



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 28, 2021
3:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR ETHICS AND CAMPAIGN REVIEW BOARD MEETING HEARING

Attendance: In response to the State's declaration of a Public Health Emergency, the Mayor's Proclamation of Emergency, the ban on public gatherings in excess of those permitted in the current Public Health Order, and the need to incorporate technology and practices to re-institute in-person meetings consistent with the limitations established by the Order, the Ethics and Campaign Review Board meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Public Comment: To provide public comment prior to the meeting, please click the virtual "comment" button next to the meeting at <https://santafe.primegov.com/public/portal>. To provide live public comment you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/81341024188?pwd=TzJsTENYbXBPZGZwTmdkb2NTQ0lxdz09>

Passcode: 227918

Attendees should use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone number: 1 (346) 248-7799

Webinar ID: 813 4102 4188



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 28, 2021
3:00 PM
ATTEND VIRTUALLY

Passcode: 227918

Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.

Agenda: The agenda for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES**
 - a. Ethics and Campaign Review Board Meeting – September 9, 2021
5. **DISCUSSION AND POSSIBLE ACTION**
 - a. **Case #2021-3.** Complaint Brought Forward by Virgil Vigil and Gilbert Romero – In Accordance with Section 6-16.4 SFCC 1987 “Determination of Legal Sufficiency; Setting a Hearing.” Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15(H)(3) to Deliberate in Connection with an Administrative Adjudicatory Proceeding.)
 1. Discussion of Actions.
 2. Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts, Which, if True, Show Probable Cause to Believe There Was a Violation.
 3. Action on Any Steps as Permitted Under Section 6-16
6. **PUBLIC COMMENT**
7. **MATTERS FROM STAFF**
 - a. CONSIDERATION OF BILL NO. 2021-23. An Ordinance Amending Section 9-1.7 SFCC 1987 Regarding Ranked Choice Voting to Amend How a Tie Vote Between Two Candidates is Resolved. (Councilor Garcia) (Marcos Martinez, Senior Assistant City Attorney: mdmartinez@santafenm.gov,



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 28, 2021
3:00 PM
ATTEND VIRTUALLY

955-6502 and Kristine Mihelcic, City Clerk: kmmihelcic@santafenm.gov,
955-6846) **INFORMATION ONLY**

Committee Review:

Introduced: 09/20/21 (Finance Committee)

Ethics and Campaign Review Board: 09/28/21

Governing Body (Request to Publish): 09/29/21

Quality of Life Committee: 10/06/21

Finance Committee: 10/18/21

Governing Body (Public Hearing): 10/27/21

8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: No Meeting Scheduled**
11. **ADJOURN**



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 09, 2021
3:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR ETHICS AND CAMPAIGN REVIEW BOARD MEETING HEARING

Attendance: In response to the State's declaration of a Public Health Emergency and the Mayor's Proclamation of Emergency, the Ethics and Campaign Review Board meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Public Comment: To provide public comment prior to the meeting, please click the virtual "comment" button next to the meeting at <https://santafe.primegov.com/public/portal>. To provide live public comment you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/84602702418?pwd=N0U2YURSeFZSQWpGWWxmSXZ2WIBpZz09>. **Passcode: 720465**

Attendees should use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone number: 1 (346) 248-7799

Webinar ID: 846 0270 2418

Passcode: 720465

Phone attendees should press *9 to use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.



AGENDA

ETHICS AND CAMPAIGN
REVIEW BOARD
SEPTEMBER 09, 2021
3:00 PM
ATTEND VIRTUALLY

Agenda: The agenda for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES**
 - a. Ethics and Campaign Review Board Meeting – August 19, 2021
5. **DISCUSSION AND POSSIBLE ACTION**
 - a. **Case #2021-2.** Complaint Brought Forward by the Alan Webber for Mayor Campaign – In Accordance with Section 6-16.4 SFCC 1987 “Determination of Legal Sufficiency; Setting a Hearing.” Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15(H)(3) to Deliberate in Connection with an Administrative Adjudicatory Proceeding.)
 1. Discussion of Actions.
 2. Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts, Which, if True, Show Probable Cause to Believe There Was a Violation.
 3. Action on Any Steps as Permitted Under Section 6-16
6. **MATTERS FROM STAFF**
7. **MATTERS FROM THE COMMITTEE**
8. **MATTERS FROM THE CHAIR**
9. **NEXT MEETING: No Meeting Scheduled**
10. **ADJOURN**

**INDEX OF THE CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD MEETING
September 9, 2021**

ITEM	ACTION	PAGES
CALL TO ORDER	Called to Order at 3:05 pm	1
ROLL CALL	Quorum Present	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF MINUTES August 19, 2021	Approved, as amended	2
DISCUSSION & POSSIBLE ACTION		
a) Complaint #2021-2 Alan Webber Campaign	Dismissed	2-15
MATTERS FROM STAFF	None	15
MATTERS FROM THE BOARD	Comments	15
MATTERS FROM THE CHAIR	None	15
NEXT MEETING	September 28, 2021	15-16
ADJOURNMENT	5:15 PM	16

**MINUTES OF THE CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
THURSDAY, SEPTEMBER 9, 2021 @ 3:00 P.M.**

1. CALL TO ORDER

A meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, at approximately 3:05 p.m. at a virtual meeting on Zoom at <https://www.youtube.com/watch?v=XC5KvDrXssg&t=47s>.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Paul Biderman
Ruth Kovnat
Tara Lujan
Kristina Martinez

Members Absent:

Judith Amer
One vacancy

Staff Present:

Kristine Mihelcic, City Clerk
Marcos Martinez, Assistant City Attorney

Others Present:

Melissa Byers, Stenographer

3. APPROVAL OF AGENDA

MOTION: Member Kovnat moved to approve the agenda as presented. Member Biderman seconded the motion.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat, Lujan and Martinez voting in favor and none voting against.

4. APPROVAL OF MINUTES: August 19, 2021

Mr. Biderman corrected the spelling of his name.

MOTION: Member Kovnat moved to approve the minutes of August 19, 2021, as amended. Member Martinez seconded the motion.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat, Lujan and Martinez voting in favor and none voting against.

5. DISCUSSION AND POSSIBLE

- a. **Case #2021-2.** Complaint Brought Forward by the Alan Webber for Mayor Campaign – In Accordance with Section 6-16.4 SFCC 1987 “Determination of Legal Sufficiency; Setting a Hearing.” Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15(H)(3) to Deliberate in Connection with an Administrative Adjudicatory Proceeding.)

Member Martinez said her law firm is representing the Campaign of Mayor Webber in the Complaint. She recused herself and left the meeting.

Member Kovnat said a motion was filed that includes a motion to disqualify herself. Her position is that the assertions did not justify her recusal. She asked the Board if anyone objected to her participation in the discussion.

Chair Miller said a Complaint that is not at issue today, had been recently filed raising the possibility of Member Kovnat’s recusal. He said Member Kovnat’s position is there are no reasons raised in this issue for her to recuse herself from this matter.

Member Biderman asked Member Kovnat to explain her position for the benefit of the Applicant.

Member Kovnat said as she understands, the Complaint states she has contributed to Alan Webber’s campaign, which she has not. The Complaint also states she contributed to Brian Egolf’s campaigns in State elections, which she has done. She has no other connections to the law firm that represents Mayor Webber. She said she feels that is not justification for recusal, but she would leave that to her colleagues.

Member Biderman suggested waiting to see if a motion is made to disqualify Member Kovnat.

Chair Miller, seeing none, thanked Member Kovnat for her explanation.

James Hallinan asked to comment.

Chair Miller explained this issue was not open for public comment and is a Board decision. There will be opportunity for public comment. The Complaint has made representations which can be addressed at the time the Complaint is heard.

Chair Miller briefly summarized the Complaint stating there are 3 Respondents, Union Protectiva, VFW Post 2951, and American Legion. The Complaint alleges these Respondents paid for election related advertising and therefore should be required to register as political committees, and take steps that ensue from that designation. The Complaint alleges possible coordinated expenditures between the campaign of JoAnne Vigil Coppler and these three organizations. The Complaint alleges the sections of City Code, 9-2.5(d), 9-2.7(a), 9-2.7(d) and 9-2.2 (a) have been violated. The Complaint was submitted on August 18, 2021. Respondents were notified and given a certain period of time to submit a written response and that material has been provided to the Board.

Chair Miller explained the Board recently has gone through this and is familiar with the proceedings. He said for those present, the ECRB procedures are considered a two-step process. The first step is to determine specifically whether the Complaint states, with legally sufficient facts, which if true show probable cause of either a violation of the Code of Ethics, the Campaign Code or the Public Campaign Finance Code.

The Board will dismiss the Complaint if it finds the Complaint was filed too late, does not state a violation, is frivolous, or was filed to solely harass or intimidate, or if the Board lacks jurisdiction to hear the Complaint. If the Board dismisses the Complaint, the matter is resolved. If the Board finds the Complaint is legally sufficient, the Complaint will proceed to a hearing, and the Board will set the meeting and procedures for a hearing at the next meeting.

Chair Miller asked if representatives for the Complainant and Respondent were in attendance.

Jeff Herrera appeared for the Complainant, Mayor Webber Campaign.

Scott Fuquay represented the Respondent for Union Protectiva; Harold Durr, represented American Legion Post 1; and Gregory Ross represented VFW, Post 2951.

Member Biderman noted a response also came from VFW Post 2952, but were not one of the named people charged. He thought possibly there was an inversion in responses from VFW Post 2951 and VFW Post 2952. He asked if VFW 2952 was present if that was appropriate if they are not named.

Chair Miller said there is a response filed by VFW Post 2951 which is signed by Gilbert Romero in the Board packet. He asked Greg Ross to verify the response was from VFW Post 2951.

Mr. Ross said confirmed that is their response.

Clerk Mihelcic believed the response from Post 2952 to be an error that occurred when the packet was posted and that both responses were from VFW Post 2951. She verified that both were signed the same.

Member Biderman noted there was a second response.

Clerk Mihelcic said he was correct. The Clerk's Office had received the original response which was distributed to all of the Board members. After which, a second response was received from the VFW. Out of transparency, she included both responses and submitted both as official responses on behalf of the VFW. Both responses were signed by Post Commander Gilbert Romero.

Member Biderman asked for clarification whether the parties wanted both responses to be considered, or just one.

Clerk Mihelcic said that was not communicated. Both were submitted without noting if one should replace the other.

Member Biderman requested Mr. Romero be asked that question.

Chair Miller asked Mr. Ross if both submissions from VFW were to be considered by the Board.

Mr. Ross said he could not answer, except to say both should be considered. He asked if the responses were included in the packet provided to the parties.

Clerk Mihelcic said both are presented as packet materials to the parties as well as posted on the website for this meeting.

Mr. Ross asked the web address.

City Clerk Mihelcic provided the santafenm.gov web address. She asked if he would like her to walk him through the process to the website.

Mr. Ross said yes, he wanted the same information as the Board, so they could be on the same page.

Clerk Mihelcic explained the process to access the packet.

