



Agenda

DATE 2/21/13 TIME 2:40p

SERVED BY *Jerene R. [Signature]*

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CHARTER REVIEW COMMISSION

February 28, 2013

4:00 pm

City Council Chambers

200 Lincoln Avenue

1. PROCEDURES:
 - a) Roll Call
 - b) Approval of Agenda
 - c) Approval of February 13, 2013 Minutes
2. Public Comment.
3. Report from the Outreach/Communications Committee on status of outreach efforts regarding Charter Review Commission Outreach Process and Procedures for input from concerned residents, including possible use of City Website, social media, and communications with media.
4. Discussion of Issues presented to date regarding election process:
 - a) Re-Districting to be Drawn by an Independent Commission?
 - b) Off year Councilors Required to Resign In Order to Run for Mayor?
 - c) Machine Count Ballots/Ranked Voting Status?
 - d) Change Municipal Election Cycle to Fall?
 - e) Full Time Mayor rather than Part Time Mayor?
 - f) Limit Contributions and Gifts to Candidates for Office Who Do Not Elect to receive Public Financing?
 - g) Term Limits for Elected Officials?
 - h) Create At-Large Districts for City Councilors?
 - i) Charter Review to Occur More Frequently?
5. Listing of all Issues presented to date for consideration and possible action setting date for discussion of pending issues.
6. Discussion/possible action regarding future meeting locations and dates.
7. Discussion/possible action regarding process for Charter Review Commission to obtain information for review on topics raised for possible changes to City Charter.
8. Discussion/possible action regarding setting future deadlines for the submission of proposed amendments to the Charter Review Commission for consideration by the Charter Review Commission and the process that Charter Review Commission will follow in considering any submitted amendments.
9. Communications from Charter Commission Members.
10. Public Comment
11. Adjournment

Persons with disabilities in need of accommodations, contact the City Attorney's Office at 955-6512, five (5) working days prior to meeting date.

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Wednesday, February 28, 2013**

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**MINUTES OF THE
CHARTER REVIEW COMMISSION
City Hall Chambers
200 Lincoln Avenue
Wednesday, February 28, 2013**

CALL TO ORDER.

A meeting of the Charter Review Commission was called to order by Nancy R. Long, Vice-Chair, at approximately 4:00 p.m., on February 28, 2013, in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

1. PROCEDURES

a) ROLL CALL

Roll call indicated the presence of a quorum as follows:

Nancy R. Long, Vice-Chair
Roman Abeyta
Steven G. Farber
Brian Patrick Gutierrez
John B. Hiatt
Houston Johansen
Carol Romero-Wirth
Daniel Werwath

MEMBERS EXCUSED

The Honorable Patricio Serna, Chair

OTHERS ATTENDING

Marcos Martinez, Assistant City Attorney
Irene Romero, City Attorney's Office
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance.

b) APPROVAL OF AGENDA

MOTION: Commissioner Hiatt moved, seconded by Commissioner Werwath, to approve the agenda as presented.

VOTE: The motion was approved unanimously on a voice vote.

c) APPROVAL OF FEBRUARY 13, 2013 MINUTES

The following corrections were made to the minutes.

Page 4, paragraph 4, line 4, correct as follows: “..the City and would....”

MOTION: Commissioner Hiatt moved, seconded by Commissioner Werwath, to approve the minutes of the meeting of February 13, 2013, as amended.

VOTE: The motion was approved unanimously on a voice vote

2. PUBLIC COMMENT

John Otter said at-large elections would eliminate the necessity for redistricting.

Former Councilor Karen Heldmeyer said she has two process issues. First, this is supposed to be the District #1 meeting, but she doesn't think anybody knows that, especially the people in District #1. She said it doesn't make sense to talk about including the public in meetings if the public doesn't know the meetings exist and they are being targeted to them. She said this Commission needs to figure out a way to make the whole thing more public.

Former Councilor Heldmeyer said secondly, this agenda is ambitious and a little confusing, with “this comment at the beginning, comment at the end.” She doesn't think the Commission will finish its agenda, and would think the Commission would rather hear from people at the time you discuss each individual issue. She said if this isn't what you have in mind it needs to be clarified.

Vice-Chair Long said she assumes the Commission would want to take comment and get input on the individual items as we're considering them. She agrees that she doesn't see this Commission getting through all the items on the agenda, or even to consideration of substantive issue.

Karen Walker spoke about two cases at the Historic Board where they met all publication requirements, but still had no attendance. She doesn't know how we are going to get the word out. She looked at the minutes, and there were comments that you did not want to hear subject matter that would require state concurrence.

Vice-Chair Long said there was discussion about that issue.

Ms. Walker reviewed list of items on the agenda. She said Mayor Coss may take issue with the full time or part time Mayor, commenting he considers himself a full time Mayor. She said, with regard to candidates who do not accept finance, that would require State concurrence, as well as term limits. She said she doesn't believe there can be an at-large district, and believes every district has to have a representative, noting she suggested partial districting with 1 representative from each district and the balance of the Council would run at large. She said the issue of charter review to occur more frequently is not necessary. She said we have to review it every 10 years, but it doesn't say you can't review it every 10 days."

Ms. Walker asked if the meetings were televised when you get down to specific issues, if that would increase attendance, and asked if there is a budget for this.

Commissioner Werwath said the hope is, in the very near future, 1-2 weeks, we will have all the information finalized, the comprehensive list of topics, and plan to distribute that as a press release from the City to the major media outlets. There are some planned components, including radio interviews and other things that will happen to get some information into the community. He said the Commission has been doing this in tandem with everything that is going on, and people need to understand it is being done by volunteers.

Ms. Walker said the first Commission was televised and she thinks it helped, because people would come rushing down to the meetings.

3. REPORT FROM THE OUTREACH COMMUNICATIONS COMMITTEE ON STATUS OF OUTREACH EFFORTS REGARDING CHARTER REVIEW COMMISSION OUTREACH PROCESS AND PROCEDURES FOR INPUT FROM CONCERNED RESIDENTS, INCLUDING POSSIBLE USE OF CITY WEBSITE, SOCIAL MEDIA, AND COMMUNICATIONS WITH MEDIA.

Commissioner Werwath said he met last week with Irene Romero and Joyce Bond regarding tasking out the remaining items from our approved plan for outreach, and everything has been tasked out. He said the progress includes creating a Face Book page for the Charter Commission, and he encourages Commissioners to find and mark that page. He said there is still not a lot of content, but it is set up. He said Mr. Johansen created a Twitter Page for the Commission which also is linked into the Face Book page, so they cross post. He sent an initial draft to the Commission today of the on-line survey. He said they are waiting on Agenda Items #5 and #6, the last components they need to complete the plan as it relates to the website, and publishing the meeting dates. He said Joyce Bond is working on all the other things we discussed. He hopes following this meeting they can complete the website, which will trigger the launch of a press release.

Vice-Chair Long thanked Commissioner Werwath and the members of his committee for getting the word out in a way the "rest of us would not be able to do." She hopes that will yield results and we'll get more interest.

Commissioner Farber said he signed up for Twitter and Face Book some time ago, but never utilized them. He said he received the email and clicked on the Twitter page. He said we need to decide as Commission members how much personal information we want available to whomever might be looking at it. He said, "I know that the Charter Commission likes the Charter Page and Daniel likes the Charter page, but if everybody starts clicking on stuff, there may be all kinds of personal things that are out there that you or I or others may not want people to know about. It's way beyond the Charter Commission stuff. We have to figure out how that works, what we do."

Commissioner Werwath said those are matters of personal preference and there are privacy settings on the Face Book page and what you do and don't show. That information is completely available with a simple Google search, and if you have a Face Book page it will come up. The level and depth of information you show is part of the individual settings that you choose.

Commissioner Farber said he thought to find out something about somebody else, he would have to sign onto Face Book.

Commissioner Werwath said there are certain levels of information on Face Book, but that has little bearing on the Charter Commission Face Book page, and doesn't create any more disclosure of information than is readily available to any Face Book user.

Commissioner Farber said he was exploring, and appreciates that there was a good attempt to try and let people know about the meetings. He said this was to be the first District #1 outreach meeting. He asked what we could do done better to get attendance for the next meeting, commenting we're walking through this trying to figure it out as we go along. He said perhaps some sort of web streaming would get people interested. He asked if the meeting was on the list published by the City.

Commissioner Werwath said yes. He said the social media component we're doing and things published on the internet including the website on the City's page is not intended to be the comprehensive answer to outreach, but it is part of completing a comprehensive approach which includes those things. He said this is one of the pieces of a comprehensive approach to get the message to the public.

Mr. Farber said the next question is how we can fill in the rest of that piece.

Commissioner Werwath said at this point, we're limited about what we can do, noting we can do a press release, approach media outlets about getting on the radio and other things, all of which are important. He said the subcommittee was tasked around the issues of social media as a priority and they dealt with those first, but they always are open to looking at other avenues and creating as much public interest in this as possible. He feels our stalwart attendees deserve company.

