

CASE # 2021-2

Complaint Form

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

City of Santa Fe
Ethics & Campaign Review Board

Date: August 18, 2021

1. Name of person and/or group charged with alleged violation. _____
Union Protectiva, VFW Post 2951, and American Legion Post 1, all domestic nonprofit corporations based in Santa Fe, NM.

2. Please explain briefly the nature of the alleged violation. _____
Between March - July 2021, these three organizations paid for advertising that unambiguously called for the defeat of Alan Webber for Mayor, and failed to register as political committees. We believe they may also engaged in coordinated expenditures with the campaign of JoAnne Vigil Coppler.

3. Please state which specific provision(s) or part(s) of the Code of Ethics or Election Code you believe have been violated. Sections 9-2.5(B); 9-2.7(A) and (B); 9-2.8(A); and 9-2.2(K)

4. Please state the facts you have regarding the violations, including:
the date(s) March 31 through approximately July 31, 2021
the time(s) No specific time
the place(s) Advertisements in the Santa Fe Reporters on 3/31/21, 4/7/21, and 7/28/21; printing of yard signs; Facebook ads
people involved Union Protectiva, VFW Post 2951, and American Legion Post 1
other facts See attachment

5. Are there any witnesses to the violation who are willing to confirm your charge? Please list with addresses, phone numbers and what they know. _____
See attachment

6. Attach documentation of actual evidence you have to support your complaint, to this form.

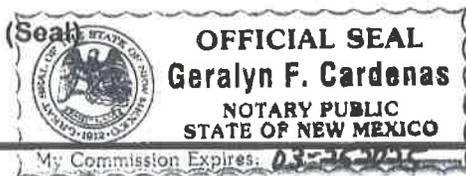
7. What is your name? Alan Webber for Mayor Campaign
8. Address? 1000 Cordova Pl PMB #232 Zip Code 87505
9. Telephone Number? 505-570-2733 Work: _____
10. Email Address? campaign@alanforsantafe.com

Received on: August 18 20 21
By: [Signature]
City Clerk's Office

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

[Signature]
Signature

Subscribed and sworn to before me this 18th day of August 20 21



[Signature]
Notary Public

1. Union Protectiva, VFW Post 2951, and American Legion Post 1 have engaged in illegal political activity.

According to the New Mexico Secretary of State's office, [Union Protectiva](#), [VFW Post 2951](#), and [American Legion Post 1](#) are each New Mexico domestic nonprofit corporations, and each [registered](#) in Santa Fe, New Mexico.

The following four exhibits are paid political ads placed by these three nonprofit organizations.

Exhibit 1: Advertisement by Union Protectiva, Santa Fe Reporter, March 31, 2021 and April 7, 2021



Exhibit 2: Advertisement by VFW Post 2951 and American Legion Post 1, Santa Fe Reporter, July 28, 2021

The destruction of the Soldiers Monument (the Obelisk) on the Plaza, the removal of the Don Diego de Vargas statue from Cathedral Park and the boarding up of the Kit Carson memorial

WHAT "CHART" REALLY STANDS FOR

C CANCELING
H HISPANIC
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T TRADITIONS

ANGER CHAOS MISINFORMATION ILLEGAL

SANTA FEAN'S
are shocked that the **MAYOR WEBBER** believes his made-up
"CHART"
- culture, history, art, reconciliation and truth -
process will proceed because it is in direct
violation of New Mexico's Prehistoric and Historic Sites
Preservation Act of 1989

PAID ADVERTISEMENT
VFW POST 2951 & AMERICAN LEGION POST 1

74 JULY 28-AUGUST 3, 2021 • SFREPORTER.COM

Exhibit 3: Yard Sign by VFW Post 2951 and American Legion Post 1, seen in late July 2021