Chair Miller asked the Board if they would like to discuss before the parties provide input.

Member Biderman said he would like to hear the presentation from the parties.

Complainant Presentation:

Jeff Herrera appeared representing the Alan Webber for Mayor Campaign. He said Santa Fe Municipal Code states a public policy of the City is that Political Campaign expenditures need to be disclosed to the public, and secrecy and the sources of such contributions is to be avoided. The Board has before them whether Santa Fe voters have a right to know who is trying to influence the campaigns to elect the officials that govern the City. He said three entities have tried to influence the municipal elections who feel they are above those requirements for the public to know who is funding the advertisements.

The packet includes four exhibits of advertisements. One is exclusively by Union Protectiva and Exhibits 2, 3, and 4 are by Union Protectiva and VFW Post 2951 and the American Legion, Post 1. These three violate a number of campaign disclosure requirements as none of the entities registered with the City as political committees. The standard for a political committee is *any entity spending in the aggregate \$250 during a single election to pay for any public communication to influence the election*. That standard is either expressed advocacy for the election, or defeat of a candidate, or for a clearly identifiable candidate, within 60 days before an election.

Mr. Herrera noted Exhibit 1 of the Complaint states in bold print that, *"It is time for leaders to take their hands out of their pockets"* and has a photograph of the Mayor. Both the photograph and the caption refer to Mayor Webber as well as the text of the advertisement. In Exhibits 2, 3 and 4, although more vague, it clearly includes a parody of Mayor Webber's campaign logo and attempts to influence the coming election and sway voters.

Mr. Herrera said Exhibit 1 is clearly within the bounds of expressed advocacy toward the defeat of a candidate. He added that even if the Board did not agree that Exhibits 2, 3, and 4 constitute expressed advocacy, a reference to a clearly identifiable candidate within 60 days of an election, also requires the entity paying for the ads to register as an identifiable political committee. He noted the Complaint was filed in August prior to the 60 day threshold, when many of the signs were still up and visible to hundreds of possible voters. The entity who paid for the advertisements has not disclosed any of its donors for their expenditures.

He said the Supreme Court has, in multiple occasions, upheld that campaign finance disclosures for independent expenditures are a valid form of regulation of Campaign-Finance and does not rise to the level of impermissible burden on the exercise of free speech.

Mr. Herrera said the Respondents, American Legion and VFW have denied their organizations paid for the advertisements, but neither has an explanation why their names appear. At this stage that is immaterial consideration, the standard before the Board is whether the factual allegations, taken as true, constitute a violation of the Campaign Code.

Mr. Herrera said the time for discovery is after today, when questions such as how their names appeared on advertising they claim they have nothing to do with. He said Respondent Union Protectora, has not denied they paid for the advertisements. Per standard 9-2.6 (a), the position of the Complainant is these largely fall within the bounds of advocacy for election purposes and require disclosure of donors as listed throughout the Campaign Code. If they have not registered as a political committee, they are in violation of 9-2.5(d), 9-2.7(a), 9-2.7(e) and 9-2.8(a). Our position is that the Respondents are in violation of the regulations to register with the City as a political committee.

He said secondly, the Board has to determine in Exhibit 6, if there has been a coordinated expenditure between the entities listed and another candidate for mayor. Which is another impermissible use of campaign finance that also requires disclosure.

Member Lujan asked Mr. Herrera to expand on the financial expenditure and coordination.

Mr. Herrera said the coordinated expenditure aspect was the more difficult threshold for a campaign with limited discovery process to provide, prior to the filing of the Complaint. A coordinated expenditure happens in secret, especially by a group that is not registered such as the entities. The packet contains an email between Councilor Vigil Coppler and Virgil Vigil of the VFW, but there is no firm demonstration of coordination. He said they believe, given the nature of the email and the secrecy, the Complaint should be allowed to proceed to the discovery process where facts may be uncovered

Member Lujan said she had a lot of questions around the proof of and the facts with expenditure coordination between the two parties. She stated in her opinion based on the evidence given as it stands, she did not see that as an issue.

Member Kovnat asked Mr. Herrera if his position was that the Respondents are political committees or independent organizations who solicited contributions.

Mr. Herrera said the theory is very straightforward. The Santa Fe City Code 9-2.6 requires entities engaging in spending to influence an election to register with the City and disclose as to who is financing. The voters have a right to know. He said they believe the Respondents are trying to dodge that requirement.

Member Kovnat said she agrees voters have that right, but looking at the specific provisions believed to have been violated, she doesn't see that provision. She sees provisions regarding political committees.

Mr. Herrera said 9-2.6(a) requires registration as a political committee. That is the threshold standard as to whether or not an entity must register. The other provisions mentioned are provisions that are substantively violated as a function of not registering.

Member Biderman said on that point, one response Mr. Herrera did not allege as a violation is now being alleged. He asked clarification whether the Board could act on 9-2.6 and if the parties were given due process of notice.

Mr. Herrera did not believe that would be a due process issue. He said 9-2.6 defines the threshold for registration; 9-2.7(a) is the statement of organization and 9-2.7(b) is the disclosure of the political committee. They are substantive provisions the entities have allegedly violated. He added that New Mexico is a liberal notice state and even if not stated, they identified to the Respondents that 9-2.6 was an issue. The Respondents are not without notice the issue would be discussed at this hearing.

Member Biderman said it was raised in the response and would also be part of his argument that the Respondents were alerted, or they would not have addressed this.

He said he also had a technical question and wanted to be sure about the standing that the Webber campaign is a person authorized to file this Complaint under the provisions of the Ordinance.

Mr. Herrera said that sworn Complaints may be filed by any person and give the facts and allegations according to Code. An individual signed the Complaint on behalf of the campaign. He said he thought Member Biderman was referring to a response from VFW Post 2951 that alleged there is no statement of representative, or that the notary is invalid for the purposes of the Complaint. He explained that the individual that signed the complaint is Danny Macki, an employee of the firm working for the Campaign and acting as agent of the Campaign.

Chair Miller asked to confirm the distinction made by Mr. Herrera that the communication in Exhibit 1 has expressed advocacy. The allegations in Exhibits 2, 3, and 4 is that the communication expresses advocacy *and* was made 60 days before the election.

Mr. Herrera said the advertisement in Exhibit 1 without question, expresses advocacy for the defeat of the candidate. The advertisements in Exhibits 2, 3, and 4 would be for the Board to determine if it meets the standards for 9-2.6 as stated. He said we believe it does, and even if the Board does not believe it does express advocacy for defeat of the candidate, the advertisements have existed within 60 days prior to the election. That would constitute a violation of the second provision and trigger the 9-2.6 threshold.

Chair Miller asked to confirm they were not claiming that the advertisement in Exhibit 1 could be found in violation because it was not made within 60 days of the election.

Mr. Herrera said they are not contending that Exhibit 1 was the same threshold, but Exhibits 2, 3, and 4 are within the 60 day threshold because they are publicly visible - not because the action occurred within 60 days of the election. The yard signs are still

up. Mr. Herrera said it would be impossible to conclusively prove the Facebook advertisements are down. It is possible that the algorithm still serves them to other users of the platform.

Member Lujan said throughout their elections they know that having the signs removed is complaint driven. She wanted to be sure everyone understood that there is a number to call if there is a complaint about signs.

Member Biderman said he would like to have a hard copy of Exhibit 1 if the Board proceeded. He was having trouble reading Exhibit 1 online.

Mr. Herrera said they could make that happen.

Respondent for Union Protectiva

Scott Fuquay said he would start at the back of the complaint and move forward. There is no recourse provision for an independent organization engaging in coordinated expenditures. The provisions on reporting and spending are all directed to candidates. Even if the Board found a violation, it would only move to JoAnne Vigil Coppler who is not a party to this Complaint. He said there are significant due process problems with moving forward with potential violations of the Municipal Election Code that are alleged to have been undertaken by a party not before the Board, whether named or participating.

He said he appreciated Mr. Herrera's presentation of the issues that address the expenditures made by his client. It clarified a couple of his questions, one noted by Member Kovnat. The theory is based on the fundamental misunderstanding of the way the provisions operate, and he understands why they think that is the way this works. But Section 9-2.6 is not a threshold statute or regulation that establishes if someone is a political committee. That is in the definition in Section 9-2.3. The definition is, "*An organization organized primarily for the purpose of engaging in election activity.*" It is not spending \$250 on an advertisement. That is the only way under this regulatory scheme, that an entity/person can be a political committee.

Mr. Fuquay said the Board has nothing saying that his client was organized primarily for political expenditures, and in fact, its 105 year history demonstrates the opposite. This is the only time since 1970, that Union Protectiva has engaged in this type of communications. Their principal purpose is very different. Because of that they are not a political committee. As a result, the provisions alleged to have been violated are all provisions that address political committees and what they have to do. The distinction can be seen in those three provisions; 9-2.6 deals with independent expenditures and says that anyone spending \$250 or more in an election has to file a report that identifies contributions made to fund that communication and the expenditures. Political committees have a lot more requirements, such as identification of the chair and disclosure of where the money came from, etc. Those burdens are based on the First Amendment and the manner in which the U.S. Supreme Court applies that amendment to regulate campaign speech.

Mr. Fuquay explained that is important to the Board because they should want to interpret and apply those provisions consistent with the Constitution. The 10th Circuit Court used to require any organization spending \$500 or more under the Campaign Reporting Act, to register as a political committee along with all disclosures per the Act. The U.S. District Court declared that unconstitutional and that was upheld by the 10th circuit court. He said he is telling them this because if the Board interprets 9-2.6 that spending \$250 makes them a political committee, that is the exact structure the New Mexico statute was found to be unconstitutional.

Mr. Fuquay noted that distinction is important because his client is not a political committee, and they cannot be viewed as such. The allegations are not legally sufficient. His client is not required to do anything under Section 9-2.7 or 9-2.8 and the only potential provision that could apply is 9-2.6. That provision requires disclosures of communications made within 60 days of an election. The Complainant can only point to yard signs, where the threshold is whether or not a communication counts as an expenditure if extended to 100 or more people. He couldn't see how the Board could know how many yard signs are up, the number of people that saw or read them, or digested them. Those questions cannot be answered. He thought that provision is directed at traditional media.

He said the Board has a Complaint before them that fails. There is no basis to find any violation of the coordinated expenditure provisions, and the only person to face consequences is not a party to this case. The Board is powerless to do something about that. The violations of 9-2.5, 9-2.7 and 9-2.8 all rely on his client being a political committee, which according to the definition, they are not. The only thing left is 9-2.6 on communication made within 60 days of the election. The evidence before the Board does not indicate that.

Mr. Fuquay said he believes the Complaint is not legally sufficient and the Board has no actions they can take. It would be appropriate to dismiss the case in its entirety.

Respondent for American Legion

Mr. Durr said the Board received the American Legion's response the day after the summons was delivered to them. In the first paragraph the American Legion denied the alleged posters, etc. He said we have never paid any money to a politician, paid for material, or sponsored a politician. In the second paragraph it says the American Legion National Constitution prevents them from that type of expenditure. He didn't want to talk further. He asked that the representative for VFW speak.

