertain any arguments on this issue as he has no jurisdiction to consider a constitutional challenge to the CRA. As the New Mexico statute does not regulate individual communications, the issue before this tribunal is solely whether Cowboys for Trump may be classified as a political committee for the purpose of requiring that it register with the New Mexico Secretary of State and file periodic disclosure statements.

**B. COWBOYS FOR TRUMP IS A POLITICAL COMMITTEE AS DEFINED IN SECTION 1-19-26(Q) OF THE CRA AND IS STATUTORILY REQUIRED TO REPORT ITS INDEPENDENT EXPENDITURES.**

***1. Cowboys for Trump is a Political Committee As Defined Under Section 1-19-26(Q) of the Campaign Reporting Act.***

Cowboys for Trump protests the fines imposed by the SOS for its failure to register with the Office of the Secretary of State as a political committee and to post its required 2019 biannual reports through the SOS's electronic Campaign Finance Information System known as ("CFIS"). Cowboys for Trump is a political committee as defined under the Campaign Reporting Act ("CRA") because it is an association of two or more persons, "whose **primary purpose** is to make independent expenditures **and** that has received more than five thousand dollars (\$5,000) in contributions or made independent expenditures of more than five thousand dollars (\$5,000) in the election cycle;" NMSA 1978, § 1-19-26Q)(4) (2019) (emphasis added). There is no dispute that Cowboys for Trump has received more than \$5,000 in monetary and in-kind contributions/donations for political activities, and that Cowboys for Trump has expended more

than \$5,000 for independent expenditures. **[SOF #'s 10, 13 & 14]** It is clear from its activities that C4T was organized to garner support for a clearly identified candidate and to engage in express advocacy.

The New Mexico Campaign Reporting Act requires that organizations "operated primarily" for the purpose of influencing or attempting to influence an election must register with the Secretary of State as "political committees," pay a filing fee, and file reports disclosing their activities and contributors. NMSA 1978, §§1-19-26(Q), (M), 1-19-26.1(A), 1-19-29(G). "It is unlawful for a **political committee** to continue to receive or make any contribution or expenditure for a political purpose if the committee fails to meet the requirements of Subsections B and C of this section." NMSA 1978, § 1-19-26.1(A) (2019). Subsection B requires the appointment of a treasurer and a requirement to file a statement of organization and pay a filing fee. NMSA 1978, § 1-19-26.1(B). Subsection C requires information about the committee, including the name of the committee, purpose for which the committee was organized, names and addresses of the officers of the committee, and an identification of the bank account used by the committee to receive or make contributions or to make expenditures. NMSA 1978, § 1-19-26.1(C) (2019). Section 1-19-27(A) requires all 'reporting individuals,' which includes a treasurer of a political committee, *see* Section 1-19-26(V), to file with the secretary of state reports of expenditures and contributions and statements of no activity. NMSA 1978, § 1-19-27(A) (2016). C4T admits it has not registered with the SOS through its CFIS as required nor did it register with the federal election commission. **[SOF #'s 15 & 16]**

There is also no evidence that C4T is anything other than a political organization, organized primarily for a political purpose. "Primary purpose" is defined by Rule 1.10.13.7(BB) as "the purpose for which an entity or committee:

- (1) was created, formed or organized; or
- (2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or
- (3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.”

These three factors are mutually exclusive requirements, as indicated by the conjunction “or.” Thus only one factor need be proved to establish a primary purpose. C4T identifies itself as a “political organization” in its Articles of Organization submitted to the SOS on March 27, 2019. **[SOF #'s 1-4]**. It also advertises itself as a “political organization.” **[SOS EX. D: 078-080]**. Nonetheless, there is no evidence that C4T expends its donations on any other enterprise other than engaging in or furthering its political activities and agenda. Thus, Cowboys for Trump meets the definition of a political committee under the CRA definition Section 1-19-26(Q)(4).

Related to political committees, the *Buckley* Court explained that a general requirement that political committees disclose their expenditures raised no vagueness problems because the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate” and thus a political committee’s expenditures “are, by definition, campaign related.” *Buckley*, 424 U.S. at 79. *See also McConnell v. FEC*, 540 U.S. 93, fn. 64, (2003). “[A]ny public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating.” *McConnell* 540 U.S. at 169.