4. DISCUSSION OF ISSUES PRESENTED TO DATE REGARDING ELECTION PROCESS:

A copy of *Draft Charter Review Commission Topics under Consideration 2-14-2013*, is incorporated herewith to these minutes as Exhibit "1."

A copy of *Master List of Currently Proposed Amendments – Daniel Werwath*, is incorporated herewith to these minutes as Exhibit "2."

Vice-Chair Long said these topics were nominated by this Commission or the public. She said she thinks that Item, (e) Full time Mayor is a governance issue. She noted the list of topics under consideration dated February 14, 2013, also has this issue as a governance issue, and proposed this be moved to the governance section for discussion.

Vice-Chair Long suggested the Commission discuss how to tackle these items in a more substantive way, noting the Commission previously received two legal Memos from Marcos Martinez on term limits and at large Councilors. However, we just heard from Ms. Walker that the proposal was to have ½ of the Councilors to serve at large.

Commissioner Romero-Wirth said, with regard to 4(c) Machine Count Ballots/Ranked Voting Status, there was public comment about whether we should remove it from the Charter because it can't be done. She doesn't know it can be removed, because we need to discuss whether it should be part of the charter or not, and not just part of this list.

Commissioner Farber said, with regard to the list of February 14, 2013, Commissioner Hiatt tried to go through and capture the various ideas that have been presented in an attempt to have something before this Commission.

Commissioner Werwath said his list was done get to a consolidated list today and make sure we're all on the same page so we can move forward to publishing this.

[Commissioner Farber's remarks here are inaudible because his microphone was turned off.]

Commissioner Farber said something about prioritizing the list before the Commission with regard to elections, after removing several items.

Commissioner Farber said, "At the last meeting we talked about two short memos. One was Citizens United and its impact on limiting campaign contributions. I think there was another one which was would the City even have the right to require someone who, I don't know how you call it, who has a Council off-term, in other words, their term doesn't end at the time the Mayoral election itself, that they have to resign, or something like that, but there isn't any legal ability to do that. Did you have a chance to work on those things."

Marcos Martinez said, "I have a memo on the first, yes."

Vice-Chair Long asked if it was the Citizen's United Case.

[The response here was inaudible]

Vice Chair Long thanked Mr. Martinez for his work on that.

Commissioner Hiatt said he would like to vote on the issue of sending the frequency of the Charter review to the "kill list," for next meeting. He said it doesn't matter how you feel about it, one way or another, it's going to a list to be decided at the next meeting."

Commissioner Werwath said he is favor of this, and doesn't think it is necessary to get really into the Roberts Rules of Order.

Commissioner Hiatt said he doesn't want to go into the other topics until we vote on this one.

Vice-Chair Long said she doesn't see any of these as action items, so she doesn't know that we should make motions on them, but it is a suggestion for the next meeting.

Commissioner Hiatt said, "I would like to see this on the agenda at the next meeting. Now, if we could go back to 4(c), do we need to separate these two issues."

Commissioner Farber said yes.

a) Re-Districting to be drawn by an independent commission.

Jodie Larson, League of Women Voters, said the League supports independent redistricting commissions with balanced representation and we support that at all levels.

Vice-Chair Long asked if the State is looking at that right now.

[Unidentified from the audience seemed to indicate it is, but was inaudible because they were not at the microphone]

Commissioner Hiatt asked who does this now.

Vice-Chair Long said it is done by the City Council.

Commissioner Hiatt asked, "Are we unhappy with the Council's way of doing it."

Ms. Larson said the League doesn't look at results of particular redistricting efforts and say, this is good, that's bad, but just in terms of the way it should be done, having it done by an independent commission, rather than having it done by incumbents whose chances of reelection might be affected would be better."

Commissioner Abeyta said, "So for clarification, the independent commission would have the final say. It wouldn't have to go to the Council. It wouldn't be just a recommendation, what you're proposing. You're proposing that this Commission would set it, and that would be it."

Ms. Larson said she thinks the League position would allow us "certainly to support what you just

said." She said, "If a proposal were made to do it other way, just to have just an advisory commission, I think we probably would.... well, I'd have to look at the actual wording, but we would prefer that it be an independent commission that does have the final say. We might be able to support an alternative to that. We would have to see it and study it. I'd just rather not say that right now."

Commissioner Romero-Wirth said, "To clarify. What we're proposing to be in the Charter would be just the fact that we think there should be an independent commission for redistricting, and then the details of that would be put in City Ordinance. There's a lot to creating these things. Would we actually decide the components of how that would work, or just say there should be one, and then the City Council has to go out and create the laws about how that would work. Correct."

Former Councilor Heldmeyer said, "Correct."

Commissioner Romero-Wirth said, "Just like the contribution limits."

Commissioner Abeyta said, "Without language in there, regarding if it's the final say or not, then what's the point. The City Council could still change the [District boundary] lines when it gets to them. I saw how..."

Commissioner Romero Wirth said we could probably give some direction.

Former Councilor Heldmeyer said she thinks what Ms. Larson is saying that either of those two ways of doing it are supported by the League position. She said, "As a Charter Commission, you could request to put it into the Charter. Either of those two positions, that's not considered too detailed, whether it was an independent balanced citizen commission that would decide on the redistricting, or whether it was an independent, balanced commission that would make a recommendation to the Council. The choice between those two... I think either of them are an appropriate level of detail for the Charter."

Commissioner Hiatt asked Councilor Heldmeyer for a suggestion on how to structure the debate as we go forward. He said, "I'm looking for process every time now, and so who else should we have here besides the League of Women Voters to help us decide."

Former Councilor Heldmeyer said we've got Common Cause and "they agree with us."

Commissioner Hiatt said, "I'm sorry, I agree, Common Cause and the League. But who is going to be on the other side – the Councilors."

Former Councilor Heldmeyer said she thinks it would be the Councilors.

Commissioner Hiatt asked her if they would be the only ones.

Former Councilor Heldmeyer said, "If you want an outside independent person, Brian Sanderhoff has done the numbers for the City and for most other political subdivisions in this State for at least a couple of go-rounds, if not more."

Commissioner Romero-Wirth asked if Mr. Sanderhoff would take a position on this.

Former Councilor Heldmeyer said, "Probably not, but he could tell you what he does, and he could tell you what different cities do with that information."

Commissioner Romero-Wirth said there was a bill in the Legislature to have an independent commission, and there might be people who testified around that who would be helpful to us, commenting she doesn't know who those people are, but they are a possible source of information.

Former Councilor Heldmeyer said Jared Applewhite is one of the people who has been very pro independent redistricting, and he's probably the lead lobbyist in the Legislature who's been pushing it. So, if it has been killed, he's free and could come and speak to the Commission.

Mr. Harrington said, "I was in the meetings, before Senator O'Neill's bill was dropped with the League representatives, Meredith Mason, Dick Mason, and regionally, there was an advisory version. And then it was decided that... whether the advisory commission idea would work, I think depends on who they are and whether they would command sufficient prestige that the Council would be reluctant to mess with it. If they don't, then you end up just juggling the time and expense and everything of the redistricting process, if the Legislature, and in this case the Council, feels free to just kind of start over. In Iowa it works well, because they've used their legislative council service which commands bi-partisan respect, but in other states, the advisory hasn't. And California and Arizona have now both gone for the final say type commission. Which again, the controversial thing about that, as you all can probably guess, is who gets to appoint the members. I don't know if you want to tackle that in the Charter. But thanks."

Commissioner Hiatt said if Vice-Chair Long decides to put this on the agenda for the next meeting, he will volunteer to talk to Brian Sanderoff to see if he would be willing to come and talk, noting he knows Mr. Sanderhoff and has worked with him in the past.

Vice-Chair Long said that would be helpful.

John Otter said, "Well, having the Council establish the Districts is a clear conflict of interest, as has been pointed out. And so the advisory matter would still constitute a conflict of interest. And so, this last point about who appoints the members of the commission has to be carefully attended to, because if it's done, as it was with this Commission, having each Councilor recommend somebody to the Mayor, who appoints you, that could also be a conflict of interest, because the Councilors would just appoint someone who favors their redistricting ideas. So, I don't have the answer to that, but I just encourage that there's some innovative thinking that needs to go into that matter."

b) Off year Councilors required to resign in order to run for Mayor

Commissioner Werwath said this issue is in the enabling Resolution which established this Commission.

Vice-Chair Long said it is something that has come up at the Council.

Commissioner Romero-Wirth asked if there was input in terms of whether this is....

Commissioner Werwath said there was input from the City Councilors themselves at the last meeting.

Commissioner Romero-Wirth continued with her question, "... whether it was legally prohibited, I thought."

Commissioner Farber said, "I thought Marcos [Martinez] indicated, informally, that he thought that it could not be done legally."

Commissioner Werwath said Mr. Martinez was looking at producing some sort of policy brief on that.

Commissioner Farber said this is his understanding.

Commissioner Werwath said, "Okay, so it might be worth holding off on the discussion until we have an analysis of the legal implications."