Respondent for VFW

Mr. Gregory Ross said the VFW objects to the power of the Ethics and Campaign Review Board bringing this into a quasi-judicial setting. He said contrary to the allegations made by the City Clerk, no packet was provided, and the only notice of hearing is the

agenda on the website. He said for the record, the notice of hearing indicated “error” four different times that he tried to bring up the notice on his computer.

He said the VFW makes its jurisdictional arguments which are expressly stated in their Response, and they stand on those. He said the VFW does appreciate the Chairman of the Board for the purpose of being part of this organization. He thanked the Board for making the City a better place. The VFW recognizes that election integrity is very important. The VFW is full of veterans who have lost limbs and who have had great personal losses protecting Freedom of Speech. He said at issue here is the United States Constitution’s protection of Freedom of Speech, which is also protected by the New Mexico Constitution.

Mr. Ross said substantively, although they object to the way the hearing was held regarding Ms. Kovnat’s recusal, they stand procedurally. There was no notice of any hearing, in accordance with the rules, and the VFW contends that the Board does not have rule making authority. If they do, they did not comply with that authority which is granted or required by administrative agencies throughout the State. There is also an issue with any discovery or discovery process. According to their reading, none is proscribed by the rules enacted by this Board.

He noted the video and confirmed he was being recorded. He asked to be on record that his presentation was interrupted by the host who insisted he be on video. He said as mentioned by the American Legion, there was no summons to appear or to answer. Also, the Board does not have the authority to require any of the groups to pull up signs. That is injected relief that is reserved for the district and higher courts and the magistrate court doesn’t even have that ability. He said he was not sure whence this power was derived on behalf of the Board.

Mr. Ross said for the first time today, there has been no indication of who signed the complaint on behalf of the Mayor. He heard it was Danny Macki and he doesn’t know who that is, and the signature was not notarized. He said if Danny Macki is not an attorney, by filing this Complaint he is practicing law without a license.

Mr. Ross reiterated that the VFW did not get the same packet of information received and relied on by the Board members. Having to respond is a deprivation of due process rights to documents that were not provided to the other members. He said he would assume that includes the answers from the American Legion and Union Protectiva, but they cannot be sure. He asked to have post facto, a copy of the materials provided to the Board.

Mr. Ross said further their reading of the rules enacted, that it is the Board’s responsibility to determine whether a valid cause of action has been stated. One of the Board’s duties is to hire an investigator to do that, and had that been done for at least a cursory review of the Complaint, the Board would have seen there is nothing to indicate the VFW had responsibility for the contribution to the Santa Fe Reporter article. That article does not mention the VFW and there is no allegation they were a party to, or

supported the statement made by Union Protectiva. Also, there was an article in the Reporter saying the article was paid for by Union Protectiva, and there was no mention of VFW. He said a phone call to the Santa Fe Reporter would have found that the VFW made no payment to the Santa Fe Reporter. He asked that all of those counts be dismissed.

Mr. Ross said secondly, the CHART posters are free speech. The Mayor obviously does not like it and hired lawyers to come before the Board. He said the lawyers are salivating to get into some discovery process, which is designed simply to harass and intimidate these local groups. None of these groups have the budget that Mayor Webber has. He said personally, for the record, he wanted to state that he has no animosity with the Mayor. He has worked with him in interactions with the Native Americans and Hispanic communities. He thought this action by his campaign is highly regrettable and designed to harass and is an attempt to deprive the VFW and its "members" of their rights to expression, political or otherwise.

He said when a lawyer is looking up the type of organization, or association you are suing, you do a simple search on a business entity. If the Mayor's campaign had done so, they would have found that the VFW is not an incorporated entity. It is an unincorporated association of members. He said, again, he puts that on the Board because they were charged with reviewing the Complaint prior to these organizations spending a lot of time, money and angst to respond.

Mr. Ross said the Board, if they had complied with their own rules, would have found a number of facts were different, and they would have chosen, hopefully, not to bring these specious allegations against the VFW. He said the language in the CHART posters is clearly an expression of these groups' angst against the Mayor for allowing the police to step down and let people forcefully tear down our monuments.

He said a number of other things led up to this. The groups in question prior to the abdication of duty to protect the City, its property and its citizens, had been working closely with the City, and other groups and stakeholders. The Caballeros De Vargas is an example. They voluntarily ended a long heartfelt tradition of the Entrada because they agreed in negotiations to cease doing that. The group was making good headway before lawbreakers were allowed to run roughshod over our community and destroy veteran war soldiers' statues. He said he believed there are also federal implications.

Mr. Ross said considering all those things, it is unfortunate the Mayor felt it necessary to make false allegations against the VFW for anything in the Reporter. And that with all of the legal minds the Mayor is employing, that they believe the CHART language is anything but highly protected free speech. Which is precious to most in this country.

Mr. Ross said other than the express arguments made in the Responses, pleadings - he isn't sure even if the Board is a quasi-judicial body or where the Board

derives their power- they don't understand the right nomenclature. But the VFW will say that due to the powers being claimed by the Board, that this is a pleading.

He said in summation, the VFW does appreciate the Board's hard work and the intention to keep elections free and clear. Granting this petition to move forward to enter into an expensive discovery process would run counter to that. He said we hope that the Board will consider all the arguments made, particularly those made by Mr. Fuquay on behalf of Union Protectiva; and find, because the Complaint was not correctly filed, in addition to all the other arguments he has made and the Response Pleading, that there is not sufficient cause to move forward with the VFW. And if so at least restrict that to the CHART poster because there is zero evidence that the VFW was involved with the Reporter article.

Member Biderman said Mr. Ross made some allegations about what the Board has already done that is confusing to people who are not familiar with the Board's process. He said Mr. Ross had stated that the Board had already decided to go forward, and he made it sound as though the VFW was being charged by the Board, and that the Board had made decisions that the Board should have investigated first.

Member Biderman said we have not done any of that. He said if Mr. Ross had read what he had been served, he would know that our rules require...

Mr. Ross interjected that he has read everything he was presented with. He said he did not appreciate the insinuation that he had not.

Member Biderman said then Mr. Ross should know that stating the Board is moving ahead is incorrect, which he just said. Member Biderman said he wants to be clear because Mr. Ross had stated that the Board had found him guilty.

Mr. Ross said the Board served a Complaint on his client, the VFW, that did not comply with any of the rules or civil procedures, including the Board's own rules. He said the Board served the Complaint on his client, did they not.

Member Biderman asked if he did not want his client to receive notice of the allegation.

Mr. Ross asked Member Biderman not to put words in his mouth.

Member Lujan said point of order, all discussion should go through Chair Miller. She said that is how they keep civility within the rules of operation.

Chair Miller said that was a good point. He noted that Member Biderman was making important clarifications about the Board's process which are significant. A Complaint was filed with the City alleging allegations. This Board did not file that Complaint. The Complaint was filed with the City with allegations with respect to the Respondents. The City provided the Respondents with notice of the Complaint. The

Board is here to address whether those Complaints are legally valid today. The Board did not engage in discovery, outside of reviewing the Complaints and Responses. That is not their role. And this Board is not a court, and it does not represent anyone in this matter. The Board is here to address the Complaint and determine if legally sufficient.

Mr. Ross interjected, point well taken.

Chair Miller said Mr. Ross had interrupted Member Biderman several times and has interrupted him as well. He asked Mr. Ross to let him continue.

Chair Miller continued that hopefully people attending understand where the hearing is in that process. He asked if there were further comments or questions from the Board members.

Member Lujan thanked everyone present. She assured all parties that this is a process. She said we are civil servants acting on behalf of the public and fulfilling our duties as Board members. They will do due diligence through the process to listen to everyone and understand all arguments and all of the information given to all of them. She said and we will do it in a civil way. She assured all of the parties that the Board is here and are public servants doing the will of the people.

Mr. Herrera asked for an opportunity to express that the Mayor cherishes the First Amendment. He said there is nothing about the Santa Fe City Campaign requirements that infringes upon the First Amendment, or free speech and a public marketplace of ideas. He reiterated that the standard before the Board was whether the Complaint set forth actual allegations that if taken as true, constitute a violation of the Campaign Code. He said again, we believe it has and await the decision of the Board.

1. Discussion of Actions.

MOTION: Member Biderman moved that the Board go into Executive Session. Member Lujan seconded the motion.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat and Lujan voting in favor and none voting against.

Clerk Mihelcic explained the process for those in attendance and that the space will remain active as the Board went into Executive Session and the Board will return to this space when they come out.

The Board entered into Executive Session at 4:34 p.m.

The Board returned from Executive Session at 4:57 p.m.

Attached hereto as Exhibit "1" are the Executive Session notes provided by Clerk Mihelcic.

MOTION: Member Kovnat moved that the Board come out of Executive Session into Open Session. Member Lujan seconded the motion.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat and Lujan voting in favor and none voting against.

2. Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts, Which, if True, Show Probable Cause to Believe There Was a Violation.

Chair Miller said the Board met in Executive Session for the reasons stated on the agenda, and no other items were discussed, and no final action was taken.

Chair Miller said the Board heard presentations from the Complainant and Respondents on the Complaint. He asked for comments from the Board.

MOTION: Member Biderman moved to dismiss the Complaint. The motion was seconded by Member Kovnat.

Member Biderman explained the reasons were concerns over several elements of the Complaint. One was the Respondents' principal purpose is not as a Political Action Committees, and they do not meet the definition. There were concerns the facts alleged did not rise to the level of a violation in that they would not be able to establish how many people might have seen the advertisements. Also, there were concerns that these were explicit statements in support of, or against the candidate. Regarding the second allegation about collusion, the Board felt the allegations were not properly directed at these Respondents because they are not the targets of the allegation. Even if the Respondents were a political committee, that only applies to candidates.

He said the Board had a number of problems with the structure of the Complaint and did not feel overall that the Complaint sufficiently stated claims upon which the Board could grant relief, or has jurisdiction to pursue.

Chair Miller asked if other members wanted to add anything.

Member Biderman recalled one more reason. The Board was unable to consider the facts alleged in support of the allegations under Section 9-2.6 because the Complaint itself did not allege a violation of that section of Code.

VOTE: The motion passed by roll call vote with Members Biderman, Kovnat and Lujan voting in favor and none voting against.

Chair Miller said the Complaint has been dismissed. He thanked everyone who participated.

Member Biderman said he wanted to observe that today is the 50th anniversary of the release of “Imagine” written by John Lennon. He said he was involved in the world at that time and asked them to imagine a world where people won their elections based on their qualifications and their policy positions, and not on attacking each other’s ethics.

6. MATTERS FROM STAFF

There were no matters from Staff.

7. MATTERS FROM THE BOARD

There were no matters from the Board.

8. MATTERS FROM THE CHAIR

There were no matters from the Chair.

9. NEXT MEETING:

Chair Miller said the Board received a recently filed Complaint and he believed the Respondent had been notified. He asked Clerk Mihelcic to comment.

