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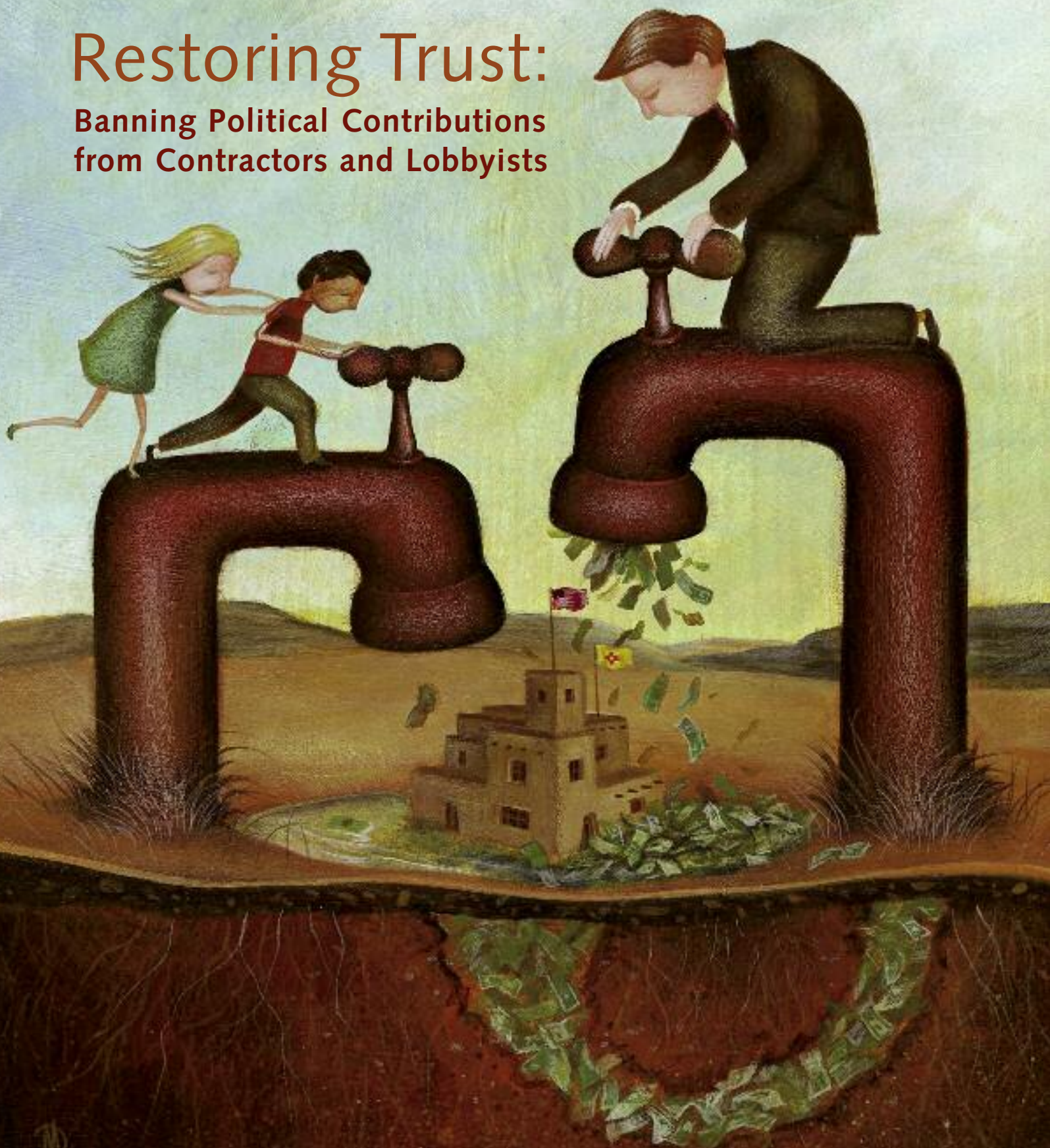
THINK NEW MEXICO

A Results-Oriented Think Tank Serving New Mexicans



Restoring Trust:

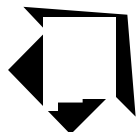
**Banning Political Contributions
from Contractors and Lobbyists**



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About Think New Mexico

Think New Mexico is a results-oriented think tank serving the citizens of New Mexico. Our mission is to improve the quality of life for all New Mexicans, especially those who lack a strong voice in the political process. We fulfill this mission by educating the public, the media, and policymakers about some of the most serious problems facing New Mexico and by developing and advocating for effective, comprehensive, sustainable solutions to those problems.

Our approach is to perform and publish sound, nonpartisan, independent research. Unlike many think tanks, Think New Mexico does not subscribe to any particular ideology. Instead, because New Mexico is at or near the bottom of so many national rankings, our focus is on promoting workable solutions.

Consistent with our nonpartisan approach, Think New Mexico's board is composed of Democrats, Independents, and Republicans. They are statesmen and stateswomen, who have no agenda other than to see New Mexico succeed. They are also the brain trust of this think tank.

Think New Mexico began its operations on January 1, 1999. It is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. In order to maintain its independence, Think New Mexico does not accept government funding. However, contributions from individuals, businesses, and foundations are welcomed, encouraged, and tax-deductible.

Results

As a results-oriented think tank, Think New Mexico measures its success based on changes in law we help to achieve. Our results include:

- making full-day kindergarten accessible to every child in New Mexico
- repealing the state's regressive tax on food
- creating a Strategic Water Reserve to protect and restore New Mexico's rivers
- establishing New Mexico's first state-supported Individual Development Accounts to alleviate the state's persistent poverty
- redirecting millions of dollars a year from the state lottery's excessive operating costs to full-tuition college scholarships
- reforming title insurance to lower closing costs for homebuyers and homeowners who refinance their mortgages

Think New Mexico's Board of Directors



Clara Apodaca, a native of Las Cruces, was First Lady of New Mexico from 1975–1978. She served as New Mexico's Secretary of Cultural Affairs under Governors Toney Anaya and Garrey Carruthers and as senior advisor to the U.S. Department of the Treasury. Clara is President and CEO of the National Hispanic Cultural Center Foundation.



Edward Archuleta, a 13th generation New Mexican, is a consultant and activist on issues including responsible land-use planning, growth management, and sustainable development. Edward previously served as the top assistant to former New Mexico Secretary of State Stephanie Gonzales.



Paul Bardacke served as Attorney General of New Mexico from 1983–1986. Paul was Chairman of Bill Richardson's successful gubernatorial campaigns. He is a Fellow in the American College of Trial Lawyers. Paul currently handles complex commercial litigation and mediation with the firm of Sutin, Thayer, and Browne.