Vice-Chair Long agreed. She said, "And what was the discussion, Carol you were saying... I remember the Councilors that showed up at our last meeting, not the discussion, but what were their comments. I guess I could look at the minutes, but I'm trying to recall what those were."

Commissioner Hiatt said, "I don't recall anybody supporting...."

Commissioner Romero-Wirth said, "Yes, I just thought..."

Commissioner Farber said, "Councilor Rivera particularly said he was in the situation where 10 years down the road, he was giving as an example, he might be in a position where he would have to resign if this kind of provision was passed, so he was saying it was his preference that it not be passed."

Former Councilor Heldmeyer said, "He also talked about, if several Councilors ran at the same time, which may be the case very soon, that there might be several vacancies. And then you had a Mayor who was appointing like half the Council, because they all would have to get off. And that all of this constituted the fact that they were elected officials and that their constituencies had elected them and that it was substituting the Mayor's ideas about who should be on the Council for what the voters had said."

Commissioner Romero-Wirth said she believed they used the words "disenfranchising voters."

Commissioner Hiatt said, "And not to mention the problems with quorums if this were to happen. I know you don't want to discuss it necessarily in a vote, but I sure think that one stinks."

Commissioner Werwath said there's a fundamental inequity there.

Commissioner Romero-Wirth asked if there is a way to rotate, change terms.

Commissioner Werwath said it would be to put everyone on the same election term.

Commission Johansen said that would create other inequities, because somebody would get to stay on longer or shorter, because you've now moved the calendar around.

Vice-Chair Long said, "You draw straws or play poker to get who that is, but it does seem it's just complete luck as to whether you're the Councilor that is on the Mayor cycle election, or you're the one that isn't. I guess you could run for another spot."

Commissioner Farber said when he ran for the Council, he was not thinking about any of that, because he decided to run for Council a week before the filing deadline. It was only after he was elected, that he realized he was one of the off-year Councilors.

Vice-Chair Long said, then you're saying the strategy is when you run.

Commissioner Farber said yes, if you think at some point you want to get politically involved, and running for Mayor is in your future, you can decide to run for that position when you're not going to have to get off the Council because your Council term ends, so it's not luck. Someone could think about it.

Commissioner Werwath said that also implies long term strategy, that limits the person's choice to change their mind later.

Former Councilor Heldmeyer said she has been told it may be, and this is something for your staff attorney, it may be that State Statute which sets up districting also sets up staggered terms within a District, and so that might answer that question.

Vice-Chair Long said then fixing the problem so everyone runs at the same time may not work.

Former Councilor Heldmeyer said, from a practical point of view it really makes sense, because for a given district you always have someone who has been there for a couple of years, and then you've got someone who is new. Just in practical terms, it works much better with staggered terms, but you may be required to do that by Statute.

Commissioner Werwath asked Ms. Romero to note to ask Marcos Martinez to look into that.

Vice-Chair Long said we also can think about any other solutions.

Commissioner Werwath said he strongly feels that this is an inequity on the highest level, and the Commission should consider something which would address this issue.

c) Machine count ballots/ranked voting status.

A copy of a Memo to Commissioners, submitted by John Otter, is incorporated herewith to these minutes as Exhibit "3."

Commissioner Hiatt would like to talk about machine count ballots, what they're talking about, what's going wrong with it and the reason it's on this list.

Commissioner Werwath said he remembers from past meetings, the issue is that there is language in the current Charter which can't be implemented because of the types of machines that we use and lease for our elections. The issue was do we still want to have that language in the charter, do we want to modify it because it is essentially unenforceable at this point.

Karen Walker said ranked choice voting as a form of runoff elections was approved in 2008, and we did have to go the State government, and after a couple of tries, they finally agreed to it as a local option. However, it hasn't been implemented because the machines needed to count those ballots hasn't been forthcoming. It hasn't been paid for by the City and there is no sign of them doing it. So this issue has already been agreed on by the voters, the problem is there's no implementation.

Vice-Chair Long said the way she reads the provision, 4.06 in the Charter, it says, "Ranked choice will begin with the Municipal Election of March 2010, or as soon thereafter as equipment and software for tabulation of votes and incorrectly marked in-person ballots is available at a reasonable price." She said it would seem there is no deadline, and once those conditions occur, then we would have ranked choice voting and the voters have approved that.

Ms. Walker said, "The voters have agreed to it, and the administration refuses to pay for the machinery. So, even though the voters have requested it, and it's been approved by the State Legislature, we still don't have it, but it has been approved."

Vice-Chair Long said the voters have approved it, and it is in the Charter.

Former Councilor Heldmeyer said, "The modified form in which ranked choice voting was put into the Charter is because A, in New Mexico the City has to use voting machines that are approved by the County Clerk. If you use the County Clerk's voting machines, those are approved by the County Clerk. In theory, the County Clerk could approve other machines, but the City would have to go out to buy them and that would be an enormous expense for elections that are held every other year. The machines that the County Clerk has, that the City uses, could be reprogrammed. However, that cost would be borne by the City, and the estimates were as high as \$1 million, because they know a captive audience when they see it."

Former Councilor Heldmeyer continued, "There were two things in that provision. One, you had machines that could do ranked choice voting. And secondly, and I think this is more important, that the

machine would reject ballots that were incorrectly marked, because it's a new way of doing things, and new ways of doing things, tend to take a little time to get used to in Santa Fe and other places. Including... and I'll use the example of the American Psychological Association when they changed to ranked choice voting, it took 3 or 4 years for their members, all Ph.D.'s, to get used to it. And in the first couple of rounds, they had 20% rejected ballots which is pretty common in moving to ranked choice voting."

Former Councilor Heldmeyer continued, "I would like to give you better data, but if you just go on the internet, most of the data on the internet about ranked choice voting is from its supporters. And so the numbers they give about what works, and what doesn't, and how many ballots were correct and all of that, are not independent verifications. And so there is, and we can provide you with the link to it, a fairly complete analysis of ranked choice voting done by the Minnesota League of Women Voters. One of the things they point out is that there is not one algorithm for ranked choice voting. There are several algorithms, and in small turnout elections, like we have here, which algorithm you use can really make a difference in the outcome. And so, it's not just 'Oh well, we'll do ranked choice voting,' it's like which kind of ranked choice voting."

Former Councilor Heldmeyer continued, "What John's going to say, because I read what he wrote, is that we shouldn't use machines. We should hand count and hand counting is wonderful and it works in Ireland and it works other places, and it may, I don't know. However, I do know that a couple of years ago the City Clerk and Denise Lamb head of Bureau of Elections for the County Clerk, and people from the Green Party, got together and did a small pilot project, what would ranked choice voting look like if it was being hand counted. It didn't go well. And my advice to you is that if you're considering taking out the [language on] machines, that you invite Yolanda Green and Denise Lamb, she's retiring at the end of March, fairly soon, to come and talk to you about that demonstration project. And they were not happy with the process, not happy with the results, but I'd rather have them speak to the specifics themselves, because they're the ones that did it."

Former Councilor Heldmeyer continued, "So that's why the item, minus the pilot project, which is after that Charter revision was put in place, but that's why the Charter provision looks the way it does. There's other laws that come into play when you have machine counted votes, and if you don't want to have machines counting votes, then I think you need to talk to the people counting votes, see what they think about it, and what their experiences have been, because they're the ones that do it."

Commissioner Hiatt asked former Councilor Heldmeyer what she thinks about it.

Former Councilor Heldmeyer said, "As a Councilor, I voted to put the provision on the ballot. I personally voted against it."

Commissioner Hiatt said, "You stand before us today against the provision for ranked [choice] voting as well as machines."

Former Councilor Heldmeyer said, "You didn't have a choice to separate those two out. I voted against the whole thing. Because I knew, from conversations that I had had with people who were pushing ranked choice voting, that they were saying, well, this is just the first step. Once we get it, we're going to

get rid of those machines, we don't trust those machines. We're going to hand counting ballots. And I had one conversation with someone who is the leading proponent of ranked choice voting at the last Charter Commission. And I was explaining to him how important I thought it was that people have a chance to correct their ballots if they are mismarked, you have that now, but only if you know that you're mismarked it. And he said well, this is almost a direct quote, 'You don't need machines to do that. You can have somebody look at your ballot and tell you whether you've made mistakes or not.' And I said, 'What about the secret ballot.' And he said, "Well I'm proud of the people I vote for, I would be glad to have anybody look at my ballot.' I don't believe everyone feels the same way."

John Otter said, "You have, in your packet a 1½ page document [Exhibit "3"] that I wrote on this particular subject, so I don't think I need to go through all the arguments and details, although the evidence I present there is very strong as to the ease and accuracy of hand counting ballots. So, obviously, I don't agree with the arguments that were just made. I will say, I guess that clerks, County Clerks and City Clerks, are kind of naturally adverse to any changes in the election system, because it requires, not only a lot of work which they might be willing to do, but the probability of things not going perfectly well and reflecting adversely upon them. And so I wouldn't take fully their resistance to any changes in the election system. Machines are coming, sometime, but this ranked choice voting provision for machines and error corrections, came from the City Council, not from the Charter Review Commission previously. It was added mostly at the behest, as I understand it, of Ms. Vigil, because I think what I said about adversity to change."