Clerk Mihelcic said the Clerk’s Office had received another Complaint and it was distributed according to ECRB Rules of Procedure, which are also provided to the person receiving a Complaint. The date for the hearing identified is Thursday, September 30, 2021, if that works for everyone.

Member Lujan said that is her birthday and also it is the end of the fiscal year.

Clerk Mihelcic offered alternate dates of September 28th, Tuesday, October 5th, Thursday, October 7 and Friday, October 1st as options.

Chair Miller said he preferred to address the Complaint as soon as possible. He suggested if the other four members were available, doing the hearing on September 28th.

Board consensus is to schedule a tentative meeting on Tuesday, September 28th from 3 p.m. to 5 p.m., if Ms. Amer is available, or possibly consider another time. They will continue to meet on Zoom.

Chair Miller noted the importance of including public comment on future agendas and noted that it was not included on this agenda. He asked if there was anyone from the public who wished to comment.

Mr. Ross thanked the Board for their time. He asked if possible to get a copy of the transcript, and if the signer of the Complaint was Danny Macki.

Chair Miller explained there is no transcript but there are meeting minutes. The minutes will be prepared by the City and presented to the Board for approval at the next meeting. He asked if Clerk Mihelcic could confirm the signature was Danny Macki.

Clerk Mihelcic confirmed Danny Macki signed the Complaint. She noted there is also the YouTube video available that will remain active.

Member Biderman said he will be teaching a class the morning of September 28th and will have limited time. He requested the Board receive the materials earlier than the meeting date to provide more time for review.

Clerk Mihelcic said materials for the hearings are posted online the Friday before each meeting and this hearing will be posted on the 24th of September.

10. ADJOURNMENT

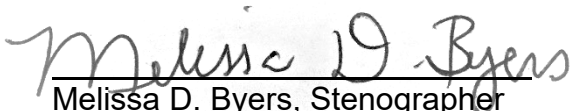
MOTION: Member Kovnat moved to adjourn the meeting at 5:15 p.m. Member Lujan seconded the motion.

VOTE: The motion passed by roll call vote with Member Biderman, Kovnat and Lujan voting in favor and none voting against.

Approved by:

Justin Miller, Chair

Submitted by:



Melissa D. Byers, Stenographer
For Byers Organizational Support Services

Ethics Campaign Review Board (ECRB) Executive Session – Sept. 9, 2021
Start 4:34 p.m. / Ended at 4:57 p.m.

Exhibit 1
9/9/21
ECRB Meeting

Members Present –

Justin Miller

Ruth Kovnat

Tara Lujan

Paul Biderman

Outside Counsel

Stephen Ross

Assistant City Attorney

Marcos Martinez

Ethics Campaign Review Board (ECRB) Executive Session – Sept. 9, 2021
Start 4:34 p.m. / Ended at 4:57 p.m.

Exhibit 1
9/9/21
ECRB Meeting

Members Present –

Justin Miller

Ruth Kovnat

Tara Lujan

Paul Biderman

Outside Counsel

Stephen Ross

Assistant City Attorney

Marcos Martinez

CASE # 2021-3

Complaint Form

(Please print or type)
(Additional pages may be added)

City of Santa Fe
Ethics & Campaign Review Board

Date: _____

- Name of person and/or group charged with alleged violation. Mayor Alan Webber and Alan Webber for Santa Fe campaign
- Please explain briefly the nature of the alleged violation. Bullying, campaign finance violations, ethics violations, extorting unjust influence, and general abuse of power by Mayor Alan Webber and Alan Webber for Santa Fe Campaign
- Please state which specific provision(s) or part(s) of the Code of Ethics or Election Code you believe have been violated. See attached.
- Please state the facts you have regarding the violations, including:
 the date(s) Beginning on or about Monday, October 12, 2020 and continuing.
 the time(s) Mutiple events (See attached)
 the place(s) See attached.
 people involved See attached.
 other facts See attached.
- Are there any witnesses to the violation who are willing to confirm your charge?
Please list with addresses, phone numbers and what they know. _____
Santa Fe New Mexican Newspaper, City of Santa Fe, City of Santa Fe Fire Department
- Attach documentation of actual evidence you have to support your complaint, to this form.
- What is your name? Virgil Vigil, Gilbert Romero
- Address? 467 Camino Don Miguel & 3001 Governor Lindsey Zip Code 87505, 87505
- Telephone Number? 505-603-2448, 505-699-6472 Work: _____
- Email Address? vigilvj@aol.com, gilbertromero2951@gmail.com

Received on: September 7 2021

By: Xavier Vigil
City Clerk's Office

To the best of my knowledge, the above statements are true and complete.

Virgil Vigil Gilbert Romero
Signature

Subscribed and sworn to before me this 7th day of September 20 21



OFFICIAL SEAL
Xavier I. Vigil
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: March 25, 2025

[Signature]
Notary Public

Attachment to complaint form for City of Santa Fe Ethics & Campaign Review Board

Violation #1

Mayor Alan Webber and the Alan Webber for Santa Fe campaign sent an email on 7/14/2021 advertising a "Cool Down" event planned for 7/17/2021 and 7/24/2021. This was a City of Santa Fe and taxpayer funded and planned event. The email was branded in a manner to make the public believe that this was a promotional Alan Webber for Santa Fe campaign event. The Mayor highlighted himself as the featured participant in City events that should not have included him.

Using the Alan Webber for Santa Fe's campaign logo the email stated: "Santa Fe Cool Downs! Join the Mayor and the Fire Department as they turn on the hoses for the City-sponsored fun water play!" "You'll find fire trucks (and Mayor Webber!) ready to play at each of the following locations for these City-sponsored events: July 17: Swan Park. July 24: Franklin Miles Park."

Mayor Alan Webber and the Alan Webber for Santa Fe campaign stated the mayor's name 5 or more times in the campaign announcement and listed him as the featured participant in the City event.

The following codes were violated by these actions:

City of Santa Fe Code of Ethics:

1-7.7 - Improper gifts; improper transactions; representation of private interests; conflicts of interest; and other prohibitions.

E. Misuse of City Resources. A public official or public employee shall not use city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public.

H. Improper Political Campaigning. A public official or public employee shall not knowingly request or authorize another person to request that any subordinate of the public official or public employee make a campaign contribution or provide services to a political campaign, and shall not engage in political campaigning while on duty for the city, or use city funds, supplies, vehicles or facilities to benefit or assist a political campaign.

Violation #2

Mayor Alan Webber and his spokesperson have released comments bullying others on his behalf. He has called members of the public, city employees, and city public officials "Trump Maga operatives" in an attempt to discredit and taint the reputation of these members of the community. More recently he has gone on to saying "MAGA and QAnon are real in Santa Fe, and they will stop at nothing to take over the Mayor's office." Mayor Alan Webber has done so with no actual evidence and continues to push these outlandish conspiracy theories on the voters of Santa Fe. These irresponsible and immature rants are embarrassing for a public official at any level, much less the highest elected official of our beloved City. Should this Board allow this

desperate and shameful behavior to continue, the election process and the overall respect for our city will soon be discredited.

The following codes were violated by these actions:

City of Santa Fe Code of Ethics:

1-7.7 - Improper gifts; improper transactions; representation of private interests; conflicts of interest; and other prohibitions.

K. Workplace Bullying by Governing Body Members. A governing body member shall not intentionally bully any public employee, including the city manager, city attorney or city clerk. For purposes of this paragraph, workplace bullying means intentional behavior intended to create an abusive work environment for a public employee or public employees. Bullying behavior is behavior in the workplace that a reasonable person would find hostile, offensive, and not obviously related to the city of Santa Fe's legitimate business interests. Workplace bullying includes, but is not limited to the following:

- (1) Use of disrespectful and devaluing language;
- (2) Persistent or constant criticism in front of other persons (including co-workers, vendors, contractors or members of the public) for the purpose of humiliating an employee;
- (3) Behavior or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming;
- (4) Threats and intimidation, including threats to discipline or terminate a public employee.

Violation #3

An ethics complaint was filed against Mayor Alan Webber on 7/15/2021. Mayor Alan Webber improperly retained the Egolf + Ferlic + Martinez + Harwood LLC law firm as counsel to represent him in his defense of said ethics complaint. Mayor Alan Webber was aware that Kristina Martinez of Egolf + Ferlic + Martinez + Harwood LLC was a partner of the law firm he retained and was also a member of the Ethics and Campaign Review Board. Mayor Webber knowingly and intentionally hired this specific law firm in an attempt have an unfair advantage and to exert unjust influence on the City of Santa Fe Ethics & Campaign Review Board. Mayor Webber was fully conscious of this conflict and should not have attempted to retain this firm in the first place. (See 1-7.7 - CODE OF ETHICS (3)). Finally, he violated yet another city code by not disclosing this obvious conflict of interest he created after this firm was retained.

The following codes were violated by these actions:

Santa Fe City Charter: Article II. Policy Statements

2.01. Code of ethics.

The proper administration of democratic government requires public officials to exercise a high degree of integrity and honesty, free from undue and inappropriate influence and further requires that government decisions and policy be made in a fair manner, guided by the best interests of the people and the community, so that the public may have confidence in its government.

City of Santa Fe Code of Ethics:

1-7.7 - Improper gifts; improper transactions; representation of private interests; conflicts of interest; and other prohibitions.

M. Conflicts of Interest. The following shall govern conflicts of interest:

(1) A public official or public employee who has a conflict of interest as defined in subsection 1-7.5 SFCC 1987 shall immediately disclose the conflict in the following manner:

(a) In the case of a member of a governmental body, to the governmental body at a public meeting;

(b) In the case of the city manager, the city attorney or the city clerk, to the governing body at a public meeting, and

(c) In the case of a public employee, to the city manager.

(2) A public official or public employee shall not perform an official act or attempt to influence another person to perform an official act in any matter in which he or she has a conflict of interest.

1-7.7 - Improper gifts; improper transactions; representation of private interests; conflicts of interest; and other prohibitions.

C. Representation of Private Interests.

(1) A governing body member, the city manager, the city attorney and the city clerk shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city or matter before the city.

(2) A public employee shall not, during his or her term of employment or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city department that the public employee is or was employed by or any matter before such city department in which the public employee has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a city employee.

(3) A governmental body member, excluding members of the governing body, shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising

that party regarding any transaction with such governmental body or matter before such governmental body in which he or she has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a governmental body member.

Requested Remedy

This Board has previously dismissed a complaint on a technicality when it should have instead begun an investigation as cited in “Ethics and Campaign Review Board RULES OF ORGANIZATION AND PRACTICE 6-16.6 – Investigations”:

“The Board may conduct an investigation of allegations brought before it rather than simply hearing charges; to do this, it shall temporarily contract with qualified investigators. No such investigation shall be undertaken unless it is specifically authorized and defined by the Board.”

Once again, this complaint has been filed by a member of the public with no prior legal knowledge, experience, and without the assistance of an attorney. Serious violations, issues, and concerns have been brought up in this complaint and others. If this complaint has not been filed correctly, violations not cited correctly, or if there is any other type of technicality it should be referred to a private investigator or city attorney for further investigation and re-filing rather than just being dismissed. This Board is intended to be inclusive to all members of the public, not just the “Millionaire Mayor” and his high-priced legal counsel.

