

Attn: Kari Fresquez–Proposed Campaign Finance Rule
RE: Rio Grande Foundation proposed comments
Sent via email to: sos.rules@state.nm.us

July 11, 2017

Please consider these comments with regard to the Secretary of State's proposed rules for campaign finance made by Paul J. Gessing on behalf of the Rio Grande Foundation.

The Rio Grande Foundation is a non-profit 501c3 organization based in Albuquerque. We are a non-profit, non-partisan policy research organization working to promote economic liberty in New Mexico. We have been in existence since 2000, and I personally have been the head of the Foundation since 2006.

The Rio Grande Foundation remains concerned about efforts to impose new rules to enforce disclosure upon non-profit organizations such as my own. Our concerns involve process and are both practical and philosophical in nature.

The first significant issue is procedural. The proposed regulations are quite similar to legislation (SB 96) that was introduced in the 2017 legislative session. That bill was ultimately vetoed by Gov. Susana Martinez over sincere privacy concerns.

Regardless of one's views on the specific regulations, these sweeping new regulations should be handled through the democratic/legislative process. Imposition through the authority of one government official is simply not the appropriate mechanism for such wide-ranging and impactful new policies. Why should the Legislature even go to the effort of enacting such reforms (even if they are not to the liking of the Rio Grande Foundation) if the Secretary of State can simply enact reforms to his/her liking?

Our primary substantive issue with these regulations is the new reporting requirements for individuals and organizations that make broadly-defined "independent expenditures" or publish information that simply mentions the name of a candidate in a specified window before a primary or general election. These provisions would ultimately chill protected speech by mandating the disclosure of donors to groups like Rio Grande Foundation that are engaged solely in constitutionally-protected issue advocacy.

Going back to the 1958 United States Supreme Court ruling in *NAACP vs. Alabama*, it has been recognized that donors to non-profits should be protected from disclosure due to the dangers of and potential for political intimidation. While the *NAACP* had an obvious interest in donor privacy given the challenges it faced during the Civil Rights era, donors whose names wind up in public databases often suffer intimidation to this day.

A second, related issue with these regulations is that they create new and burdensome reporting requirements for organizations. The Secretary's proposal claims to cover only "independent expenditures," but the definition of independent expenditure is so broad that it would cover many activities that have no relation to express advocacy for or against a candidate.

While the Rio Grande Foundation expressed concerns about SB 96 during the 2017 legislative session, our opposition to these disclosure requirements is further informed by recent efforts to comply with campaign finance law already on the books in Santa Fe. In our efforts to educate Santa Feans on the recently-defeated sugary drinks tax in a manner well-within the bounds of standard 501c3 educational activity, we were told that we would be forced to disclose the names, addresses, and donation amounts of our supporters if we spent more than \$250 speaking about the impacts of the proposed policy. This led us to constrain our activities in an effort to comply with both our promise of donor privacy to our supporters under our federal 501c3 charter as well as locally-imposed rules and regulations.

The disclosure requirements are a major concern, but equally problematic is the paperwork and demands to keep detailed records of transactions and filings relating to these efforts. The Rio Grande Foundation is a small organization with an annual budget of approximately \$250,000, but Santa Fe's rules, much like those being promulgated by the Secretary of State, will pose nearly insurmountable obstacles to smaller citizen and grassroots organizations.

These regulations would impermissibly restrict speech about public policy issues in the net designed to regulate campaign speech. Worse, once entangled in New Mexico's campaign finance regime, the rulemaking proposal imposes onerous registration and multiple reporting requirements on speakers in New Mexico.

While the regulations attempt to exclude activity by § 501(c)(3) nonprofit organizations (like the Rio Grande Foundation), the definition of "independent expenditure" is broad enough to cover grassroots lobbying by § 501(c)(3) organizations if they run their communications close in time to an election. The rule even covers cheap, nontraditional Internet media like podcasts, according to Section 1.10.13.7(A). Under Section 1.10.13.7(M)(3)(c), among other things, an "independent expenditure" can be a communication that "refers to a clearly identified candidate or ballot measure and is published and disseminated to the relevant electorate... within thirty days before the primary election or sixty days before the general election...."

Thus, any discussion of a candidate, even an incumbent officeholder who is running the government, can trigger the "independent expenditure" requirements if it is done close in time to an election. All 501(c)(3) organizations (like mine) would be under threat of having to disclose their donors, even if they are only focusing on issues, if they happen to mention a candidate (and candidates are often incumbent officeholders). So what little grassroots work a 501(c)(3) can do will be impeded by the proposed rule.

An example of this could involve the Rio Grande Foundation talking about school choice and a state representative who is sponsoring a bill about charter schools. But discussion of taxes or transportation policy or any number of other things, if they mention a candidate close to the election, opens up RGF's donors to potential disclosure to the government—whether the donors wanted that advertisement run or not. Because the Proposed Rule also covers ballot measures, even discussing bonds for roads can trigger the rule.

The Rio Grande Foundation prides itself on focusing on issues, not individuals. We have worked and will continue to work with policymakers and citizens from all parties and walks of life to advance our vision of increased economic freedom and limited government.

A core component of America's system of limited government is free speech under the First Amendment. For both philosophical and practical reasons, we at the Rio Grande Foundation urge you not to move forward with these proposed regulations.