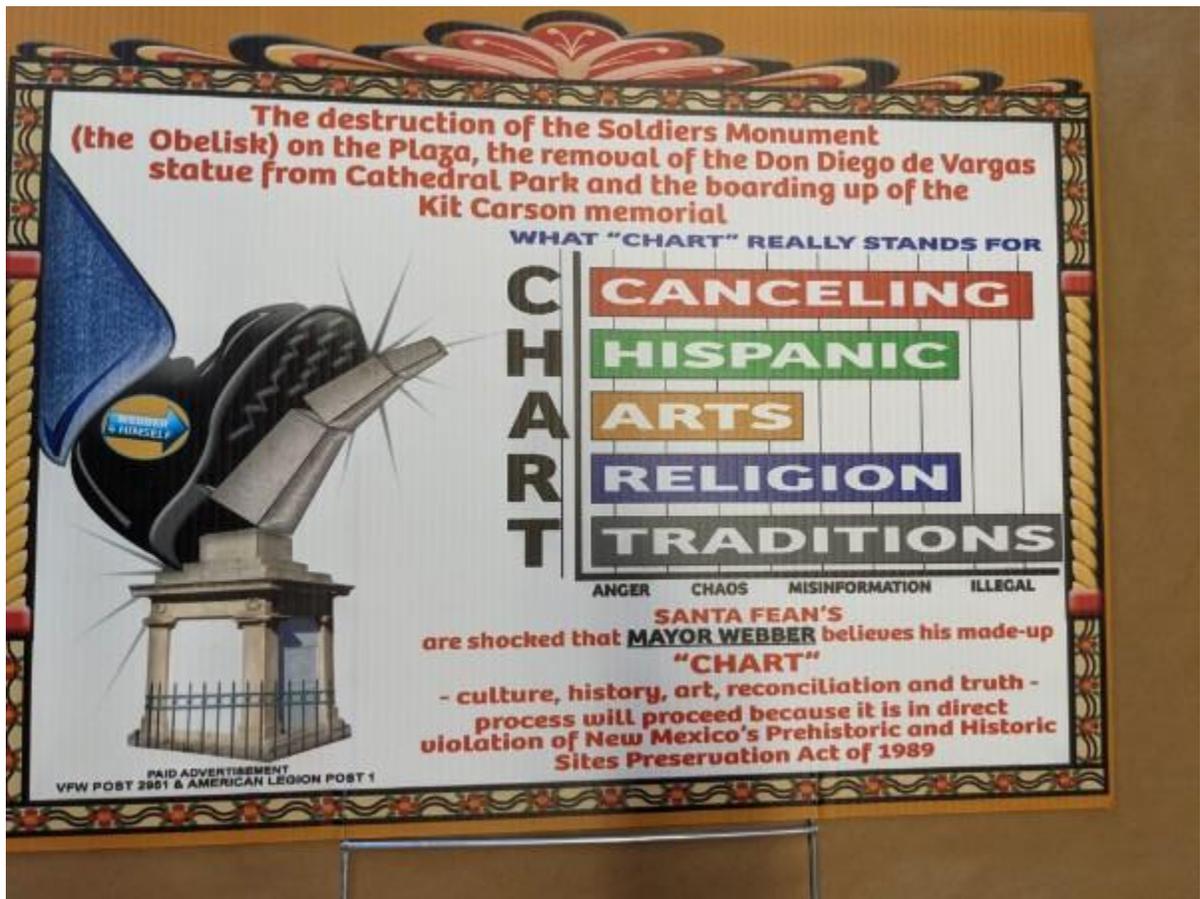


Exhibit 4: Facebook Advertisement by Union Protectiva, seen in late July 2021

**The destruction of the Soldier's Monument
(the Obelisk) on the Plaza, the removal of the Don
Diego de Vargas statue from Cathedral Park and the
boarding up of the Kit Carson memorial**

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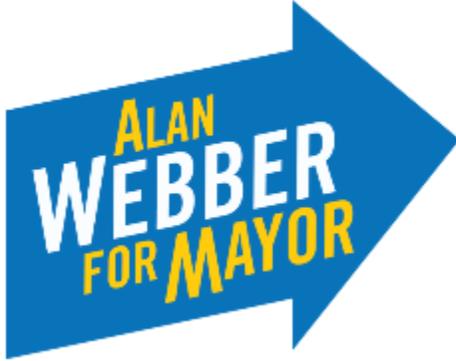
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PAID ADVERTISEMENT UNION PROTECTIVA
(505) 983-9886

Exhibit 5: 2021 Campaign Logo of Alan Webber for Santa Fe



Sections in Violation (Exhibit 1)

The Santa Fe City Code uses the phrase “expressly advocates,” but does not define the term “express advocacy”:

9-2.6 - *Independently sponsored campaign communications and reporting.*

- A. *Any person or entity that makes expenditures of two hundred fifty dollars (\$250.00) or more in the aggregate during a single election to pay for any form of public communication including print, broadcast, cable or electronic advertising, billboards, signs, pamphlets, mass mailers, mass electronic mail, recorded phone messages, organized phone-banking or organized precinct-walking, that is disseminated to one hundred (100) or more eligible voters, and that either **expressly advocates** the election or defeat of a candidate,*

However, the [Federal Election Commission](#) defines “express advocacy” as follows (emphasis ours):

“Express advocacy” means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s). There are two ways that a communication can be considered express advocacy: by use of certain “explicit words of advocacy of election or defeat” or by meeting the “only reasonable interpretation” test.