Recently, the Alan Webber for Santa Fe campaign so eloquently stated: “Transparency and disclosure are basic tenets of Santa Fe's election code and no one should be above the law.” In light of the above issues and other ethical concerns that have recently been brought to the attention of this Board, I ask that this Board hold all meetings in an open public forum and no longer meet privately in Executive Session. Should this not be acceptable, I ask that this complaint be seen and decided in front of the Santa Fe City Council or an applicable court so as not to give the public any additional appearances of impropriety.

Due to the level of these egregious infractions, I respectfully request that the Ethics and Campaign Review Board consider the following remedies, at a minimum, should it determine that Mayor Alan Webber and the Alan Webber for Santa Fe campaign are guilty of the complaints outlined above:

- Issue a public reprimand; (6-16.7.2); AND
- Impose a maximum fine of five hundred dollars (\$500.00) per violation on each of the entities in question (6-16.7.2); AND
- Refer this and any other complaints where appropriate, to the district attorney's office for investigation and prosecution; AND

- Refer this and any other complaints where appropriate, to the New Mexico Bar Association for investigation and prosecution; AND
- Require that the Alan Webber for Santa Fe campaign reimburse the City of Santa Fe and taxpayers for all costs with interest of 10% per annum from July 14th, 2021, for the “Cool Down” events on July 17th, 2021 and July 24th, 2021; AND
- Stated in bold letters (for emphasis and clarity), **Recommend removal or suspension from office of a public official by the governing body; (6-16.7.2).**

Motion for Disqualification of Ethics and Campaign Review Board

Member: Kristina Martinez (Egolf + Ferlic + Martinez + Harwood LLC)

Ms. Martinez is a current partner of Egolf + Ferlic + Martinez + Harwood LLC and is believed to have either been a partner or employee of the above law firm since 2018. An ethics complaint was filed against Mayor Alan Webber on 7/15/2021. Mayor Webber retained the firm of Egolf + Ferlic + Martinez + Harwood LLC shortly thereafter.

First, as a current governmental body member, Ms. Martinez and her firm should not have accepted Mayor Alan Webber as a client. (See 1-7.7 - CODE OF ETHICS (3)). As a result of this intentionally created conflict, Ms. Martinez had a duty to immediately recuse herself from her participation on the Ethics and Campaign Review Board (hereinafter, "the Board") as soon as her firm was improperly retained by Mayor Alan Webber. Ms. Martinez failed to recuse herself within a timely manner.

Ms. Martinez and her firm influenced or had the appearance of the opportunity to influence the Board during the time from when her firm was retained by Mayor Webber until the time she actually recused herself only from this specific complaint during the Ethics and Campaign Board hearing on 8/19/2021. As cited in the Ethics and Campaign Review Board Minutes: "Member Martinez said she was recusing herself from consideration of **this complaint** because her partner, Kate Ferlic, is representing Mayor Webber". This was blatantly incorrect as her entire firm was representing Alan Webber (see "RESPONDENT'S MOTION TO DISMISS RESPONDENT ALAN WEBBER, by and through his attorneys, Egolf + Ferlic + Martinez + Harwood, LLC (Kate Ferlic and Jeff Herrera, appearing)").

Second, while her firm had been and was still retained by Mayor Alan Webber, the Alan Webber for Santa Fe campaign and Mayor Alan Webber filed an ethics complaint against the Union Protectiva, VFW Post 2951, and American Legion Post 1 on 8/19/2021. During this period Ms. Martinez, Mayor Alan Webber, the Campaign of Alan Webber for Santa Fe, and the firm of Egolf + Ferlic + Martinez + Harwood LLC colluded or coordinated or had the appearance of collusion and coordination regarding the creation and filing of this complaint. Ms. Martinez has failed to recuse herself in this action as well.

Lastly, Ms. Martinez participated in discussion of the 10th Circuit Opinion in Rio Grande Foundation v. the City of Santa Fe, Case No. 20-2022. Ms. Martinez's firm influenced or had the appearance of the opportunity to influence the opinions or recommendations that this Board could make for amendments to the governing body. These recommendations will affect some of the same rules her firm's client Mayor Alan Webber referred to in the above-mentioned complaint filed against the Union Protectiva, VFW Post 2951, and American Legion Post 1.

By failing to remove and recuse herself, Ms. Martinez has violated the following rules, codes, and statutes:

Ethics and Campaign Review Board Rules of Organization and Practice:

J. Board and Board Members' Responsibilities

3. As public officials, Board members must comply with all provisions of the Code

of Ethics, including those prescribing conflicts of interest, as well as New Mexico case law prohibiting participation in quasi-judicial proceedings whenever the member's actions would be tainted by bias, prejudice, or partiality or give rise to the actuality or the appearance of impropriety.

4. Due to the sensitivity of the Board's mission to enforce ethical standards, and the importance of public trust and confidence in the Board's integrity and impartiality, Board members should be mindful of the need for recusal in close or doubtful cases. Recusal of a member may be compelled on motion upheld by a majority vote of present and voting Board members.

Santa Fe City Charter:

Article II. Policy Statements

2.01. Code of ethics.

The proper administration of democratic government requires public officials to exercise a high degree of integrity and honesty, free from undue and inappropriate influence and further requires that government decisions and policy be made in a fair manner, guided by the best interests of the people and the community, so that the public may have confidence in its government. To effect these ends, the governing body shall by ordinance establish standards for the ethical conduct of all elected and appointed officials and all employees of the city, and provide consequences for violating such ethical standards.

N.M. Code. Jud. Cond. 21-211

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

1-7 - CODE OF ETHICS

1-7.7 - Improper gifts; improper transactions; representation of private interests; conflicts of interest; and other prohibitions.

C. Representation of Private Interests.

(1) A governing body member, the city manager, the city attorney and the city clerk shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city or matter before the city.

(2) A public employee shall not, during his or her term of employment or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with the city department that the public employee is or was employed by or any matter before such city department in which

the public employee has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a city employee.

(3) A governmental body member, excluding members of the governing body, shall not, during his or her term of office or within one (1) year after the termination thereof, accept monetary compensation from a third party for consulting with, representing or advising that party regarding any transaction with such governmental body or matter before such governmental body in which he or she has had or reasonably should expect to have any influence or personal involvement in his or her capacity as a governmental body member.

In addition to the above noted conflicts, the firm of Egolf + Ferlic + Martinez + Harwood LLC is still believed to be retained by Mayor Alan Webber. Consequently, Ms. Martinez can no longer impartially perform the duties required by this Board. As a result of the impropriety or perceived impropriety between Mayor Alan Webber, Alan Webber for Santa Fe Campaign, Egolf + Ferlic + Martinez + Harwood LLC, and this Board I request that Ms. Martinez be removed from the Board and all future hearings, and that Egolf + Ferlic + Martinez + Harwood LLC be banned from representing any candidates or complaints in front of this Board for a period of 5 or more years. I would also call for a special investigation into all activities on this Board by Ms. Martinez during Mayor Webber's term and ask that all Ms. Martinez's votes and actions on this committee be reversed.

Respectfully,

Virgil Vigil



Gilbert Romero



Motion for Disqualification of Ethics and Campaign Review Board

Member: Ruth Kovnat

Ms. Kovnat has knowingly supported and made political contributions in multiple instances to the campaigns of Alan Webber, Brian Egolf of Egolf + Ferlic + Martinez + Harwood LLC, and political action committees that regularly donate to Alan Webber's Campaign. On or about 7/15/2021 an ethics complaint was filed against Mayor Alan Webber. Mayor Webber retained the firm of Egolf + Ferlic + Martinez + Harwood LLC shortly thereafter. As a result of this conflict Ms. Kovnat should have immediately recused herself but failed to do so during Ethics and Campaign Review Board hearing on 8/19/2021. Ms. Kovnat not only seconded the motion to dismiss the ethics complaint, but she also cast a vote calling for the dismissal of the complaint against Mayor Alan Webber. Additionally, there has been a separate ethics complaint filed against the Union Protectoria, VFW Post 2951, and American Legion Post 1 by Mayor Alan Webber on 8/19/2021. Ms. Kovnat has failed to recuse herself in this action as well.

By failing to recuse herself, Ms. Kovnat has violated the following rules, codes, and statues:

Per the Ethics and Campaign Review Board Rules of Organization and Practice:

J. Board and Board Members' Responsibilities

3. As public officials, Board members must comply with all provisions of the Code of Ethics, including those prescribing conflicts of interest, as well as New Mexico case law prohibiting participation in quasi-judicial proceedings whenever the member's actions would be tainted by bias, prejudice, or partiality or give rise to the actuality or the appearance of impropriety.

Santa Fe City Charter:

Article II. Policy Statements

2.01. Code of ethics.

The proper administration of democratic government requires public officials to exercise a high degree of integrity and honesty, free from undue and inappropriate influence and further requires that government decisions and policy be made in a fair manner, guided by the best interests of the people and the community, so that the public may have confidence in its government. To effect these ends, the governing body shall by ordinance establish standards for the ethical conduct of all elected and appointed officials and all employees of the city, and provide consequences for violating such ethical standards.

N.M. Code. Jud. Cond. 21-211

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

Ethics and Campaign Review Board Rules of Organization and Practice:

J. Board and Board Members' Responsibilities

4. Due to the sensitivity of the Board's mission to enforce ethical standards, and the importance of public trust and confidence in the Board's integrity and impartiality, Board members should be mindful of the need for recusal in close or doubtful cases. Recusal of a member may be compelled on motion upheld by a majority vote of present and voting Board members.

As supporter of Alan Webber, a supporter of a partner in the law firm representing Alan Webber, and by the failure to recuse herself when necessary, it is strikingly clear that Ms. Kovnat no longer maintains the impartiality required by this Board.

Due to the impropriety or perceived impropriety between Ms. Ruth Kovnat, Mayor Alan Webber, Alan Webber for Santa Fe Campaign, and Egolf + Ferlic + Martinez + Harwood LLC, and this Board I request that Ms. Kovnat be removed from the board and all future hearings, and that Egolf + Ferlic + Martinez + Harwood LLC be banned from representing any candidates or complaints in front of this board for a period of 5 or more years. I would also call for a special investigation into all activities on this Board by Ms. Kovnat during Mayor Webber's term and ask that all Ms. Kovnat's votes and actions on this committee be reversed.

Respectfully,

Virgil Vigil

A handwritten signature in black ink, appearing to read "Virgil Vigil", written over a horizontal line.

Gilbert Romero

A handwritten signature in black ink, appearing to read "Gilbert Romero", written over a horizontal line.