Mr. Otter continued, "So I just encourage you to read this thoroughly and have an open mind as to the evidence there that's presented. I believe it is such an advantage to the City to have this kind of voting, it really increases proportional representation on the Council considerably. And it's worthwhile to implement as soon as possible, so I encourage you to consider this change."

Commissioner Hiatt said he is going to move to put this on the agenda for a decision at the next meeting. He said, "If we are going to have a substantive discussion, who would we invite that would support your point of view to help us in this discussion. Is there somebody else, not to demean or dismiss what you're saying, I'm just saying, if we are to have a full discussion of this, who else should we invite. I've heard from Councilor Heldmeyer that we might invite the City Clerk, which makes sense. But who else, from your point of view."

Mr. Otter said he, Rick Glass and Sheila Solomon are members of an organization called Voting Matters, which supports this particular proposal. The expert in the country is Rob Richie of Fair Vote, which is in California.

Commissioner Hiatt said we have been told it could cost \$1 million, and asked Mr. Otter if he disagrees with that.

Mr. Otter said, "It costs a million dollars to hand vote [count?] ballots, is that what you're saying."

Commissioner Hiatt said, "No. If we are going to have machines."

Commissioner Werwath said, "If I could clarify, that was Councilor Heldmeyer's reference to reprogramming the software and the machines. One of the proposals that Mr. Otter is putting forward, is that the initial count be done with the machines with the existing software, and that a secondary count be done by hand, which wouldn't cost \$1 million."

Mr. Otter said, "Ranked choice voting only comes into play if there are 3 or more candidates, and if, on the initial preferences, no candidate has received a majority, so it's maybe not that frequent an exercise."

Commissioner Romero-Wirth said, "Could you clarify for me the history. I think once upon a time you said that ranked choice voting was recommended by the last Charter Review Commission and it was the City Council that added this provision about machines. So that was added by the City Council after the Commission had recommended ranked choice voting, but the previous Commission thought it should be done by hand and you all clarified it should be done by machine."

Former Councilor Heldmeyer said, "No. No. No. They didn't say anything about how it should be done. They just said, ranked choice voting. And it was after hearing additional information from the Clerk, the County Bureau of Elections, hearing about cost and prices and feasibility, that that was put in by the City Council. And that was what was passed by the City Council and that's what went on the ballot for the voters."

Commissioner Romero-With said, "If I'm understanding, then the Charter Review Commission, the last one that met, did recommend ranked choice voting, but the City Council modified it after hearing about the issues that would be involved with counting, updating machines or buying new machines."

Former Councilor Heldmeyer said as far as her memory goes, she thinks that's a fair assumption. She said, "I will point out that, like this Charter Commission, there were very few people who attended, and there were a few people who attended consistently and specifically on this issue."

Commissioner Abeyta said, "Question for clarification, was the machine issue on the ballot."

Former Councilor Heldmeyer said, "Yes. The way you see it in the Charter is the way it was on the ballot."

Commissioner Romero-Wirth said, "And it was approved."

Former Councilor Heldmeyer said, "Yes, it was approved."

d) Change municipal election cycle to the Fall.

Not discussed.

e) **Full time Mayor rather than part time Mayor.**

Moved to governance

f) **Limit contributions and gifts to candidates for office who do not elect to receive public financing.**

A Memorandum dated February 26, 2013, to the Charter Commission from Marcos D. Martinez, regarding Contribution Limits, is incorporated herewith to these minutes as Exhibit "4."

Vice-Chair Long said Mr. Martinez provided us with a Memo, which is longer than the last memo, so we can't go right to the short answer, and asked Mr. Martinez to tell us "what your summary is, if there is a clear answer."

Mr. Martinez reviewed his Memorandum of February 26, 2013. Please see Exhibit "4" for the specifics of this presentation.

Mr. Martinez said the Supreme Court has upheld some contribution limits, because at the time they articulated the decision to uphold such limits, they felt that contribution limits prevented corruption and its appearance. At the time, in 1976, the contribution limit they upheld was \$1,000. He said, "I would say that the state of the law is in flux right now. Since then, in 2006, the Supreme Court has overturned contribution limits which were too low in a Vermont case that went to the U.S. Supreme Court. And there they found contribution limits in the range of \$400 per individual for state-wide offices, \$300 for State Senators and \$200 for State Representatives to be too low. They overturned that and said it violated the First Amendment. And finally, I would say that in this term, the Supreme Court is considering whether the Federal Election Contribution limits of \$2,500 per election for a candidate committee, \$30,000 for a national party committee, \$10,000 per calendar year for state, local and district party committees, and PACs, not Super PACs, \$5,000 per calendar, are too low. So that is a case the Supreme Court has accepted for review."

Mr. Martinez continued, "So I would say that the question of whether contributions limits following the *Citizens United* and the *Montana* case last year, whether that is a violation of the First Amendment is still being determined. We know there's a lower bound from the Vermont case. We know that \$1,000 was upheld 35 years ago, or so, in *Buckley v. Valeo*. So I would say, stay tuned."

Former Councilor Heldmeyer said, "The League of Women Voters, local, state and national, support limits on contributions. Do you want me to say anything beside that. We think it's important to democracy, but let me say with my personal hat on. One, if you noticed in the paper today that the Legislature is currently considering a bill to increase limits to State candidates, but not to get rid of them. And the second thing I would say is, I don't think any of us can anticipate what the Supreme Court may or may not do at some point in the future. You are here to make recommendations to the Council about what

to put on the ballot, and then there's the ballot in March, presumably, and what people vote for or not vote for. So there's a lot of timeline between now and when this would be decided. There's also a lot of timeline between now and when the Supreme Court may make a ruling, and we don't know what that ruling is. I think it's your job to come up with the best provisions in the Charter that you can, that seem to make sense for Santa Fe. And if the Supreme Court changes its mind about something in the future, then we can take that into account. For instance, the campaign financing law that Santa Fe has, has a provision in it that's very similar to a provision that the Supreme Court knocked down for Arizona, in terms of matching amounts, if a candidate who is not taking public financing, gets a large amount of money, that the public financing would match, that was struck down in Arizona. When this issue came up in the PRC race, in November, actually it came up before that also in the Primary for the PRC race in June, it went to the State Appellate Court. The State Appellate Court upheld that matching provision, even though the Supreme Court had already ruled in Arizona that it was unconstitutional. Whether the Appellate Court should have done that, whether that will continue, I don't know. But there are so many levels of judicial cases, and it seems to me that you can operate in a vacuum. You can say what makes sense for Santa Fe, and if it gets struck down later, it gets struck down later and we just don't enforce that provision."

Commissioner Farber asked what was the New Mexico Appellate case.

Former Councilor Heldmeyer said the Appellate Court upheld the matching.

Commissioner Farber asked the name of the case, so we can look it up.

Former Councilor Heldmeyer said she doesn't have that, but she will look it up and get it to Irene and she can send it to the Commissioner. She said they know that from working on the PRC Committee.

Mr. Hiatt said the suggestion for campaign limits came from the League.

Former Councilor Heldmeyer said it came from the League and from Councilor Farber.

Commissioner Hiatt said he would like to put this issue on the agenda at the next meeting for a decision. He would like the League to present any language it might have in this regard, such as a cap.

Former Councilor Heldmeyer said, "We have philosophical and theoretical information we can give you that was the study that produced this, but the study that produced this wasn't done by the Local League, so we don't have local numbers. And the way the League works, we would have to do a thorough study before we would suggest any particular numbers. However, one of the things that people look at, for instance, are the limits at the State level."

Commissioner Farber said, "I want to disagree with the idea that at the next meeting we should vote on this particular issue. I understand the thing about amending the Charter whenever it's necessary, because it's in the Charter. But my understanding from our last meeting was that we were going to go out into the community, we were going to have a series of 4 meetings, we were going to get as much input as possible, and then after we had those 4 meetings, we were then going to take up substantively the various issues. So, aside from something that is as simple as the fact that the Charter can be amended, we see it

clearly by looking at it. Mayor Maestas just mentioned it. We put it on our list. I understand the desire to want to move ahead, but I think we came up with a good plan at the last meeting to have 4 meetings, get all the input and then structure discussions, debate and decisions after those 4 meetings.

Vice-Chair Long said we can certainly refine these. She said Commissioner Hiatt is suggesting we get numbers and limits and that sort of thing, but maybe not a final vote. She said, "I think it's helpful, and to getting more input, if we actually have some substantive issues that we are considering with some details."

Commissioner Farber said, "I'm not suggesting we should not take in information, I'm just saying I don't think we should, at the next meeting, vote on that kind of.. That's an important issue, actually."

Vice-Chair Long recognized Mr. Harrington to speak.

