

CRONY CAPITALISM, CORRUPTION AND THE ECONOMY IN THE STATE OF NEW MEXICO

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EXECUTIVE SUMMARY

The Committee for Economic Development (CED)—a Washington, DC-based non-profit, nonpartisan business-led public policy organization—recently released a study outlining their concerns about the rise of crony capitalism in American politics (CED 2014). The term refers to the unhealthy relationship between some private interests (e.g. business, anti-business interests, professions, and social groups) and government. Deals are struck that reward winners on the basis of political *influence* rather than *merit*. Like Olson (1982), Coates and Heckelman (2003a, 2003b) and others (e.g. Knack and Keefer 1997), the CED argues that such deals inhibit the productive reallocation of society's resources and reduce innovation and economic growth. Examples of such deals include cash subsidies, tax preferences, earmarked appropriations, no-bid contracts, and regulatory and trade protection. They can be crafted to benefit virtually any sector of the economy, and though each alleged deal has its defenders—else it would not exist—the list of questionable private sector-government interactions is long. The goal of the CED report is to raise awareness nationally of the concern surrounding this trend in an effort towards rebuilding Americans' confidence in a more sustainable system of capitalism.

The purpose of this paper is to examine crony capitalism in the state of New Mexico. Our focus is on the relationship between business and government, primarily because the private sector is integral to a state's economic growth. Furthermore, New Mexico is an interesting case to examine crony capitalism due to the state economy's heavy reliance on public funding. Indeed, New Mexico's economy is more dependent on the federal

government than any other state in the nation. Because so much of the state's economy is dependent on public funds, the potential for crony capitalistic behavior is high. Sadly, New Mexico continues to score near the bottom of reputable watchdog and political reporter state corruption indexes, and has been rocked by a number of high profile corruption cases in recent years. The most recent—occurring only weeks before the release of this report—involves former Secretary of State Dianna Duran, who resigned from office and accepted a plea deal related to charges of fraud, embezzlement, money laundering, and other crimes related to allegedly converting thousands of dollars in campaign contributions to her personal use in 2013 and 2014.

Using the CED's national study as a guide, the purpose of this project will be threefold: (1) to examine the conditions that create the potential for crony capitalism in New Mexico; (2) to conduct brief studies of cases where crony capitalistic behavior seemed to be present; and (3) to suggest policy reforms to lessen the potential for crony capitalism. **We argue, first, that crony capitalism in the state of New Mexico is defined mostly by rent extraction rather than rent seeking.** The long history of political corruption in the state, coupled with its refusal to enact rule changes that discourage corrupt behavior, has created incentive structures that all but force the business community to engage in crony capitalistic behavior.

Second, we argue that crony capitalism is not a binary condition; rather, it exists along a continuum. Some private-public sector relationships, like some **tax subsidies**, are legitimate policy choices that can, under the right conditions, successfully grow the economy. Others, like **predatory lending practices**, clearly benefit only a small section of society while spreading significant economic costs to the general public. Still others, like **pay-to-play scandals**, are illegal and corrupt, and have tremendous short and long-term economic costs on the state.

To combat crony capitalism, we recommend three actions:

1. **Require Greater Disclosure.** A prerequisite for holding public officials accountable is providing **full and free access to relevant information**. In the case of crony capitalism, this means full disclosure of campaign contributions and lobbying activity. Disclosure empowers public oversight and accountability in the government decision-making process. The state should (a) require donors to disclose their employers; (b) require lobbyists to disclose the bills and issues on behalf of which they lobby; (c) amend the Campaign Reporting Act of New Mexico to compel public disclosure of all possible information about the campaign spending of political action committees (PACs) and other non-candidate campaign participants without crossing the constitutional boundaries established by the court; and (d) improve online access to campaign finance and lobbying information.
2. **Establish an Ethics Commission.** Ethics commissions have long been believed to be an important tool in curbing abuses in government (see Smith 2003). Currently, New Mexico is one of only eight states that does not have an ethics commission. We

believe establishing such a commission would have a positive effect on confidence in the New Mexican political system.

- 3. Conduct Regular and Rigorous Evaluations of Tax Subsidy Programs.** New Mexico issued 860 subsidies between 2011 and 2013 for a total of \$262,699,040. New Mexico should follow the lead of other states such as Alaska, Florida, Indiana, Louisiana, and Maryland and pass a law that charges an appropriate committee or agency (likely in either the legislative or executive branch, or both) with conducting a regular and rigorous evaluation of these programs. The programs need to be studied often enough to provide policymakers with up-to-date information, while allowed the time to produce thorough, detailed studies.

Finally, and most important, is our belief that high public corruption and cronyism is a key reason for New Mexico's lackluster economic growth (ranked by *Business Insider* as 49 out of 50).¹ This belief is grounded in the well-established evidence from international- and state-level research discussed below. **The lesson is clear: if New Mexico is to ever recapture the economic vitality it experienced as a key terminal along the Santa Fe Trail, Camino Real and, later, Route 66, it must root out cronyism and corruption in its state government.**

¹ See Kiersz and Holodny (2014), available at <http://www.businessinsider.com/ranked-the-50-us-state-economies-2014-8?op=1> (Accessed September 7, 2015)

CRONY CAPITALISM, CORRUPTION AND THE ECONOMY IN THE STATE OF NEW MEXICO

In *The Rise and Decline of Nations* (1982), noted economist Mancur Olson argued that interest group politics hurt economic performance. His logic was simple. First, interest groups that represent *small* constituencies are more likely to emerge than organizations that represent *large* constituencies, such as consumers or taxpayers.² Second, these small interest groups will lobby for preferential policies, imposing disproportionate costs on the rest of society. Over time, “distributional coalitions” between small interest groups and government impede economic growth and development. Prominent studies in political science and economics have since supported his argument, particularly in stable, economically developed democracies such as the United States (e.g. Coates and Heckelman 2003a, 2003b; Heckelman 2000).³ Economists Dennis Coates and Jac Heckelman (2003a) sum up Olson’s argument best: interest groups, in effect, “fight to carve up the economic pie to the detriment of growth of the pie” (Coates and Heckelman 333).

In line with Olson’s idea, the Committee for Economic Development (CED)—a Washington, DC-based non-profit, nonpartisan business-led public policy organization—recently released a study outlining their concerns about the rise of crony capitalism in America politics (CED 2014). The term refers to the unhealthy relationship between some private interests (e.g. business, anti-business interests, professions, and social groups) and government. Deals are struck that reward winners on the basis of political *influence* rather than *merit*. Like Olson (1982), Coates and Heckelman (2003a, 2003b) and others (e.g. Knack and Keefer 1997), the CED argues that such deals inhibit the productive reallocation of society’s resources and reduce innovation and economic growth. Examples of such deals include cash subsidies, tax preferences, earmarked appropriations, no-bid contracts, and regulatory and trade protection. They can be crafted to benefit virtually any sector of the economy, and though each alleged deal has its defenders—else it would not exist—the list of questionable private sector–government interactions is long. The goal of the CED report is to raise awareness nationally of the concern surrounding this trend in an effort towards rebuilding Americans’ confidence in a more sustainable system of capitalism.

To date, examinations of the relationship between crony capitalism and economic growth have been limited to either cross-national comparisons (e.g. Olsen 1982) or the U.S. Federal Government (CED 2014). The purpose of this paper is to extend the crony-

² This idea is consistent with Olson’s own landmark research on “collective action problems” (Olson 1965), which is the tendency for individuals not to engage in joint action to accomplish a common goal.

³ See also Knack and Keefer (1997) and Knack (2002) for similar detrimental effects between “social capital” interest groups and economic growth.

capitalism logic to the state level. Our analysis is limited to one outside interest, the business community, in one state, the state of New Mexico. We focus on the business-government relationship because the private sector is integral to a state's economic growth.⁴ Furthermore, New Mexico is an interesting case to examine crony capitalism due to the state economy's heavy reliance on public funding. Indeed, New Mexico's economy is more dependent on the federal government than any other state in the nation.⁵ And many of the state's largest employers (e.g. the state of New Mexico, the University of New Mexico, New Mexico State University, Albuquerque Public Schools, and public hospitals) are funded directly through public dollars. Because so much of the state's economy is dependent on public funds, the potential for crony capitalistic behavior is high. Sadly, New Mexico continues to score near the bottom of reputable watchdog and political reporter state corruption indexes, and has been rocked by a number of high profile corruption cases in recent years.⁶

Using the CED's national study as a guide, the purpose of the New Mexican project will be threefold: (1) To examine the conditions that create the potential for crony capitalism in New Mexico; (2) to conduct brief studies of cases where crony capitalistic behavior seems to be present; and (3) to suggest policy reforms to lessen the potential for crony capitalism. **We argue, first, that crony capitalism in the state of New Mexico is defined mostly by rent extraction rather than rent seeking.** The long history of political corruption in the state, coupled with its refusal to enact rule changes that discourage corrupt behavior, has created incentive structures that all but force the business community to engage in crony capitalistic activity through demands made of them. Second, we argue that crony capitalism is not a binary condition; rather, it exists along a continuum. Some crony capitalistic examples, like some tax subsidies, are legitimate policy choices that can successfully grow the economy while others, like pay-to-play demands, are illegal and can hurt economic growth.

The paper proceeds in the following way: First, we define the relationship between campaign contributions from the economic sector and political behavior in government.

⁴ Our intent is not to suggest that crony capitalism is limited to interactions between business and government. While government is always involved, non-business interests (e.g. labor and professional groups) also routinely engage in the behavior. Such interactions are so widely and deeply rooted in American politics that political scientists have long referred to it as the "iron triangle" (e.g. Gais, Peterson and Walker 1984). We emphasize that U.S. business, operating under capitalism, has over the long term produced tremendous improvements in income and living standards for the U.S. population at large.

⁵ See Kiernan (2015) available at <http://wallethub.com/edu/states-most-least-dependent-on-the-federal-government/2700/> (accessed on April 13, 2015).

⁶ For New Mexico's corruption scores, see http://www.stateintegrity.org/new_mexico and <http://ethics.harvard.edu/blog/measuring-illegal-and-legal-corruption-american-states-some-results-safra> (accessed on April 13, 2015).

Second, we examine three cases in New Mexico that illustrate the complex relationship between business and government: pay-to-play scandals, predatory lending, and tax incentives for businesses. Third, we conclude with suggestions for policy change.

CRONY CAPITALISM: AN INTRODUCTION

The relationship between influential interest groups, such as businesses, and government is well established by political pundits (e.g. Broder 2001), political scientists (e.g. Wright 2002), and even political officials themselves (e.g. McCain 1999). Their relationship is predicated on the exchange of influence. On the one hand, interest groups seek governmental policy change or favors (e.g. governmental contracts) beneficial to their members, and they need political officials to accomplish this goal. On the other hand, politicians seek reelection and need interest groups' valuable resources (most importantly, voters and money) to do so.⁷ Thus, elected officials trade their influence over governmental resources for interest groups' influence over important electoral resources.

The tight relationship between interest groups and government is not necessarily bad for democracy or economic development. On the contrary, noted political theorists such as David Truman (1951) and Robert Dahl (1961) argued that this relationship is an important component of the political process, and a mechanism for average citizens to receive adequate political representation. The American political system, they observed, is pluralistic, defined by interest groups' competition over scarce public resources. As long as the political system is open, inclusive, and competitive (Dahl 1971), groups of all types and sizes can limit the power of elite groups through institutions such as regular and free elections.

Unfortunately, even the casual observer of politics is likely to note that the current American political system has fallen well short of this ideal. One of the arenas in which this failure is most evident is in the economic sector, where the relationship between elite businesses and government is often far from open, inclusive, and competitive. This is the essence of crony capitalism; the government rewards some business interests—usually the most powerful—based on those groups' degree of access to, or level of influence on, elected officials, as opposed to merit. This can often have negative consequences for the greater good. Take the 2008 financial crisis as an example. Economists and journalists alike have outlined how the U.S. government established the conditions under which the banking industry was allowed to engage in questionable lending practices that, while in

⁷ Political scientists—most notably David Mayhew (1974) and Richard Fenno (1973)—claim elected officials have three goals: pass good public policy, increase their influence in office, and win reelection. Getting reelected is considered to be the most important goal (some claim it is the *only* goal) because you cannot accomplish the other two goals without first winning reelection.

the short term created economic growth, eventually led to economic calamity (e.g. Lewis 2010; Rajan 2010; Blinder 2014).

Events such as the 2008 crisis underscore the public's growing skepticism with what they see as a system that benefits the few at the expense of the many (e.g. Newport 2015). The public is coming to believe that the economic success that other citizens enjoy increasingly arises from close relationships between private interests and their lobbyists, on the one hand, and government officials on the other, perhaps best illustrated by their general distrust in the banking industry (see Wood and Berg 2011). Indeed, even business leaders themselves view the system as unfair (CED 2015). These are important trends, as consumer confidence has long been cited as a key determinant of economic activity and performance (e.g. Keynes 1936; Greenspan 2002).

The danger is that the public's perception of crony capitalism may bleed into an indictment of capitalism itself. Although American capitalism enjoyed particularly strong public support in the golden post-war economic growth years from 1945 to the early 1970s, there is reason to believe that support has been eroding since, particularly in the wake of the 2008 financial crisis.⁸ Three basic reasons might explain that erosion. The first is that American economic growth has not continued at the extraordinary pace of those fortunate early post-War years.⁹ The second is that the gains from economic growth are now widely seen to be increasingly unevenly distributed.¹⁰ The third—which many believe is an important cause of the first two—is that policy decisions are coming to be viewed by the public as reflecting the preferences of the connected and organized few rather than those of the general public (see Sorkin and Thee-Brenan 2011). Deterioration of public support for capitalism for all of these reasons contributes to the demoralization of the citizenry and the difficulty of solving America's problems, including increasing economic growth – and so to some extent these problems grow through a vicious cycle and are self-perpetuating. Thus, slowing economic growth and crony capitalism are to some degree mutually reinforcing.

The weakness in the recent performance of the U.S. economy has included slower growth of aggregate output, labor productivity, and median household income. And while those

⁸ See, for example, Globescan (2011) available at <http://www.globescan.com/news-and-analysis/press-releases/press-releases-2011/94-press-releases-2011/150-sharp-drop-in-american-enthusiasm-for-free-market-poll-shows.html> and Pew Research Center (2012) available at (<http://www.pewglobal.org/2012/07/12/pervasive-gloom-about-the-world-economy/>) (Accessed August 20, 2015).

⁹ See the Bureau of Economic Analysis for historical national data (http://www.bea.gov/iTable/index_nipa.cfm) (Accessed August 20, 2015).

¹⁰ See Gallup Poll's analysis at http://www.gallup.com/poll/182987/americans-continue-say-wealth-distribution-unfair.aspx?utm_source=economic%20fair&utm_medium=search&utm_campaign=tiles (Accessed August 20, 2015).

adverse trends have worsened the absolute status of typical U.S. households, the conspicuous display of rapidly rising incomes among a small proportion of the public has compounded the popular frustration.¹¹ In the public mind, these trends seem to be connected; the standard of living of the typical citizen is advancing slowly by historical standards, while a few are doing well. The public views this game as rigged, with the results pre-programmed to favor some over others. Crony capitalism is a major reason why.

DEFINING CRONY CAPITALISM

The greatly expanded role of government in the U.S. economy since the Industrial Revolution has substantially increased the number and magnitude of interactions between business and government. Many such interactions are necessary and healthy, and benefit the overall U.S. economy and general welfare. The broadening interface between government and the economy has legitimately led business to take action to defend itself against instances of undue government intrusion and regulation. At the same time, however, it has provided strong incentives for private-sector interests—*both business and non-business*—to attempt to influence government decisions to their advantage, often at a substantial cost to overall economic efficiency. It is this latter sort of private sector–government activity that has been of particular concern to many of the critics of capitalism on both sides of the political spectrum.

How can we distinguish the harmful government interventions in the economy from the necessary and constructive?

As just noted, some interactions between business and government are necessary and healthy. From the time of Adam Smith, most economists have believed that the market yields the best (indeed, optimal) outcomes. However, markets are not always perfect, and when they are not, public policy must intervene if the economy is to attain—or sometimes just to approach—optimal outcomes. But when government intervenes effectively in such a fashion, we can have good public-private “deals.”

The first textbook example of an imperfection in a market (sometimes called a “market failure”) is monopoly. Markets yield efficient outcomes if there are many producers, so that none has market power. But if there is only one producer (or merely too few to make a competitive market), the seller can restrict supply and extract excess profits from consumers, thus reducing society’s welfare. Government would need to restore competition, which inevitably is easier said than done.