AFFIDAVIT OF RUTH L. KOVNAT IN RESPONSE TO MOTION FOR DISQUALIFICATION

SOUD - CITY CLERK
17 SEP 21

I, Ruth L. Kovnat, hereby state as follows:

1. I am over the age of eighteen and competent to execute this affidavit
2. I have not donated anything of value to the mayoral campaigns of Alan Webber.
3. I have donated to Brian Egolf's campaigns for state office.
4. I have no association with the law firm of Egolf, Ferlic, Martinez + Harwood, L.L.C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Santa Fe, New Mexico, on September 14, 2021

Ruth L. Kovnat
Ruth L. Kovnat

State of New Mexico
County of Santa Fe

Subscribed and sworn to (or affirmed) before me on this 14th
day of September, 2021 by Ruth L. Kovnat
Notary Name Jennifer Telles
Notary Signature Jennifer Telles
My commission expires on 11/09/2024



**CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD**

**VIRGIL VIGIL and GILBERT
ROMERO,**

Complainant,

v.

ALAN WEBBER,

Respondent.

**RESPONDENT’S RESPONSE TO COMPLAINT AND MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

RESPONDENT ALAN WEBBER, by and through his attorneys, Egolf + Ferlic + Martinez + Harwood, LLC (Kate Ferlic and Jeff Herrera, appearing), responds to Complainant Virgil Vigil and Complainant Gilbert Romero’s (hereinafter referred to as “Complainants” collectively) Complaint for Violations of the Santa Fe Code of Ordinances.

INTRODUCTION

In all three allegations before the Ethics and Campaign Review Board (the “Board”), Complainants fail to allege facts sufficient to constitute a violation of the Santa Fe Ethics Code. The Board’s Rules of Organization and Practice read that “[a]ll complaints *must state, with particularity*, the factual basis and the specific conduct alleged to violate the particular provisions of the Code of Ethics, the Campaign Code, and/or the Public Campaign Finance Code.” Ethics and Campaign Review Board Rules of Organization and Practice, at 2-3 (emphasis added) (the “Rules”). The Rules further state that “The Board shall promptly consider whether the factual allegations, if true, establish a violation of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code. The Board . . . shall dismiss the case if the

complaint . . . [d]oes not state a violation of the Code of Ethics, the Campaign Code and/or the Public Campaign Finance Code.” *Id.* at 3.

Under this standard, where Complainants fail to allege facts that constitute a violation—even when those facts are assumed as true by the Board—the Board is required to dismiss the complaint. Here, in all three alleged violations, Complainants fail to meet this standard. Even if one were to assume the facts alleged in all three instances are true, the Complainants have failed to plead facts sufficient to constitute a violation of any provisions of the Santa Fe City Code. Where a complainant is not entitled to a remedy under any theory of the facts alleged in the complaint, dismissal is appropriate. *See Delfino v. Griffio*, 2011-NMSC-015, ¶ 12, 150 N.M. 97 (discussing comparable 12(B)(6) motions in N.M. district courts). The Complainants here have failed to plead facts that create liability for the Respondent under any provision of the Ethics Code, Campaign Code, or Public Campaign Finance Code and the Complaint should be dismissed in its entirety.

ARGUMENT

I. COUNT 1

Complainants are not entitled to relief under their first count because the Ethics Code does not apply to Respondent Alan Webber for Santa Fe campaign and because Complainants fail to allege facts establishing misconduct on the part of Respondent Mayor Alan Webber in his official capacity.

A. The Board must dismiss Count 1 against Respondent Alan Webber for Santa Fe because Complainants have alleged violation of Ethics Code provisions that do not apply to campaigns.

As stated above, Respondents are entitled to dismissal before this Board where the factual allegations—taken as true—do not constitute a violation. Complainants have cited two provisions of the Ethics Code, SFCC 1-7.7(E), concerning misuse of city resources, and SFCC 1-

7.7(H), concerning improper political campaigning. SFCC 1-7.7(E) states, “A *public official* or *public employee* shall not use city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public” (emphasis added). SFCC 1-7.7(H) states, “A *public official* or *public employee* shall not knowingly request or authorize another person to request that any subordinate of the public official or public employee make a campaign contribution or provide services to a political campaign and shall not engage in political campaigning while on duty for the city, or use city funds, supplies, vehicles or facilities to benefit or assist a political campaign” (emphasis added). Both provisions apply strictly to public officials and public employees, both of which are defined the City Code. *See* SFCC 1-7.5 (“*Public employee* means any exempt, classified, probationary, temporary, term or part-time employee of the city of Santa Fe except the municipal judge, the city manager, the city clerk, the city attorney and the members of the governing body. *Public official* means the city manager, the city attorney, the city clerk and any member of a governmental body, including the governing body.” (emphasis in original)). Respondent Alan Webber for Santa Fe is neither a public official nor a public employee, but rather a political campaign. Campaigns exist as private associations, separate from the government bodies to which they seek to elect their candidates. Per the plain language of the Ethics Code, neither provision allegedly violated is applicable to the campaign. Therefore, the campaign cannot be liable for any such violation.

B. The Board must dismiss Count 1 against Respondent Mayor Alan Webber because the facts in the Complaint do not allege that Respondent acted improperly in his official capacity.

In regard to Respondent Mayor Alan Webber, complainants fail to allege any actions the Respondent took that would be improper. The complaint states, “Mayor Alan Webber and the Alan Webber for Santa Fe campaign sent an email on 7/14/2021 advertising a ‘Cool Down’ event planned for 7/17/2021 and 7/24/2021.” Complaint Attachment, at 1. Complainants further

state, “The Mayor highlighted himself as the featured participant in City events that should not have included him.” *Id.* Finally, Complainants state, “Mayor Alan Webber and the Alan Webber for Santa Fe campaign stated the mayor’s name 5 or more times in the campaign announcement and listed him as the featured participant in the City event.” *Id.* Absent any additional facts (none were pled), these statements do not constitute violations of either provision of the Ethics Code that Complainants cite.

The factual allegations raised in the Complaint are exclusively concerned with the campaign’s advertisement of an official city event at which Respondent was a featured participant. Complainants inaccurately impute all statements of the campaign to Respondent in his official capacity. However, even when taking this factual inaccuracy as true, the allegations still do not create a cognizable claim.

SFCC 1-7.7(E) prohibits public officials from using “city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public.” SFCC 1-7.7(H) prohibits public officials from using “city funds, supplies, vehicles or facilities to benefit or assist a political campaign.” Complainants fail to allege any facts demonstrating —nor even create the implication—that Respondent used municipal resources for personal benefit or to aid the campaign. Complainants do not allege that the event was orchestrated for the purpose of campaigning, nor do they allege that Respondent’s campaign had any hand in the planning or organization of the event. Nothing in the Complaint suggests that the behavior of Respondent in his official capacity was untoward.

There is no ethical prohibition against public officials properly using city resources to create events to benefit the public. Moreover, there is no ethical prohibition against public officials attending those same events. Therefore, Complainants’ allegation redounds to the idea that a private association promoting a public event creates liability under the Ethics Code for the

public official. This is an untenable interpretation of the Ethics Code and one that is inherently contrary to the interests of government. Creating liability for public officials using private resources to promote events and opportunities open to the public would reduce the efficacy of public programs. Elected officials frequently use privately managed campaign websites, email lists, and social media accounts to communicate policy initiatives, public resources, and government-sponsored events undertaken in their official capacities. Here, the campaign created an email advertising a public event at which Respondent would be in attendance in the hopes that more families would take advantage of the event. Even if one were to impute the campaign's email to Respondent, this does not create liability under the Ethics Code. Absent an allegation that Respondent or his public office created the event for campaign purposes or made statements concerning his reelection at the event, this email does not constitute a violation of the Ethics Code. Complainants have not cited any facts to support the idea that city resources were expended for electoral purposes and an email from campaign staff who are not public employees to a privately owned email list does not change these facts to create liability under the Ethics Code.

The Board must dismiss Count 1 on the basis that the Ethics Code does not apply to Respondent Alan Webber for Santa Fe and Complainants failed to allege facts necessary to state a violation by Respondent Mayor Alan Webber.

II. COUNT 2

Count 2 should similarly be dismissed because the facts alleged against Respondent Mayor Alan Webber do not constitute a violation of the cited provision of the Ethics Code and because the Ethics Code does not apply to Respondent Alan Webber for Santa Fe.

- A. Count 2 should be dismissed against Respondent Mayor Alan Webber because the statements do not occur in a workplace context and because the statements constitute protected political speech that is not directed at any individuals.**

Complainants' Count 2 against Mayor Alan Webber should be dismissed. The cited provision of the Ethics Code prohibits workplace bullying of public employees. *See* SFCC 1-7.7(K). The statements cited in the Complaint do not constitute bullying under the Ethics Code and were not directed at public employees. The provision of the ethics code states, "A governing body member shall not intentionally bully any public employee, including the city manager, city attorney or city clerk. For purposes of this paragraph, workplace bullying means intentional behavior intended to create an abusive work environment for a public employee or public employees. Bullying behavior is behavior in the workplace that a reasonable person would find hostile, offensive, and not obviously related to the city of Santa Fe's legitimate business interests." SFCC 1-7.7(K). The statements cited in support of this Count do not constitute a violation of this provision.

Complainants cite two statements in support of the contention that Respondent Mayor Alan Webber has conducted workplace bullying. Neither statement was released by Respondent in his official capacity relating to a municipal workplace; rather, both cited statements were derived from emails sent out by Respondent Alan Webber for Santa Fe. The quote concerning "Trump MAGA operatives" was derived from a press release sent by campaign spokesperson Sascha Guinn Anderson on August 18, 2021. *See* Exhibit 1, attached hereto. The quote asserting that "MAGA and QAnon are real in Santa Fe" was released by the campaign in Alan Webber's name in his private capacity as a candidate on September 6, 2021. *See* Exhibit 2, attached hereto.

However, even if one were to impute both statements to Respondent in his official capacity, the statements do not constitute workplace bullying. The Ethics Code defines workplace bullying as "intentional behavior intended to create an abusive work environment for a public employee or public employees." SFCC 1-7.7(K). Complainants fail to plead any facts

detailing exactly how these statements released in campaign emails were intended to create an abusive work environment for any public employees. Respondent, in his official capacity, is permitted to criticize aspects of public life that he feels are detrimental to the interests of the City of Santa Fe, such as the policies and division wrought by former president Trump.

Moreover, the Complainants have failed to specify to which public employees these comments were directed. The first email names the three individuals who are the “Trump MAGA operatives” at issue: Virgil Vigil (Complainant), James Hallinan, and Eli Bransford. The second email is directed at a pseudonymous social media user who goes by the name Jay Baker. These four individuals are not public employees and Complainants have failed to plead any facts to the contrary.

The statements that complainants have cited in support of Count 2 are neither workplace bullying, nor are they directed at any public employees. Moreover, Complainants have failed to plead facts to support their claim. Count 2 should be dismissed against Respondent Mayor Alan Webber on these grounds.

B. Count 2 must be dismissed against Respondent Alan Webber for Santa Fe because the Ethics Code does not apply to campaigns.