David Buchholtz has advised more than a dozen Governors and Cabinet Secretaries of Economic Development on fiscal matters. David has served as Chairman of the Association of Commerce and Industry. He is the senior member of the New Mexico office of Brownstein Hyatt Farber Schreck.



Garrey Carruthers served as Governor of New Mexico from 1987–1990. Garrey is Dean of New Mexico State University's College of Business and was formerly President and CEO of Cimarron Health Plan. He serves on the board of Arrowhead, an economic development center in Las Cruces, as well as a number of corporate and public organizations.



Dr. F. Chris Garcia is a former President of the University of New Mexico and is currently a Distinguished Professor Emeritus of Political Science. He is the co-author of, among other books, *Hispanics and the U.S. Political System* and *Governing New Mexico*. In 2003, Dr. Garcia received the Governor's Distinguished Public Service Award.

LaDonna Harris is Chair of the Board and Founder of Americans for Indian Opportunity. She is also a founder of the National Women's Political Caucus. LaDonna was a leader in the effort to return the Taos Blue Lake to Taos Pueblo. She is an enrolled member of the Comanche Nation.



Susan Herter served as Chief of Staff to Vice President Nelson Rockefeller and was appointed to the President's Commission on White House Fellows by Presidents Carter and Reagan. Susan was a founding board member of Common Cause, the North American Institute, and the New Mexico Community Foundation, where she also served as president.



Edward Lujan is the former CEO of Manuel Lujan Agencies, the largest privately owned insurance agency in New Mexico. Ed is a former Chairman of the National Hispanic Cultural Center of New Mexico, the Republican Party of New Mexico, and the New Mexico Economic Development Commission.



Fred Nathan founded Think New Mexico and is its Executive Director. Fred served as Special Counsel to New Mexico Attorney General Tom Udall. In that capacity, he was the architect of several successful legislative initiatives and was in charge of New Mexico's lawsuit against the tobacco industry.



Roberta Cooper Ramo is the first woman elected President of the American Bar Association and the American Law Institute. Roberta served on the State Board of Finance and is a former President of the Board of Regents of the University of New Mexico. She is a shareholder in the Modrall law firm and serves on many national boards.



Stewart Udall served as Secretary of the Interior under Presidents Kennedy and Johnson. Prior to that, Stewart served three terms in Congress. He is the author of *The Quiet Crisis* (1963), which tells the story of humankind's stewardship over the planet's resources, and *To the Inland Empire: Coronado and Our Spanish Legacy* (1987), which celebrates Hispanic contributions to our history.



Dear New Mexican:

This year's policy report from Think New Mexico should be of interest to every New Mexico taxpayer as well as anyone who is concerned about political corruption and the toll it takes on our state.

We could have written an entire report lamenting the recent parade of New Mexico government contractors, lobbyists and prominent elected officials who have either been indicted or convicted for essentially using government as a piñata for political sweetheart deals. However, our report only touches briefly on these episodes. Instead our focus is on how to prevent this sort of corruption in the future.

The approach we take is more common sense than ideological and centers on removing the inherent conflict of interest that exists when state contractors and lobbyists donate to the campaigns of the elected officials who can award them government dollars. This inherent conflict erodes the public's trust in government.

We begin with the presumption that the problems are systemic rather than personal or partisan. Based on our own experience working closely with elected officials on various public policy reforms, we believe that the vast majority of elected officials in New Mexico are honest and are working in government for the right reasons.

At the same time, we believe that more needs to be done to tackle corruption in New Mexico and change how government operates at the state and local level. It is especially urgent now because the challenges confronting state and local government are severe and addressing them will require the public's confidence and support.

The reforms we propose here are designed to be comprehensive. They target political contributions by contractors and lobbyists not only at the state government level but at the local government level as well. They also seek to close the loophole of bundling political contributions.

We have also tried to be practical. As this report is being written, Governor Richardson and legislators are grappling with a state budget deficit of more than \$430 million. The reforms proposed here will have no fiscal impact on the state's depleted General Fund or equally stressed

local government budgets. In fact, over the long term these reforms should result in savings by eliminating the waste caused by corruption.

These reforms also complement and build on the government ethics reforms that have already been put in place by Governor Richardson, the legislature, and their predecessors.

Too often campaign finance and government procurement are treated in isolation from each other. However, those who work these systems intimately understand the connection. Our analysis recognizes that link. It benefits from the wisdom and political experience of several of our board members who have run for and been elected to public office.

During the course of researching and writing this report, we consulted experts in the areas of campaign finance and government ethics to gain their insights about what works and what doesn't. These experts, the leaders in their field, include: Eric Bender at the National Institute on Money in State Politics; Peggy Kerns, Director of the Center for Ethics in Government at the National Conference of State Legislatures; Alan Rosenthal, Rutgers Professor of Political Science; and Bob Stern at the Center for Governmental Studies.

Special thanks to my hard-working colleagues at Think New Mexico, whose photographs appear at right. Kristina, Lynne, and I are especially delighted to welcome our new Field Director, Jason Espinoza, to the staff. Jason's background in online and on-the-ground organizing will help us to build up our grassroots outreach on this initiative (as well as our ongoing smaller schools initiative) so that we can convert the reforms recommended in the following pages into law.

If you would like to get involved in changing the balance of power between the political insiders, who have too much influence at all levels of government, and everyday New Mexicans who have too little, then I encourage you to join us by sending in a contribution in the conveniently enclosed reply envelope and by visiting our website at www.thinknewmexico.org for other ways to get involved.

Fred Nathan

Founder and Executive Director

Think New Mexico Staff



Lynne Loucks Buchen
Business Manager



Jason Espinoza
Field Director



Kristina Gray Fisher
Associate Director



Fred Nathan
Executive Director

NEW MEXICO'S LONG STRUGGLE AGAINST POLITICAL CORRUPTION

New Mexico has a long history of battling political corruption, dating back to well before statehood.

The Lincoln County War (1878—1881), which is usually recalled as the backdrop for the exploits of Billy the Kid, began as a political fight over the control of government contracts for beef and other provisions. Those government contracts were heavily influenced by the patronage of the powerful “Santa Fe Ring,” a group of lawyers, judges, businessmen, and politicians from both parties who gained control of the territorial legislature and courts and dominated the economic life of New Mexico by manipulating public offices for private gain.

Political corruption held New Mexico back in important ways throughout much of its early history. For example, it was political corruption, along with ethnic and religious prejudice, that delayed statehood for many decades before New Mexico was finally admitted to the Union in 1912. In a recent essay entitled “Statehood Era and the Federal Presence in New Mexico,” David Holtby, a former Editor in Chief of the University of New Mexico Press, comments:

The (Santa Fe) Ring utterly corrupted party politics in New Mexico for more than thirty years, injecting an intense combativeness from the late 1870's until well into the first decade of the twentieth century. In the minds of many influential people in Washington D.C. in the 1880s and 1890s, New Mexico Territorial politics indelibly soiled its reputation.