There are many other examples. If a producer cannot reap the full reward of its efforts, it will produce too little. Hence, the textbook says that basic research and development (R&D – sometimes “research and experimentation,” or R&E) must be subsidized, or even undertaken directly or indirectly by government, if the nation is to invest enough in vital new ideas. (Policy analysts refer specifically to *basic* research, which has broad application rather than contributing to taking a specific product to market.) This is an

¹¹ See the CED’s 2015 report for detail.

example of a “public good,” where the benefits of production or consumption “spill over” to the public at large, such that “free riders” can enjoy the benefit without paying. National defense is another clear example of a public good.

A further example of negative externalities is pollution. A factory that generates dangerous by-products might cheaply dispose of them by dumping them in an adjacent river. Then, they are the problem of the metaphorical town downstream.

Still, there is relatively broad acceptance that markets work and should be allowed to work whenever possible. This can apply even in some instances of market failure, such as the pollution example, where market-oriented solutions might be better than hard-and-fast regulation. Outright regulation might require an exceedingly costly alternative disposal system, whereas a market-oriented fee based on the concentrations of harmful pollutants might allow the use of an inexpensive filter that removes such a high percentage of the contaminants that the problem is for all practical purposes solved. In some instances, everyone, including consumers, as well as producers, could be better off with a market-based solution to such a market failure.

The challenge is determining precisely whether any particular situation constitutes a market failure. Because perfectly competitive markets are extremely rare, we must judge real-world markets based on relative degrees of imperfection, not by clear and absolute standards. Often one might conclude that there is a significant market failure, but that none of society’s relatively blunt public-policy instruments would solve the problem without causing even worse collateral damage. And one person’s perceived monopoly or oligopoly power, for example, is another person’s hard-earned success and profitability in a competitive market. Such judgments are sometimes cut along fairly well-defined partisan lines; for example, some might look for monopoly power in our economy first in terms of labor and union organization, rather than few and powerful businesses in a particular industry.

Thus, our crucial issue of crony capitalism is, for all of its importance, not clear-cut. Just as market failure is to a considerable degree in the eye of the beholder, it follows that crony capitalism is a matter of judgment. Because market failure can require government intervention in the economy, crony capitalism cannot be defined as *any and every* government intervention. Rather, crony capitalism would constitute government intervention *not* justified by market failure, but rather as part of a pursuit of a *purely private* interest through some subsidy (whether delivered through public spending or as a tax preference) or some regulatory protection against fair competition.

A consequential characteristic of bad public-private deals is that they are negative-sum uses of a state’s resources. A government intervention that effectively addresses a market failure may not make *every* interest in society better off, but it makes society *as a whole* better off. Thus, in the pollution example, creating a deal under which dumping is appropriately reduced in severity creates larger gains for the heretofore victims than it imposes costs on the polluters. In theory, the victims can compensate the regulated polluters out of those larger gains, and everyone can be better off. Some “crony deals” might be true and precise zero-sum transactions – for example, a dispute over which interest gets to use an economic resource (perhaps which bidder gets a concession to

operate a restaurant location on a limited-access public highway), where the economic consequences would be identical whichever bidder wins. However, a truly bad crony deal might prevent an innovator from challenging an incumbent business with a new and superior technology. In that instance, deprived of additional competition and innovation, society as a whole is *worse off* – even though the protected interest may be *better off*. If an incumbent interest can in that fashion protect an inferior way of doing things merely to safeguard its own advantaged position, we have a crony deal at its worst.

Furthermore, even though the concept of crony capitalism cannot properly be extended to all interventions into government policy, it should embrace improper interventions from whatever source. Thus, although interventions by business to pursue the benefits of “corporate welfare” are perhaps raised most commonly, there can be equal ill effects on the performance of the economy from unjustified interventions from any interest – including (among those sometimes mentioned) labor, the tort bar, and particular subgroups of the population. Some improper interventions seek benefits for business, or segments of the business community; some seek to hinder business for the perceived benefit of other groups. Public-private deals cannot be judged by their source, but only by their merit; and judgments inevitably will differ from one observer to the next.

Thus, bad crony deals do not come with indelible bar codes to identify them. If challenged, even a bad crony deal will be defended by the interests that profit from it. However, we can say that under the best unbiased analysis, a bad crony deal will be found *not to address any true market failure*, and it will *fail a society-wide cost-benefit test*. Unfortunately, this is no easy answer to the problem of combating crony capitalism; it is an endless series of judgment calls and public-policy puzzles. For example, no one can know precisely the benefits of future competition; and so no one can know the *costs* of a bad public-private deal that forestalls *future* competition. Any judgment on this point will be subjective, and will be challenged.

Today, the broader interface between an expanded government and, particularly, large business enterprises encourages many private-sector attempts to influence government policy. These efforts have taken many forms, as have been catalogued in the following list by researchers at George Mason’s Mercatus Center (Mitchell 2012):

- Obtaining exemptions from legislation or securing the passage of legislation to provide targeted benefits;
- effecting regulatory changes, exemptions from regulation, or regulations that discourage new or small competitors;
- obtaining targeted tax breaks or modification of tax penalties;
- securing direct or indirect subsidies;
- obtaining tariff or quota protection from foreign competition;
- gaining access to bailout funds or loan guarantees; and
- securing benefits from non-competitive bidding.

Besides the CED's 2015 federal report, no comprehensive studies are available as to the aggregate economic cost of unjustified private-sector and government interaction. The goal of this paper is to illustrate the distortionary effect of such public-policy activity at the state level, and we use the state of New Mexico as our case study.

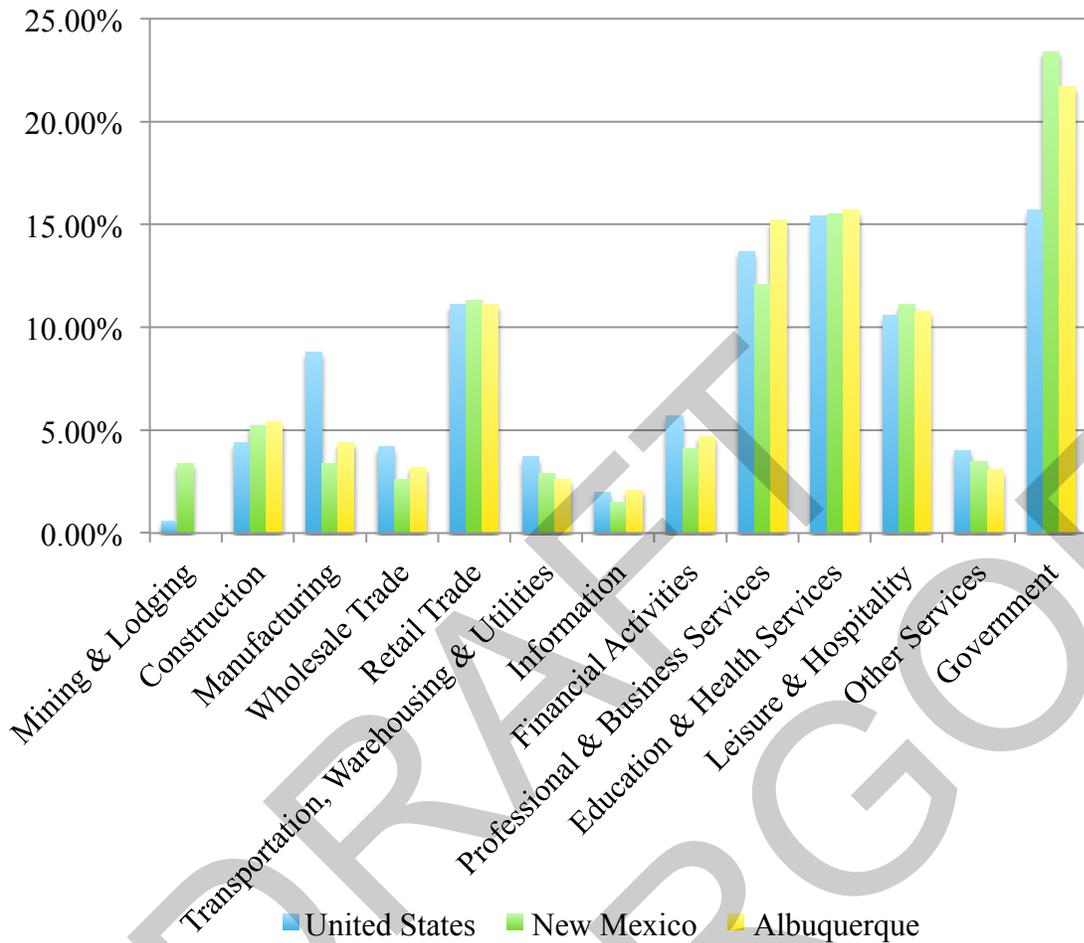
WHY NEW MEXICO?

For a variety of reasons, the state of New Mexico provides a unique and illustrative case for identifying the potential for, and illustration of, crony capitalism.

Dependence on Government Spending. Perhaps more than any state in the nation, New Mexico's economy is driven by public dollars. Its largest employer is the government, which constitutes about one quarter (23%) of its total non-farm employment. As shown in Figure 1 (next page), this is well above the 16% national average. Its second highest employer is education and health services, much of which is also publicly funded. Indeed, public schools are among the largest employers in the state. This includes stated funded employers such as the University of New Mexico (second only to the government as the state's largest employer), the Albuquerque Public School system, and New Mexico State University. It also includes federally funded employers, such as two U.S. Energy Department funded national laboratories, Sandia and Los Alamos, and three large military bases. WalletHub.com, a reputable online economic resource for consumers and small business, recently ranked New Mexico as the nation's most dependent state on federal dollars. According to their 2015 analysis, 38% of the state's revenue stems from federal subsidies, which is higher than 41 other states. Furthermore, nine civilian (non-military) employees out of 1,000 residents are federal employees, with only Maryland and Alaska averaging more.¹²

¹² See Kiernan (2015) available at <http://wallethub.com/edu/states-most-least-dependent-on-the-federal-government/2700/#main-findings> (Accessed June 29th, 2015).

Figure 1: New Mexico Employment by Industry



Source: U.S. Bureau of Labor Statistics and New Mexico Department of Workforce Solutions

Economic research shows that the bigger a government’s economic power or influence – e.g. how much it spends or regulates – the greater the potential for crony capitalism. According to Holcombe (2013), the literature describes three key components of crony capitalism: rent seeking, or when businesses seek favors from government in return for political support (e.g. Tullock 1967; Kornai 1986; McChesney 1987, 1997); “regulation capture,” or when regulatory policies are captured by industries to benefit those who are regulated (e.g. Stigler 1971; Krueger 1990); and interest-group politics, or when interest groups become so intertwined in the political process that firms gain more from political activity than from their economic productivity (e.g. Olson 1984; North, Wallis, Weingast 2009; Acemoglu and Robinson 2012). As Holcombe (2013) claims, when one looks at the academic literature in economics that describes the components of crony capitalism—rent seeking, regulatory capture, and interest-group politics—the common element is that big government amplifies each of those components (Holcombe 2013, 551). While the unadjusted size of New Mexico’s government (approximately 56,000 non-education employees) is dwarfed by states such as California (approximately 870,000 non-

education employees), it has one of the highest *per-capita* governmental workforces in the nation, ranking 3rd in the nation according to data from the Bureau of Labor Statistics.¹³ And according to Census data, New Mexico ranked 13th in total state expenditures per capita in 2012 and had the 6th highest growth rate in direct spending between 2001 and 2011.¹⁴

The bottom line is that the New Mexico state government is big (for the size of the state), active, and a vital participant in the state economy. **This opens the door to crony capitalistic behavior.** It encourages rent-seeking activity because rent-seekers have more to gain when government budgets are higher. Higher budgets, for instance, mean more governmental contracts or economic subsidies to be won. And larger governments tend to regulate more because there is more private sector-government interaction to be regulated. This encourages regulation capture because firms have an incentive to enter the political process to gain governmental and bureaucratic favors. And as regulations increase, economic actors are drawn into interest-group politics, where groups are rewarded for political connections rather than economic productivity or merit. The point is simple—the potential for crony capitalistic behavior increases as a state’s economic dependency on public dollars increases. And the state of New Mexico may provide a useful illustration of this claim.

High Level of Public Distrust in Government. According to the Garrity Perception Survey—an annual survey of New Mexico residents commissioned by the Garrity Group and administered by Albuquerque-based Research & Polling—only 15% of New Mexican residents trusted a state government official in 2014. While the level of trust among all New Mexicans has not changed much since 2011, it has fallen dramatically across each political party (see Figure 2, next page). In four years, Democrats’ trust fell 10%, Republicans’ 4%, and Independents’ 11%.¹⁵ These figures are far lower than Americans’ level of trust in federal officials, even though those figures continue to hover near historic lows. According to Gallup, 45% of Americans trusted elected officials in 2014 (see Figure 3, next page).¹⁶ While this marks a 30-year low at the federal level, it remains well above New Mexico residents’ trust in their state officials.

¹³ See Frohlich and Kent (2015) available at <http://www.usatoday.com/story/money/business/2015/05/17/24-7-wall-st-government-work-states/27207857/> (Accessed on June 29, 2015).

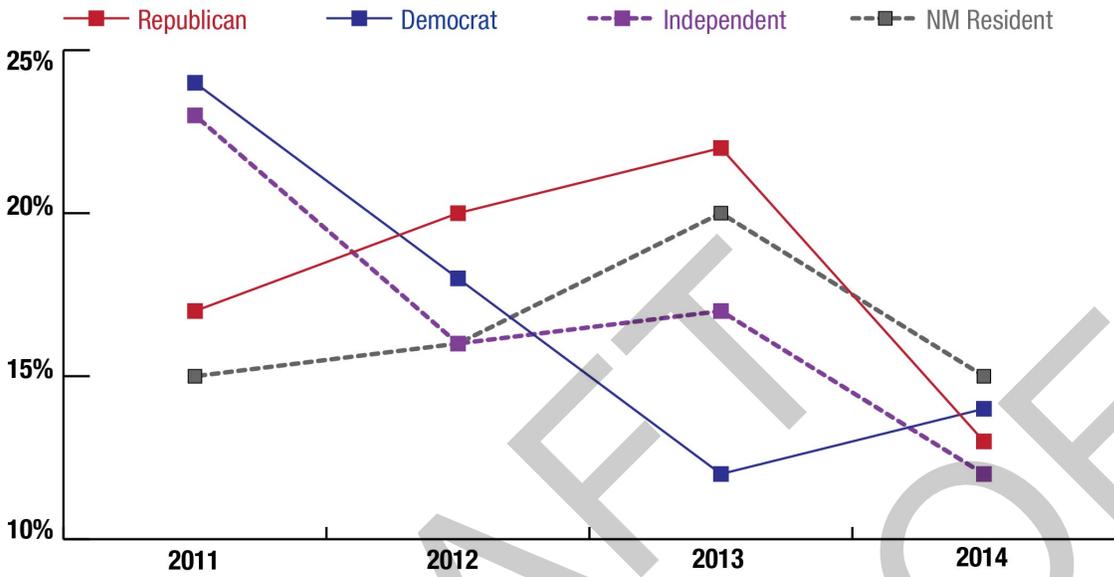
¹⁴ See <http://kff.org/other/state-indicator/per-capita-state-spending/#map> and http://taxfoundation.org/sites/taxfoundation.org/files/docs/State-Spending-Per-Capita-%28large%29_0.png (Accessed June 30, 2015).

¹⁵ See <http://www.garritypr.com/nmleg/trust-state-officials> (Accessed June 30, 2015).

¹⁶ See <http://www.gallup.com/poll/5392/trust-government.aspx> (Access June 30, 2015).