The Board must dismiss Count 2 against Respondent Alan Webber for Santa Fe because—as with Count 1—the campaign is not a public official as contemplated by the Ethics Code. *See* Sec. I.A, *supra*. Complainants cite SFCC 1-7.7(K) as the violated provision of the Ethics Code. *See* Complaint Attachment, at 2. That provision is explicitly limited to members of a governing body. *See* SFCC 1-7.7(K) (“A *governing body member* shall not intentionally bully any public employee” (emphasis added)). Respondent Alan Webber for Santa Fe is a private association, separate from any governing body. This provision of the Ethics Code has no application here and must be dismissed against Respondent Alan Webber for Santa Fe.

III. COUNT 3

Finally, Count 3 should be dismissed because no actions taken by Respondent Mayor Alan Webber have constituted a conflict of interest as defined by the City Code and because the Ethics Code does not apply to Respondent Alan Webber for Santa Fe.

A. Count 3 must be dismissed against Respondent Mayor Alan Webber because Complainants have failed to plead facts demonstrating pecuniary gain to substantiate a conflict and because Respondent has not represented any third-party.

Complainants have failed to plead facts sufficient to constitute a conflict of interest or representation of private interest under the Ethics Code and the Count must be dismissed. Complainants cite provisions 1-7.7(M), concerning conflicts of interest, and 1-7.7(C), concerning representation of private interests, in regard to Respondent's hiring of Egolf + Ferlic + Martinez + Harwood, LLC to represent him in this and other matters before this Board. However, Complainants have failed to allege any way in which the hiring of this law firm constitutes a violation under these provisions.

The Ethics Code defines a conflict of interest as "a specific and identifiable prospect of pecuniary gain or loss, other than a gain or loss that is de minimis in amount or shared with a substantial segment of the general public, to any of the individuals or entities here listed from an official act of any public official or employee." SFCC 1-7.5. There has been no official act in relation to the hiring of this firm. Further, Respondent has not, in any way, incurred a pecuniary gain from this firm's representation, and Complainants have failed to plead any facts supporting that notion. That a member of the Board is a partner at this firm does not constitute a violation of the Ethics Code for Respondent. The ethical obligations of this firm's representation fall upon the member of the Board to disclose her position with the firm and recuse herself, which she has done in every instance involving Respondent.

Concerning representation of private interests, Complainants have entirely reversed the theory of liability. The Ethics Code prohibits a governing body member from “accept[ing] monetary compensation from a third party for consulting with, representing or advising that party” SFCC 1-7.7(C). Respondent has not represented any third-party interests before this Board. Rather, specific lawyers were retained in order to represent Respondent. Complainants have pleaded no facts supporting the notion that Respondent has accepted any monetary compensation.

Because Complainants have failed to plead any facts substantiating the claim that there has been a conflict of interest or a representation of private interests, Count 3 must be dismissed against Respondent Mayor Alan Webber.

B. Count 2 must be dismissed against Respondent Alan Webber for Santa Fe because the Ethics Code does not apply to campaigns.

Finally, as with Count 1 and Count 2, Count 3 must be dismissed because the cited provisions of the Ethics Code do not apply to campaigns. The Ethics Code requires disclosure of conflicts of interest from “public officials and public employees” and prohibits those individuals from engaging in “official act[s] or attempt[ing] to influence another person to perform official act[s] in which he or she has a conflict of interest.” SFCC 1-7.7(M). The Ethics Code further prohibits governing body members, public employees, and members of a governmental body from accepting monetary compensation from third-parties for consulting with, representing, or advising that party concerning official acts within the scope of the individual’s public authority. *See* SFCC 1-7.7(C). Here, Respondent Alan Webber for Santa Fe does not constitute a public official, public employee, governing body member, or member of a governmental body as those terms are defined in the Santa Fe City Code. *See* SFCC 1-7.5. Count 3 must therefore be dismissed against Respondent Alan Webber for Santa Fe.

CONCLUSION

For the reasons articulated above and in order to be consistent with the Board's decisions on Ethics Complaints 2021-001 and 2021-002, the Board must dismiss the Complaint against Respondent Mayor Alan Webber and Respondent Alan Webber for Santa Fe.

Respectfully submitted,

EGOLF + FERLIC +
MARTINEZ + HARWOOD, LLC

By: /s/ Kate Ferlic

Kate Ferlic

Jeff Herrera

123 W. San Francisco Street, 2nd Floor

Santa Fe, NM 87501

(505) 986-9641

Kate@EgolfLaw.com

Jeff@EgolfLaw.com

Attorneys for Respondent

Sent: Wednesday, August 18, 2021 4:22 PM

Subject: FOR IMMEDIATE RELEASE: Trump/MAGA Operatives illegally interfere in Mayoral election to support Vigil Coppler; charged with coordinating with Vigil Coppler campaign

For Immediate Release

August

18, 2021

Contact:

Sascha Guinn Anderson, Alan Webber for Santa Fe

[REDACTED]

or

[REDACTED]

Trump/MAGA Operatives

illegally interfere in Mayoral election to support Vigil Coppler; charged with coordinating with Vigil Coppler campaign

Santa Fe -

Today, the Alan Webber for Santa Fe campaign

filed an ethics complaint against Union Protectiva, VFW Post 2951, and American Legion Post 1 for illegal political activity in this year's Mayoral election. The Webber Campaign also requested that the Ethics and Campaign

Review Board investigate whether there

has been unreported coordination between these organizations and the Mayoral campaign of JoAnne Vigil Coppler.

the Martyrs and other statues, Mayor Webber stated, "I'll speak up against anyone who seeks to divide us and tear us apart. And I'll sit down with anyone who wants to work for healing and unity."

Union Protectiva has

[stated](#)

that it has \$14 million in assets and is led by known Trump MAGA operatives.

The complaint, attached, alleges that Union Protectiva, VFW Post 2951, and American Legion Post 1 have illegally engaged in partisan, political activity, in violation of state law and in the case of Union Protectiva, perhaps of federal law. All three organizations are registered nonprofit organizations. The three organizations paid for newspaper advertisements in the Santa Fe Reporter, printed yard signs, and paid for Facebook ads, all advocating for the defeat of Alan Webber. None of the three organizations registered as a political committee, required under City law.

The complaint also provides an email from Vigil Coppler from Union Protectiva President Virgil Vigil, showing potential collaboration between her campaign and Union Protectiva. Vigil is also the Treasurer for the VFW Post 2951.

The email states:

...we are pulling for you to run for Mayor and will support your run....I have received a lot of support for what we are doing to identify Webber as the worst Mayor we have seen...Once again, we are on your side and hope you run for Mayor... We need to stop people like Webber and his puppet regime Councilors from destroying our beloved City. I personally believe Webber is Anti-Hispanic (a Racist)...

"Their plan is to divide the city and incite a culture war. The MAGA cast of characters supporting JoAnne Vigil Coppler should give all Santa Feans pause," said Sascha Guinn Anderson, Campaign Spokesperson. "City voters have the right to know about the Trump MAGA operatives who are illegally working on behalf of JoAnne Vigil Coppler. We call on Vigil Coppler to repudiate these Trump operatives who are trying to tear apart the fabric of our community, and to stop relying on their help to win this election at all costs."

This cast of characters include:

-

Virgil Vigil, Union Protectiva President and VFW Post 2951 Treasurer, is a Trump Republican, who has given money to the Republican National Committee and noted MAGA extremist Steve Pearce. In his email to Vigil Coppler, Mr. Vigil states: "We even have a slogan you can use or modify against Webber "Make Santa Fe United-Again," a clear modification of Donald Trump's "Make America Great Again," or "MAGA," slogan.

-

James Hallinan is a spokesperson for Union Protectiva, vocal Trump supporter on social media, and also runs the political action committee supporting Sheriff Manny Gonzales' bid to become Mayor of Albuquerque. Gonzales' campaign is mired in controversy for fraud and



ethics complaint 3.png

427K

3:16 PM · Jun 14, 2020 from Albuquerque, NM



ethics complaint 1.png

1535K

Date: Mon, Sep 6, 2021 at 12:00 PM
Subject: [test] Is this the Santa Fe we know and love?
To: <[REDACTED]@gmail.com>

Dear [REDACTED],

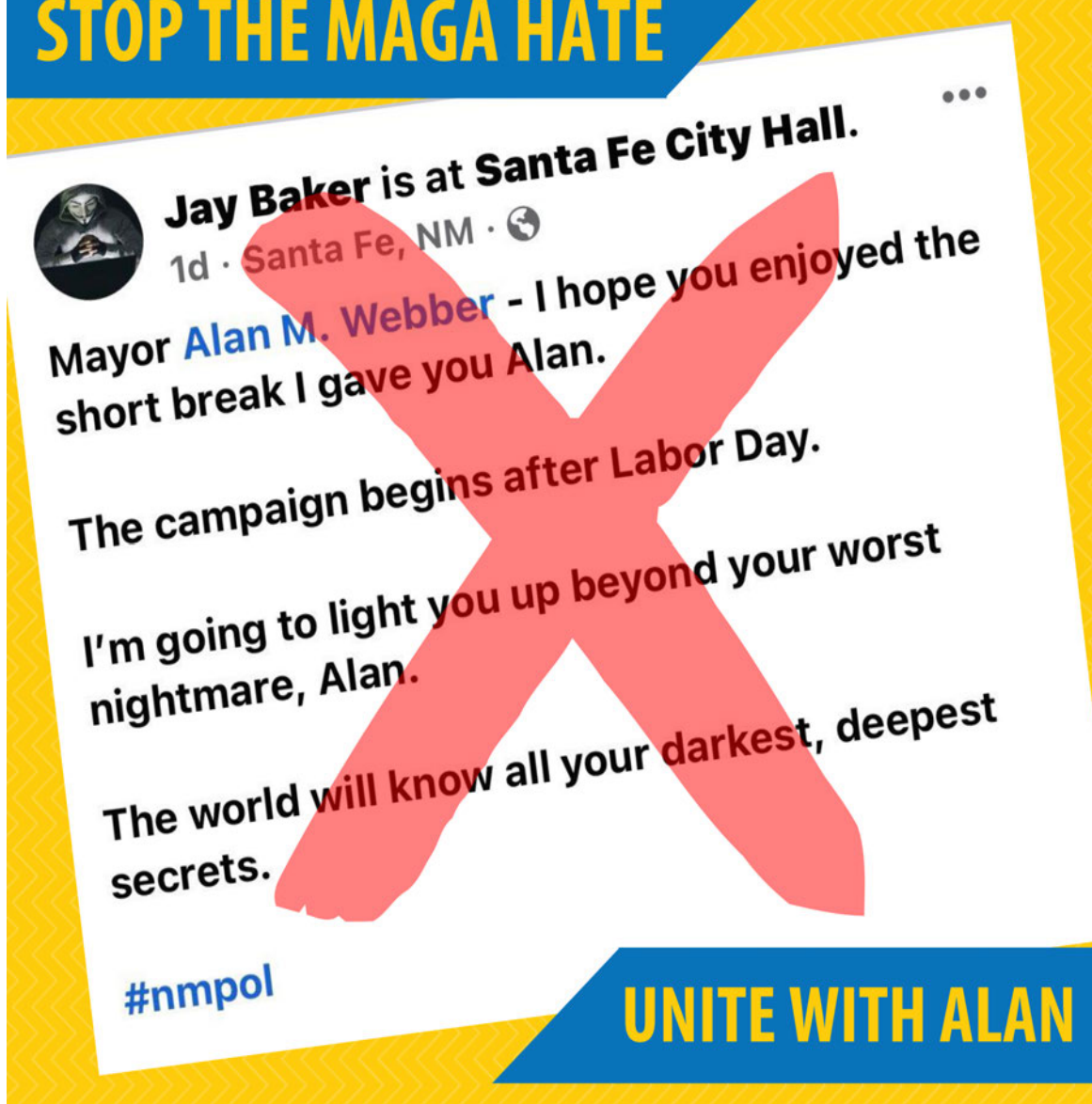
I hate to send this email now, as families are sitting down for Rosh Hashanah dinner — but I couldn't let this go unchecked.