Explicit words of advocacy of election or defeat

The following words convey a message of express advocacy:

- *“Democratic nominee,” “cast your ballot for the Republican challenger for the U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ‘22”;*
- *Words urging action with respect to candidates associated with a particular issue, for example, “vote Pro-Life”/“vote Pro-Choice,” when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;*
- *“Defeat” accompanied by a photograph of the opposed candidate, or the opposed candidate’s name, or “reject the incumbent”; and*
- *Campaign slogan(s) or word(s) that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, posters, bumper stickers and advertisements that say “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush.”*

“Only reasonable interpretation” test

In the absence of such “explicit words of advocacy of election or defeat,” a communication expressly advocates when, taken as a whole and with limited reference to external events, such as the proximity to the election, it can only be interpreted by a “reasonable person” as advocating the election or defeat of one or more clearly identified candidate(s).

This test requires advocacy of a candidate that is unmistakable, unambiguous and

suggestive of only one meaning (that being the election or defeat of a candidate).

Note that the author's intent is irrelevant. The test is how a "reasonable" receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is express advocacy regardless of what the author intended.

In Exhibit 1, Union Protectiva unambiguously engaged in express advocacy, despite its nonprofit status. In its ad, Union Protectiva:

- Referred to an election in the first sentence: *"Mayor Webber of Santa Fe recently announced his reelection for a second term as Mayor,"* referencing the upcoming election on November 2, 2021.
- Stated that *"Mayor Webber [sic] job performance does not deserve a second term..."* which can have no other reasonable interpretation other than a call to unelect Mayor Webber, given the previous reference to Mayor Webber's reelection campaign.
- Stated that *"It's time to **vote for** leaders that take their hands out of their pockets,"* with an arrow pointing directly to a photograph of Mayor Webber with his hands in his pockets, another unambiguous call to "vote for" a leader other than Mayor Webber.

The cost of a full-page ad in the Santa Fe Reporter's print edition at the time of its publishing was \$1,300.00 for nonprofit and governmental entities and \$1,968.00 for commercial entities.

Union Protectiva's ad is express advocacy, meeting both the "explicit words" and "only reasonable interpretation" tests. By engaging in express advocacy, Union Protectiva has violated the following sections of Chapter IX - Election and Political Campaign Codes in the Santa Fe City Code:

- 9-2.5(B): In its express advocacy ad, Union Protectiva failed to *"conspicuously identify the name of an officer or other responsible person of the political committee sponsoring such materials."*
- 9-2.7(A) and (B): Union Protectiva failed to file as a political committee within ten days of *"The date on which it receives or has information which causes it to anticipate that it will receive contributions or will make expenditures in any election campaign."* The deadline for submitting an advertisement for the March 31, 2021 edition of the Santa Fe Reporter was March 29, 2021. Presuming that Union Protectiva needed at least one business day to write, design, receive authorization, and submit the ad and payment, the ten-day period would have ended on Friday, April 9, 2021. As of the filing of this complaint, Union Protectiva has not filed as a political committee with the City of Santa Fe. Union Protectiva would then also be in violation of subsection (B) for failure to submit the required information on its statement of organization.
- 9-2.8(A): By the same reasoning, Union Protectiva is in violation of this section for failure to

designate a campaign treasurer and list a campaign depository.

Sections in Violation (Exhibits 2, 3, and 4)

In Exhibits 2, 3, and 4, Union Protectiva, VFW Post 2951, and American Legion Post 1 sponsor the same graphic image, on a yard sign, in a Santa Fe Reporter ad, and on a Facebook advertisement. In all three cases, these organizations engaged in express advocacy, despite their nonprofit status. They:

- Included a graphic referencing candidate Alan Webber: a revised version of Webber's current campaign logo (see Exhibit 5), a clear reference to the November 2, 2021 election and Webber the candidate.
- Criticized the City's Culture, History, Art, Reconciliation, and Truth (CHART) process and Mayor Webber, stating, "Santa Fean's [sic] are shocked that the mayor believes his made-up 'CHART'...process will proceed in direct violation of New Mexico's Prehistoric and Historic Sites Preservation Act of 1989."

