



# AGENDA

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

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## 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.



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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**

<b>ITEM</b>	<b>ACTION</b>	<b>PAGES</b>
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](http://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 Protectiva, 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 10<sup>th</sup> 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 10<sup>th</sup> 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 Protectora. Also, there was an article in the Reporter saying the article was paid for by Union Protectora, 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 50<sup>th</sup> 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 28<sup>th</sup>, Tuesday, October 5<sup>th</sup>, Thursday, October 7 and Friday, October 1<sup>st</sup> 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 28<sup>th</sup>.

Board consensus is to schedule a tentative meeting on Tuesday, September 28<sup>th</sup> 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 28<sup>th</sup> 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 24<sup>th</sup> 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*

Justin Miller (Feb 15, 2022 16:09 MST)

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Justin Miller, Chair

Submitted by:

*Melissa D. Byers*

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

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