Even President Theodore Roosevelt, a supporter of statehood, was drawn into the effort to clean up political corruption in New Mexico. Roosevelt fired two territorial governors, including one of his own appointees who had approved a fraudulent land transaction at the behest of the Santa Fe Ring within a few months of moving to New Mexico. In 1907, Roosevelt appointed George Curry, one of his former Rough Rider officers, as Governor. In a letter from President Roosevelt to Curry, one can sense the president's frustrations with the corruption in the New Mexico territory:

All I ask of you is that you give an absolutely honest and common-sense administration ...[Your predecessor has] plunge[d] the affairs of the Territory into such a tangle that I am quite at a loss to know how to discriminate between those who are decent and those who are not. I look to you to help me out.



Future President Theodore Roosevelt at the first Rough Riders Reunion, Castaneda Hotel, Las Vegas, New Mexico 1899.

Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #014292



This cartoon by John Trever first appeared in the Albuquerque Journal a quarter-century ago, after the convictions of Troutman and Johnson.

Cartoon copyright December 21, 1984. Reprinted with permission.

Holtby observes that political corruption “cost [statehood] advocates the president’s support for several years, during which time he refused to do anything to advance their cause, and it gave Congress evidence to turn back a concerted attempt by Roosevelt in the waning weeks of his presidency to try one last time to secure statehood.”

Unfortunately, this culture of corruption has continued into modern times. It can be seen in the troubling attitude that this is simply how business is done in the state. For example, in 1984 New Mexico State Investment Officer Phillip Troutman and Deputy State Treasurer Ken Johnson were convicted of conspiracy to commit extortion. According to the sworn testimony at trial, Troutman solicited a political contribution from a bank executive, emphasizing that he controlled the bank’s ability to receive state business. Johnson then stated, “You have to pay to play,” because “this is how business is done.”

The same phrase surfaced a decade later in the testimony of a witness in the successful prosecution of former state Treasurers Michael Montoya and Robert Vigil for extortion. In his plea agreement, Montoya stated that he started taking bribes as soon as he entered office in 1995: “I discovered that it was quite easy to get bribes from people who wanted to keep or obtain business with the State Treasurer’s Office.” One witness in the case stated, “My understanding is that’s how business is done in New Mexico.”

In January of 2008, former New Mexico Deputy Superintendent of Insurance Joe Ruiz was convicted on thirty counts of fraud, extortion, and corruption. The jury found that Ruiz had threatened insurance companies with fines unless they made donations to two charities—one of which purchased children’s books written by Ruiz. According to the indictment, Ruiz told one representative of an insurance company that this is “how politics works in New Mexico.”

These three separate instances, expressed in almost identical language across three decades, indicate that we urgently need to change the political culture in New Mexico. Just as political corruption held New Mexico back in the fight for statehood, its modern variations continue to undermine the state today. As Attorney General Gary King noted in a recent opinion editorial, “public corruption poses the greatest single threat to the credibility of government institutions at all levels. It undermines good government, fundamentally distorts public policy...leads to misallocation of resources...and ultimately harms all New Mexicans either directly or indirectly.”

THE COMMON DENOMINATOR

In contrast to this history, New Mexico's legislature and governor have been making bipartisan progress in enacting ethics laws over the past quarter century.

From the mid-1980s through the 1990s, the legislature and governor adopted reforms including new reporting requirements for campaign contributions, enhanced financial disclosures for public officials, a prohibition on most anonymous contributions, and a one-year cooling off period before former public officials and employees can become lobbyists. They also passed laws prohibiting elected officials from accepting honoraria or using campaign funds for living expenses.

In 2006, Governor Bill Richardson followed these earlier efforts by convening an ethics reform task force. This initiative led to the passage of several key reforms, including restrictions on gifts from certain donors, public financing of statewide judicial races, and contribution limits of \$2,300 for legislative and executive branch races and \$5,000 for political action committees.

Nonetheless, despite these important gains, prosecutors have been kept busy recently with a series of political corruption indictments and convictions of top elected officials.

On August 19, 2009, Attorney General King indicted former Secretary of State Rebecca Vigil-Giron on fifty felony counts of embezzlement, kickbacks, and money laundering, among other things, for her part in an alleged scheme that involved two New

Mexico lobbyists, Joe and Elizabeth Kupfer, and an out-of-state contractor, Armando Gutierrez, all of whom were also indicted. The indictment alleges that millions of dollars from the Secretary of State's Office were deposited into the personal bank accounts of the contractor and lobbyists based on fraudulent invoices they submitted. The contractor was supposed to have used the taxpayer money for a voter education campaign, but he could only account for \$2.6 million of the \$6.3 million he received. The defendants deny the charges.

In the fall of 2008, former Senate President Pro Tem and Majority Leader Manny Aragon pleaded guilty in a scheme designed to skim about \$4.2 million from a state contract to construct a new federal courthouse in Bernalillo County. Senator Aragon sponsored legislation to pay for the new courthouse, and then conspired with courthouse administrator Toby Martinez to hire an architectural firm headed by Marc Schiff to design the building. Schiff kicked back some of the dollars from the contract to Aragon and Martinez. Former Albuquerque mayor and registered lobbyist for the architectural contractor, Ken Shultz, also pleaded guilty in the case for delivering the kickback payments to Aragon and others.

Another kickback scheme involving state contractors took place from 1995—2005 in the New Mexico Treasurer's Office. In 2007, former Treasurer Michael Montoya pleaded guilty and former Treasurer Robert Vigil was convicted of soliciting kickbacks from contractors who invested hundreds of millions of dollars in state money. During Vigil's trial, jurors saw videotape of then-Treasurer Vigil accepting cash payments of \$11,500 from a state contractor.



Corruption in the awarding of state contracts distorts public policy and public spending decisions, and undermines public trust in government. Photo by Mugatt, depicting the demolition of a New Mexico state government building in 1951. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #056414

Vigil contended that he was not accepting a bribe for steering a state contract to the investment advisor, but was rather accepting the cash as a campaign contribution, which would make it perfectly legal. This defense underscores the frequently murky line between bribes and campaign contributions when they are made by those seeking state business.

The common denominator in each of these recent scandals is public contracts worth millions of dollars. Because of the high stakes, there is a temptation for individuals and businesses seeking government contracts to make political contributions to the elected

officials who will decide whether to award them the contract. Meanwhile, for elected officials running increasingly expensive campaigns, there is a similar temptation to accept those contributions.