These exhibits by Union Protectiva, VFW Post 2951, and American Legion Post 1 are express advocacy, meeting the "only reasonable interpretation" test. These exhibits unmistakably and unambiguously suggest one meaning: that candidate Alan Webber should not be reelected to second term. If these organizations had intended to communicate their displeasure with Mayor Webber's official actions as Mayor related to the CHART process, they could easily have used his official photograph from the City of Santa Fe's [website](#) or another image from his role as Mayor. By using a clear variation of Alan Webber's campaign logo, the ads make clear that they are referring to a clearly-identified candidate and urging the defeat of that candidate.

By engaging in express advocacy, Union Protectiva, VFW Post 2951, and American Legion Post 1 have violated the following sections of Chapter IX - Election and Political Campaign Codes in the Santa Fe City Code:

- 9-2.5(B): In its electioneering ad, Union Protectiva, VFW Post 2951, and American Legion Post 1 failed to "*conspicuously identify the name of an officer or other responsible person of the political committee sponsoring such materials.*"
- 9-2.7(A) and (B): Union Protectiva, VFW Post 2951, and American Legion Post 1 failed to file as a political committee within ten days of "*The date on which it receives or has information which causes it to anticipate that it will receive contributions or will make expenditures in any election campaign.*" Exhibits 2, 3, and 4 were purchased in late July 2021. As of the filing of this complaint, Union Protectiva, VFW Post 2951, and American Legion Post 1 have not filed as a political committee with the City of Santa Fe. Union Protectiva, VFW Post 2951, and American Legion Post 1 would then also be in violation of subsection (B) for failure to submit the required information on its statement of organization.

- 9-2.8(A): By the same reasoning, Union Protectiva, VFW Post 2951, and American Legion Post 1 are in violation of this section for failure to designate a campaign treasurer and list a campaign depository.

Union Protectiva, VFW Post 2951, and American Legion Post 1 are domestic nonprofit organizations, and at least in the case of Union Protectiva, are prohibited from engaging in express advocacy. A story in the [Santa Fe New Mexican](#) on April 5, 2021 states (emphasis ours), “*Virgil J. Vigil, president of Union Protectiva de Santa Fé, said Monday he disagreed with Webber’s claims that language in the ad was false....Vigil said Union Protectiva doesn’t see the ad as political, and the organization’s bylaws prevent it from supporting any political candidates.*”

But Union Protectiva did engage in express advocacy. And as the FEC noted above:

Note that the author’s intent is irrelevant. The test is how a “reasonable” receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is express advocacy regardless of what the author intended.

Finally, the Santa Fe City Code states (emphasis ours):

9-2.2 - Purpose and intent. It is the public policy of the city of Santa Fe:

- A. That public confidence in municipal government is essential and must be promoted by all possible means;
- B. **That political campaign contributions and expenditures be fully disclosed to the public and that secrecy in the sources and application of such contributions be avoided;**
- C. **That the public’s right to know how political campaigns are financed far outweighs any right that this matter remain secret and private;** and
- D. That the public interest is served by encouraging the widest participation of the public in the electoral process by reducing the dependence of candidates on large contributions.

A [Santa Fe New Mexican article](#) stated on October 24, 2020:

Officials of Union Protectiva de Santa Fe declined to divulge details about its finances but said it is financially strong.

We could fund an [advertisement] against what’s going on in the city today every week and it won’t even make a dent on us,” [Union Protectiva President Virgil] Vigil said.