Jim Harrington, 1518 Cerro Gordo, said, "The rulings on the PRC case, there wasn't actually an appellate decision. It was Judge Barbara Vigil who ruled that the money had to be given out, notwithstanding the Supreme Court decision. And then there was a suit pending at the time in the Federal District Court and that Judge ruled you can't do it. The Secretary of State and the A.G. had split, and we thought the Secretary of State was right. Our organization had said that the Supreme Court Ruling was definitive and the money couldn't be given out, but Judge Vigil disagreed. But eventually, it came out, it couldn't be given out."

Mr. Harrington continued, "I guess the Commission is aware there already are contribution limits in the Ordinances for privately financed candidates. I guess this proposal is to put them in the Charter. They're in the Campaign Code. There are contribution limits of \$1,000 for Council candidates, and \$2,500 for Mayor. No, not in the Charter. In the Campaign Code which is 9-2. Those were added just a couple of years ago."

Vice-Chair Long asked what are the State contribution limits, and the current discussion about increasing those.

Mr. Harrington said, "The limits are \$5,000 for State candidates and \$2,500 for non-Statewide, and those are per election in which the candidate is running. And there was a proposal to make them annual, and that was kind of controversial, and finally a mid-way position was reached, which is per election, regardless of whether you're running or not."

Commissioner Vice-Chair Long said, "But that also means Primary and General as well."

Mr. Harrington said this is correct.

Commissioner Romero-Wirth said, "When you're talking about an election, a primary is one, and a general election is another."

Mr. Harrington said, "And that was always true, but now four-year candidates would effectively have their limits doubled. And there's been some Constitutional back and forth with conflicts in the Circuits about whether the discrimination against challengers who don't decide to run until election year, is a problem. But this is fairly harmless compared to the annual, which would have raised questions. But that's in Senator Wirth's bill which just passed the Senate unanimously, this changing when you reset the contribution limits."

Commissioner Farber asked, "Mr. Harrington, as the State Chair, does Common Cause have a position regarding campaign contribution limits either being in a Code, Home Rule Charter – Code versus just an Ordinance. "

Mr. Harrington said, "In general, that's a pretty simple thing, but Albuquerque turns out to have made a, because of the constant litigation in this area and changes in the Constitutional limits, we haven't been able... in Santa Fe, everyone actually knew that the Arizona free enterprise case was coming, because the Court had made an extraordinarily, preliminary ruling that they shouldn't conceivably have made. They kind of shut down the whole system in Arizona, if anyone thought they were going to uphold it. So we all knew it was coming and before the... I knew it was passed right after the decision, but even before the decision the matching thing was repealed here in Santa Fe. And, Santa Fe being the kind of town it is, the thinking was, let's see if maybe we make it without any matching. The alternative solution, which also just passed the Senate, by the way, is to substitute for the.... what the Supreme Court found wrong with the current system that was in effect in Arizona, Santa Fe, Albuquerque, New Mexico, Maine, everywhere, was that it discouraged the opponent from raising money and exercising his speech, because he knew that whatever he raised would be matched for his opponent, his publicly financed opponent. So the bill that just passed the Senate here, substitutes a different kind of matching where, even if you are publicly financed, you can continue to raise \$100 contributions and then those will be matched at a 4-1 ratio up to the same caps as before, the same limits, so it doesn't change."

Mr. Harrington continued, "But on the Code of Ordinances versus the Charter, because of constant [inaudible], having these things in the Charter can be a problem if you have to change them to accommodate a Court decision or to accommodate new inventions by the campaign wizards and the PACs and new ways of getting new loopholes that are discovered. In this whole area, probably going in the Charter's not a great idea. We would have been doing these same fixes in Albuquerque, but we just don't have the resources for a campaign down there, an electoral campaign. Changes in the Campaign Reporting Act to make it constitutional that Senator Wirth is sponsoring, should be done in Albuquerque. Their reporting for independent groups is completely unconstitutional, but it's too difficult. So anyway, I've gone on long enough. I don't want to take up any more of your time."

Vice-Chair Long said Mr. Harrington knows a lot about this area, and thanked him for the good suggestion.

Commissioner Wirth said, "Given what we just heard, that there are contribution limits in the City Ordinances, it seems like this should be moved to your list -- the Charter Review to occur more frequently."

Commissioner Hiatt said, given Commissioner Farber's concern, I understand it and I bow to his recommendation.

Commissioner Romero-Wirth said, "But I don't think these are things that we need to go the public with, if we already know, one, there are already campaign limits in City law. We don't need them in our constitutional governing document, any more than we need to be specific about how much more frequently the Charter Commission meets, because the ability to meet more frequently is there."

Vice-Chair Long agreed, commenting we don't have to take a final vote on any of those now, but we're just starting to kind of parse these out on the list.

Commissioner Farber said, "Well, I may be persuaded, probably, by what Mr. Harrington just said. I think the League of Women Voters position is that there should be a limit with regard to campaign contributions in the Charter. At least, that's what I had understood. So part of what we're doing, is trying to come up with the ideas, and I don't think their position ought to be dismissed out of hand, even though I may be persuaded by what Mr. Harrington just said, that you need the flexibility. So I think that's not in the same category as the Charter review that Mayor Maestas was suggesting. And it's very very clear. I think it's a policy issue as opposed to what is already in the Charter."

Mr. Harrington said, "The contribution limits, the numbers are simple enough, notwithstanding some speculation about the case in which the Supreme Court just granted [inaudible]. I don't think they're going to strike them down in that case."

Too many people talking here at the same time to transcribe.

Commissioner Farber sees them as two separate categories for consideration.

Former Councilor Heldmeyer said, "We're proposing the policy. That's what we have a position on. We have no position on the specifics, and the specifics shouldn't be in the Charter, because anytime you stick a lot of specifics in the Charter, then if something changes, you have to go back and change the Charter. However, if you didn't have it in the Charter, which you don't now, there's nothing that compels the City to have an Ordinance that causes campaign contributions limits.

Commissioner Romero-Wirth said, to clarify, you're suggesting some sort of broad of language, that there shall be contribution limits in City Ordinance.

Former Councilor Heldmeyer said yes, exactly what they handed out to the Commission, which is a policy statement.

Councilor Romero-Wirth said, "Given that they're already in City law, why does the Charter need to say that."

Former Councilor Heldmeyer said, "Because if it's not in the Charter, that law could be canceled tomorrow, and that would be okay. And the League of Women Voters has a position that there should be limits on contributions, so as a guiding, philosophical policy document, we think it should be in the Charter."

g) Term limits for elected officials

This item may be removed from the list.

h) Create at-large Districts for City Councilors.

This item may be removed from the list.

i) Charter Review to occur more frequently.

Commissioner Hiatt said he has had two conversations with Karen Walker, and he agrees that the Charter Review as contained in Article 10 of the Charter gives the Council the opportunity to call a Charter Review Commission anytime they would like, but not less than every 10 years.

Commissioner Hiatt moved, seconded by Commissioner Abeyta, to place Item 4(i) on the agenda for the next meeting for removal from the list of issues to be considered.

Vice-Chair Long said this is a good suggestion, but she doesn't believe we can vote on this because it isn't on the agenda for action.

Commissioner Werwath said, to be comprehensive, we need to look at the frequency of past Charter Reviews. He said 10 years does seem like a long time, but in practicality it's being revisited at regular intervals, and he doesn't see it as being an issue.

Vice-Chair Long said it has been 10 years since the last Charter Review, and someone from the audience said it has been 5 years. She said the Council could call a Charter Review Commission at any time if there is something that needs to be addressed, even if it is only one item.

Vice-Chair Long said perhaps Item 4(c) is already in the Charter, we just haven't been able to do that, so that might be another to march off the list.

Commissioner Hiatt suggested we take the items one at a time, because he has comments about the machine count, and would like to hear more about that.

Vice-Chair Long said the list created on February 14, 2013, under elections, has also mail-in ballots for elections, noting it is not on the list for today and should be added at the next meeting.

Commissioner Romero-Wirth said there is a motion and second to delete 4(i) Charter Review to occur more frequently.

Vice-Chair Long said she knows there is, and reiterating that the Commission can't vote on that tonight.

i) Miscellaneous other

Commissioner Farber said the issue of run-off elections has been discussed, but he didn't see it on any of the lists, and asked perhaps if we can discuss this at the next meeting.

Vice-Chair Long asked if he is speaking of run-off elections, as separate from ranked choice, so there would be a subsequent election.

Commissioner Farber said yes, in the event someone was elected Mayor or Councilor with, for example, 33% of the vote. He said he raises this, because there was an article in the *Albuquerque Journal* that the Albuquerque voters next month will vote to decide "one word for their Charter about whether the requirement is 40% or 50%." He said it was an interesting article in the paper on February 26th. He said if it isn't on our list, it should be on the list. It needs to be discussed.

Vice-Chair Long asked if this is for Mayor and Councilors, and Commissioner Farber said yes.

John Otter said, "In general, separate runoff elections to obtain a majority vote for election of a candidate have two major disadvantages. One is, it is a great expense to have a second election. And the second disadvantage is normally the turnout for that election is very low, so the number of votes that actually elect a person, even though they get a majority in a separate runoff election, is usually less than the number of votes that they would get in a plurality type election. Ranked choice voting accomplishes a majority vote for the elected candidate in a single election, so that's the advantage of ranked choice voting."