In *N.M. Youth Organized v. Herrera*, 611 F.3d 669, the Court of Appeals for the Tenth Circuit held that there are two methods to determine an organization’s “major purpose”: (1) examination of the organization’s central organizational purpose; or (2) comparison of the organization’s electioneering spending with overall spending to determine whether the preponderance of expenditures is for express advocacy or contributions to candidates. *N.M. Youth*



*Organized*, 611 F.3d at 678 (internal citations omitted). C4T was clearly organized for and its central purpose is advocacy for like-minded candidates and political issues. There is no evidence that C4T makes expenditures for any other purposes than political advocacy.

C4T was organized for the express purpose of engaging in partisan political activity, and engages in electioneering activities for the purpose of influencing issues and elections. Its Articles of Incorporation expressly state that its “purpose” is political, and it classified itself and advertises as a “political organization.” **[SOS EX. K: 004]**<sup>1</sup> Cowboys for Trump’s expressly advocates for the election of a clearly identified candidate-President Trump, and its multiple horseback rides, rallies and other activities in the year (2019) immediately preceding the general election, and the election year can have no other interpretation but as an appeal to vote for Trump. *See* **[SOF # 8. 10, & 11]**. “We organized this ride to support our President and our Nation.” **[SOS EX. D: 075]** In addition, C4T solicited monetary and in-kind donations for the cause. **[SOS EX. D: 075-076]**

In addition, C4T engages in issue advocacy. C4T uses independent expenditures to advance its stated political purpose(s) and support candidates who agree with C4T’s position on identified issues, which include but are not limited to, securing our nations border; protecting the unborn, and preserving their Second Amendment rights. **[SOF # 9]** C4T uses the contributions received by its donors to fund travel and other expenses for activities related to promoting its political platform, which it clearly advertises on its website and in fliers and bulletins displayed to the public. **[SOS EX. D: 010-016; 040-043; 056; 074-075]** **[SOS EX. E: 006]** **[SOS EX. N: 009-012]** **[SOF #’s 5, 8-12]**

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<sup>1</sup> On November 26, 2019, the Corporations Division of the SOS received a Certificate of Amendment from Kay Griffin regarding Cowboys for Trump, LLC requesting to amend Article Four by removing her name as organizer and manager and to amend Article Six to change the purpose of the LLC to “charity.” **[SOS EX. K: 008]** The LLC was never converted to a charitable organization and regardless, during the reporting periods covered by this arbitration C4T was and is still a non-profit LLC.

In order to support candidates who hold principles in common with them, and advance ballot issues that align with C4T's platform, C4T raises money by soliciting and accepting contributions from individuals and entities. **[SOS EX. M-001]** C4T accepts in-kind donations and monetary contributions and makes expenditures to finance its various horseback rides, rallies and website which advertises and promoted candidates that support its political agenda. C4T determines how contributions made to it will be used, and which candidates/issues it supports. See **[SOS EX. M-001; EX. N-025-031]**

The SOS correctly determined that C4T is a political committee as defined in the CRA pursuant to Section 1-19-26(Q) and is subject to the registration, reporting and disclosure requirements of the CRA. In addition, C4T has violated the Election Code by failing to satisfy the registration and reporting provisions of the CRA.

**2. *Cowboys For Trump Makes Independent Expenditures That Meet the Definition of Section 1-19-26(N).***

Cowboys for Trump questions how its advertisements are the product of an independent expenditure. But that is not the relevant issue. The issue is whether C4T or Couy Griffin made independent expenditures required to be reported pursuant to the Campaign Reporting Act. Section 1-19-27.3(A) requires that “[a] person who makes an independent expenditure **not otherwise required to be reported** under the Campaign Reposting Act shall file a report with the secretary of state within: . . .” NMSA 1978 § 1-19-27.3(A)(2019) (emphasis added).

The term "independent spending" refers broadly to any political expenditures made by groups or individuals that are not directly affiliated with or controlled by a candidate or candidate campaign. The Campaign Reporting Act defines “independent expenditure” as an expenditure that is:

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

- (2) not a coordinated expenditure as defined in the Campaign Reporting Act;<sup>2</sup> and
- (3) made to pay for an advertisement that:
  - (a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;
  - (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or
  - (c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot;

NMSA 1978, § 1-19-26(N). An expenditure is a “payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention.” NMSA 1978, § 1-19-26(M). A “person” is defined broadly under the CRA as an individual or an entity. NMSA 1978, § 1-19-26(P). C4T and/or Couy Griffin are “persons” that used “contributions” defined as a “gift, subscription, loan, advance, or deposit of money or other thing of value, including the estimated value of in-kind contributions,” made or received for a political purpose, see NMSA 1978, § 1-19-26(H)(1), to pay for the costs of trips and horseback rides, videos and other expenditures related to C4T’s political advertising.