Figure 2: New Mexican Residents' Trust in Government Officials

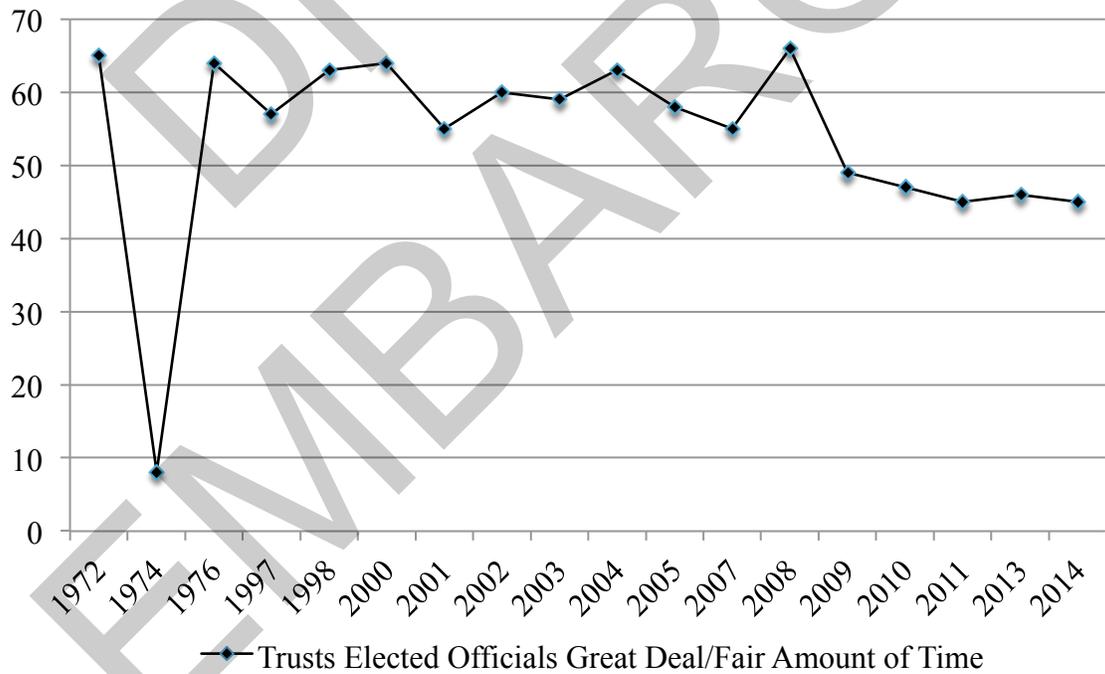
Trust of New Mexico State Government Officials



*Source: Garrity Perception Survey 2011-2014

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Figure 3: Trust in Federal Elected Officials



Source: The Gallup Poll, <http://www.gallup.com/poll/5392/trust-government.aspx>

The level of distrust in government extends to New Mexico business leaders as well. According to a 2015 report released by the CED, local business leaders are nearly equally as likely to say things in New Mexico are heading in the *right direction* (39%) as they are to say things are *off on the wrong track* (36%), with Republicans (44%) more likely than Democrats (31%) to say things are headed in the right direction. Furthermore, 84% say the ethical behavior of state elected officials over the past 20 years has been either a *somewhat* or *very serious* issue. New Mexico business leaders are particularly alarmed by the influence of money in politics, campaign finance reform, and transparency. For example,

- Half of business leaders interviewed say the current system for financing political campaigns in New Mexico is either in *poor shape with major problems* or *completely broken*.
- Few (13%) business leaders say the problems with the influence of money in politics are *improving*, while the majority says things are *staying the same* (38%) or *getting worse* (39%).
- Nearly nine-in-ten (87%) business leaders in New Mexico say that political donors have either a *great deal more* (53%) or *some more* (34%) influence than average voters.
- Over three-quarters (78%) of New Mexico’s business leaders say those who make campaign contributions have an easier time getting meetings with elected officials.
- Over two-thirds (68%) of New Mexico’s business leaders say that those who donate to political campaigns gain at least a *small economic advantage* in the marketplace.
- New Mexico’s business leaders are equally divided as to whether they feel most elected officials *are mostly looking out for their constituents* or *those who finance their campaigns* (35% and 38%, respectively).
- Nearly six-in-ten (58%) of New Mexico’s business leaders feel that transparency does not exist over the way election campaigns are financed.

Economic and political science research has long shown that a citizenry’s level of trust not only in their government, but *in one another* as well, is closely connected to economic growth. Noted political scientist Robert Putnam famously argued that societies with higher social capital have greater economic productivity and development. Putnam’s landmark comparative study of Northern Italy (with higher social capital and economic prosperity) and Southern Italy (with lower social capital and prosperity) showed strong support for his claim (Putnam 1994). Students of American and comparative economics and politics have since found further support for Putnam’s argument (e.g. Knack and Keefer 1997; Zak and Knack 2001; Beugelsdijk, de Groot and van Schaik 2004; Dincer and Uslaner 2010). At the heart of this research is that economic transactions, in large part, *depend on trust*. Buyers and sellers must trust one another that their goods or services exchanged will be as promised, beneficial, while also trusting that outside institutions – such as the government – will uphold a rule of law that protects property

rights and provides a reasonably fair playing field. When trust erodes, buyers and sellers lose incentive to work with one another.

Are New Mexicans' levels of distrust in its state's institutions and elected officials warranted? Determining the potential for, and presence of, crony capitalistic activity may provide an answer. And in light of the robust research noted above, the state's economic future may hinge on its ability to control cronyism.

A Long History of Corruption. The first example of corruption in New Mexico may have occurred at its very inception. Historian Hampton Sides suggests in his book, *Blood and Thunder* (2006), that despite enjoying strategic advantages over the Americans during the Mexican–American war, Mexican Governor Manuel Armijo handed New Mexico to the American Army in exchange for a bribe. Even while others dispute this claim (e.g. Chávez 2006), the lack of clarity suggests an inauspicious beginning. Shortly after came one of the most famous corruption rings in U.S. history: The Santa Fe Ring, a group of wealthy attorneys and land speculators who, in the late 19th and early 20th centuries, amassed fortunes through corruption and fraudulent land deals. Their corrupt dealings had enormous consequences, some of which would become part of U.S. legend. Among other things, the Ring's actions led to the Lincoln County War, which would make Billy the Kid an American icon. Even while it was only a territory, New Mexico's corruption would capture the attention of U.S. President Theodore Roosevelt who, in 1907, appointed one of his one-time Rough Rider officers, George Curry, as Governor. An exasperated President Roosevelt wrote to his friend, "...[Your predecessor has] plunge[d] the affairs of the Territory into such a tangle that I am quite at a loss to know how to discriminate between those who are decent and those who are not. I look to you to help me out" (Nathan and Fisher 2009). Indeed, the U.S. Congress, nervous of New Mexico's level of corruption, held back statehood for decades, until 1912. And the Santa Fe Ring's actions are why the famed Route 66 travels through Albuquerque rather than Santa Fe; Governor Arthur Hannett implemented the dramatic change in 1937 as punishment to the ring.

Unfortunately, New Mexico's history of corruption extends to modern eras as well. A 2009 report released by Think New Mexico outlines the state's recent struggles: a 1984 extortion conviction involving a State Investment Officer and Treasurer; a 2006 racketeering conviction involving two State Treasurers; a kickback case in 2007 involving another State Treasurer; a 2008 case in which a Superintendent of Insurance was convicted of fraud, extortion and corruption; another 2008 conviction of a State Senator involved in kickbacks; a 2009 case in which a Secretary of State was charged with fifty counts of embezzlement, kickbacks, and money laundering; and a 2012 pay-to-play scandal involving a governor. Perhaps most telling is a recent analysis conducted by professors of economics and political science, **which ranked New Mexico as the 5th most corrupt state in the nation** (Dincer and Johnston 2014). Indeed, only a few weeks before the release of this report, New Mexico's former Secretary of State Dianna Duran resigned from office and accepted a plea deal related to charges of fraud, embezzlement, money laundering, and other crimes related to allegedly converting thousands of dollars

in campaign contributions to her personal use in 2013 and 2014.¹⁷

New Mexico state government has a penchant for public corruption, which makes it a likely candidate for crony capitalism as well.

Citizen Legislature. A citizen legislature is one made up of part-time elected officials whose primary occupation is *not* in the legislature. Citizen legislators typically spend only 50% of their time participating in legislative activity while in session (versus 82% for full-time legislators), receive little compensation (an average of \$19,197 versus \$81,047 for full time legislators), and have a small collective staff (an average of 169 in citizen legislatures versus 1340 in professional legislatures).¹⁸ According to the National Conference of State Legislatures, New Mexico is one of only 16 American states governed by a citizen legislature.

Research shows significant differences between professional and citizen legislatures. One benefit of citizen legislatures is that they seem to spend less than professional ones (e.g. Owings and Borck 2000). On the other hand, they also appear more susceptible to interest group politics. In one notable study, Berkman (2001) finds that professional legislators are more resistant to interest group pressure because they have the skill, experience, knowledge, and staff to negate their services. Providing political and policy information is an important interest group function. Because professional legislators and legislatures generate more and better information on their own, there is far less demand for interest group expertise (Berkman 2001, 662). Their expertise is in high demand in citizen legislatures, on the other hand, because legislators lack the resources necessary to acquire political and policy information on their own. Thus, lobbying activity is higher in citizen legislatures than professional legislatures (Berkman 2001).

Interest groups and lobbyists have been an important part of New Mexico state politics for a long time, and their importance seems to be increasing (Fish 2015).¹⁹ Indeed, New Mexico's citizen legislature has shown little interest in stemming the lobbying tide (Doland 2015).²⁰ This seems another good reason to examine New Mexico and crony

¹⁷ See Baker (2015) available at <http://www.abqjournal.com/635916/news/ag-charges-secretary-of-state-duran-with-converting-campaign-funds-to-personal-use.html> (Accessed September 7, 2015).

¹⁸ See http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side (Accessed July 2, 2015).

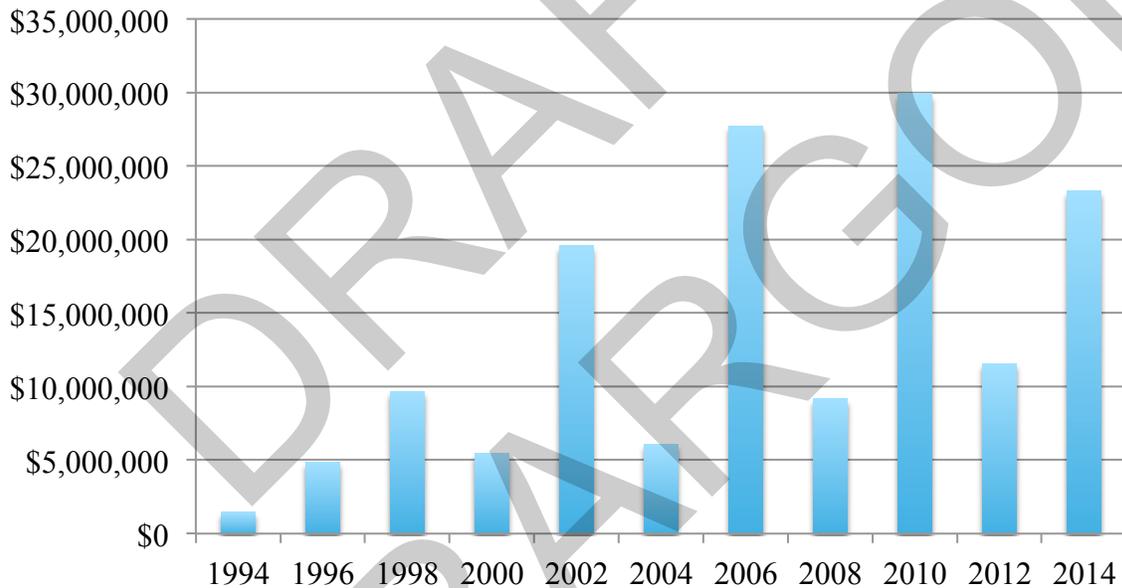
¹⁹ See Fish (2015) available at <http://nmindepth.com/2015/03/24/lobbyists-report-spending-nearly-300000-during-session/> (Accessed July 2, 2015).

²⁰ See Doland (2015) available at <http://nmindepth.com/2015/03/10/stripped-down-lobbying-disclosure-advances-to-senate/> (Accessed July 2, 2015).

capitalism, particularly given Olson’s (1984) landmark discussion of interest group politics’ effect on economic growth.

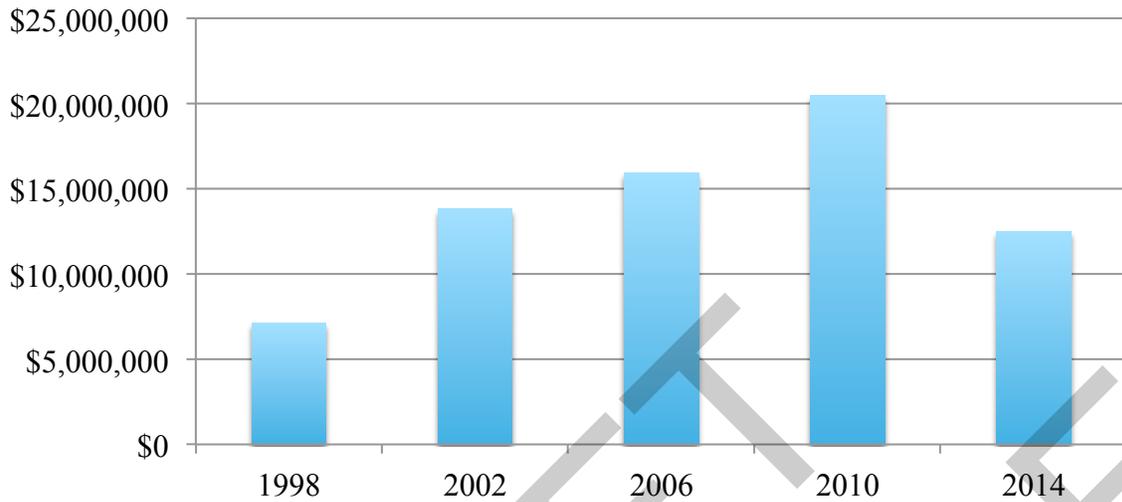
A Little Bit of Money Goes a Long Way. Like most of the nation, the cost of New Mexico’s elections has been increasing over the past decade. As Figure 4 below shows, total contributions have increased dramatically since the 1990s. Indeed, they have jumped 211% between 1998 and 2012, from approximately \$9.6 million to \$29.9 million. A slight dip in 2014 was due to a noncompetitive gubernatorial election, handily won by incumbent Governor Susana Martinez over challenger and Attorney General Gary King. This is evidenced in Figure 5 (next page), which depicts contributions to gubernatorial candidates steadily increasing until a \$6 million drop in 2014. Figure 6 (page 20) shows similar trends for total contributions to state legislative races. Contributions to both chambers have been steadily rising since 2000, topping out at almost \$6 million for the 2014 House race.

Figure 4: Total Contributions to New Mexico Candidates (1990-2014)



Source: National Institute on Money in State Politics (followthemoney.org)

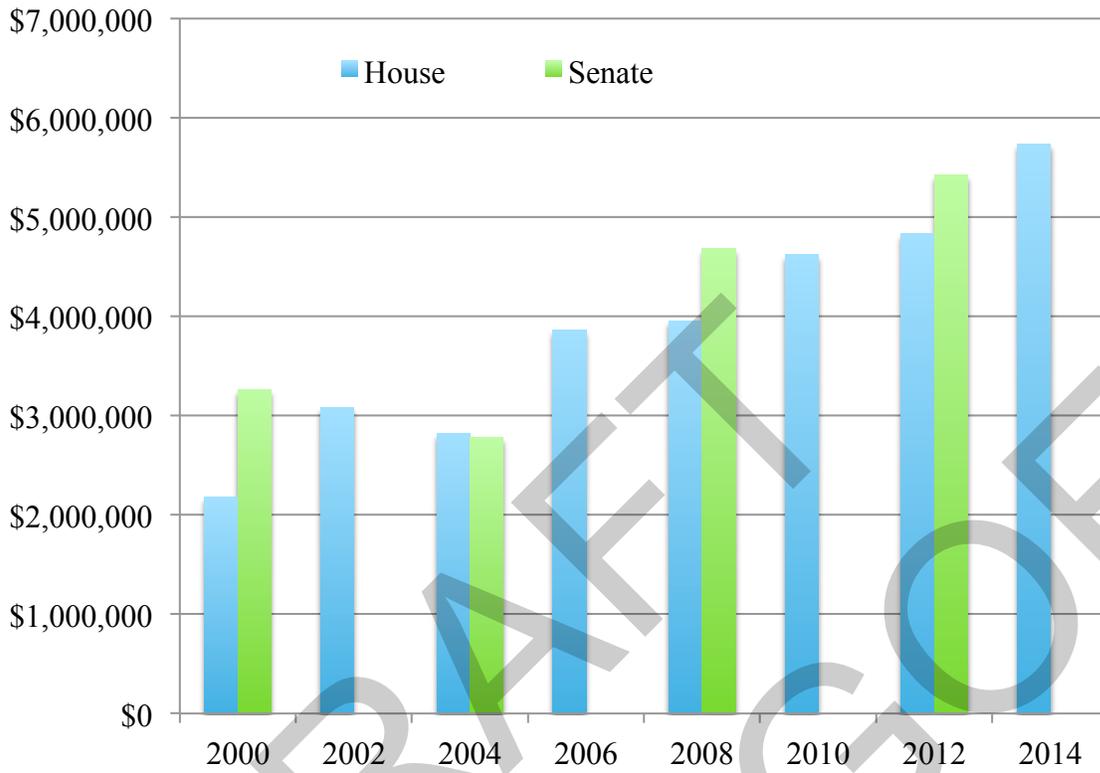
Figure 5: Total Contributions to NM Gubernatorial Candidates (2000-2014)



Source: National Institute on Money in State Politics (followthemoney.org)

Figure 6 shows that while overall contributions to legislative candidates have been smaller than gubernatorial candidates, the increase has been relatively monotonic since 2000. According to data compiled by the authors, the average incumbent in the 2014 House election received approximately \$57,750 from donors; \$44,000 from interest groups; and \$13,750 from individual donors. While these averages pale in comparison to larger states such as California (where the average member of the assembly raises \$837,000), a seemingly small contribution—say, \$1,500 or \$2,500—can make a big difference in the average New Mexican election.