MAGA and QAnon are real in Santa Fe, and they will stop at nothing to take over the Mayor's office.

We've seen the Trumpian MAGA conspiracy theorists promote videos that paint me as a Marxist hell-bent on destroying our community, the antisemitic cartoon depicting me with the bigoted trope of an enlarged nose, and the purported non-profits run by Trump supporters who are illegally electioneering with a QAnon sympathizer for a publicist.

And then this weekend — the anonymous Facebook account that operates under the pseudonym "Jay Baker" threatened that he was "going to light me up beyond my worst nightmare."

STOP THE MAGA HATE



Baker's anonymous account tags *Santa Fe New Mexican* reporters in each post, and some of his drivel manages to make its way into our city's paper of record. Baker never shows his or her face, hiding behind the Guy Fawkes mask worn by users of 4chan, the internet site that spawned QAnon. Baker not only attacks me, but innocent, hard-working members of my team and their families. His posts ring of QAnon conspiracies and contain wild accusations. **This isn't the first time I've been threatened by the cowardice behind this account, and it won't be the last, unless we stand up —united — against hatred and division.**

The extent of the division in our community lies not just with a hateful Facebook account: it's the burning of the artwork made by an artist of color on Guadalupe Street, the QAnon level conspiracies being peddled about my administration and allies, and even, just this weekend, [Nazi propaganda spraypainted on the wall of a Jewish Santa Fe resident](#). *We cannot stand for it.*

In community,



Alan





City of Santa Fe, New Mexico

Memorandum



Date: September 15, 2021

To: Ethics and Campaign Review Board, Quality of Life, and Governing Body

From: Kristine Mihelcic, City Clerk ^{KM}
Marcos Martinez, Senior Assistant City Attorney ^{MM}

RE: Ranked Choice Voting Tie Votes

EXECUTIVE SUMMARY:

Current City Code states that in the event of a tie for the fewest number of votes during any round of ranked choice voting, the candidate to be eliminated shall be chosen by lot. The proposed Bill changes the process by resolving the tie in favor of the candidate who received the greatest number of combined first choice votes and transferred votes during the previous state of tabulation.

The proposed bill would make the City's Code consistent with the Secretary of State's Administrative Rules on resolving ties for ranked choice voting elections. The State Rule on tie votes is codified at 1.10.14.10(B) NMAC.

ACTION REQUESTED:

Staff requests approval of the Bill as presented.

ATTACHMENTS:

Bill
Fiscal Impact Report

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2021-__

INTRODUCED BY:

Councilor Michael J. Garcia

AN ORDINANCE

**AMENDING SECTION 9-1.7 SFCC 1987 REGARDING RANKED CHOICE VOTING TO
AMEND HOW A TIE VOTE BETWEEN TWO CANDIDATES IS RESOLVED.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

**Section 1. Section 9-1.7 of SFCC 1987 (being Ord. No. 2017-26, § 1, as amended)
is amended to read:**

9-1.7 Ranked Choice Voting.

A. *Authority.* The city has the authority to enact this section under all powers possible for a city to have under the constitution and laws of New Mexico by virtue of its enactment of its charter pursuant to the provisions of Article X, Section 6 of the New Mexico Constitution, and pursuant to the New Mexico Municipal Charter Act including all implied powers and all powers necessary to implement all express powers of the city, as if each and every one of the city's implied powers were fully, completely and expressly enumerated in its charter.

B. *Definitions.* As used in this section, the following terms have the following meanings:

1 (1) *Choice* means an indication on a ballot of a voter's assigned ranking of
2 candidates (i.e., first choice, second choice, third choice) for any single office according
3 to the voter's preference.

4 (2) *Continuing ballot* means a ballot that counts towards a continuing
5 candidate.

6 (3) *Continuing candidate* means a candidate that has not been eliminated.

7 (4) *Duplicate ranking* means a voter has ranked the same candidate at
8 multiple rankings for the office being counted. The highest ranking for the candidate is
9 valid and any lower rankings of that candidate shall be ignored.

10 (5) *Exhausted ballot* means a ballot that cannot be advanced because no
11 further continuing candidates are ranked on that ballot.

12 (6) *Incorrectly marked ballot* means a ballot showing an overvote,
13 undervote, duplicate ranking, skipped ranking, or unused ranking, and shall be rejected
14 with an error message. A person who accidentally spoils or erroneously prepares the
15 ballot may return the spoiled or erroneously prepared ballot to the election judge and
16 receive a new ballot.

17 (7) *Majority of votes* means fifty (50) percent plus one (1) of the votes cast
18 for a continuing candidate.

19 (8) *Next ranked* means the highest ranked choice for a continuing candidate.

20 (9) *Overvote* means a voter has ranked more than one candidate at the same
21 ranking. If a voter gives the same ranking to more than one (1) candidate, the voter's
22 rankings shall be counted in order of preference, stopping at the point where the ballot
23 contains the same ranking for more than one (1) candidate.

24 (10) *Ranked choice voting* means an election system in which voters rank the
25 candidates for office in order of preference, and the ballots are counted in rounds that

1 simulate a series of runoffs until one candidate receives a majority of votes. Ranked
2 choice voting is also known as "instant runoff voting."

3 (11) *Round of counting or round* means a step in the counting process during
4 which votes for all continuing candidates are tabulated for the purpose of determining
5 whether a candidate has achieved a majority of the votes cast for a particular office and,
6 absent a majority, which candidate or candidates must be eliminated.

7 (12) *Skipped ranking* means a voter has left a ranking blank and ranks a
8 candidate in a subsequent ranking. If a voter skips a numerical ranking, the skipped
9 ranking will be ignored and the next indicated ranking on that ballot will be valid.

10 (13) *Undervote* means a voter did not rank any candidates for an office.

11 (14) *Unused ranking* means the voter has ranked at least one (1), but not all,
12 candidates.

13 (15) *Vote* means a ballot choice that is counted toward the election of a
14 candidate. During each round of counting, each continuing ballot contains one vote. All
15 first choices are votes and lower ranked choices are potential runoff votes that may, in
16 accordance with the requirements of this section, become votes and subsequently
17 credited for a continuing candidate.

18 C. *General Provisions.*

19 (1) Ranked choice voting elections for the offices of mayor, councilor and
20 municipal judge shall be conducted according to the procedures in this section.

21 (2) Ranked choice voting shall commence with the 2018 regular municipal
22 election and continue for all regular municipal elections thereafter unless later repealed
23 or invalidated by a subsequent federal, state or city law, statute, rule, regulation, or
24 ordinance.

25 (3) The New Mexico secretary of state must certify the software prior to the

1 use of ranked choice voting.

2 D. *Ballot.* The ranked choice voting ballot shall allow voters to rank all choices.

3 E. *Tabulation.* The ballots shall be counted in rounds.

4 (1) In the first round, every ballot shall count as a vote towards the first
5 choice candidate.

6 (2) After any round, if any candidate receives a majority of votes, that
7 candidate shall be declared the winner.

8 (3) If no candidate receives a majority of votes, the candidate receiving the
9 fewest number of votes shall be eliminated.

10 (4) Every ballot counting towards the eliminated candidate shall be
11 transferred to the next ranked continuing candidate. All the continuing ballots for all
12 continuing candidates shall be counted again in a new round.

13 F. *Ties.* ~~[In the event that two (2) or more candidates tie for the fewest number of~~
14 ~~votes, the candidate to eliminate shall be chosen by lot]~~ If a tie between candidates occurs at any
15 stage in the tabulation, the tie shall be resolved in favor of the candidate who received the greatest
16 number of combined first choice votes and transferred votes at the previous stage of tabulation.
17 If the first round tabulation results in a tie between candidates, the tie shall be resolved against
18 the candidate who received the least number of combined second choice votes.

19 G. *Severability.* The requirements and provisions of this section and their parts,
20 subparts and clauses are severable. In the event that any requirement, provision, part, subpart or
21 clause of this section, or the application thereof to any person or circumstance, is determined to
22 be impossible of performance, or held to be invalid or unenforceable by a court of competent
23 jurisdiction, it is the intent of the governing body that the remainder of the section be enforced
24 to the maximum extent possible consistent with the governing body's purpose of this Campaign
25 Code.

1 APPROVED AS TO FORM:

2



3

4 ERIN K. MCSHERRY, CITY ATTORNEY

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 *Legislation/2021/Bills/Ranked Choice Tie Votes*

FISCAL IMPACT REPORT

General Information:

(Check) Bill: X Resolution: _____

Short Title(s): Ranked Choice Tie Votes

Sponsor(s): Councilor Garcia

Reviewing Department(s): Community Development/Planning and Land Use, Finance

Staff Completing FIR: Kristine Mihelcic/Marcos Martinez Date: 9/15/21 Phone: 955-6846/955-6502

Reviewed by City Attorney: *Eric McGeary* Date: Sep 15, 2021

Reviewed by Finance Director: *Mary McGeary* Date: Sep 20, 2021

Summary:

This Bill amends the Election Code, Section 9-1.7 SFCC 1987, to revise how tie votes are resolved for candidates in a given round. The current method is to choose the candidate to be eliminated by lot. The amendments change the method to one in which the tie is resolved in favor of the candidate who receives the greatest number of combined first choice and transferred votes from the previous round.

Departments Affected:

City Clerk and City Attorney

Consequences of Not Enacting Legislation:

The current method of resolving tie votes will remain, a method that relies entirely on chance and does not take into account first choice or transferred votes from previous rounds.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

None identified.

Performance and Administrative Implications:

In the event of a tie, the City Clerk will no longer have to conduct a drawing of lots to determine which candidate is eliminated.

Fiscal Implications:

None identified.

Fiscal Impact

X Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	\$ _____	\$ _____	\$ _____		_____	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
<u>Total:</u>	\$ _____	\$ _____	\$ _____				\$ _____

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

Revenue

Revenue Type	FYE __	FYE __	FYE __	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ _____	\$ _____	\$ _____	_____	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$ _____	\$ _____	\$ _____		

Revenue Narrative:

Signature: Marcos Martinez
Marcos Martinez (Sep 15, 2021 16:31 MDT)

Email: mdmartinez@santafenm.gov

Signature: Kristine Mihelcic
Kristine Mihelcic (Sep 16, 2021 13:19 MDT)

Email: kmihelcic@santafenm.gov