In fact, relationships between contractors, lobbyists and elected officials often begin on the campaign trail at political fundraising events. To change how business is too often done in New Mexico, we need to start at the beginning—before officials are elected and already indebted to contractors, lobbyists and various special interests. By banning political contributions from contractors and lobbyists to elected officials, we can establish a bright line between legal and illegal behavior, restore public trust in government, and take an urgently needed step to change the culture of corruption that continues to hold New Mexico back.

ADDRESSING THE ROOT CAUSE OF THE PROBLEM

In 2007, New Mexico's Gift Act passed the legislature by a strong bipartisan majority and was signed into law by Governor Richardson. The law bars contractors, potential contractors, lobbyists, and anyone who will receive a direct and substantial financial benefit from the state from giving gifts worth more than \$250 to the candidates or state officials who will be making the decisions that financially benefit them.

The enactment of the Gift Act begs the question: if we believe that these three groups should not give gifts worth more than \$250, why should they be able to make campaign contributions worth as much as \$4,600 in a single election cycle?

As the national good government advocacy group Common Cause put it in a January 2009 report: "The problem is not so much the amount we spend on political campaigns—columnist George Will likes to remind us that we spend more on



The Constitutional Convention had to overcome New Mexico's history of corruption before statehood was granted.

Photo of the New Mexico State Constitutional Convention in Santa Fe in 1910 by William R. Walton. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #008119

potato chips each year—as it is who pays for them, what they get in return, and how that distorts public policy and spending priorities."

Like gifts, campaign contributions help build relationships between the contributor and recipient, and when it comes time to make policy decisions, those relationships matter.

As Alan Rosenthal, Professor of Public Policy at Rutgers and one of the nation's leading researchers on ethics in state government, writes: "The nudge of a campaign contribution can cause [elected officials] to look at the information furnished by that group much more favorably than the information furnished by the opposition."

Although any campaign contribution can be seen as having a corrupting influence, by far the most troubling are those made by individuals and groups who are seeking direct financial benefits from the state or local government. These are the donations that may be viewed by the public as "pay to play"—special interests giving political contributions in order to increase their chances of receiving public dollars.

New Mexico's legislature has recognized the need to address these apparent or actual conflicts of interest. In addition to the Gift Act, existing law prohibits anyone from making campaign contributions to legislators or the governor while the legislature is in session actively considering bills. Similarly, regulated entities (like utilities and phone companies) are barred from donating to the campaigns of the Public Regulation Commission members responsible for regulating them. The logical next step is to prohibit campaign contributions from contractors, recipients of targeted financial benefits (like subsidies and tax incentives), and lobbyists.

Contractors

Every year, New Mexico's state and local governments enter into contracts for everything from office supplies to prison management to hiring outside consultants for advice on how to invest the state's public funds. According to a recent report by the Legislative Finance Committee, the state solicits bids on over 1,200 contracts annually.

As the amount of contracting between New Mexico government and private vendors has grown over the past many years, so too has the potential for corruption.

A number of other states, as well the federal government, have recognized this risk and established rules to minimize it. At least seven states currently ban or tightly restrict contractors from donating to the campaigns of the public officials responsible for awarding their contracts.

One of the most comprehensive laws was enacted in Connecticut in 2005. This law prohibits any current or potential state contractor with a contract worth at least \$50,000 from contributing to the campaigns of state candidates, parties, and political action committees. The prohibition begins when negotiations on the contract commence and continues through the end of the year after the contract is completed. The spouses and dependent children of state contractors are included in the prohibition, as are any individuals who own at least 5% of the contracting company.

Other states limit or prohibit contributions from contractors with contracts of any dollar amount, and extend the ban to as long as 18 months before the contract is issued. Penalties for viola-

State Laws on Contributions by Government Contractors

	DONORS RESTRICTED	RECIPIENTS RESTRICTED	DURATION OF RESTRICTION
Connecticut	Board, managers, owners of 5%, spouses, & dependents.	State candidates, parties, PACs.	Negotiation of contract through end of year after completion.
Hawaii	Just the contracting entity itself.	State and local candidates and parties.	Award of contract through completion.
Illinois	Owners of 7.5%, subsidiaries, spouses, and dependents.	State candidates, officials responsible for contract, and PACs.	Solicitation of bids through two years after completion.
Kentucky	Owners of 10% and their immediate families.	Gubernatorial candidates.	Election of governor through end of current term.
New Jersey	Owners of 10% and their spouses.	Gubernatorial candidates, parties, and PACs.	Eighteen months before contract through completion.
South Carolina	Just the contracting entity itself.	State and local candidates responsible for awarding the contract.	Award of contract through completion of contract.
West Virginia	Just the contracting entity itself.	State and local candidates and parties.	Negotiation through completion of contract.

Source: Public Citizen, "Pay to Play Restrictions on Campaign Contributions from Government Contractors 2008—2009." Excerpted and adapted by Think New Mexico.



Corruption in state contracting undermines public trust in government. Photos of New Mexico's Territorial Capitol Building (built 1886, burned 1892) photo by J.R. Riddle (left); and an unknown photographer (right). Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #076041 and #016710.

tions include cancellation of the contract, ineligibility to receive other state contracts for several years, fines, and even misdemeanor or felony charges.

The federal government has banned federal contractors from contributing to federal campaigns since 1940. In 1939, Carl Hatch, a Senator from New Mexico, sponsored legislation that came to be known as the "Hatch Act." This law prohibited federal candidates from soliciting contributions from workers on public works projects, which were rapidly increasing as a result of New Deal programs. The following year, Congress expanded the act to prohibit all federal contractors from contributing to federal campaigns. This prohibition remains in place today.

The federal government has also recognized the need for similar rules at the state level. In June of 2009, the federal Securities and Exchange Commission (SEC) voted unanimously to establish a new rule prohibiting investment firms from doing business with state or local governments if they have made campaign contributions to officials in those governments within the past two years. Explaining the need for the new rule, SEC Commissioner Mary Schapiro stated: "The selec-

tion of investment advisers to manage public [pension] plans should be based on merit and the best interests of the plans and their beneficiaries, not the payment of kickbacks or political favors."

New Mexico's State Investment Council (SIC) had adopted a similar rule the previous month in the wake of pay to play allegations in several states, including New Mexico. The new SIC rule bars any company seeking a contract to manage the state's investments from making campaign contribution to elected officials with influence over state investment policy. This prohibition begins two years before the company seeks the contract and extends for two years after the contract is completed.