Figure 6: Total Contributions to New Mexico Legislative Candidates (1998-2014)



Source: National Institute on Money in State Politics (followthemoney.org)

It should be noted that spending on lobbying is also on the rise in New Mexico. *New Mexico In Depth* reported in May of 2015 that the \$519,000 spent on lobbying in the first four months of the 60-day session already eclipsed the amount spent during *all 12 months* in each of the prior four years (Fish 2015).

CRONY CAPITALISM IN NEW MEXICO

The discussion to come hinges on the idea that crony capitalism is not binary (i.e. it is either present or not). Rather, there are *degrees* of crony capitalism; it exists along a continuum. On one end of the continuum are legal transactions where the government distributes benefits to powerful interest groups in return for their political support. While the policies are likely accompanied by, sometimes reasonable, promises of stimulating or growing the economy, they are much more likely to benefit the few than the many. The state of New Mexico's recent experimentation with **tax subsidies** to large corporations strikes us as examples of this type of crony capitalism.

The second form of crony capitalism is more concerning. It includes transactions that, while legal, come at the great expense of the wider public. In other words, the benefits

received by the few far outweigh the benefits received by others. In fact, it is quite likely that in these cases the public experiences significant *costs* associated with the transactions. We use New Mexico's **payday loan** laws to illustrate this middle-ground level of crony capitalism.

The final degree of crony capitalism is the most nefarious. The defining characteristic of this sort is that it is *illegal*. It is a form of public corruption, or the "misuse of public power for private gain" (Rose-Ackerman 1999; Treisman 2000). In other words, it loosely defines some manner of quid pro quo relationship. The most common form of this sort of crony capitalism is the exchange of public goods for campaign contributions. Unfortunately, as we note briefly above, examples abound in recent New Mexico political history. Our final illustration of crony capitalism, at its worst, is a discussion of recent **pay-to-play** scandals involving highly ranked public officials.

Case #1: Tax Subsidies

Targeted tax incentives are laws passed by a legislature that "provide preferential tax treatment to a limited number of taxpayers and are not readily available to taxpayers in general" (Brunori 1997: 50-51). Tax incentives reduce the tax liability a private company assumes when doing business in a state (Legislative Finance Committee 2012). By offering a lower tax liability than surrounding states, political actors hope to attract and retain businesses. They hope this will boost economic development, create jobs, and put money into the pockets of their constituents (Legislative Finance Committee 2012).

Tax incentives are widely used throughout the country to increase economic development, so much so that states find themselves at war with one another (Bowman 1988; Burnier 1992; Forman 1997; Guskind 1989; Haider 1992; Hamilton 1994; Hanson 1993; Kenyon 1991; Krohe 1989). In New Mexico, private companies can apply for 34 different tax credits in seven different industries, or the state legislature can create "targeted" credits by passing legislation (New Mexico Economic Development Department 2015). Between Fiscal Year 2007 and Fiscal Year 2011, New Mexico spent \$467.5 million on incentives for job creation, \$374.5 million on general tax credits, \$63 million on corporate grants, and \$30 million on direct incentives to private businesses (Legislative Finance Committee 2012). In total, \$935 million dollars was invested in private businesses with the hope of boosting economic development in New Mexico, with approximately \$250 million spent on corporate subsidies per year (Legislative Finance Committee 2012; Story et al. 2012).

Economics research shows, at best, mixed support for the effect of such subsidies on important economic indicators such as growth and unemployment. For example, while some interstate studies show positive effects (e.g. Bartik 1989; Browne, Mieszkoki, & Syron 1980; McConnell & Schwab 1990; Munnell 1990; Papke 1991; Wasylenko & McGuire 1985; Wasylenko 1997), others show either small or statistically insignificant elasticities (e.g. Bradbury, Downs, & Small 1982; Carlton 1983; Carroll & Wasylenko

1994; McGuire & Wasylenko 1987; Schmenner 1978, 1982; Tannenwald 1996).²¹ These inconsistent results are one reason why the Institute on Taxation and Economic Policy (ITEP)—a non-profit, non-partisan research organization that works on federal, state, and local tax policy issues—recently concluded that “tax incentives are of little benefit to the states and localities that offer them, and that they are actually a drag on national economic growth” (ITEP 2013).

There are a number of reasons why tax incentives may not positively affect economic growth. Among the most important reasons is that they are rarely the deciding factor in whether a business chooses to hire or invest in a state (e.g. Schmenner 1978, 1982; Carlton 1983; Kolesar 1990; ITEP 2013). Corporations select a location based on factors other than tax incentive packages (e.g. Carlton 1983). Last year, several states, including New Mexico, were competing to win Tesla’s new \$5 billion “giga-factory” (Nikolewski 2014b). The factory would generate thousands of jobs and millions of dollars (Nikolewski 2014b). States were preparing lucrative tax packages to win Tesla over. However, Tesla CEO Elon Musk admitted the company’s priority was not *how much* it would receive but *how quickly* they could open their doors (Nikolewski 2014b). As Musk explains, “It’s not so much the incentives but how fast the site can be completed” (Nikolewski 2014b). As a result, Tesla selected Nevada because the state has no income tax, allows the direct sales of automobiles from manufactures to customers, and is adjacent to a lithium mine located in California (Nikolewski 2014b; Pappas 2014). Although Tesla received an extremely lucrative tax incentive package, scholars contest that it is more likely that factors beyond that deal, such as regulations, energy cost, existing concentrations of employment, and available technical expertise matter much more (e.g. Carlton 1983).²²

Furthermore, because states prefer not to evaluate the effectiveness of incentive programs, it is difficult to understand the effects of tax incentives on economic development (Buss 2001; Legislative Finance Committee 2012; Urahn 2012). The state of New Mexico is no different in this respect. A report published by New Mexico’s Legislative Finance Committee finds that the incentives given to private corporations lack “strategic planning and accountability” (Legislative Finance Committee 2012: 7). Additionally, the report finds that the Taxation and Revenue Department and the Economic Development Department does not regularly measure the economic impact of

²¹ See Buss (2001) for a thoughtful review of the literature on the subject.

²² Other reasons to question the effectiveness of tax incentives are: incentives aimed to benefit one business or group will likely come at another business or group’s loss, particularly small businesses already established in the community (Brunori 1997; ITEP 2013); it is impossible to design a tax incentive that its benefits remain in-state; the tax breaks are usually paid by reducing public services that business use every day; and business owners might interpret lucrative tax incentives as a signal that a state has serious weaknesses (ITEP 2013).

tax incentives aimed at stimulating economic growth (Legislative Finance Committee 2012). For example, a risk the state assumes when it offers tax incentive packages to corporations is that the cost of lost revenue exceeds the economic gain corporations contribute to the state (Kolesar 1990). This risk is becoming the norm in New Mexico. Tax incentives create jobs but they do so at an exponential cost, especially in New Mexico (Bartik 1991; Legislative Finance Committee 2012). As the report finds, “it costs the state of New Mexico on average an estimated \$31,000 to attract a job, with an average salary of \$43,000” (Legislative Finance Committee 2012: 7). Moreover, when the Economic Development Department reports job growth, their measure is “based on company reports of anticipated jobs, not actual jobs created” (Legislative Finance Committee 2012: 17). Inefficient metrics of tax incentive’s effectiveness persist not only in New Mexico but in most states as well (Urahn 2012). This is one reason why, according to the *Wall Street Journal*, states are looking at ways to bring corporate subsidy programs under control (Dolan 2015).²³

While tax incentives may be questionable economic policy, they are good politics. Political actors seek to be reelected (e.g. Mayhew 1974), and they need money to do so, especially in hotly contested races (e.g. Caldeira and Patterson 1982; Gierzynski and Breaux 1991; Gierzynski and Breaux 1996). Furthermore, political actors are under pressure to create jobs (Brunori 1997). As a result, politicians must obtain campaign contributions and find opportunities to accomplish something and then brag about it (e.g. Mayhew 1974; Fellowes and Wolf 2004). Trying to attract and retain corporations through tax packages can be electorally profitable for politicians, *even if the policies themselves do not work*. Thus, businesses looking for tax breaks become enthusiastic donors to elected officials who support those breaks, while politicians become enthusiastic supporters of tax breaks to businesses who can make sizable campaign contributions (e.g. Fellowes and Wolf 2004; Richter et al. 2009; Hogan et al. 2010; Brunori 2014). This is crony capitalism at work.

Here are some examples of tax subsidies and crony capitalism from the state of New Mexico:

Union Pacific Railroad. With overwhelming bipartisan support, the state of New Mexico passed the *Locomotive Fuel Tax Gross Receipts Deduction* (HB 523) into law in 2011 that eliminated the locomotive fuel tax for Union Pacific Railroad. Known as a “targeted tax incentive,” this type of legislation offers special benefits to a single entity in exchange for doing business in the state (Brunori 1997). In this case, Union Pacific would receive a 100% fuel tax break, saving them \$8 million a year, if they agree to build their rail facility in Santa Teresa, New Mexico (Simonich 2011). As a result, the state would forgo \$8 million in tax revenue in exchange for the economic development that will result from the corporation’s \$418 million project (Simonich 2011).

²³ See Dolan (2015) available at <http://www.wsj.com/articles/corporate-tax-incentives-generate-budget-problems-1423696411> (Accessed on September 1, 2015).

With millions at stake, it is not surprising that Union Pacific arms themselves with a large war chest. From 1998-2014, Union Pacific donated \$111,625 to 127 New Mexico political candidates. They donated \$71,750 to Democrats and \$39,375 to Republicans. The average amount Union Pacific spends per election cycle is \$12,402.78. They spent the most in 2010, \$25,700, only months before HB 523 was introduced in the House of Representatives. Over the course of their spending they have contributed to a wide variety of candidates and to a range of offices including NM House, Senate, and Governor. Powerful members of the New Mexico Legislature have accepted money from Union Pacific Railroad, including Former Speaker Ken Martinez (\$2,300), Senate Majority Leader Michael Sanchez (\$1,350), and the Chairman of the Senate Finance Committee John Arthur Smith (\$1,650).

Approximately 61% of Senators and 61% of Representatives who voted “yes” on HB 523/SB 179 received campaign contributions, *either before or after the vote*.²⁴ Donations to allies in the Senate and the House totaled \$14,475 and \$32,475, respectively. In 2010, Governor Susana Martinez accepted a \$5,000 donation and then in 2014 she accepted \$7,500 from Union Pacific Railroad. This means that Union Pacific donated almost \$50,000 dollars to 55 members who voted “yes” on legislation that would generate \$33 million in tax revenue for New Mexico by 2025 and increase the profitability of a \$1.15 billion company (Carey 2015).²⁵

Spaceport America and Virgin Galactic. For the past decade, Richard Branson of Virgin Galactic has been striving to achieve commercial spaceflight. Branson and New Mexico’s government hope that Spaceport America will be the hub of this emerging industry. As Governor Richardson explained, “If you build me a spaceship, I’ll build you a spaceport” (Wheeler 2014). New Mexico’s taxpayers would fund construction of Spaceport America, and Virgin Galactic, through their flights, would pay a per-flight fee back to the government. At the inception, the project had mainstream public approval. Voters in Doña Ana County, Sierra County and surrounding cities approved sales tax increases as great as .375 percent and generated more than \$15 million to fund Spaceport America’s construction (Alba 2009; Frosch 2014). By offering bonds and reallocating revenue from oil and gas taxes, New Mexicans are \$218.5 million dollars deep in Spaceport America (Frosch 2014; Nikolewski 2014a). Initially, flights into space were expected to begin in 2012 and New Mexico was expecting to make \$25,000 to \$75,000 per launch (Nikolewski 2014a). Yet, delays on Virgin’s part have slowed the project and left the Spaceport relatively vacant (Nikolewski 2014a).

²⁴ The only public officials to receive campaign contributions and vote “no” were House Majority Leader W. Ken Martinez (\$2,300) and Senate Majority Leader Michal Sanchez (\$1,350). Still, as party leaders, they were in a position to prevent the bill from reaching the floor.

²⁵ Data derived from Sunlight Foundation.

One of the main delays has been a debate on liability protection for spaceflight operators (Karmasek 2013; Clausing 2013). This legislation protects Virgin Galactic and other contributing parties from being held liable for any “loss, damage or death of the participant resulting exclusively from any of the inherent risks of space flight activities” (Karmasek 2013; S. 240 2013). For two legislative secessions, the bill was introduced but never succeeded, much to the chagrin of Virgin Galactic. Therefore, in 2013, Virgin Galactic began paying rent on Spaceport America but did so under “protest” (Clausing 2013). In fact, they threatened that if the State Legislature did not correct these issues they “may stop paying rent, pay reduced rent or give notice to terminate,” leaving New Mexico with a spaceport and no spaceship (Clausing 2013).

In 2012, Virgin Galactic donated \$39,300 to a majority of the state legislature and the following year hired three lobbyists. This is the only election cycle in which Virgin Galactic significantly donated to candidates. In 2013, a bill granting Virgin Galactic liability protection passed the New Mexico Senate and House unanimously. Furthermore, 22 of 34 Senators and 35 of 62 Representatives who voted “yes” received campaign contributions from Virgin Galactic.²⁶ The following election cycle, Governor Susana Martinez, who supported and signed the bill into law, received a \$4,000 contribution from Virgin Galactic. In total, Virgin Galactic contributed \$20,900 to those who would eventually vote “yes” on liability protection for space operators. After threats of terminating their contract with the Spaceport, Virgin Galactic was successful in achieving liability protection after spending \$40,000 on campaign contributions to New Mexico legislators and hiring several lobbyists,

Eclipse Aviation. The state of New Mexico and the city of Albuquerque were hopeful that Eclipse Aviation would be a huge economic success (McClellan 2009). In total, the state invested about \$20 million in Eclipse Aviation (Webb 2006). At the time, this was the single largest equity investment in the history of the State Investment Council (Scarantino 2008). On top of a direct investment, Eclipse Aviation received millions in employee training tax credits and property tax incentives (Scarantino 2008). In 2004, the city of Albuquerque approved a \$45 million bond for Eclipse (The Associated Press 2004). The following year, the city built a \$6 million hanger for Eclipse, which the aviation company used under a lease agreement (Webb 2005).

After the State Investment Council invested \$10 million in Eclipse Aviation in 2003, Governor Bill Richardson supported the decision by saying, “This investment represents the confidence we have in Eclipse as a sound investment and in recognition of the importance Eclipse will play in building a high wage economy in New Mexico” (Business Wire 2003). As the chairperson of the State Investment Council in 2003, Governor Richardson led the legislative initiative to permit the State Investment Council to invest directly into private New Mexico businesses, a rule that made the Eclipse

²⁶ Of the 16 who abstained (eight in the House and eight in the Senate), \$600 was given to three Representatives and \$2,300 to six Senators.

Aviation subsidy possible (Scarantino 2010). Three years later, Eclipse Aviation donated \$9,000 to Richardson's reelection campaign.

Ultimately, in 2008, Eclipse's performance led to massive financial distress and the company eventually filed for Chapter 7 bankruptcy. Stakeholders, including taxpayers, lost over \$1 billion (McClellan 2009). As J. Mac McClellan of *Flying Magazine* explained, "There has never been a financial failure of this scale in the entire history of general aviation" (McClellan 2009). For many, this unprecedented failure raised questions about the competency of the State Investment Council as stewards of public money (Gessing, 2009; Scarantino 2010).