Commissioner Farber asked Mr. Otter and Mr. Harrington, "Was that the reason why the last Charter Review Commission recommended the ranked choice voting?"

Mr. Harrington said, "That was exactly the reason. [*The rest of Mr. Harrington's remarks here are inaudible because he was speaking from the audience and away from the microphone.*] He said, "The feeling was that ranked choice was superior because of the cost, delay and lower turnout."

Commissioner Farber said your debate included the whole issue of runoffs, and that you thought that a ranked choice method was a much more positive way.

Mr. Harrington said, "The Commission actually was divided on that, but no Commissioners were in favor of sticking with the present system. Some of the Commissioners wanted to opt for regular runoff."

Actually, the minority on the Commission was for a proposal that would put the choice to the voters, with a question, "Do you want the present system. Do you want ranked choice. Do you want a runoff." The voters would have decided, and the majority on the Commission just said, 'Well that's an easy choice because of expense and why create such a confusing ballot issue, when it's our view that ranked choice is clearly the superior one.' That's the history of that."

Former Councilor Heldmeyer said, "The majority of the Commission wanted ranked choice voting, but there was this minority, and we were given legal advice that we couldn't put a question like that in the format of voting on the Charter where it was either/or. Then, going down a step, there were exactly the kinds of discussions then that Albuquerque is having now, and I think I said at the last meeting, every Charter City that has runoffs does it differently, a different cutoff, different way of resolving it. There's a number of different things that can be done. But, a second election does cost more money. There also were some people who said, in the kinds of elections we have in Santa Fe, maybe runoffs aren't that important, and went back and looked at the percentages by which people won in different elections and said, it's not worth it. In my first election, I won with 49.9% of the vote. Do you want to have a runoff when you have that percentage, particularly for Mayor. Then there was a discussion, should it only be for Mayoral or should it also be for Council, and in particular to look at the percentages that Mayoral candidates win by, even when there are multiple candidates."

Commissioner Farber said, this raises the issue with your listing, there had been a prior request by Commissioner Romero-Wirth for copies of the charters from all the other cities. He asked if we are getting those, or has the City made a request to other cities to get us copies.

Ms. Romero said she didn't know she was supposed to get that.

Commissioner Farber asked, "Can we make a request that the City provide those to us. I think the idea was to get one copy, it gets scanned, sent out to everybody without the expense of everyone having a paper copy. We wanted to be able to at least review the other charters."

Commissioner Werwath said, "Perhaps if there is a direct link, we could just provide the link to the element for that."

Ms. Romero asked if there is a specific list, and Commissioner Farber said he has a list.

Commissioner Hiatt asked Commissioner Farber if he wants to keep runoff elections on the discussion list, to have a more specific conversation. He asked if his mind has been changed about the idea.

Commissioner Farber said he read the article and happened to think about the fact that it had been mentioned, and it should be on any list we have for discussion. He said people are saying ranked choice solves the problem and is a better solution, but then people are saying it is a solution that really doesn't solve the problem because there are no machines, so it's not effective.

Commissioner Werwath said, "The previous Charter Commissioner recommended ranked choice voting to be implemented. It was manipulated by the City Council to include the proviso about whether it is feasible to do. I think the average layman who voted for or against that, didn't expect 4 years later for this not to be implemented. So I think it's important that we as a Commission work to find a functional alternative for this to be implemented. The logical next step is to have the City Clerk come in and talk to us about that, and perhaps present some alternatives to how this can be done. I think this is a fundamental issue of government's lack of ability to carry out the will of the people."

Mr. Harrington reiterated that it is his view, as the ex-chair, that that was a "poison pill. We knew that when it hit the Council. Those machines exist, but there is no prospect of buying new machines within the foreseeable future. It is not impossible to conduct a ranked choice election with the equipment that is there now, but it does require hand sorting between the rounds of counting and Clerk's office has been resistant because that's an additional burden and would cost additional money.

Commissioner Werwath said one of the considerations is that there are a small percentage of elections which would trigger the ranked choice with the minority vote being the winning vote, so I think it is still worth consideration of some scheme, including hand-counted ballots as an alternative. But we should I think, of course, get the point of view from the City Clerk as well, regarding that.

Vice-Chair Long agreed, saying we need to invite the City Clerk to attend the next meeting, and asked Irene Romero to follow up on this. She said it is in the Charter and just sitting there, and nothing will ever happen.

Commissioner Werwath said he voted for ranked choice voting, and was confused when it wasn't done at the next election. It is a fundamental which we need to resolve.

Commissioner Farber said, "Mr. Harrington, it would seem to me a way of resolving the problem is to recommend to amend the Charter to take out the provision with regard to the machines. If that gains the support of this Commission, where does that leave us with regard to the issue of elections and runoffs. Was it perceived by the Charter Commission that the idea of runoffs is so negative, that that's not something that should be considered."

Mr. Harrington said, "No. We considered it, we just thought it was inferior in terms of cost, delay and so forth, but."

Commissioner Farber said he is trying to understand. He asked, "If there were not support to change the Charter amendment to make ranked choice voting a reality, would it then be, in your judgment a good idea, understanding that reality, to have runoffs."

Mr. Harrington said, "I do think that Commissioner Long is right, that you should make the choice to either repeal the proviso, or repeal the ranked choice article and forget about it. As Commissioner Werwath said, right now, it's just sort of a charade in there in our charter. Yes, I was with the majority of the Commission that preferred ranked choice to runoffs. But I think all of the Commissioners, including me, were of the view that runoffs are probably better than the system we have now. On the question of what

percentage, if we should have something like Albuquerque where you don't actually have to get a majority, just get substantial support, I don't have a position, neither does Common Cause. But I think you should avoid the kind of thing that happened in the PRC Primary in this District a few years ago where the candidate that won had 23% of the vote, who ends up getting himself in a lot of trouble. But a 23% winner is not a good thing and that's possible under the current system. It doesn't happen very often as Karen said, but it can."

Former Councilor Heldmeyer said, "The League has a position that they support runoff elections. Let me say that if you're interested, a way that one City has dealt with this is, is to look at the Las Vegas [New Mexico] Charter. They have in it both a ranked choice voting provision that is similar to one we have and they have a runoff provision. And they have taken the position that, because they haven't reached the right level of technical competence to do ranked choice voting on machines, they instead will do runoffs. And they have done one runoff since the Charter has been passed. Las Vegas, New Mexico."

Commissioner Werwath reiterated that a runoff election is costly and it is different for a population of 50,000 versus 10,000. He said, "If it's costly to do runoffs, I'd rather just pay to do it the best way the first time, right."

Former Councilor Heldmeyer said, "It was the Deputy City Clerk in charge of it, who spoke with me. So, if you want to get more details about what it costs and how many votes they were talking about, I was just trying to get an overview of what other cities were doing, but that's the person to talk to."

Vice-Chair Long said, "I don't know it's something the City is constantly looking at, even though it's in the Charter, or regularly looking at, in terms of available software, machines, and it may just be an issue that's 'out of sight, out of mind.' We don't know that."

John Otter said, "Well at the time of the previous Charter Review Commission in 2006, 15 of the previous 35 officials that had been elected in Santa Fe City had been elected with less than a majority of the vote. Since that time, the elections haven't been contested quite so much, and the frequency of a minority vote of officials has decreased." Mr. Otter reiterated he is not in favor of removing ranked choice voting from the Charter entirely. He said the prospect of machines is increasing, and are used in a few big cities currently in the U.S. He said in the capital outlay bill before the Legislature, the Secretary of State has placed a \$6 million for purchase of election machine tabulators.

Mr. Otter said, "Ranked choice voting takes a single machine that's different from the ones we have now, a central tabulator. And only one is needed in a County. So it's not that all M-100 machines now used need to be replaced for ranked choice voting. In fact they can be used to count the first preference votes, and as Mr. Harrington indicated, they can also be used to do the lower rankings with a hand re-sort in between, or as I have recommended, in my particular brief to you, just do a total hand sort after the first preference votes are tabulated with the M-100 machines that we now use."

Mr. Harrington said, "I don't know how down in the weeds the Commission wants to get on this stuff. But as has been said, there are machines that are available, and there's a rather difficult legal

question that I discussed before with Yolanda and with Frank Katz, about whether Santa Fe has the authority to go and buy those and be different from the rest of the State, assuming they wouldn't be approved by the Secretary of State. The other thing, I don't know whatever happened on this, but there was an election conducted in Carry, North Carolina using ranked choice. As I recall, North Carolina law said cities could do this once on an experimental basis to see how it work, and they did it. And they had exactly the same machines that we have which are ESS 100's, right, and they were able to finish up a Council election with a couple of races where there was not a majority in 6 hours. And at one time, I know Rick was urging Yolanda to contact that City Clerk. The city is almost the same size as Santa Fe. But I don't know if she ever did."

Vice-Chair Long said she is getting concerned about the time, so we are going to move forward.