The CRA defines an **advertisement** as “a **communication** referring to a candidate or ballot question that is published, disseminated, distributed or **displayed to the public** by print, broadcast, satellite, cable or **electronic media**, including recorded phone messages, or by printed materials, including **mailers, handbills, signs and billboards**, . . .” NMSA 1978, § 1-19-26(A) (emphasis added). A communication is the expression or exchange of information by speech, writing, gestures, conduct, or electronic medium. *See*

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<sup>2</sup> A coordinated expenditure is defined in part as one “that is made at the request or suggestion of or in consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party;” *see* NMSA 1978 § 1-19-26(I)(2019).

<https://definitions.us.legal.com/c/communications/>; see also <https://www.merriam-webster.com/dictionary/communication> (“a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior”).

C4T under Couy Griffin’s management, made expenditures to pay for communications/messages that either expressly advocated or can have no other reasonable interpretation but as an appeal to vote for a clearly identified candidate. NMSA 1978, § 1-19-26(N)(3). In *FEC v. Wisconsin Right to Life, Inc. (WRTL)*, 551 U.S. 449, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007), the Supreme Court adopted a test for the “functional equivalent of express advocacy” which is consistent with the language set forth in Section 1-19-26(N)(3)(b). The Supreme Court in *WRTL* held that “a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *FEC V WRTL*, 551 U.S. at 469-470.

Rule 1.10.13.7(M) NMAC defines “expressly advocate” as meaning that “the communication contains a phrase including, but not limited to, “vote for,” “re-elect,” “support,” “cast your ballot for,” “candidate for elected office,” “vote against,” “defeat,” “reject,” or “sign the petition for,” **or a campaign slogan or words that in context and with limited reference to external events**, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot questions or candidates.” Rule 1.10.13.7(M) (2019) NMAC. The expenditures needed to finance the horseback rides in which participants displayed a huge flag with “Cowboys for Trump” [SOS EX. N: 026] or “TRUMP Make America Great Again” [SOS EX. N: 031] and the rallies, website and merchandise that displayed the C4T logo were all communications expressly advocating support for a clearly identified candidate, and as such were “advertisements.” Communications from a

political committee for the purpose of urging action on a bill or issue, and/or to generate support for a particular candidate are subject to CRA reporting requirements. Thus, the funds used to pay for these advertisements were independent expenditures required to be reported under Section 1-19-27.3(A). (“A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reposting Act shall file a report with the secretary of state.”)

C4T cannot circumvent its statutory obligation to report independent expenditures by using a circular argument that it did not use “independent expenditures” to pay for a political advertisement published, disseminated, distributed, or displayed to the public. The purpose of C4T’s website, the horseback rides, the rallies, the signs, and the C4T merchandise is to communicate to the public its support for President Trump and to advocate for specific issues such as border control, Second Amendment right to bear arms, and protecting the unborn child. **[SOS EX. N: 043]** These communications in whatever form, including signs carried in a Fourth of July parade are “advertisements.” All contributions expended for these events would be independent expenditures. The use of the contributions solicited and received from the public to pay for these purposes is the essence of an independent expenditure. By their nature, the funds used to pay for such advertisements are independent expenditures.

C4T’s contributions and expenditures exceed the threshold amounts of monetary and in-kind contributions received from contributors and independent expenditures made, for reporting purposes under Section 1-19-27.3 and C4T’s failure to provide the information mandated under that provision is a violation of the CRA.

**C. COWBOYS FOR TRUMP IS NOT EXEMPT FROM THE REPORTING REQUIREMENTS UNDER NEW MEXICO’S CAMPAIGN REPORTING ACT EVEN IF IT MADE INDEPENDENT EXPENDITURES TO SUPPORT A FEDERAL CANDIDATE.**

Cowboys for Trump argues that “the Act (CRA) does not apply to independent expenditures in support of candidates for federal election.” *See* [Response to Secretary of State’s Request for Discovery, pg. 1] C4T contends that because Section 1-19-26(K) excludes federal, municipal, school board and special district elections that the CRA does not govern C4T’s support of a federal candidate. C4T misunderstands the application of the definition of “election” in Section 1-19-26(K). Section 1-19-26(K) defines an election as:

any **primary, general or statewide special election in New Mexico** and includes county and judicial retention elections but excludes federal, municipal, school board and special district elections;

NMSA 1978, § 1-19-26(K) (emphasis added). New Mexico’s primary election in June 2020 and its general election in November 2020 are not federal elections. The CRA does cover primary and general elections, *see* Section 1-19-26(K), which includes Presidential elections. NMSA 1978 1-15A-4 (2011) (“The presidential primary election shall be conducted and canvassed along with and in the manner provided by law for the conduct and canvassing of the primary election.”) These elections are “statewide elections” defined in NMSA 1978, Section 1-1-5.12 as a general election, a political primary election, or a regular local election. New Mexico political committees that expressly advocate for candidates on the ballot in the primary election in June 2020 and the general election in November 2020 are subject to the CRA reporting requirements. C4T is a New Mexico political committee that is supporting a federal candidate in New Mexico elections. This is not equivalent to a political committee in another state supporting a federal candidate in a federal election.