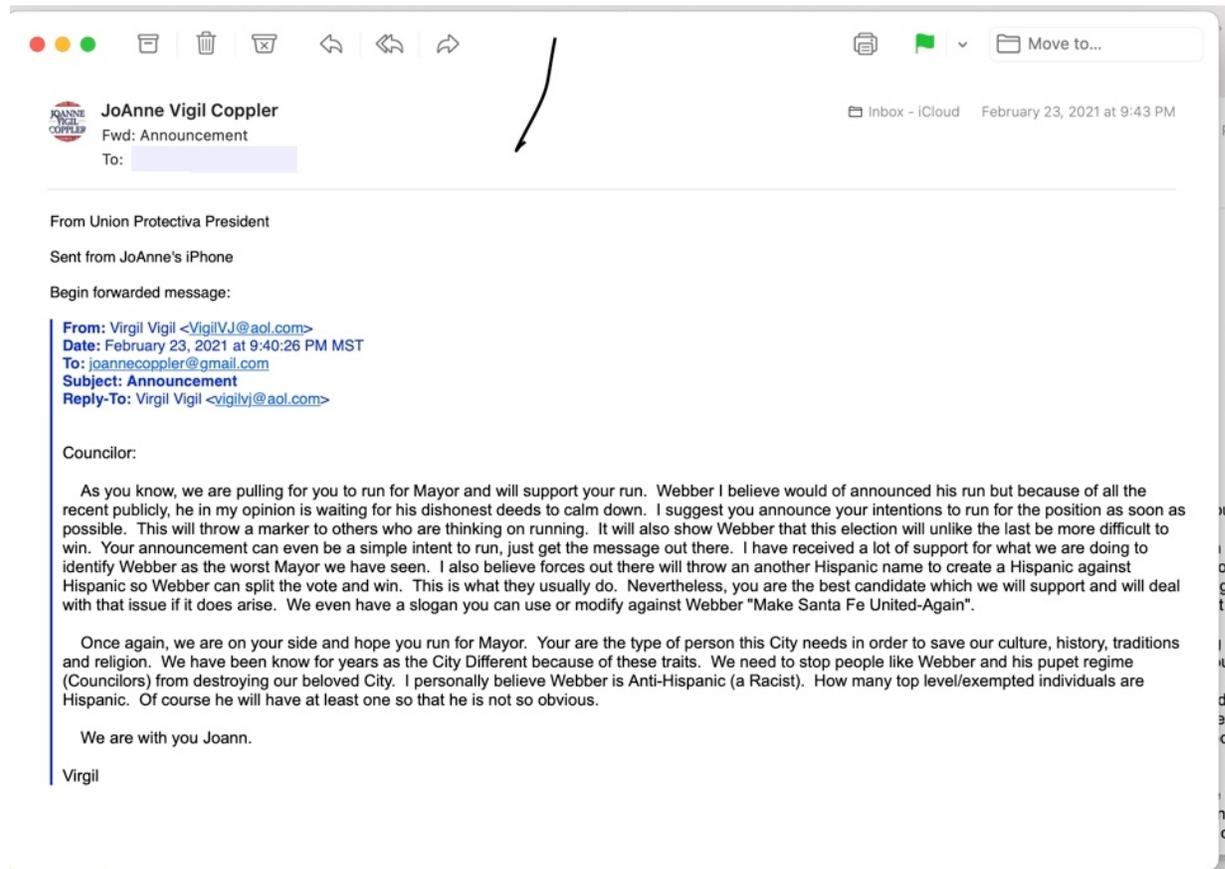
“We’ve grown a lot,” said outgoing Santa Fe County Treasurer Patrick “Pat” Varela, who has helped the organization invest its money. “I use my business skills to help the organization.”

Barela said Union Protectiva has an estimated \$14 million in real estate assets....

Union Protectiva, led by President Virgil Vigil, is a multimillion dollar nonprofit organization that has engaged in express advocacy. Union Protectiva has a responsibility to voters to disclose their contributions and expenditures related to their independent expenditures, rather than have their finances be secret and private.

2. Union Protectiva, VFW Post 2951, and American Legion Post 1 may have engaged in a coordinated expenditure or coordinated expenditures with the campaign of mayoral candidate JoAnne Vigil Coppler.

Exhibit 6: Forwarded email from Virgil Vigil, President, Union Protectiva, to JoAnne Vigil Coppler, candidate for Mayor of Santa Fe. Virgil Vigil is also the Treasurer of VFW Post 2951.