New Mexico Film Industry. Started under Governor Gary Johnson's administration in 2002, the state began offering filmmakers a 15 percent tax credit to make movies in New Mexico (Kinsley 2011). This credit rate was later increased to 25 percent (Kinsley 2011). Then in 2015, Governor Susana Martinez offered a 30 percent tax rebate to television producers who made at least six episodes in New Mexico (Boyd 2014). In New Mexico, filmmakers can access numerous tax incentives, including the job-training incentive program (eligible for \$2 million), the low-income-county film production tax credit (eligible for another 5 percent tax rebate), direct state investments (includes increasing the cap on loans from \$7.5 million to \$15 million), and funding from the severance tax permanent fund (Center for Entertainment Industry Data and Research 2005). Since 2003, the state has refunded more than \$404 million dollars in tax incentives to production companies (MNP 2014; Beale 2014). On top of that, the film industry received the most lucrative seven grants in state history, totaling \$187.1 million. Lions Gate Entertainment received the most lucrative: \$99.1 million over eight grants (Story et al. 2012). Additionally, the second and third most costly state programs are the Film Investment Program (\$30 million) and the Film Production Tax Credit (\$17 million) (Story et al. 2012).

Since 1992, those in the film and television industry have donated \$132,662 to politicians in New Mexico.²⁷ Of these contributions, \$121,842 was donated to Democrats and \$10,820 to Republicans. Former Governor Bill Richardson was the chief beneficiary; he accepted \$50,579 from motion picture producers and distributors, \$237,542 from professionals in broadcasting and motion pictures, and \$42,500 from television producers. In total, his campaign amassed \$330,621 from those in these industries. While not all entertainment contributors directly benefit from the film production tax credit, Governor Richardson maintained a clear network of Hollywood executives. For example, of all the donations Governor Richardson received from the categories, 78.5 percent came from California while only 1.3 percent came from New Mexico. Furthermore, contributions to Governor Richardson included donations from Lions Gate Entertainment Company (\$1,000), the CEO of Walt Disney (\$2,000), Senior Vice President of Warner

²⁷ This amount is a sum of movie production and distribution and television production. In addition, this amount does not include donations from the New Mexico Broadcasters Association or from local TV Stations.

Brothers Studios (\$2,000), TV mogul Ted Turner (\$10,000), and former chairman of Univision and Hollywood mastermind Jerry Perenchio and his wife (\$152,442.58).²⁸

Even with the vast amount of money flowing from the television and movie industry to New Mexico's politicians, tax incentives for the film industry are judged by some to be the state's best investment (Center for Entertainment Industry Data and Research, 2005; Ernst & Young 2009; MNP 2014). Since the program's inception, 213 major productions have been shot in the "Land of Enchantment", including *The Avengers*, *The Lone Ranger*, *Iron Man 2* and *Breaking Bad* (Longwell 2014; Beale 2014). Between 2010 and 2014, there were 317 registered projects including major and minor films, TV productions, documentaries, music videos, commercials, etc. (MNP 2014). During that time period the film industry in New Mexico created an estimated 8,851 jobs and indirectly created 6,997 jobs (MNP 2014; Beale 2014). In total, 15,848 full-time positions were created by tax incentives (MNP 2014; Beale 2014). This means that for every million dollars spent in tax incentives, 117 new jobs are created; this works out to \$8,519 per job (MNP 2014; Beale 2014). In all, between 2010 and 2014 an estimated \$1.53 billion was generated in total economic output from production spending alone (MNP 2014).

Others, however, are far more critical of the program. For example, a 2008 report by the Arrowhead Center at New Mexico State University provided a negative assessment, concluding that for every dollar spent in rebates, the state only received \$0.14 in return.²⁹ A 2010 report from the Center on Budget and Policy Priorities (CBPP) provided a more cynical evaluation, concluding that film subsidies in general offer little bang for the buck (Tannenwald 2010).³⁰ The report claims that among other things, these very generous subsidies create jobs that are mostly temporary and part-time for non-residents of the state, reward producers for projects they might have already undertaken anyway, and require states to provide costly subsidies indefinitely in order to "stay in the game." Perhaps their most pointed criticism is that the subsidies *do not pay for themselves, thereby shifting the burden to state taxpayers*. They write,

The economic activity induced by these subsidies generates insufficient tax revenue to offset their cost... Given that 49 out of 50 states have a balanced budget requirement, states offering film subsidies must therefore cut public services or increase taxes elsewhere to make ends meet. These measures stunt economic growth, offsetting the economic and revenue gains induced by film subsidies (Tannenwald 2010, 8).

²⁸ See <http://followthemoney.org/research/institute-reports/names-in-the-news-gov-bill-richardson/> (Accessed November 17, 2015).

²⁹ See Popp and Peach (2008) available at <http://arrowheadcenter.nmsu.edu/wp-content/uploads/2015/06/filmindustryfinal.pdf> (Accessed September 3, 2015).

³⁰ See <http://www.cbpp.org/research/state-film-subsidies-not-much-bang-for-too-many-bucks> (Accessed November 6, 2015).

Implicit in the CBPP report is the claim that film subsidy programs should be evaluated using *tax revenues* to the state. In other words, does tax revenue as a result of the subsidy program—e.g. income taxes from jobs created, sales tax from economic output, etc.—offset the cost of the program itself? The CBPP is thus offering an alternative and altogether reasonable criteria for evaluating the programs by comparing apples (tax revenues) to apples (tax expenditures). Indeed, adopting this framework recasts key findings from the 2014 MNP report cited above. In addition to detailing job creation and economic output as a result of New Mexico’s film subsidy program, MNP also finds that film production activity only produced an estimated \$0.43 in state and local taxes (\$0.33 in state taxes and \$0.10 in local taxes) for each dollar in production incentive granted. According to CBPP’s measure of success, then, New Mexico’s program is a failure. Indeed, the CBPP itself singles out a prominent and generally positive 2009 Ernst & Young study of New Mexico’s film subsidy program, citing three key methodological flaws in addition to potential bias. In the end, the CBPP claims that contrary to the Ernst & Young findings, in order to finance the film subsidies, “New Mexico probably had to cut state services, offsetting at least part of the subsidies’ boost to jobs, income, and tax revenues for New Mexicans” (Tannenwald 2010, 12).

Conclusion

Targeted tax subsidies have been a popular tool to stimulate economic growth in the state of New Mexico and the results have been mixed. On the whole, it is difficult to determine whether New Mexico comes out ahead or behind on these deals, especially since the Economic Development Department does not regularly measure their economic impact. Indeed, it is our belief that more should be done in this regard. **Greater effort should be made in determining the economic consequences of each tax subsidy program, so that lawmakers and the public can better evaluate whether each program is a wise use of state resources.**

The point of this section was not to debate the economic benefit of tax subsidies. Rather, it is to point out one very clear characteristic many, if not *all*, of the major tax subsidies programs in New Mexico have in common: the industries and companies that receive the subsidies contribute to the campaigns of the public officials that write the subsidies. While this does not necessarily imply a quid pro quo relationship, it does suggest the presence of crony capitalism. That is, companies that contribute are more likely to receive subsidies than those who do not.

Case #2: Predatory Lending (e.g. "Payday" and Installment Loans)

According to the NM Regulatory and Licensing Department, “Payday” loans are:

“Loans in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees in writing to defer presentment of that check or use the debit authorization until the consumer’s next payday or another date agreed to by the licensee and the consumer (NM Small Loan Act” (§58-15-32 through 38).

In practice, this means that a consumer postdates a check and receives a loan for that amount with the expectation that the loan will be paid back at the next payday, *with interest*. The benefit of “payday” loans is that it allows for individuals to take out small loans, for a short period, to cover unexpected expenses. However, this industry has often relied on predatory lending practices—such as extremely high interest rates and fees—to increase its profits. Predatory lending is a broad concept; it can involve virtually any type of loan, such as auto loans, car title loans, credit and prepaid cards, debt collection, mortgage loans, overdraft loans, payday loans, refund anticipation loans (RALs), and student loans³¹. In particular, predatory lending is associated with the offering of these loans on an installment basis through what is known as “storefront” lending. It involves several practices, including; abusive prepayment penalties, equity loans, excessive fees, forced arbitration, kickbacks to brokers, loan flipping, unnecessary products, steering and targeting, and high interest rates (Bocian, et al. 2012). Predatory lenders generally make use of extraordinarily high interest rates to make a profit on their loans. In New Mexico, these average APR (Annual Percentage Rate) or interest rate has ranged from about 300-350%, with some instances of APR’s as high as 1500% (NM Regulations and Licensing Department 2015; Martin 2009).

In 2007, the state of New Mexico approved new rules aimed at regulating payday loan practices. The Small Loan Act called for the creation of a database of consumers, a 35-day loan term, and the requirement of postdated checks to ensure consumers could pay the principal lending amount. In response, the law storefront lenders adopted new lending practices to sidestep the law. For example, they created new “installment loans” which are written for more than the 35-day loan period prescribed by the Small Loan Act. Because installment loans do not fall under the definition of “payday loans,” they are currently unregulated in the state of New Mexico (see Martin 2009). And although payday loans are regulated by the state, the interest rate cap on the loans was left generously high, at 417%.

One might question why a consumer would ever agree to terms that include such high interest rates. Three linked factors explain this outcome: marketing strategies; loan term length; and an interested, but often desperate and poorly informed population. While there may be options for loans or lines of credit, such as a lower rate loan through the bank or credit cards, these populations are often too uninformed about the differences between these loans, do not qualify because of poor credit, and/or have insufficient income to qualify for a lower APR loan. Furthermore, storefront lending companies commonly adopt marketing strategies that obscure the true costs of its loans to its customers (Martin 2011). For example, customers are often presented with the daily interest rate rather than their *annual* interest rate and/or are not told the loans are interest-

³¹ All of these types of loans exist in New Mexico, and some are quite similar often governed by the same laws, particularly title loans. In this report however we are primarily concerned with high interest payday loans.

only (Bocian et al. 2015; Martin 2011). These factors all contribute to a vicious cycle: Borrowers are often unable to repay their loans so they take out additional loans to cover the cost of previous loans. According to the New Mexico Regulation and Licensing Department, each consumer takes out 5-7 payday loans per year.

What makes predatory lending so damaging is that it generally targets the most vulnerable segment of the New Mexican public. Payday and other installment loans are often taken out due to some unforeseen expense, such as a medical emergency, that cannot be covered through personal savings. However, in many cases these loans are taken out to fill the disparity between income and expenses for minimum wage workers and those on fixed incomes.³² According to a 2015 Pew Charitable Trusts report, lower-income households typically only have about nine days of liquid assets in a checking or savings account. In many cases lower-income citizens do not have any savings at all, given that the money in checking and savings accounts may actually be earmarked for upcoming rent and food costs (Pew Charitable Trusts, 2015). New Mexicans in particular are at high risk given that 20.4% of the overall population, or one in every five residents, is living below the national poverty level (\$20,090 for a family of three persons).³³ Given that unexpected expenses are likely to afflict low-income populations at a higher rate (e.g. poorer quality health and lack of health insurance, older automobiles and housing stock), and that this population is also the least likely to be able to cover those expenses with savings, predatory lending disproportionately affects the poor. It is also important to note that many of these individuals have low rates of financial literacy and experience, and do not fully understand the financial repercussions of their loans (Martin 2009). In essence, unregulated payday and installment loans prey on New Mexico's most vulnerable populations.

Storefront lending is a clear case of crony capitalism in New Mexico. And it touches upon all three tools of crony capitalism: rent seeking, regulation capture, and interest group politics. Regulation capture is arguably the most obvious, where lax regulation appears to benefit industrial interests at the expense of the public good. Indeed, the storefront lending industry relies on low regulation to carry on its business; the argument here is *not* that payday and installment loans in and of themselves are problematic. Indeed, when properly regulated, short term, small dollar loans (or "micro loans") may in fact be beneficial to the economy generally and to individuals specifically. However, when unregulated or improperly so, predatory lenders look to increase their profits at the

³² Fixed income is considered as income for storefront lending, meaning that a portion of an individual's disability, social security, or TANF income will go to paying the fees and interest for these loans

³³ The average number of persons per household in NM is 2.66 according to the U.S. Census Bureau. The national poverty guideline stipulates an income threshold according to the size of the household. For a list of the poverty guidelines see: <http://aspe.hhs.gov/poverty/15poverty.cfm>

expense of the consumer by charging high interest rates and extremely high fees, and often creating a cycle of dependency.

While New Mexico has established some laws restricting the payday practice, such as an interest rate cap of 417%, a consumer database and a right of rescission, storefront lenders quickly found ways to sidestep the regulations. As Martin (2009) notes, in order to reclaim the “tremendous profits to which it had become accustomed” the industry invented new products such as the installment loan which earn higher lender fees. New Mexico’s lack of an absolute cap on interest rates is not lost on storefront lending companies. A recent state court case highlights this point. In *State of New Mexico v. B&B Investment Group, Inc., Cash Loans Now and American Cash Loans, LLC, American Cash Loans*, B&B president, James Bartlett, stated that the Illinois-based company opened several payday loan locations in New Mexico *precisely because* it does not have an interest rate cap (Bush 2014).³⁴ The case resulted in sanctions against the payday lenders and argued that the “unconscionable” APRs these companies were charging (between 1,150% and 1,500%) violated the New Mexico’s Unfair Practices Act (UPA). However, the court left it to the New Mexico State Legislature to determine limits on interest rates. To date, no such regulations have been imposed, outside of the 2007 cap on the now outdated payday loans.

Attempts *have* been made to regulate small loans in recent legislative sessions. For example, in 2015 five bills (more than in the previous five years combined) specifically sought to cap loan interest rates. All bills died, likely because of lenders’ growing presence in state legislatures and New Mexico in particular. Since 1998, the storefront lending industry has contributed \$672,949.73 to New Mexico candidates in financial election year contributions, according to the National Institute on Money in State Politics.³⁵ This amount represents a total of 1,032 different transactions between 57 contributors and 238 candidates. In 2014, the storefront lending industry contributed \$108,563.33 to New Mexico candidates. The Consumer Lending Alliance, based in Florida, has consistently been one of the largest contributors since 2004, contributing between \$13,500 (in 2004) and \$51,650 in 2012. Their total contributions since 2002, is over \$200,000. Other large contributors include Fastbucks Management Co., based in Texas, which has contributed over \$60,000 since 2010 alone, and Consumer Installment Loan Association of New Mexico, which has contributed over \$92,000 since 2000.³⁶

³⁴ See Bush (2014) available at <http://www.abqjournal.com/502692/news/nm-urged-to-limit-payday-loan-rates.html> (Accessed July 5, 2015).

³⁵ Commonly referred to by their website name, “followthemoney.org.”

³⁶ This pattern of growth appears at the national level as well. According to the Center for Responsive Politics, “political contributions from the PACs of payday lending firms and their employees hovered in the tens of thousands per election cycle for most of the 1990s... cracked \$1 million for the first time in 2004, and hit an all-time high of \$1.93 million during the 2010 races.”

The recipients of these financial contributions are candidates from both major political parties. Analysis of financial contributions between 1998 and 2014 showed no significant effect of party on amount of campaign contributions. According to the Center for Responsive Politics, this follows the national pattern. They state that the “party split of leaders’ contributions has fluctuated considerably over the past decade” (Center for Responsive Politics 2015). As an example, in 2010 Consumer Lending Alliance donated \$12,500 to Republican John Sanchez’ campaign for Lieutenant Governor, while in the same election cycle donating \$10,200 to Democrat Hector Balderas’ campaign for Attorney General.

In addition to campaign contributions, the storefront lending industry has spent tens of thousands on lobbying efforts in New Mexico. Particularly in 2015, when two House bills were introduced to cap the annual interest rates at 36%, there was a surge of lobbyists working on behalf of the storefront lending industry. Importantly, many of the lobbyists hired are well-established lobbyists, some of whom are former state legislators themselves. According to a report by New Mexico In Depth reviewing data from the Secretary of State’s office, these lobbyists included former House speaker Raymond Sanchez, who is also Democratic Senate Majority Leader Michael Sanchez’ brother, and Mickey Barnett, who was formerly a NM Committeeman to the Republican National Committee (Jennings 2015). The industry spent about \$300,000 in combined campaign contributions and other lobbying activities in the 2014 cycle (a significant amount considering the relatively low cost of NM state legislative campaigns). The top storefront lending financial contributors in the state, including Community Loans of America, Fast Bucks, Speedy Loan, and Axxess, have all hired lobbyists in New Mexico for 2015. Both of the 2015 bills that sought to regulate the storefront loan industry died in the House Regulatory and Public Affairs Committee. *New Mexico In Depth* reported that of the seven members of this committee, three received financial contributions from the industry in 2014 (all three were part of the Republican majority).