C4T asserts that “the Campaign Reporting Act does not cover a candidate for federal office, including the Presidency of the United States.” *See* [Response to Secretary of State’s Request for Discovery, pg. 2] Petitioner conflates the reporting requirements for a federal candidate, such as President Trump, with the requirements of a political party or political committee that support a federal candidate. These are distinct situations.

C4T is comingling candidates and political committees. A **candidate** is one who seeks or considers an office in an election covered by the Campaign Reporting Act. *See* NMSA 1089, § 1-19-26(G). This provision does not exempt **political committees** from the CRA. Whether the CRA covers a federal candidate seeking election to a federal office is irrelevant, because C4T is not a federal candidate. C4T is a **political committee** as defined in Section 1-19-26(Q) and the only exemption that applies to political committees is Section 1-19-26.1(E).

Section 1-19-26.1(E) (2019) exempts political committees from New Mexico’s registration requirements of Section 1-19-26.1(A) – (D), **if** the political committee is located out of state and is registered with the federal election commission and reports all expenditures for and contributions made to reporting individuals in New Mexico and also files a full report, or a partial report related to New Mexico individuals with the SOS. C4T has not registered with the federal election commission; C4T is located in NM, registered in NM as an LLC, and accepts contributions from New Mexicans, and advocates in this state for a clearly identified candidate and for or against various issues.

Unless C4T meets the conditions of Section 1-19-26.1(E), **which it does not**, as a political committee located in NM, it is subject to the CRA. In addition, C4T may also make expenditures to support other candidates in addition to President Trump, and certainly expends contributions for issue advocacy, such as, opposing gun control and the reintroduction of the Mexican grey wolf

into its habitat, and supporting border security and protection of the unborn. Thus, C4T has a broad political purpose and is not exempt from the requirements of the CRA.

## **V. CONCLUSION AND REQUEST FOR RELIEF**

By its own account, as reported in its Articles of Organization, Cowboys for Trump is a political organization, organized for a political purpose which is advertised on its website, and through its horseback rides, and rallies. C4T is a political committee as defined in NMSA 1978, Section 1-19-26(Q) and is subject to the registration and reporting requirements under New Mexico's Campaign Reporting Act. The expenditures made to support its political activities are independent expenditures and must be reported pursuant to NMSA 1978, Section 1-19-27.3 (2019).

C4T does not dispute that it solicits and receives contributions and makes expenditures to support its activities. C4T admits it has not registered or filed expenditure and contribution reports with the SOS through its CFIS, nor has C4T registered or filed reports with the federal election commission.

**THEREFORE**, the SOS requests that the arbitrator order Cowboys for Trump: 1) to register with the SOS as a political committee pursuant to Section 1-19-27, 2) file all delinquent expenditure and contribution reports with the SOS as required in Sections 1-19-27, 1-19-27.3 and 1-19-29 for the First and Second 2019 Biannual Reports, and all 2020 expenditures and contributions reports as required under Section 1-19-29(B), and 3) pay the fines imposed by the SOS for C4T's failure to register and file reports, in the amounts of \$7,800 as stated in the SOS's Final Action Letter dated January 15, 2020, within fifteen (15) days of the arbitrator's decision.

Concurrence of opposing counsel was not sought for this motion due to the nature of the motion as provided by Rule 1-007.1(C)(3) NMRA (2019).



Respectfully submitted,

OFFICE OF THE SECRETARY OF STATE

By: Tonya Noonan Herring  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of May 2020, I submitted a true and correct copy of the foregoing Motion for Summary Judgment and Memorandum in Support electronically to counsel for Cowboys for Trump.