Sections in Violation (Exhibit 6)

The Santa Fe City Code defines a “Coordinated Expenditure” as (emphasis ours):

9-2.2(K). *Coordinated expenditure means an expenditure made:*

1. *By an individual or entity other than a candidate or the candidate's political committee; and*
2. *In cooperation, consultation or concert with, or at the request or suggestion of, a candidate, his/her representatives or agents or the candidate's political committee, including but not limited to, the following examples in subsections 9-2.3(K)(2)(a)—(d) SFCC 1987:*
 - a. *There has been substantial discussion between the individual or entity making the expenditure and the candidate, candidate's political committee, or his/her representatives or agents. Substantial discussion includes, but is not limited to, an exchange of campaign strategies, polling information, voter lists or any other similar information that would facilitate the election or defeat of a candidate.*
 - b. *An entity making the expenditure is directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of the candidate, candidate's political committee, or his/her representatives or agents;*
 - c. *The candidate, candidate's political committee or his/her representatives or agents has solicited funds or engaged in other fundraising activities on behalf of the person or entity making the expenditure during the twelve-month period preceding the date of the expenditure. Fundraising activities include, but are not limited to, exchanging names of potential donors or other lists to be used in engaging in fundraising activity, regardless of whether or not the individual or entity pays fair market value for the names or lists provided; or being a featured guest or speaker at a fundraising event for the benefit of the entity making the expenditure.*
 - d. *If the individual or entity making the expenditure has employed, has in a leadership position, or has accepted a donation of the campaign related professional services of any person, who, during the twelve-month period preceding the date of the expenditure, has been an employee of, has advised, or provided or is providing services to the candidate or candidate's political committee. These services include, but are not limited to, any services in support of the candidate's or candidate's political committee's campaign activities, such as advertising, message, strategy or policy services, polling, allocation of resources, fundraising or campaign operations.*
 - e. *An expenditure is not a coordinated expenditure solely because:*
 - i. *The individual or entity and a candidate or candidate's political committee use the same vendor to provide polling services,*

printing or distribution services or physical space, provided that the vendor has in place prior to the expenditure a firewall to ensure that there is no exchange of information between the individual or entity and the candidate or campaign committee. Evidence of an adequate firewall is a vendor's formal written policy or a contractual agreement with the vendor prohibiting the exchange of information between the individual or entity and the candidate or candidate's political committee, which policy or contract is distributed to all relevant employees, consultants, and clients affected by the policy or contract. The firewall shall be designed and implemented to prohibit the flow of information between employees and consultants providing services to the individual and entity and to those currently or previously providing services to the candidate or candidate's political committee. Coordination will be presumed in the absence of such a firewall; or

- ii. The individual or entity making the expenditure interviews a candidate; has endorsed a candidate; has obtained from the candidate a biography of the candidate or a position paper, press release, or similar material about the candidate; has invited the candidate to make an appearance before the person's members, employees or shareholders; or has shared space with a candidate or candidate's political committee for one (1) or more single events of limited duration.*

Mr. Vigil states in his email to Ms. Vigil Coppler that:

...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...

He further discusses strategy with Ms. Vigil Coppler, suggesting that she:

...announce your intentions to run for the position as soon as possible. This will throw a marker to others who are thinking on running...We even have a slogan you can use or modify against Webber "Make Santa Fe United-Again."

To be considered a "coordinated expenditure," (9-2.2(K)) an expenditure must:

- Be made by an individual or entity other than a candidate. Union Protectiva, VFW Post 2951, and American Legion Post 1 each meet that definition.
- Be made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his/her representatives or agents or the candidate's political committee. We

believe, based on Exhibit 6, that Mr. Vigil may have cooperated, consulted with, worked in concert with, or acted at the request or suggestion of Ms. Vigil Coppler and or representatives of hers.

It is worth noting that Mr. Vigil, in addition to serving as President of Union Protectiva, is also treasurer of VFW Post 2951.

3. Requested Remedy

We respectfully request that the Ethics and Campaign Review Board consider the following remedies, at a minimum, should it determine that Union Protectiva, VFW Post 2951, and/or American Legion Post 1 are guilty of the complaints outlined above:

- Require VFW Post 2951/American Legion Post 1 to remove all yard signs that are out in community; 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
- Require Union Protectiva, VFW Post 2951, and/or American Legion Post 1 to file as a political committee so that they are required to disclose their donors and expenditures related to this municipal election; AND
- Determine, based on the initial email and any subsequent emails between Mr. Vigil and Ms. Vigil Coppler, whether Exhibits 1, 2, 3, and/or 4 were coordinated expenditures made by Union Protectiva, VFW Post 2951, and/or American Legion Post 1 with the campaign of Ms. Vigil Coppler. If the Board finds that these expenditures were coordinated, than the Board should assess whether Ms. Vigil Coppler filed as a political committee within ten days of the coordinated expenditure; whether she reported these coordinated expenditures; and whether she violated any applicable contribution limits.