Pinpointing the relationship between lobbying efforts and policy outcomes is challenging. In New Mexico this is particularly complicated due to lack in disclosure regulation of lobbying expenses. For example, employers are not required to disclose the amount they are paying for lobbyist employees; nor are the lobbyists themselves required to disclose amount paid by each employer. Lobbyists may have a number of employers; in 2014 New Mexico lobbyists worked for an average of two companies each, with several working on behalf of more than 20 employers. In addition, lobbyists are not required to disclose the issues or bills they are involved in, a common practice in other states. In fact, they are not required to identify themselves through, for example, nametags (Jennings 2015).

While details of all transactions are not available (because lobbyists do not always disclose details for all transactions), there is evidence to suggest that at least some of the thousands of dollars spent in lobbying efforts by the industry were spent on legislators who are directly involved with decisions regarding regulating storefront loans. This is intuitive as lobbyists are likely to target members through their committee assignments. For example Community Loans of America lobbyist Anthony Trujillo, spent thousands

on meeting with legislators specifically assigned to the New Mexico Finance Authority Oversight Committee, often traveling around the state to follow the committees' travel schedule. Similarly, J.D. Bullington, who represents, Fast Bucks among others, bought breakfast burritos for the same committee in November according to his disclosed transactions (Jennings 2015).

Conclusion

New Mexico offers a lucrative location for the storefront lending industry. Meanwhile, the costs to the general public are likely large. While the economic cost to the state of New Mexico is unknown, a 2011 national study from the Insight Center for Community Economic Development (2013) details the economic cost to the U.S. According to the study, the burden of repaying payday loans cost the U.S. economy \$774 million in lost consumer spending, 14,000 job losses, and 56,230 bankruptcies, taking an additional \$169 million out of the economy.³⁷ Based on these national figures, it is reasonable to assume the lending practices hurt the New Mexican economy.

The state offers a poor and often financially illiterate population, little regulation on the storefront lending, low-cost lobbying, a political context where small contributions can go a long way, and relatively non-transparent lobbying and campaign finance laws. These factors combine to make New Mexico an attractive arena for predatory lenders to secure beneficial policies through all three tools of crony capitalism: rent seeking, regulation capture, and interest group activity. Until predatory lending law is changed—such as instituting an across-the-board cap on interest rates— the industry stands to continue to make millions from New Mexicans least able to afford it, and at the same time have a significant negative impact on economic growth.

Case #3: Pay-to-Play

Pay-to-play is arguably the most concrete evidence of crony capitalism. Pay-to-play relationships can be defined as quid pro quo relationships between members of the business community and elected officials in which the latter exacts payments (campaign donations and/or bribes) in order for the former to be considered for, or awarded, government contracts. According to local think tank, *Think New Mexico*, pay-to-play can be described as, "...corruption in which special interests make political contributions in order to increase their chances of receiving public dollars" (Nathan 2009). The most insidious result of such scandals comes at great cost to the general public. For example, the New Mexico State Investment Council (NMSIC) claims that, at its lowest, the State of New Mexico has lost \$90 million in poor investments due to pay-to-play deals, with private sources' estimates doubling this figure at \$180 dollars (Krasnow 2015). As former Attorney General Gary King noted in an opinion editorial, "Public corruption poses the greatest single threat to the credibility of government institutions at all levels. It

³⁷ See http://www.insightccd.org/uploads/assets/InsightCenter_Release%20Payday%20Lending%20Impact%20Report.pdf (Accessed August 9, 2015)

undermines good government, fundamentally distorts public policy...leads to misallocation of resources...and ultimately harms all New Mexicans either directly or indirectly” (Nathan 2009).

As we briefly noted above, New Mexico has gained considerable national notoriety from many recent pay-to-play scandals involving high-level public officials. Few instances received as much attention as those involving former Governor Bill Richardson and his administration in the 2000’s. This case received national attention due to the large number of individuals involved, the high sums of money purportedly lost, as well as the alleged involvement of Governor Bill Richardson himself, a national figure with an extensive political resume (Governor of New Mexico, U.S. Congressman, 2004 Democratic National Convention chairman, U.S. Ambassador to the United Nations, Energy Secretary under the Clinton Administration, and 2008 presidential candidate). It is for these reasons that we pay particular attention to this case.

Pay-to-Play in the Richardson Administration. The pay-to-play scandals of the Richardson Administration first gained notoriety during Governor Richardson’s presidential bid in 2008. At the time, corruption charges were filed against the Governor for allegedly awarding public contracts on the basis of campaign donations to his political action committee (PAC), Moving Forward America (CREW’s 2010). At issue was the role of CDR Financial Products, a California-based financial products and services firm, that was awarded a \$1.48 million contract with the New Mexico Finance Authority for bond management services as part of Governor Richardson’s 2004 Investment Program (GRIP). Though charges were dismissed in 2009, multiple donations from CDR and CEO David Rubin to Governor Richardson’s PACs were confirmed totaling at least \$110,000. According to prosecutors, these donations suspiciously coincided with the contracts awarded to CDR by the state of New Mexico. In a private letter to Richardson’s attorneys, United States Attorney Greg Fouratt stated that the failure to produce an indictment should not be perceived as a “an exoneration of any party’s conduct and does not preclude the United States or the Grand Jury from reinstatement of such an investigation with notification” (Gallagher 2010). According to Fouratt, it was “pressure from the Governor’s office [that] resulted in corruption of the procurement process so that CDR would be awarded such work” (Gallagher 2010). Though Richardson escaped indictment, three CDR employees were indicted in federal court for bid-rigging and fraud charges (CREW’s 2010).

Two years later, state and federal charges were filed against 15 individuals and multiple equity firms involved in a pay-to-play scandal housed in the NMSIC under the Richardson Administration. The 2011 charges were the first of many lawsuits and settlements as the result of this scandal. According to Bruce Krasnow of the Santa Fe New Mexican, the pay-to-play scandal is set to become “one of the most convoluted investment scandals in the United States,” with millions of pages of documents and financial statements from dozens of defendants, investment donors, and state employees (Krasnow 2015). At the center of the complex case are office holders within two New Mexico state investment bodies: the NMSIC and the New Mexico Educational Retirement Board (NMERB). The basic allegations are simple: Poorly reasoned

investments were made by both bodies (NMSIC and NMERB) on the basis of political, rather than financial, reasons. Furthermore, involved parties reportedly received kickbacks in the form of third party placement fees for Richardson Administration officials and campaign donations to Governor Richardson.

Among those currently under investigation are: Anthony Corraera, a one-time unofficial adviser to Governor Richardson; Gary Bland, Chief Investment Officer for NMSIC from 2003 to 2009; Marc Corraera, Anthony Corraera's son; and Saul Meyer, founder of Aldus Equity. According to the lawsuit, Anthony Corraera is believed to have acted as "...self-appointed consultant and gatekeeper, and often purporting to speak on behalf of Gov. Richardson" (Nash 2011). As such, Anthony Corraera instructed Bland and, by extension, the State Investment Council, to make "investments that would benefit politically connected individuals..." (Nash 2011). Marc Corraera was allegedly an important go-between, acting as a third party agent whose job was to match equity firms with state agencies looking for investment opportunities. New Mexico was looking to invest funds from the Land Grant Permanent Fund and the Severance Tax Permanent Fund, both the responsibility of the NMSIC. In this role, Marc Corraera earned \$22 million in fees for matching the State of New Mexico with firms such as Aldus Equity and Spyder Management.³⁸ His wrongdoing centers on misrepresenting poor investment opportunities to the NMSIC on behalf of companies paying him large sums to do so.

Meanwhile, Aldus Equity, one of the firms mentioned in the lawsuit, has been under intense scrutiny for its role in New York pay-to-play scandals as well. Meyer pled guilty to charges in New York and admitted to his role in the New Mexico scandal. He stated;

"On numerous occasions, however, contrary to my fiduciary duty, I ensured that Aldus recommended certain proposed investments that were pushed on me by politically-connected individuals in New Mexico. I did this knowing that these politically-connected individuals or their associates stood to benefit financially or politically from the investments and that the investments were not necessarily in the best economic interest of New Mexico" (Capitol Report 2011).

Spyder Management settled out of court with the State of New Mexico on April 6, 2013, for similar dealings. In 2005, Spyder received \$9.4 million to make unsound investments in startup and distressed companies (Krasnow 2015).

In the case of the NMERB, Frank Foy brought the original allegations to light in 2008 in a whistleblower lawsuit. The allegations are that former State Investment Officer Gary Bland and then Educational Retirement Board Chairman Bruce Malott were instructed by Richardson's Chief of Staff, Dave Contarino, to make investments with Vanderbilt Capital of Chicago on the basis of campaign contributions totaling \$15,000 to

³⁸ This is by no means an exhaustive list of the companies involved and under investigation.

Richardson's presidential campaign (Gallagher 2014). Vanderbilt Capital had the state invest in complex collateralized debt that has since lost all of its value following the 2008 financial crisis (Gallagher 2009).

Though these scandals have been continually deemed a "pay-to-play" scandal, current litigation under the NMSIC does not focus on corruption allegations, *per se*. There is no need to prove fraud, bribery, or even collusion with businesses. Rather, the current NMSIC needs to prove only that those involved (particularly office holders) failed in their "fiduciary responsibility to tax payers." But the nature of investments and the market makes it difficult to ascertain whether an investment was economically sound (Krasnow 2015). Fiduciary responsibility, more often than not, pits high returns with risky investments against low returns with safe investments. In other words, regardless of which you pick (high return/high risk investment vs. low return/low risk investments), a case is to be made for its economic responsibility. In the former case, an investment officer can argue that higher returns, though risky, are more financially responsible than playing it safe with low returns. Those who are risk-averse could argue the opposite: A sure thing with low return is a better investment. Part of the NMSIC's argument centers on the claim that, when it comes to pension funds (e.g. NMERB), it is irresponsible to engage in high-risk investments, regardless of their returns, given that pension funds *must* deliver benefits to state employees. Furthermore, if NMSIC can prove that investments were made based on an alternate criteria, in this case political and monetary gain, those charged will be less able to make an argument relating to the economic responsibility (whether high or low risk) of the investments they supported.

In all, the NMSIC claims to have lost over \$90 million from investments gone bad resulting from pay-to-play schemes during Governor Richardson's tenure. But according to Krasnow (2015), "the total loss to New Mexico residents and taxpayers could easily end up being twice that, depending on how one looks at the markets and what could have been with equity returns." In a recently filed lawsuit dealing with the scandal, Attorney and whistleblower Frank Foy alleged the pay-to-play scheme cost New Mexico taxpayers as much as \$200 million in investment losses (Gallagher 2015).

Other High Profile Examples. As we discuss above, New Mexico has a long history with corruption. The investment of taxpayer money appears to be at the heart of most cases. **After being convicted of conspiracy to commit extortion in 1984, Deputy State Treasurer Ken Johnson stated that in the State of New Mexico, "You have to pay to play," because "this is how business is done"** (Nathan and Fisher 2009). He was convicted along with State Investment Officer Phillip Troutman from the same body responsible for the Richardson administration pay-to-play scandal: NMSIC.

Twenty years later, state treasurers Michael Montoya and Robert Vigil were accused by the federal government of steering state business to investment advisers in return for hundreds of thousands of dollars in kickbacks. **During their trial, for which Vigil was convicted of extortion and Montoya pled guilty, one witness echoed Ken Johnson stating, "My understanding is that's how business is done in New Mexico"** (Nathan and Fisher 2009).

A pay-to-play scheme to skim \$4.2 million off of a government contract to build a new county courthouse in Bernalillo County led to guilty pleas from former President Pro Tem and Majority Leader of the State House Manny Aragon, as well as former Albuquerque Mayor Ken Shultz in 2008. Aragon sponsored the legislation to pay for the new courthouse and then conspired to receive kickback payments from a handpicked architectural firm headed by Marc Schiff (Nathan 2009 and Fisher 2009).

In early August of 2009, former Secretary of State Rebecca Vigil-Giron was indicted for her role in a scandal with lobbyists and contractors for the fraudulent use of money earmarked for a voter education campaign (Nathan 2009 and Fisher 2009). Again in 2009, New Mexico Deputy Superintendent of Insurance Joe Ruiz was convicted of fraud and extortion related to his role in enforcing the state insurance code. According to the lawsuit Ruiz would;

“...detect licensing violations by various insurers and threaten them with the maximum possible fines. Then, he would inform the insurers that they could avoid paying the fines if they contributed ten to twenty percent of the fine amount to two specific charities with which he and Mr. Serna were connected, the Con Alma Health Foundation (“Con Alma”) and the Southwestern Arts Institute (“SAI”)” (United States v. Ruiz 2009).

Ruiz extorted \$150,000 for Con Alma and the Southwestern Arts Institute and earned \$1,500 in royalties for himself through the sale of his children’s book sold at both charities.

Conclusion

Pay-to-play schemes represent the most insidious example of crony capitalism. In addition to being illegal, the schemes are clearly designed to benefit the few over the many. And the costs to the New Mexican public are potentially huge. As we note above, the practices during the Richardson Administration *alone* might have cost New Mexican taxpayers between \$90 million and \$200 million in investment losses. While the economic costs of the other scandals are uncertain, it is reasonable to assume the costs are nontrivial. Indeed, the long and complicated court trials themselves incur significant costs to the public.

Interestingly, the scandals persist despite some of the nation’s strongest pay-to-play laws. According to one analysis of states’ pay-to-play laws, New Mexico falls in the top tier in terms of legislative strength.³⁹ Still, the state could benefit from shoring up legislation in two places. First, the current law, the Gift Act of 2007, only prohibits donations from

³⁹ See <https://www.citizen.org/documents/pay-to-play-chart-2012.pdf>

government contractors and other recipients of public resources to public officials *directly responsible* for awarding the contract. Expanding the scope of law to cover *all* elected officials at the state and local levels, like Connecticut, may go a long way in preventing future scandals.⁴⁰ Second, the current penalties simply end the contract with the state. To strengthen this aspect of the legislation, the state might consider more severe penalties such as fines (e.g. Hawaii and Ohio), cancellation of all government contracts (e.g. Illinois), preclusion from bidding on government contracts for a defined period of time (e.g. New Jersey), and/or criminal charges (e.g. Indiana and Nebraska).

COMBATING CRONY CAPITALISM

According to studies in both economics and political science, corruption is a major obstacle to economic growth in both the US states (e.g. Johnson, LaFountain, and Yamarik 2010) and internationally (e.g. Fisman and Svensson 2007). It reduces domestic investment, discourages foreign and inter-state direct investment, inflates government spending, and shifts government spending away from education, health, and infrastructure maintenance toward less efficient, and more manipulable, public projects (see Wei 1999). It also increases income inequality and poverty both domestically (Dincer and Gunlap 2012) and abroad (Gupta, Davoodi and Alonso-Terme 2002). Corruption, in short, hurts economic performance.

As we discuss above, not every private sector–government interaction is corrupt behavior. Some—like tax subsidy programs—can, under the right conditions, be valuable instruments of economic growth. Furthermore, it is not always illegal; but at its core, crony capitalistic behavior, like corruption, is **anticompetitive deal-making that rewards influence over merit**. Corruption may therefore be thought of as a *subset* of crony capitalism, which makes it reasonable to conclude that crony capitalism may also have detrimental effects on economic performance.

Indeed, economists dating as far back as Adam Smith have emphasized how costly such crony capitalism can be. They have warned that it can impose an effective tax on the public in that it distorts the proper functioning of the market economy for the benefit of the few.

As Adam Smith famously observed in 1776 in *The Wealth of Nations*;

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder

⁴⁰ This recommendation was also suggested by Nathan and Fisher (2009) and Think New Mexico in their thoughtful analysis of pay-to-play in New Mexico, available at <http://www.thinknewmexico.org/pdfs/PayToPlayReport.pdf> (Accessed September 16, 2015).

people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.”⁴¹

This is all to say that crony capitalism may profoundly stifle economic performance. While it is difficult to make any claims about the economic consequences of tax subsidies in New Mexico (again, sometimes they work, sometimes they do not), the detrimental impacts of predatory lending and pay-to-play scandals are clear: Both continue to be a drain on the New Mexico economy. Predatory lending hurts consumer spending, while pay-to-play hurts investment returns on government spending.