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STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

July 10, 2020

Sent Via Email: [colin@theblf.com](mailto:colin@theblf.com); [jordy@theblf.com](mailto:jordy@theblf.com)

Colin L. Hunter  
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Re: Arbitration Order - Cowboys for Trump LLC

Dear Mr. Hunter and Mr. Stern:

As you are aware from the email sent to the parties in this matter on July 07, 2020 from Arbitrator Christian Doherty, an Arbitration Order has been issued granting the State's Motion for Summary Judgment and granting all relief requested therein. The Order requires your client to: 1) register with the Secretary of State (SOS) as a political committee pursuant to NMSA 1978, Section 1-19-27; 2) file all delinquent expenditure and contribution reports with the SOS as required in Sections 1-19-27; 1-19-27.3 and 1-19-29 for the First and Second 2019 Biannual Reports, and all 2020 expenditures and contributions reports as required under NMSA 1978, Section 1-19-29(B); and 3) pay the fines imposed by the SOS for Cowboys for Trump's failure to register and file reports, in the amounts of \$7,800 within fifteen (15) days of the arbitrator's decision.

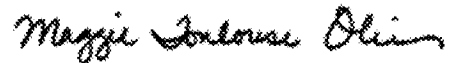
Therefore, I am requesting that your client please submit payment by check or money order, made payable to New Mexico Secretary of State's Office on or before July 22, 2020. I am also requesting that your client immediately register with my office as required by the Arbitration Order and file all delinquent reports, as referenced in the Order.

Exhibit 5

Should your client fail to comply with the requirements of the Arbitration Order, I will proceed with a referral to the State Ethics Commission for civil enforcement of the fine levied in this matter, pursuant to NMSA 1978, Sections 1-19-34.8 and 10-16G-9(F), and a referral to the New Mexico Attorney General for review of possible violations under NMSA 1978, Section 1-19-36, based on the knowing and willful nature of your client's conduct. Also, please be advised that fines will continue to accrue for failure to register and failure to file the required reports.

Should you have additional questions or concerns, please do not hesitate to contact the Ethics Division at 505-827-3600 or [sos.ethics@state.nm.us](mailto:sos.ethics@state.nm.us).

Sincerely,

A handwritten signature in cursive script, reading "Maggie Toulouse Oliver".

Maggie Toulouse Oliver  
New Mexico Secretary of State

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

COWBOYS FOR TRUMP, INC.,  
et al.,

Plaintiffs,

v.

Civ. No. 20cv587 GJF/SMV


MAGGIE TOULOUSE OLIVER, *in  
her official capacity as Secretary of State  
of New Mexico,*

Defendant.

**FINAL JUDGMENT**

In its December 30, 2020, Memorandum and Opinion Order [ECF 28] dismissing the complaint without prejudice, the Court accorded Plaintiffs until January 15, 2021, in which to file an amended complaint if they so chose. No such amended complaint having been filed, the Court in accordance with Federal Rule of Civil Procedure 58(a) now enters this Final Judgment and orders this case **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED.**



THE HONORABLE GREGORY J. FOURATT  
UNITED STATES MAGISTRATE JUDGE  
Presiding by Consent

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**NEW MEXICO OFFICE OF THE  
SECRETARY OF STATE,**

**Petitioner,**

**v.**

**Case No. D-101-CV-2021-00192**

**COWBOYS FOR TRUMP, LLC,**

**Respondent.**

**FINAL JUDGMENT TO CONFIRM ARBITRATION AWARD**

**THIS MATTER** having come before the Court on June 3, 2021, at 2:50 p.m., on Petitioner's Verified Petition to Confirm an Arbitration Award into a Judgment, the Court having examined the Verified Petition and other pleadings, having heard the argument of counsel, and being fully advised, **FINDS, CONCLUDES, and ORDERS:**

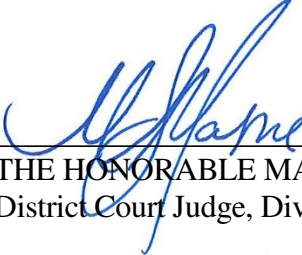
THAT the July 7, 2020, arbitration award issued in the underlying matter by Arbitrator Christian C. Doherty is hereby **CONFIRMED** into this **FINAL JUDGMENT**;

THAT Respondent is subject to the New Mexico Campaign Reporting Act;

THAT Respondent must pay the fines imposed by Petitioner in the amount of \$7 800;

THAT Respondent must register with the SOS as a political committee pursuant to the Campaign Reporting Act; and

THAT Respondent must file all delinquent expenditure and contribution reports with Petitioner, including the 2019 Biannual Reports and all 2020 expenditures and contribution reports required by the Campaign Reporting Act.

 6/7/21  
THE HONORABLE MARIA SANCHEZ-GAGNE  
District Court Judge, Division II

Submitted:

MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

/s/ Dylan K. Lange

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Electronically approved as to form on 6/7/2021:

By: /s/

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