Unfortunately, the laws governing the rest of New Mexico's government contracts are far weaker. Since 2006, prospective contractors have been required to disclose campaign contributions greater than \$250 made in the two years prior to receiving the government contract. They are also barred from making campaign contributions to officials who could influence the award of their contract during the period between when the government begins accepting bids and when a contractor is selected—in other words, during the time in which the contract is actively being

negotiated. However, since contributions are still permitted immediately before or after the negotiations, this still leaves open a wide window for actual or perceived corruption. For example, many of the campaign contributions made to Treasurers Montoya and Vigil were made by investment advisors before or after they were selected, not during the negotiation of their contracts.

New Mexico's Gift Act and the new SIC rule are a good start to curtailing the appearance or actuality of corruption in the area in which it is most likely to arise. We recommend building on this foundation by prohibiting government contractors from making campaign contributions to state or local government officials with the power to influence the awarding of the contract.

This prohibition should be based on the best practices of other states, such as:

- Applying to all contracts, of any value.
- Applying not just to candidates, but also parties and political action committees.
- Applying not only to the contracting entity itself, but also to any individuals owning at least 1% of the business, as well as their spouses and dependent children.
- Beginning two years before the contract is put out to bid and continuing for two years after the contract is completed (like the SIC rule).
- Including strong penalty provisions, such as ineligibility to receive contracts for five years and possibly misdemeanor or felony charges.

Putting these provisions in place will begin to change New Mexico's political culture and increase public confidence that government contracts are awarded based on merit, rather than politics.

Seekers of Government Subsidies

Not everyone who receives government dollars is a contractor. Policymakers often use financial incentives, like tax breaks or government subsidies, to encourage activities that will benefit the public, such as job creation and economic development. When these subsidies are targeted to a particular company or organization, rather than being available to all members of an entire industry, they have the same potential for pay to play corruption as government contracts.

These concerns have been illustrated by a number of recent examples in which special interests like development companies have made thousands of dollars of political contributions to the policymakers responsible for deciding whether their projects will receive government subsidies or tax breaks.

For example, in 2009 the New Mexico Legislature considered a bill to provide over \$400 million of state gross receipts tax dollars to subsidize the planned development of an out-of-state developer. Critics attacked the developer's political contributions as evidence that the company was attempting to buy influence with policymakers, rather than persuading them of the merits of the proposal. The *Albuquerque Journal* published an editorial calling for caution before approving the subsidy to a "corporation [that] has flooded legislative candidates with cash and doesn't want to talk about how much it's spending on its message."

New Mexico's Gift Act recognizes this concern. Under that law, individuals and organizations who stand to receive direct and substantial financial benefits from the state are prohibited from



Tax incentives and subsidies are often used to promote economic development and job creation, like the construction shown here in Albuquerque in 1942. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #183307.

giving state officials, candidates, or employees gifts worth more than \$250. The Gift Act thus restricts this group in the same way that it restricts contractors, since both share the same potential motivation to give in order to enhance their chances of receiving government dollars.

This restriction is carefully structured so that it applies only to individuals and companies who will be receiving financial benefits that are greater than those received by the public at large or by a particular group to which the person belongs. So, for example, if all members of a certain industry would benefit from a piece of legislation, members of that industry would not be restricted from giving to legislators. However, if one particular company stands to benefit significantly more than the industry as a whole, that one company would be restricted from giving.

Along with New Mexico, at least five other states explicitly target this group in their Gift Acts, regulating them alongside contractors and lobbyists. Many others take an even broader approach, limiting or banning gifts from anyone with an “interest” in legislation that might be influenced by the gift.

The New Mexico legislature and governor got it exactly right when they treated anyone receiving government subsidies or tax breaks like government contractors for the purposes of the Gift Act. *We recommend that, in order to avoid the appearance that these entities are buying access or influence, they be prohibited from contributing to the campaigns of the elected officials responsible for awarding them taxpayer dollars.*

Lobbyists

Unlike contractors and recipients of targeted financial benefits, lobbyists are not generally seeking money from the state for themselves. However, in many cases, the people who hire them are. And although existing New Mexico law bars anyone from contributing in the name of another, lobbyists know that by making their own contributions, they increase the probability that decision-makers will look more favorably on the interests of their clients.

Donations help lobbyists establish those essential relationships that get them in the door with the public officials they are hired to persuade. In an outburst of candor, one New Mexico lobbyist told the *Albuquerque Journal* that contributions are particularly helpful in establishing relationships with new legislators because, “It gives you an entrée. They’re friendly. They know who you are.”

These relationships received some scrutiny during the 2006 race for New Mexico’s First Congressional District (Albuquerque), when one candidate stated during a debate that “you have to be careful about taking large sums of money from lobbyists. But even if you do, it is only to give them access to let you know about what their concerns are. Certainly it’s not to have you vote or rule in any certain way or obligate you in any way.” However, as her opponent noted, even enhanced access is cause for concern.

This system puts lobbyists in a difficult position: in order to successfully advocate for their clients, they may feel that they need to contribute to the campaigns of the public officials they will be lobbying — particularly if other, competing lobbyists are doing so.

As political scientist Alan Rosenthal writes:

Many lobbyists feel that they are being shaken down, victimized by a system that has gotten out of control. They do not know what would happen if they stopped giving, and they do not want to find out. In a system where contributions by special interests are a way of life, no interest can afford to behave differently from the others. Not giving may cost a group standing with legislators who believe that it should be providing financial support to the electoral process.

State Laws Restricting Contributions by Lobbyists	
STATE	LOBBYISTS MAY NOT CONTRIBUTE TO
Alaska	Any candidate for the legislature except for the one representing the district in which the lobbyist lives.
California	Any elected official whom the lobbyist is registered to lobby.
Connecticut	Candidates for statewide office or the legislature, political committees, and parties.
Kentucky	Legislative candidates and their political committees.
North Carolina	Legislative or statewide candidates or their campaign committees.
South Carolina	Candidates for the legislature, governor, lieutenant governor, or any other statewide office.
Tennessee	Legislative or gubernatorial candidates.

Source: State statutes, compiled by Think New Mexico.

2006 New Mexico Campaign Contributions by Economic Sector

\$5,479,034	Finance, Insurance & Real Estate
\$2,905,192	Lawyers & Lobbyists
\$2,751,317	Energy/Natural Resources
\$2,706,198	General Business
\$1,947,796	Other/Retiree/Civil Servants
\$1,348,823	Health
\$1,293,063	Construction
\$966,530	Agriculture
\$905,254	Labor
\$877,752	Communications & Electronics
\$506,582	Transportation
\$275,958	Ideology/Single Issue
\$59,530	Defense

Dollars contributed during the 2006 legislative and statewide campaigns, excluding contributions from parties, candidates, and public financing (PRC and some judicial races). Source: National Institute on Money in State Politics, Follow the Money.