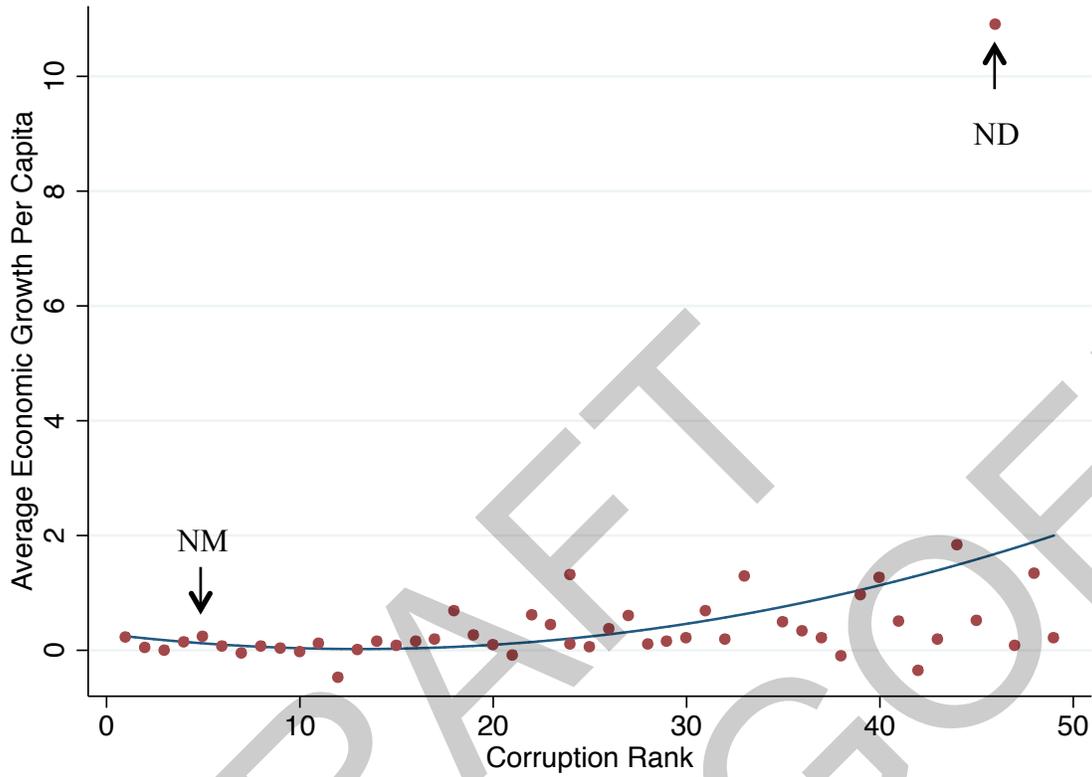
But perhaps the greatest drain on the New Mexican economy is the perception of pervasive corruption, particularly at the state level. The data seem to support this claim; Figures 7 (next page) and 8 (page 40) shows the relationship between state-level corruption and economic growth in the U.S. (one with North Dakota, an outlier with regards to economic growth, and one without). The corruption measure, referenced above, is taken from Dincer and Johnston’s 2014 survey of news and investigative reporters who cover state politics in each state. As we discuss, they find New Mexico is perceived by its *own press* as the 5th most corrupt state in the nation. During the same time period, New Mexico also has one of the lowest growth rates in the nation. Specifically, the state’s five-year average growth rate (2009-2014) was 0.5%, which makes it the 11th worst in the nation.⁴² As shown in Figure 7, there is a clear negative relationship between a state’s corruption rank and its economic growth rate. That is, the more corrupt a state, the lower its economic performance. The relationship between economic performance and perceived corruption is even clearer on income inequality. Figure 9 (page 41) shows the relationship between corruption and states’ 2010 Gini coefficient; the trend line is strongly negative, which suggests that more corrupt states have high income inequality. Once again, New Mexico is near the bottom of the list when it comes to the Gini coefficient; its score of 0.464 ranks it 15th in inequality.⁴³

⁴¹ Adam Smith, *The Wealth of Nations*, 1776.

⁴² Economic growth rates were based on gross state product (GSP) rates available from the US Bureau of Economic Analysis (<http://www.bea.gov/regional/index.htm>).

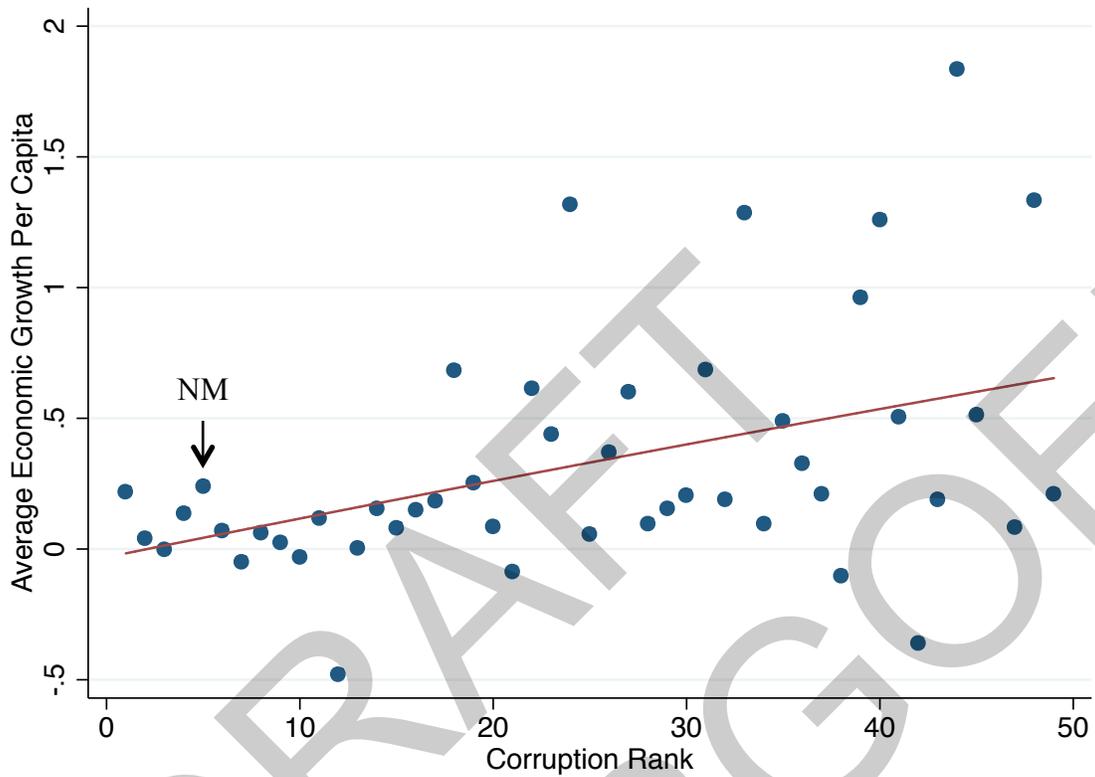
⁴³ The Gini coefficients were taken from the U.S. Census, available here: <https://www.census.gov/prod/2012pubs/acsbr11-02.pdf>

Figure 7: Relationship Between Economic Growth and Perceived Corruption



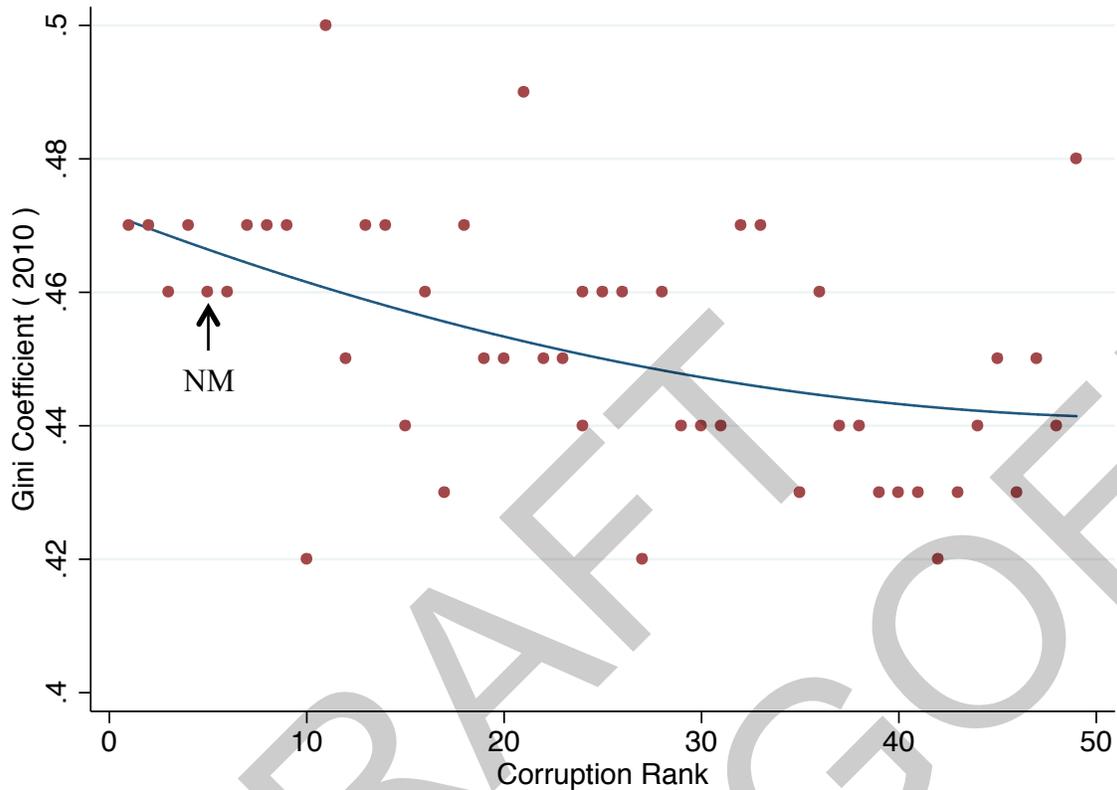
Note: The corruption rank is based on Dincer and Johnston's 2014 survey of news and investigative reporters who cover state politics in each state. Ranks range from 1 (most corrupt) to 50 (least corrupt). Economic growth is measured as a state's average growth between 2009-2014 per 100,000 persons.

**Figure 8: Relationship Between Economic Growth and Perceived Corruption
(Excluding North Dakota)**



Note: The corruption rank is based on Dincer and Johnston’s 2014 survey of news and investigative reporters who cover state politics in each state. Ranks range from 1 (most corrupt) to 50 (least corrupt). Economic growth is measured as a state’s average growth between 2009-2014 per 100,000 persons. Unlike Figure 7, this figure excludes North Dakota due to the state’s extreme GSP (it is an outlier).

Figure 9: Relationship Between Income Inequality and Perceived Corruption



Note: The corruption rank is based on Dincer and Johnston’s 2014 survey of news and investigative reporters who cover state politics in each state. Ranks range from 1 (most corrupt) to 50 (least corrupt). Gini coefficients were taken from the 2010 US Census.

New Mexico has a long history of strong economic activity. One reason has to do with its location. First, Santa Fe was at the center of two vital and infamous international and inter-state trade routes in the Americas. It was *the* key terminal for the East-West trade route of the Santa Fe Trail and the North-South route of the Camino Real. Later, Albuquerque became a major thoroughfare for U.S. travelers along the famed Route 66 (a.k.a., the “Mother Road”), which connected Chicago, Illinois to Santa Monica, California. Even today, Albuquerque serves as an important stopover for weary travelers and truckers along Route 40, not to mention an important connection for East-West-traveling railroad companies such as Union Pacific and Burlington Northern Santa Fe railways.

Why, then, has New Mexico been unable to maintain economic vitality? Certainly, New Mexico possesses key characteristics that hurt its economic potential; perhaps most important is its underachieving educational system. According to the 2010 U.S. Census, only 83% of New Mexico’s population has a high school degree, making it the 8th worst in the nation. On the other hand, New Mexico boasts one of the highest percentages of

those with graduate degrees; approximately 11% of its population has an advanced degree, which is 15th best in the nation.

It is our belief that the perception of high public corruption and cronyism is a key reason for New Mexico’s lackluster economic growth. This belief is grounded in the well-established evidence from international- and state-level research noted above. **The appearance of corruption and cronyism is a drain on economic performance;** and it is hurting New Mexico.

Unfortunately, the roots of crony capitalism are dug deeply into the U.S. political system, and New Mexico in particular. The potential fruits of anticompetitive deals are many, and given that motivation availability of money creates a strong predisposition toward its use.

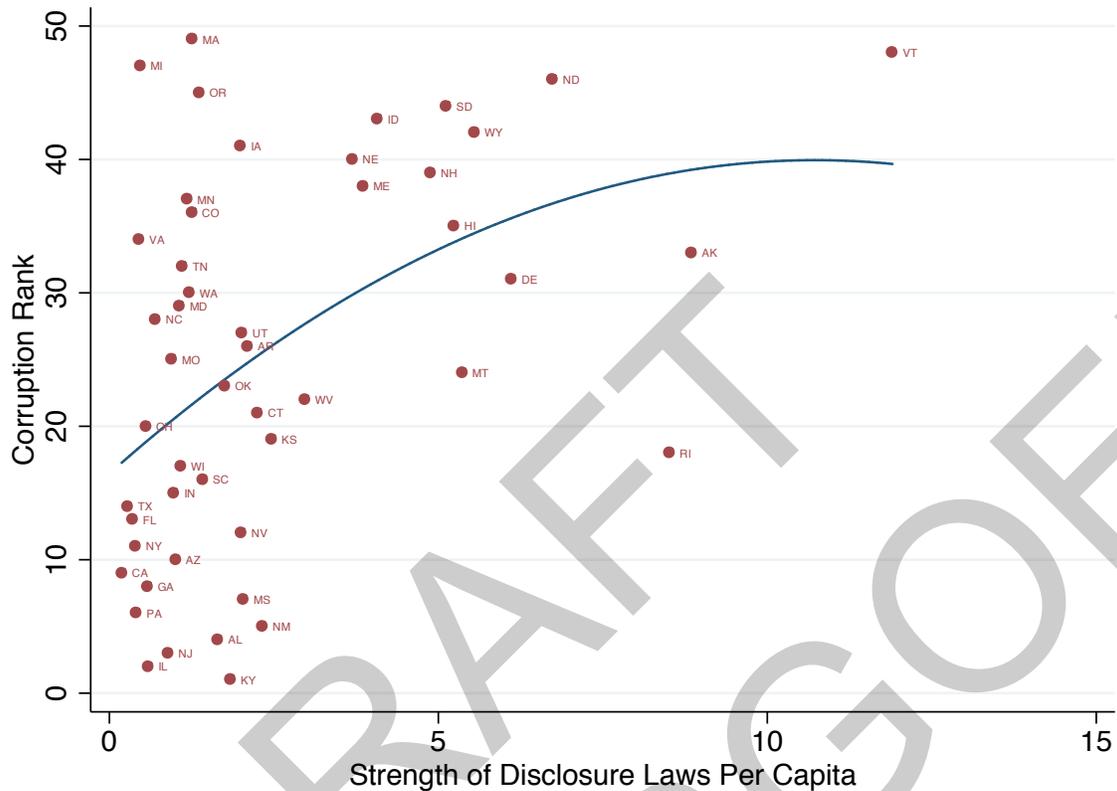
What can be done? The first line of defense, of course, is awareness – and an attitude of “just don’t do it.” New Mexicans need to make the case so strong that the public builds an ingrained aversion to crony deals. It is becoming clearer just how riddled with distorting deals public policy has become in the state of New Mexico, and elected policymakers should put a high hurdle in the way of enacting additional deals – and put a premium on efforts to reverse existing ones.

Each deal has its own advocates – else it would not have been enacted in the first place. And in the age-old dictum of political science, the “disinterested majority,” there always is a greater reward for policymakers to providing a benefit to a narrow interest than to rejecting it in the interest of the broader public – because the typical citizen is far less aware of any such issue, and would benefit less from the denial of the benefit than would each of the very small group of petitioners from its creation. Such deals quickly can become a snowballing problem through the widely recognized “logrolling” process: Once one deal is on the table, it can attract support from other policymakers in exchange for support for *their* proposed deals. Thus, it is the responsibility of the informed public, aided by the press, to follow the progress of any deals and to hold the responsible policymakers to account.