John Otter said Dominion Company, which makes the ranked choice central tabulators is contacting the Secretary of State to get certification for that machine.

Commissioner Romero-Wirth would like to have Denise Lamb and the City Clerk to come and talk to this Commission.

Commissioner Hiatt will call Denise Lamb, Rick Lass, the City Clerk and try to set up a more substantive discussion for the next meeting.

Wrap-Up

Vice-Chair Long said there are a couple of things we didn't get to discuss, noting we are not making final decisions on any of these yet. We didn't get to discuss d) Change Municipal Election to Fall, h) At Large District Districts and Mail-in Ballots is still pending for election issues, noting Item g) Term Limits for Elected Officials may be off the table.

5. LISTING OF ALL ISSUES PRESENTED TO DATE FOR CONSIDERATION AND POSSIBLE ACTION SETTING DATE FOR DISCUSSION OF PENDING ISSUES.

Vice-Chair Long said there are two lists, and we heard earlier from the Commissioners that put these together, the list dated 02/14/2013, and then there is another list from Daniel Werwath. She said we need to look at where there is overlap, and then put them all into one list.

Commissioner Abeyta said he went through them, noting one has 23 items the other 22, and they're the same with the exception of Broadening Referendum and Initiative Rights of the Voters.

Vice-Chair Long said she likes the way the 02/14/2013 list is put together, divided by subject matter, which is helpful. She asked Commissioner Hiatt if he is willing to update the list for the next meeting, and Mr. Hiatt said yes.

Commissioner Abeyta said that is the list with the 23 topics.

Vice-Chair Long asked if everything we discussed is covered under elections. She asked Commissioner Hiatt to take a look at it.

Commissioner Werwath said, "As a matter of simplicity, could I just move that we, as a group, accept the combined lists of these, so that I can leave this meeting with a list we can publish."

Commissioner Hiatt said, "Well, I want to ask, weren't you the one that suggested that last one, regarding broadening the referendum and initiative rights of voters."

Commissioner Werwath said, "No, that was the League of Women Voters."

Responding to Commissioner Hiatt, Ms. Larson said that came from the League of Women Voters.

Vice-Chair Long said ranked choice needs to be added to the list, and if that is added, it is something that can be published. It's a work in progress anyway.

Commissioner Werwath said he just wanted to get consensus among the group that this is the list of things we're considering, so he can put it on the website and we can send out a press release.

Commissioner Farber asked if we should add runoff elections.

Vice-Chair Long said it should be on the list.

Commissioner Werwath said it is part of the ranked choice conversation – runoff election.

It was the consensus among the Commissioners that, with the addition of the above items, the master list is the one dated 02/14/2013.

Commissioner Farber said the issue, with regard to marijuana, on Commissioner Werwath's list it says Marijuana decriminalization, and although he may be in favor, that is not what was proposed.

Commissioner Werwath said this is the quick, shorthand list he took from his notes and sent to Irene Romero.

Commissioner Farber said he read something today that said in the House Consumer & Public Affairs Committee, that the proposal from Albuquerque passed with regard to marijuana decriminalization in terms of certain amounts.

Commissioner Werwath said, "Alternatively, last night, the City Council made synthetic marijuana illegal."

Vice Chair Long said we will not be getting into this discussion this evening.

Vice-Chair Long said on the first item under elections, we may want to say "contributions" rather than "gifts," saying she doesn't know we actually are dealing with gifts, and the Ordinance does deal with gifts.

Commissioner Romero-Wirth said then we're not going to determine the contribution limits and wants to be clear about what it is.

Commissioner Farber said it is a policy statement.

Commissioner Romero-Wirth said we could say "mandating contribution limits."

Commissioner Farber asked if the City has an ordinance.

Commissioner Romero Wirth said, "As we go out to the public, I just don't want us to get into a conversation about whether it should be \$2,000, no, \$5,000, no. What we're saying is, should there be limits or should there not be limits."

Commissioner Wirth suggested a statement requiring the City to have an Ordinance in place limiting campaign contributions.

Commissioner Farber agreed – the City "shall have."

6. DISCUSSION/POSSIBLE ACTION REGARDING FUTURE MEETING LOCATIONS AND DATES.

A copy of *Proposed Meeting Dates* is incorporated herewith to these minutes as Exhibit "5." March 14, 2013, District #4 presentation at the Chavez Center. Are available.

Vice-Chair Long said she would like to talk about the next meeting, and what we want on the agenda. She suggested we continue with the election items, making clear on the agenda that we're taking public comment along the way. She said we would hope to get the City Clerk here at the next meeting, noting we will have all of the City charters by then, and perhaps another opinion from Marcos Martinez.

Commissioner Romero-Wirth asked if Commissioner Hiatt was to talk to Brian Sanderhoff about the next meeting.

Commissioner Hiatt said, "I get the sense from the Chair, that you want the other topics that we didn't get to today, to be on there, is that correct."

Vice-Chair Long said she doesn't know that we have time, but we could add them in the event we could get to them, at least some of them. She said, "And you all will put this together, our Agenda Committee, right, with some direction from us."

Commissioner Hiatt said yes.

Chair Long said then add all the election topics and some selected others.

Commissioner Hiatt would like to make sure that the Charter Review frequency will be listed as a separate item for decision, noting there seems to be an agreement among us to do that.

Chair Long suggested to include a general statement that there is possible action to be taken on any of the items, in the event something else comes up we want to take off the table.

Commissioner Werwath said, "I do want to point out, I still have a considerable issue around the squishiness of this whole process. Even as to the fundamental nature of our roles here. We talk about who will provide information and such. And what it really comes down to is. I think our role is to provide to the Council, reasoned decisions based on pros and cons arguments, on at least the things that are in the Resolutions, but have now expanded to a broader thing. And I don't have an answer to this problem, and I hate being the person to raise problems without solutions. But the fundamental issue I see here is not a right of clarity, or consensus even among the group about what our ultimate role is, and what our final product is. The end product to me, is an important consideration we haven't talked about. We're a recommending body, this goes to the City Council, the City Council makes a decision and ultimately it goes to the public."

Vice-Chair Long asked, "Is it proposed amendments or a report and who drafts that."

Commissioner Werwath said exactly, and we're getting to issues now around specific language that start to make him feel uncomfortable without more technical expertise and the implications of some of the language stuff that we're talking about. He said he doesn't have an answer to how we fix this, but it is worth potentially coming to consensus at the next meeting as an agenda item to discuss it and to be clear on what our policy is going forward. Are we going to *ad hoc* remove things.

Commissioner Werwath said, "The original process that the subcommittee proposed at the direction of the Chair was to do an initial vetting and eliminate some, just so we had a manageable list, but we abandoned that based on friendly amendments at the previous meeting. I think it's okay in the case of the one issue around the Charter Amendments, but I'd also like to be clear that we're not going to just propose things to be eliminated as they come up, especially since we are midstream in getting input from the community."

Chair Long said Commissioner Werwath points out problems with which we have been grappling, which is lack of resources. She said our task would be easier if we had somebody to do policy analysis, present us with reports, bring in witnesses and others for input.

Commissioner Romero-Wirth would like look at what the last Commission did, and learn from what they found, and lean heavily on what has been done previously.

Mr. Harrington said Frank Katz, City Attorney, and Irene Romero did a terrific job and put a lot of time into research. He said there was a lot of input from "Rick and John who had done a lot of research about ranked choice, but they were pretty limited."

Commissioner Romero-Wirth asked if the previous Commission proposed specific language or just said, "there ought to be these things, and then that somehow magically appeared in the dark of night."

Mr. Harrington recalled they got specific with the language, and he would bring a draft for discussion and review at the following meeting. He said by the end, everything they proposed went forward as specific language to go in the Charter.

Commissioner Romero-Wirth suggested, regarding the independent commission for redistricting, that SJR-4, sponsored by Senator Bill O'Neill, was the bill recently considered by the Legislature and that might give us things they thought about, just as a starting point.

Vice-Chair Long noted the next meeting date is March 14, 2013, the District 4 presentation, at the Chavez Center. She said she will be absent for the meeting of March 14, 2013, and Chair Serna will be here for that meeting, although he will be gone on March 28, 2013. Commissioner Romero-Wirth said she also will be absent for that meeting.

Commissioner Werwath said would like the meeting dates, times and locations to be scheduled at least one month out, and wants to do that today.

Responding to the Vice-Chair, Commissioner Hiatt would like to keep the scheduled meetings as is, and move forward.

Commissioner Farber asked what else the Vice-Chair would like to include on the agenda.

Commissioner Hiatt asked if we moved Full time Mayor to governance, and the Vice-Chair said yes, noting it wasn't voted on.

Commissioner Werwath said within governance, there is a group which includes the Mayor's duties and responsibilities which we might want to consider as a chunk, commenting there may be people who would like to talk about that. He said we should try to divide the issues into logical chunks so there is a grouping going forward.

Commissioner Hiatt said then the next meeting will be on elections, and perhaps some of the topics we hit today, and then at last meeting in March we will start on governance.