This situation traps honest lobbyists in a lose-lose situation: if they do give contributions, they may be seen as paying for access or influence, yet if they do not—or if they fund an unsuccessful challenger in a race—they may be unfairly discriminated against relative to those who provided contributions to the incumbent.

Not surprisingly, when the National Institute on Money in State Politics analyzed which industries had given the most campaign contributions in New Mexico, “lawyers and lobbyists” was the second highest in both the 2008 and 2006 election cycles (it was the top sector in 2004). In 2006, the year

of New Mexico’s most recent gubernatorial election, lawyers and lobbyists donated nearly \$3 million to candidates across the state.

Seven states currently ban campaign contributions from registered lobbyists. The prohibitions differ in their details—for example, Kentucky bars only contributions to legislators and their committees, while South Carolina includes all statewide elected offices as well. Alaska’s law includes an exception permitting lobbyists to contribute to the campaigns of the legislators representing the districts in which they live.

Although the federal government currently allows lobbyists to donate to the campaigns of the politicians they lobby, some public officials are voluntarily refusing to accept money from registered lobbyists. For example, Congressman Ben Ray Luján, who represents New Mexico’s Third Congressional District, does not accept donations from federally registered lobbyists.

This reform may be even more urgently needed in New Mexico than in many other states, as our proportion of lobbyists to legislators is unusually high among citizen legislatures. Citizen legislatures, defined by the National Conference of State Legislatures as legislatures in which the legislative work is equivalent to a half-time job or less, have an average of about three lobbyists per legislator. New Mexico has more than double that, at seven registered lobbyists per legislator. With such a high ratio, it is not surprising that lobbyists give more total dollars in New Mexico than any other state with a citizen legislature other than Georgia, even though many of those states have larger populations.

We recommend that, paralleling the restrictions in New Mexico’s Gift Act, lobbyists should be prohibited from donating to the campaigns of the public officials they lobby—as well as the parties and political action committees that support those candidates. Doing so will put all lobbyists on an even playing field and prevent them from having to make contributions to maintain equal access to elected officials. It will also enhance the public’s confidence that when lobbyists persuade legislators to support their cause, they do so based on the merits of the legislation, not on that lobbyist’s track record of contributions.

Lobbyists per Legislator in Citizen Legislatures

7	NEW MEXICO
6	GEORGIA
5	SOUTH DAKOTA
4	INDIANA
4	WYOMING
3	IDAHO
3	KANSAS
3	MONTANA
3	UTAH
3	WEST VIRGINIA
2	MISSISSIPPI
2	VERMONT
1	MAINE
1	NEW HAMPSHIRE
1	NORTH DAKOTA
1	RHODE ISLAND

Source: Center for Public Integrity, “Ratio of Lobbyists to Legislators 2006.” Citizen legislatures identified by the National Conference of State Legislators. Nevada is not included because it does not hold legislative sessions in even-numbered years. It should be noted that different states have slightly different definitions of who qualifies as a lobbyist.

Bundling

Eliminating campaign contributions from contractors, seekers of government subsidies, and lobbyists attacks the root of the problem of special interest money in politics. However, a ban on these contributions leaves open one major loophole: even if they cannot make contributions themselves, they can still “bundle” contributions from others.

“Bundling” occurs when one person gathers donations from many different contributors and delivers them to the candidate, party, or political action committee. The practice of bundling first emerged after Congress limited contributions to federal campaigns in 1974 in response to Watergate.

As a result of these limits, individuals could no longer make big donations themselves, and so they turned instead to raising large sums of money from extensive networks of other people. The bundler takes credit for raising the funds, but because the contributions are technically from other people, they do not violate campaign contribution limits.

Like large individual donors, bundlers often gain special access or favors in exchange for their fundraising. And while many individuals may become bundlers because they agree with a candidate’s position on the issues, the concern with lobbyists, contractors, and others seeking government subsidies is that their fundraising activities may influence decisions to award them state contracts or subsidies.

At least three states have enacted laws to restrict bundling. Massachusetts enacted such a law in

1994. Under this law, any contribution made through an intermediary (a bundler) is attributed to both the original donor and the bundler. So, for example, if individual campaign contributions are limited to no more than \$2,300 per candidate, a bundler could not give a candidate more than \$2,300 — either personally or collected from others.

A similar anti-bundling law was enacted in Minnesota in 1993. In 2006, North Carolina followed suit when it passed a comprehensive ethics reform law that prohibited lobbyists from bundling as well as prohibiting them from making campaign contributions directly.

New Mexico currently requires lobbyists to disclose the names, addresses, and occupations of any contributors whose donations they bundle if those bundled donations total more than \$500, but does not prohibit or restrict the practice of bundling. As the state's new contribution limits go into effect starting next year, it is likely that bundling will become increasingly prevalent in New Mexico.

We recommend that contractors, seekers of government subsidies, and lobbyists be prohibited from bundling contributions for the same reasons that these groups should be prohibited from contributing to candidates, committees, and parties directly. Without this reform, the pressure to donate will simply be replaced by the pressure to bundle donations, and little will change.



Bundling became a common practice after Congress limited contributions to federal candidates in 1974. Photo of Congressional candidate Jack Redman campaigning in Santa Fe in 1965. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #035602.

Local Governments

A number of states that have implemented the reforms discussed in this report have applied them only to the state government, not to local governments like counties, municipalities, and school boards. Yet the experience in New Mexico shows that the reforms are needed at all levels of government.

In July of 2009, Albuquerque Public Schools (APS) board president Marty Esquivel called for a new policy barring contractors and prospective contractors from “wining and dining” school

board members and employees. Esquivel's proposal came in response to an expensive party that Technology Integration Group had hosted for APS employees earlier that summer. Technology Integration Group received \$7.8 million from contracts with APS in 2008, and the party was one of six events organized by the company over the past three years. A spokesperson for the company told the *Albuquerque Journal* that these events are a normal part of their outreach – and they are far from alone. For example, a variety of APS contractors donated \$52,000 to sponsor last year's APS administrators' conference.

Similarly, the city of Albuquerque has taken initial steps toward restricting donations from contractors. The city charter currently prohibits candidates for city office from accepting contributions from anyone who holds a contract to provide goods or services to the city. It also prohibits contributions from the lobbyists of city contractors.

In May of 2009, the City Charter Review Task Force issued a report recommending, among other reforms, extending the prohibition to include anyone with "business dealings" with the city. This change would bar campaign contributions from prospective contractors and anyone receiving tax credits and subsidies. The proposed charter revisions go to the voters for approval this fall.