Recommendation #1: Require Greater Disclosure of Campaign Finance and Lobbying

A prerequisite for holding public officials accountable is providing **full and free access to relevant information**. In the case of crony capitalism, this means full disclosure of campaign contributions and lobbying activity. Disclosure empowers public oversight and accountability in the government decision-making process. For instance, without disclosure, the public cannot confidently determine the reasons behind public officials’ decisions, such as the delivery of earmarks, votes, or awarding of contracts. This issue strikes at the heart of democratic theory. As U.S. President Lyndon Johnson stated upon the signing of the Freedom of Information Act, “... a democracy works best when the people have all the information that the security of the nation permits.” Indeed, as shown in Figure 10 (next page), a relationship exists between strength of disclosure laws and corruption. **The stronger a state’s laws, the less corrupt it is perceived to be.**

Figure 10: Relationship Between Disclosure Laws and Perceived Corruption



Note: The corruption rank is based on Dincer and Johnston’s 2014 survey of news and investigative reporters who cover state politics in each state. Ranks range from 1 (most corrupt) to 50 (least corrupt). Each state’s score for strength of disclosure laws was generated by taking the average of all grades associated with disclosure from the State Integrity Project’s online database (http://www.stateintegrity.org/corruption_risk_index_raw_data). Since less populated states tend to have less stringent disclosure laws, each state’s score was then divided by its total population (and multiplied by 100,000 for ease of interpretation).

Currently, New Mexico falls short of this ideal for four reasons. Three reasons have to do with the state’s lack of disclosure requirements for three basic elements central to evaluating crony capitalism. The fourth deals with the accessibility of campaign finance and lobbying information.

1. One of the most important omissions in the current campaign finance disclosure law is the donor’s employer. Without disclosing the donor’s employer, the public is missing a vital tool to detect the sort of unhealthy dealings between contributors and public officials reviewed above.

Recommendation: Require individual donors to disclose their employer.

2. The state does not require lobbyists to disclose the bills or issues they are lobbying on behalf of. While current laws require lobbyists to disclose their expenditures, the public cannot accurately ascertain *why* they are spending the money. Again, this information is absolutely essential if they are to hold their representatives accountable.

Recommendation: Require lobbyists to disclose the bills and issues they are lobbying for/against.

3. Not all independent, non-candidate political committees are required to disclose their donors. In recent elections, there has been a dramatic increase in spending by groups that make only *independent expenditures* in elections. New Mexico law requires that groups who engage in “express advocacy” of a candidate’s election or defeat or “electioneering communication” that refer to a specific candidate must disclose, among other things, contributors to the organization. However, a series of state and federal court cases limited this requirement to only those whose primary function is in expressed advocacy and electioneering communication. Anything short of that (e.g. political advertising constitutes less than half of an organization’s purpose), and groups are not required to disclose their donors.⁴⁴ New Mexico’s lack of disclosure for independent expenditures hurts the public’s ability to trace influence, and crony capitalism, back to its source: The individual donor. This makes holding representatives accountable much more difficult.

Recommendation: Amend the Campaign Reporting Act of New Mexico to compel public disclosure of as much information about the campaign spending of PACs and other non-candidate campaign participants as can be compelled without crossing the constitutional boundaries established by the courts. For example, the state should require any organization whose “major purpose” is to engage in “express advocacy” and “electioneering communications” in New Mexico to comply with the full range of registration and disclosure requirements that are imposed by the current law.

In every legislative session since 2011, Senator Peter Wirth (D-Santa Fe-25) has introduced a bill that would resolve the issues raised by recent court decisions and modernize New Mexico’s law regulating campaign spending by non-candidates. **We believe Senator Wirth’s bill (numbered SB 384 in the 2015 Regular Session) represents the base best policy practices and provides an excellent foundation for reforming the Campaign Reporting Act.**⁴⁵

⁴⁴ See Common Cause New Mexico’s helpful guide to campaign finance disclosure in the state of New Mexico for more detail: <http://www.commoncause.org/states/new-mexico/issues/money-in-politics/guide-to-independent.pdf>

⁴⁵ For more information on the bill, see <http://www.nmlegis.gov/Sessions/15%20Regular/bills/senate/SB0384.pdf>

4. One of the most effective ways to provide full and open access to vital campaign finance and lobbying information is through a user-friendly website. On the one hand, the state of New Mexico provides the public with free online access to campaign financing and lobbying reports.⁴⁶ Furthermore, the state's online Campaign Finance Information System is elegantly designed with a relatively simply user interface, particularly when compared to the systems of other southwestern states (e.g. Texas, Arizona, Utah, and Colorado). On the other hand, the system places a few unnecessary burdens on the public that restricts its overall effectiveness as a tool of transparency.

Among its greatest limitations is how quickly the website takes the viewer to the original financial report without allowing her to view data in the aggregate. Few citizens are interested in searching the contribution patterns of *one* particular donor or lobbyist, or sift through an individual candidate's campaign reports. Indeed, the current site appears to have been designed with this very intent in mind; all searches immediately prompt the user to input a specific donor or candidate's name and upon doing so, redirects her to filed campaign reports.

What would be more helpful to the average citizen (not to mention media, interest groups and political analysts) are results that depict how particular *types* of donors contributed to particular candidates or offices. The website should allow users to answer questions such as:

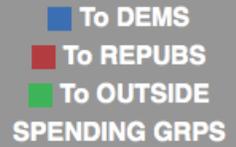
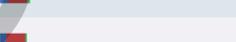
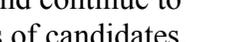
- How much money did individuals versus political committees contribute to the gubernatorial candidates in the last election? And what was the partisan breakdown?
- Which industries contribute to a particular candidate?
- How did the political parties distribute their funding in the last election?
- And how have these totals changed over time?

The state of New Mexico could adopt one of two existing models of online campaign finance resources. The first allows the user to aggregate the data themselves, through tools available on the site. An example of this model is www.followthemoney.org, which allows users to build tables and figures from a variety of data categories. The second model would be similar to www.OpenSecrets.org, a federal elections website run by the Center for Responsive Politics. While OpenSecrets does not allow users to manipulate data themselves, they present aggregated data in a variety of thoughtful ways. Figure 11 (next page) displays an example of how they would answer the second question above, regarding contributions by economic sector.

⁴⁶ See <https://www.cfis.state.nm.us> (Accessed September 1, 2015).

Figure 11: Example of Aggregated Campaign Finance Data (Opensecrets.org)

Sector Totals, 2013-2014

Rank	Sector	Amount	Total to Parties & Candidates	Dems	Repubs	
1	Finance/Insur/RealEst	\$507,293,955	\$344,462,927	37.4%	62.4%	
2	Ideology/Single-Issue	\$352,307,982	\$234,117,472	50.1%	49.7%	
3	Other	\$269,772,347	\$233,142,184	53.3%	46.3%	
4	Misc Business	\$228,470,048	\$181,637,580	38.2%	61.5%	
5	Lawyers & Lobbyists	\$151,364,481	\$140,347,046	65.2%	34.6%	
6	Health	\$141,183,350	\$131,294,451	43.0%	56.8%	
7	Labor	\$140,673,002	\$60,569,731	88.9%	10.9%	
8	Communic/Electronics	\$116,180,306	\$90,669,840	59.9%	39.8%	
9	Energy/Nat Resource	\$114,892,278	\$88,722,472	21.0%	79.0%	
10	Agribusiness	\$76,802,912	\$64,138,661	24.9%	74.7%	
11	Construction	\$67,453,027	\$59,761,486	28.4%	71.4%	
12	Transportation	\$60,893,210	\$56,552,762	28.3%	71.6%	
13	Defense	\$25,312,610	\$25,228,585	40.1%	59.8%	

Recommendation: Maintain the elegant design of the website and continue to allow users full and free access to the original financial records of candidates, contributors and lobbyists. However, allow the user to view pre-arranged aggregated data (such as OpenSecrets.org) or aggregate data *themselves* using embedded analytical tools (such as followthemoney.org).

Recommendation #2: Establish an Independent Ethics Commission

Ethics commissions have long been believed to be an important tool in curbing abuses in government (see Smith 2003). Currently, New Mexico is one of only eight states that do not have an ethics commission. While some have questioned whether ethics commissions actually reduce public corruption (e.g. Crider and Milyo 2013), we believe establishing such a commission would have a positive effect on public confidence in the New Mexican political system. It is worth noting that of the eight states without an ethics commission, New Mexico has the worst reputation for public corruption. Arizona, also without a commission, is ranked by political reporters as the 10th most corrupt state in the nation. Five of the six states without commissions— Idaho, North Dakota, South Dakota, Vermont and Wyoming—have stellar reputations on corruption, all ranking in the top 10

of *least* corrupt states. Virginia, the remaining state, is the 16th least corrupt state in nation.

New Mexico is nowhere near these six states when it comes to fighting and preventing crony capitalism or corruption. It is reasonable to argue that, at least presently, these six states do not need ethics commissions. It is definitely *not* reasonable to make the same argument for New Mexico. New Mexico needs an ethics commission, if for no other reason than to show its citizens that it takes cronyism and corruption seriously. At the very least, we recommend that the commission be independent, adequately funded, be able to protect complainants, have subpoena power, and have the power to discipline violators.^{47,48}

Recommendation #3: Conduct Regular and Rigorous Evaluations of Tax Subsidy Programs

According to data collected by Good Jobs First, a national resource dedicated to making economic development subsidies more accountable and effective, New Mexico issued 860 subsidies between 2011 and 2013 for a total of \$262,699,040.⁴⁹ As shown in Table 1 (next page), the film production tax credit program received almost twice the amount of the next highest program, high-wage jobs (\$145 million to \$78 million), and more than four times its average (\$1.3 million to \$328,000). This is confirmed by Table 2 (next page), which depicts the top 10 recipients of tax subsidies between 2011 and 2013. Seven of the ten companies in the top ten are television and movie production companies: Silver Bullet Productions, Northern Entertainment, Topanga Productions, SciWest Productions, Sony Imageworks, Triple A Productions, and Crash 2 Television Productions.

⁴⁷ In response to the corruption scandals of 2005 involving New Mexico Treasurer Robert Vigil and former Treasurer Michael Montoya, Governor Bill Richardson created two separate task forces to examine ethics reform. Both Task Forces, one in 2006 and the other in 2007, recommended the creation of an ethics commission. The 2006 report can be found here: <http://hdl.handle.net/1928/2544> (Accessed September 17, 2015).

⁴⁸ Senator Wirth is at the forefront of this issue as well. In the 2015 Regular Session, he introduced House Joint Resolution 15, with Representative Zachary Cook (R-Lincoln and Otero-56), that proposed amending the New Mexico constitution to establish an independent state ethics commission. The proposal can be found here: <http://www.nmlegis.gov/Sessions/15%20Regular/resolutions/house/HJR15.pdf>

⁴⁹ See <http://subsidytracker.goodjobsfirst.org/prog.php?statesum=NM&order=subyear&sort=desc> (Accessed on September 1, 2015).

Table 1: Tax Subsidy Spending 2011-2013

<u>PROGRAM</u>	<u>TOTAL SUBSIDIES</u>	<u>AVERAGE SUBSIDY AMOUNT</u>	<u>TOTAL SPENT</u>
Film Production Tax Credit	114	\$1,269,044	\$144,671,024
High-Wage Jobs Tax Credit	237	\$327,739	\$77,674,168
Job Training Incentive Program	116	\$119,795	\$13,896,329
Manufacturer's Investment Credit	156	\$84,155	\$13,128,292
Technology Jobs Tax Credit	237	\$56,241	\$13,329,228
Total	860	\$305,464	\$262,699,040

Source: Good Jobs First, <http://subsidytracker.goodjobsfirst.org/prog.php?statesum=NM> (Accessed September 3, 2015)

Table 2: Top 10 Recipients of Total Tax Subsidies, 2011-2013

<u>COMPANY</u>	<u>TOTAL SUBSIDIES</u>	<u>NUMBER OF SUBSIDIES</u>	<u>AVERAGE AMOUNT</u>
Silver Bullet Productions	\$25,244,500	2	\$12,622,250
Northern Entertainment	\$20,283,380	4	\$5,070,845
Topanga Productions	\$16,639,975	5	\$3,327,995
Intel Corporation	\$14,370,233	39	\$368,467
SciWest Productions	\$11,538,652	1	\$11,538,652
Conoco Phillips Co.	\$8,449,172	3	\$2,816,390
Louisiana Energy Services	\$6,408,864	16	\$400,554
Sony Imageworks	\$5,188,705	12	\$432,392
Triple A Productions	\$5,029,010	1	\$5,029,010
Crash 2 Television Productions	\$5,018,469	1	\$5,018,469
Total	\$118,170,960	83	\$41,606,555

Source: Good Jobs First, <http://subsidytracker.goodjobsfirst.org/prog.php?statesum=NM> (Accessed September 3, 2015)

In addition to the Legislative Finance Committee's report cited earlier, further information on New Mexico's tax subsidy programs can be found in the Taxation and Revenue Department's annual Tax Expenditure Report. Per Governor Susana Martinez's Executive Order 2011-071, the Tax and Revenue Department is charged with producing a detailed evaluation of New Mexico's tax subsidy programs. The report typically offers a

brief description of each program, as well as its intended purpose, history, brief evaluation and provides recommendations, if any.

What is missing from each of these tools (Good Jobs First's online database, Legislative Finance Committee's report, and the annual Tax Expenditure Budget) is an analysis of the *economic consequences* of these tax programs. While each source provides a snapshot of what each program costs, **not a single report gives the public any idea of whether they actually work**. New Mexico simply does not know whether the costs of the program outweigh the benefits for most of its tax subsidy programs.

The one exception is the Film Production Tax Credit. Since 2008, three separate studies have analyzed the costs and benefits of the program, with each producing different results. The first, conducted in 2008 by the Arrowhead Center at New Mexico State University, provided the most negative assessment, concluding that for every dollar spent in rebates, the state only received \$0.14 in return.⁵⁰ The second, released in 2009 by Ernst and Young, reported a much more optimistic result, concluding that for every dollar of state credit, state and local government received \$1.50 in tax revenue.⁵¹ Commissioned by the State of New Mexico in 2014, the final analysis was completed by MNP, a Canadian consulting firm.⁵² Their results are mixed; on the one hand, they find that film production activity has produced an estimated \$0.43 in state and local taxes for each dollar in production incentive granted. Yet they also find that each net dollar of incentive was associated with approximately \$7.18 in new Gross State Product (GSP).

According to the Pew Charitable Trusts, 10 states and the District of Columbia have recently passed laws that require regular evaluation of economic development tax incentives or an improved evaluation process.⁵³ **New Mexico should pass a similar law, and charge an appropriate committee or agency (likely in either the legislative or**

⁵⁰ See Popp and Peach (2008) available at <http://arrowheadcenter.nmsu.edu/wp-content/uploads/2015/06/filmindustryfinal.pdf> (Accessed September 3, 2015).

⁵¹ See http://www.southwindsor.org/sites/southwindsorct/files/uploads/ernst_and_young_new_mexico_film_production_tax_credit_study.pdf (Accessed September 3, 2015).

⁵² See MNP's report here: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/New%20Mexico%20Film%20Production%20Tax%20Incentive%20Study%20-%20Phase%20I%20Report%20-%20New%20Mexico%20Film%20Production%20July%202014.pdf> (Accessed on November 6, 2015).

⁵³ See Pew's thoughtful report here: <http://www.pewtrusts.org/~media/Assets/2015/01/StateTaxIncentivesBriefJanuary2015.pdf> (Accessed on September 7, 2015). We agree with Pew's recommendations.

executive branch, or both) with conducting a regular and rigorous evaluation.⁵⁴ The programs need to be studied often enough to provide policymakers with up-to-date information, while allowed the time to produce thorough, detailed studies. Furthermore, we recommend the analyses utilize a variety of relevant economic measures to evaluate the success of the tax subsidy programs. However, consistent with the perspective of the Center on Budget and Policy Priorities, tax revenue to the state as a result of the subsidy programs—e.g. income taxes from jobs created, sales tax from economic output, etc.—should be central to evaluating the effectiveness of the programs. It is a necessary and important measure of program success, as it is the only one that compares apples (tax revenues) to apples (tax expenditures).

Conclusion

There are certainly other ways to curb crony capitalism. The CED's 2015 national report outlines a number of possibilities, ranging from limiting the size of government to changing existing campaign finance laws. Our goal in this section was to outline policy changes that, given the New Mexico political context, not only show promise for curbing crony capitalism, but also have realistic chances of being enacted or implemented. Indeed, most of the recommendations outlined above would require very little change to existing law.

In short, we chose these recommendations because they have the potential to deliver the most “bang for the buck” when it comes to combating crony capitalism. Indeed, New Mexico must try *something*. **If New Mexico is to ever recapture the economic vitality it experienced as a key terminal along the Santa Fe Trail, Camino Real and, later, Route 66, it must root out cronyism and corruption in its state government.**

⁵⁴ We are relatively ambivalent about which group be charged with conducting the evaluation. We are much more concerned that an annual evaluation occur in the first place.

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