Despite the important steps that have been taken in Albuquerque and elsewhere, the campaign contribution rules at the local government level continue to vary widely across the state. While local government autonomy is often desirable, in this instance it creates uncertainty about what

behavior is permitted where, and opens up unnecessary opportunities for actual or perceived corruption.

Because local governments – including counties, municipalities, and school boards – are political subdivisions of the state, the state has the power to regulate them, and it has done so in a number of areas. For example, the state statute against nepotism in government hiring specifically applies to municipalities as well as state government.

Interestingly, in the past the legislature has imposed far fewer ethics restrictions on local governments than they have on themselves. For instance, while legislative and statewide candidates are required to file public reports detailing the names and occupations of their contributors, candidates for school boards and municipal elections are specifically exempted from these disclosure requirements.

Unfortunately, the need for clean government reforms at the local level is just as urgent as it is at the state level. As Thomas McClenaghan, former FBI Special Agent in charge of the Albuquerque field office, told KRQE News in January 2009, "From what we've seen here, corruption in this state is epidemic. It is at all levels of government."

To effectively curtail political corruption, we recommend that the prohibitions on campaign contributions and bundling by contractors, lobbyists, and seekers of government subsidies be applied not only to state candidates, parties, and PACs but to their local counterparts as well.

WILL THESE REFORMS MAKE A DIFFERENCE?

Changing the Political Culture

Although the logic behind banning campaign contributions from contractors, seekers of government subsidies, and lobbyists is clear, perhaps the most compelling reason to implement the reforms proposed here is the difference they have begun to make in the political cultures of other states.

Several years ago a number of Tennessee elected officials were indicted and convicted in a wide ranging bribery and extortion case. The Tennessee legislature responded by passing a law that banned lobbyists from giving lawmakers contributions or gifts, among other things. In the aftermath of the scandal, *State Legislatures* magazine profiled the Tennessee experience in an article entitled, "Flexing the Ethics Muscle: Restoring Public Confidence in Government after a Scandal is a Legislature's Prime Goal."

Tennessee Representative Jim Kyle was quoted in the article saying there was a "noticeable change" in Tennessee after the reforms were enacted. While Kyle conceded that there was still a fair amount of cynicism, he stated that "as a whole, and I can only tell from my constituent communications, it's getting better. The tone has changed." Kyle added "[the corruption scandal] caused us to take a look at ourselves and see where we were in comparison to other states with citizen legislatures. When you go through this experience, it makes you reflect."

In 1993, Kentucky became the first state to ban contributions from lobbyists and state contractors. This occurred after three former legislators

who had become lobbyists, among others, were convicted on extortion and racketeering charges. Joe Barrows was a state representative at the time and later became Majority Whip. In an interview, Barrows said that he remembers the law well even though it was passed sixteen years ago because "it was a time when politics changed in Kentucky...the relationship between lobbyists and legislators became less 'he's a friend, I've known him forever, he'll vote with me' and became much more professional. Lobbyists now spend more time trying to persuade legislators on the merits rather than just building personal relationships."

Connecticut passed a ban on political contributions from contractors and lobbyists in 2005. Like Kentucky and Tennessee, these reforms were enacted in the wake of a political scandal. Specifically, Connecticut's reform law came about in response to a classic pay to play scandal that sent Governor John Rowland to prison for accepting



New Mexico can curtail political corruption in the same way that other states have. Photo of a rally at the State Capitol in Santa Fe, 1927. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #147105.



These reforms will allow candidates to once again focus on the public, rather than on fundraising contractors and lobbyists.

Photo of Governor Octaviano A. Larrazolo campaigning on the Santa Fe Plaza, circa 1918—1921. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #007634.

favors in return for improperly influencing the awarding of over \$100 million in state contracts.

After Rowland resigned, Lieutenant Governor M. Jodi Rell became Governor, and on her first day in office, she pledged to end the culture of corruption in Connecticut and called for a ban on political contributions by contractors and lobbyists. Less than a year later, the reforms were law, and the following year, Rell was elected to a full term with more votes than any gubernatorial candidate had received in Connecticut history. After the law's passage, Rell stated, "With my fellow Constitutional Officers, and our partners in the Legislature, we have changed the ethical landscape of the state. And Connecticut can now proudly and rightfully lay claim to the toughest ethics law in the country."

Courts Uphold These Reforms

In the states that have implemented these reforms, several have been challenged in court as unconstitutional restrictions on free speech. In the 1976 case *Buckley v. Valeo*, the U.S. Supreme Court ruled that money spent on campaigns was a form of speech protected by the First Amendment. However, in that same case the court held that limits on individual contributions were constitutional and permissible to further the important government interest in preventing corruption or the appearance of corruption.

Since then, courts have consistently upheld reasonable state restrictions on campaign contributions based on this rationale.

For example, in 1999 the Alaska Supreme Court upheld that state's ban on contributions from lobbyists, noting that "greater risks of corruption attend lobbyists' special relationship with elected officials." The court explained that, since the legislature was relatively geographically isolated from most of the state population while it was in session, lobbyists' "professional purpose [to influence legislative or administrative action], coupled with their proximity to legislators during the legislative session, makes them particularly susceptible to the perception that they are buying access when they make contributions." Similar results have been reached by courts in New York and New Jersey in the past few years.

Perhaps the best example was a recent ruling by a federal court upholding Connecticut's ban on contributions from contractors and lobbyists. This reform was challenged by several groups, including the Association of Connecticut Lobbyists.

In December 2008, a federal judge ruled strongly in favor of the law, stating: "In light of Connecticut's recent history of corruption scandals involving high-ranking state politicians, I conclude that the legislature had a constitutional, sufficiently important interest in combating actual and perceived corruption by eliminating contributions from individuals with the means and motive to exercise undue influence over elected officials." Extending the ban beyond contractors and lobbyists to their immediate family members was a "common sense anti-circumvention measure" that was likewise justified by the risk of actual or perceived corruption. (In a separate August 2009 ruling, the judge struck down the portion of Connecticut's law establishing a system of public financing for candidates.)

By contrast, in July 2009 a judge halted the implementation of sweeping reforms approved by 51% of Colorado voters in a 2008 ballot initiative. Unlike the reforms that have been upheld in other states, the Colorado law prohibited all unions and sole source government contractors from donating to the campaigns of any state or local candidate or party. It extended this prohibition to relatives as distant as nieces, nephews, in-laws, grandparents, and grandchildren of the contractors. So, for example, the nephew of a small-business owner who had a contract with a city government in Colorado could not make a donation to the campaigns of his state legislator or the governor.

The court found that the overly broad reach of the Colorado law clearly violated the First Amendment. In issuing her decision, the judge contrasted the unconstitutional Colorado law with the legitimate laws in states like Connecticut

and New Jersey, where the prohibition is limited to donations to officials who have some influence over the contract.

Like the laws that have been upheld across the nation as reasonable, justified, and constitutional, and unlike Colorado's overly broad law, the recommendations proposed in this report are carefully designed to target the problem of actual or perceived corruption that arise when contractors, seekers of government subsidies, and lobbyists contribute to political campaigns.

WHY NOT PUBLIC FINANCING?

Rather than a targeted ban on political contributions from certain donors, some might argue that providing public financing is a more effective way to reduce the power of special interest dollars in elections.

In a publicly financed election, candidates must raise a certain number of small (e.g., \$5) private contributions in order to qualify for receiving public funds. As a condition of receiving public funds, the candidate then agrees not to raise any more private funds (or to abide by strict limits on how much money they raise privately).

New Mexico is one of the leading states when it comes to publicly financed elections. In 2003, the state established a system of public financing for Public Regulation Commission (PRC) elections, and in 2007, this system was expanded to include statewide judicial races. According to the nonprofit Center for Governmental Studies, this makes New Mexico one of only five states that provide full public financing for some statewide elections.

However, there are a number of obstacles to expanding New Mexico's public financing system to all legislative and statewide races.

The first challenge is that publicly financed elections require public funding. Currently, New Mexico's PRC elections are funded by taxes on the utilities the Commission regulates, while the judicial races are funded by revenue from the state's Unclaimed Property Fund. Altogether, the cost is just over \$600,000. However, to extend public financing to all statewide and legislative races would require substantially more — for example, Arizona's system of statewide public financing costs about \$8 million per general

election. At a time when New Mexico is in a severe fiscal crisis, it would be nearly impossible to provide sufficient public funding for all elections.

Another challenge is that the U.S. Supreme Court has ruled that public financing systems must be optional, allowing candidates to choose whether or not to participate. This leaves many opportunities for special interest dollars to continue to play a large role. For example, in the 2008 race for PRC District 1, one candidate opted out and spent over \$100,000 of privately raised dollars compared to the publicly funded candidate's approximately \$87,000. This situation is causing fewer candidates to make use of the public financing system that exists at the federal level. During the 2008 presidential election, for example, President Barack Obama opted out and raised \$745 million in private donations, while Senator John McCain opted into the public system and was therefore limited to spending only \$84 million.

Finally, New Mexico's initial experience with publicly financed elections demonstrates that they need strong accountability and enforcement mechanisms to ensure that taxpayer dollars are properly spent and accounted for. After the 2008 PRC election, District 3 commissioner Jerome Block Jr. was indicted on two counts of embezzlement, among other charges, for allegedly misappropriating public campaign funds. This case will provide the first real test of the accountability and enforcement mechanisms of the state's public financing system, and will likely reveal ways in which those mechanisms can be strengthened and improved — something that should happen before public financing is extended to all statewide and legislative races in New Mexico.

STRENGTHENING THE VOICES OF EVERYDAY NEW MEXICANS

Given the serious public policy challenges facing New Mexico, from school reform to the budget crisis, public trust and confidence in government has never been more important. If we do not curtail the traditional paths for “pay to play” corruption by banning contributions from contractors, seekers of government subsidies, and lobbyists, it will be even more difficult to address all of the other contentious issues which urgently require policymakers’ attention. The same is true for local government leaders, who are also facing severe challenges right now.

The political obstacles to enacting these reforms will be formidable – that is why only seven other states have managed to implement them so far.

As with any change to the status quo, these reforms will create winners and losers. Those government contractors with the best goods and services at the most competitive prices, but who lack political connections, will benefit. Conversely, those government contractors who offer subpar goods and services at less than competitive prices, but who have strong political connections and who know how to play the system, will likely lose.

Likewise, lobbyists who do their homework and are effective advocates but who do not have the resources or the inclination to make a lot of political contributions will benefit from these reforms. Meanwhile, those lobbyists who rely solely on political contributions and personal relationships to do their persuasion will likely lose.

Think New Mexico's Recommended Reforms

Enact legislation prohibiting

- contractors
- seekers of government subsidies, and
- lobbyists

from either making or bundling political contributions to state or local elected officials who have the power to influence the contract or subsidy.

Honest politicians may be some of the biggest winners because these reforms will finally draw a clear, bright line between what they may and may not do, and will thus remove a lot of the suspicion they currently face from the public.

The good news is that these reforms have the potential for strong bipartisan support. In the 2009 session, Governor Bill Richardson called for legislation like that proposed here, emphasizing the bans as the “strongest pieces” of his ethics reform package. A bill based on the Governor’s proposal was sponsored by Senator Eric Griego (D-Albuquerque). Likewise, Senate Minority Leader Stuart Ingle (R-Portales) and House Minority Leader Tom Taylor (R-Farmington) both sponsored bills in the 2009 session which would have prohibited certain contractors from making political contributions. (Unfortunately, none of these bills received a public hearing.)

Achieving these reforms will yield numerous benefits. In addition to restoring trust and confidence in government, banning political contributions from contractors and lobbyists will strengthen the voices of everyday New Mexicans relative to the political insiders who currently dominate the political process.

These reforms will also expand the pool of candidates willing to run for public office, many of whom are deterred by the prospect of having to either raise money from special interests in order to win or lose without it.

Some may argue that draining the campaign finance system of special interest money will not leave enough left to fund campaigns. However, since these reforms will affect all candidates equally, the most likely result will be campaigns that are less



Governor Edwin L. Mechem, shown here delivering the state-of-the-state address to the legislature circa 1957—1959, was elected as a reformer in the wake of scandals. Courtesy Palace of the Governors Photo Archives (NMHM/DCA), #041883.

expensive for both sides. This, in turn, could free candidates to spend less time chasing dollars and more time discussing the critical issues with voters.

A final important benefit is that, by lessening the influence of special interests and the distorting effect it has on government decisions, taxpayer money will be allocated on the basis of merit rather than on politics and less will be wasted on corruption.

Ultimately, the reforms proposed here present a choice for New Mexico's policymakers between the political insiders, who have too much influence at all levels of government, and members of the public, who have too little.

We will concede that, even if these reforms are enacted, ethical lapses will still occur.

However, by making these important changes and barring contributions from contractors, seekers of government subsidies and lobbyists, we can begin to change the political culture of how business is done in New Mexico and overcome the legacy of corruption that has held us back for too long. Doing so will not only improve New Mexico's public policy, but will enhance public trust in government and strengthen the voices of everyday New Mexicans.

TAKE ACTION!

Visit www.thinknewmexico.org and sign up for our email action alerts to find out how you can join the effort to end political contributions from special interests in New Mexico.

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