7. DISCUSSION/POSSIBLE ACTION REGARDING PROCESS FOR CHARTER REVIEW COMMISSION TO OBTAIN INFORMATION FROM REVIEW ON TOPICS RAISED FOR POSSIBLE CHANGES TO CITY CHARTER.

Vice-Chair Long said we discussed this previously, which is very *ad hoc*, unless someone has another process to propose.

Commissioner Werwath said it is up to us to come up with specific questions we want answered and to direct those to staff, not necessarily in the context of a meeting, noting he would like the City Attorney's staff to agree. He said we should ask any specific questions of the City Attorney's Office, and get clarification. He would like a better way of reaching out to different groups which have things to say, but that's difficult as volunteers without a lot of resources.

Commissioner Johansen suggested contacting the Councilors in the Districts ahead of time to get their help in getting more public participation, and for their resources.

Commissioner Werwath agreed, saying we need to send an invitation to the Councilors for their respective District meetings.

Commissioner Farber noted Councilor Trujillo said he would be attending the District 4 meetings.

Commissioner Werwath suggested looking at moving the meetings to 5:00 or 5:30 p.m. for the offsite meetings.

Ms. Romero said the problem is she has scheduled all these meetings, and if we run into 6:00 p.m., they have to pay employees' overtime at the GCCC, Southside Library and Senior Center..

Commissioner Gutierrez would like to see later meetings at the off-site, even if it does incur extra expense.

Ms. Romero said it is easier to stay later here at the City Council Chambers because there are people here later.

Commissioner Johansen asked about holding meetings on weekends, and if that would alleviate costs, because we could meet earlier in the day off-site and wouldn't run into the 6:00 p.m. issue.

Ms. Romero said that would work at sites other than the Council Chambers.

Ms. Romero will look at sites for Saturday meetings.

Commissioner Romero-Wirth said we need to set a time slot for a two hour meeting.

Ms. Romero said she will see if the meeting at Genoveva Chavez can be 5:00 to 7:00 p.m.

Commissioner Werwath said an option would be a meeting on the weekend.

Commissioner Werwath said, regarding topics, if we are reaching out to Councilors to motivate people to come and deal with specific topics, it might make sense to plan those out a little bit in terms of what we're going to look at. He asked if the Commission wants to look at issues regarding Mayor, do we want to consider the remainder of the governing issues at the meeting on March 28th.

Commissioner Farber said he thinks the first 5 topics should be discussed in one meeting. He said he thinks we need input on what's working, what doesn't, and what needs to be changed. It is easier to discuss elections as voting citizens. However, in terms of how City is functioning, it is a little presumptuous of us to be making judgments that something needs to be changed, unless input is provided to us that something needs to be changed.

Commissioner Werwath asked how we uncover those issues and include those in a substantive analysis, and said he has no answers as to how that is done effectively.

After discussion, it was the consensus among the Commission to finish elections at the next meeting, draft a simple letter to the Mayor and Council, saying we are considering the first 5 items under governance and ask for their input, noting the Commission intends to discuss the issues at a meeting on a certain date.

Commissioner Werwath said, and Chair Long agreed, that it may take some work and we may want to move that topic(s) to a later meeting.

Commissioner Hiatt said it seems it would be easy to invite the Mayor, as well as past Mayors to give their opinion first off, when discussing the Mayor and Council.

Commissioner Werwath said it might be easier to get the Mayor to attend if it is one of the meetings in the Council Chambers which would mean postponing the discussion to April.

Vice-Chair Long said we need to change the meeting purpose.

Commissioner Werwath said that reflected the conversations we had in the minutes to leave blank slots, but we are at the point where we just need to get these things figured out and schedule them. He wants to be able to tell the public what we are discussing and when.

The Commission agreed as follows:

March 14, 2013	Election issues [City Clerk attend if possible]
March 28, 2013	Governance – 5 issues
April 11, 2013	Policy statements and finish Mayor
April 25, 2013	Mayor and carry-over issues.

Responding to Councilor Heldmeyer, Commissioner Werwath said he will make sure the notice indicates we will consider additional issues brought by the public to the Commission. Commissioner Johansen reminded him to contact the District Councilors to attend the meetings in their respective Districts.

8. DISCUSSION/POSSIBLE ACTION REGARDING SETTING FUTURE DEADLINES FOR THE SUBMISSION OF PROPOSED AMENDMENTS TO THE CHARTER REVIEW COMMISSION FOR CONSIDERATION BY THE CHARTER REVIEW COMMISSION AND THE PROCESS THAT CHARTER REVIEW COMMISSION WILL FOLLOW IN CONSIDERING ANY SUBMITTED AMENDMENTS.

The Commission will come up with these dates after the District meetings.

9. COMMUNICATIONS FROM CHARTER COMMISSION MEMBERS

Commissioner Romero-Wirth said at every meeting we've been getting a copy of the Municipal Charter, 2012 Resolution, Rules and Procedures, and asked if these have to be provided to the Commission every time.

Ms. Romero said she was directed to do so by the City Attorney.

Commissioner Romero-Wirth said we already have these items, and each member should bring their own to the meetings, so that the only thing to be provided would be the agenda, minutes and any handouts, commenting it doesn't need to be bound.

10. PUBLIC COMMENT

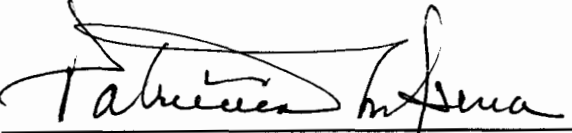
There was no further public comment.

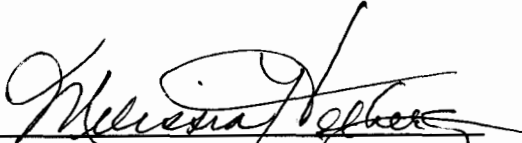
11. ADJOURNMENT

There was no further business to come before the Commission.

MOTION: Commissioner Hiatt moved, seconded by Commissioner Johansen, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 6:30 p.m.


The Honorable Patricio Serna, Chair


Melessia Helberg, Stenographer

DRAFT

CHARTER REVIEW COMMISSION

TOPICS UNDER CONSIDERTION

2-14-2013

1) ELECTIONS

Limit Gifts to Candidates for Office Who Do Not Elect to Receive Public Support

Mail-in Ballots for Elections

Re-Districting to be Drawn by an Independent Commission

Create At-Large Districts

Councilors Required to Resign In Order to Run for Mayor

Charter Review to Occur More Frequently

Term Limits for Elected Officials

Machine Count Ballots

Change Election Cycle to Fall

2) GOVERNANCE

Full Time Mayor

Mayor to Vote on Any Issue, Not Just In Case of a Tie

Mayor to Hire/Fire City Manager

Exhibit "1"

Mayor to Act as Chief Executive Officer of the City

Manager Does Not Hire/Fire City Attorney or City Clerk

Signatures Required for Petitions and Recalls

Tax Bond Elections to Require Full and Complete Disclosure of Uses

Create an Auditor/Inspector General

Salaries to be Set by an Independent Commission

Broadening Referendum and Initiative Rights of the Voters

3) POLICY MATTERS

Marijuana Policy for Police

Water

Automatic Weapons and Excessive Ammunition Clips

Technological changes

Master List of Currently Proposed Amendments-Daniel Werwath:

Firearms regulations

Full time mayor

Redistricting by independent commission

Fall Elections

Councilor resignation to run for mayor

Partial Redistricting/at large districts

Marijuana decriminalization

Charter amendment process and frequency

Ballot counting by machines

Term Limits

Policy statement on water

Signature thresholds for referendum and recall

Expenditure schedule requirement for tax and bond initiatives

All mail elections

Campaign contribution limits

Mayor votes on all matters before council

Definition of Chief Executive Officer (Mayor) in charter

Language correction of City Manager description regarding hiring and firing (clerk and attorney serve at the pleasure of the council)

Mayor Hire/Fire City Manager

Independent Auditor/Inspector General

Salaries set by independent commission

Technology changes

Exhibit "2"

Commissioners,

Subject: Removal of machine and software contingencies for ranked-choice elections

I hereby request the Charter Review Committee to recommend an amendment to the Municipal Charter that replaces in Section 4.06. Ranked-choice voting "2010, or as soon thereafter as equipment and software for tabulation of votes and the ability to correct incorrectly marked, inperson ballots, is available at a reasonable price." with "2014,". Although such machines and software has been used recently in the United States, they have been judged not to be available to Santa Fe yet. However, even without such machines and software ranked-choice elections can be conducted efficiently and accurately. By removing the machine and software contingency, the citizens of Santa Fe to enjoy the many benefits of RCV starting with the municipal election in 2014.

Equipment and software especially designed to tabulate RCV votes is not needed for efficient and accurate implementation of ranked-choice voting (RCV) because tabulation of RCV votes by hand has been demonstrated to be both efficient and accurate. The number of votes for a Santa Fe city councilor ranged from 1100 to 3300 in 2012. The number of votes for mayor was less than 13,000 in 2010. Implementation of RCV without the use of specialized equipment and software for tabulation of RCV votes has been efficient for many more votes than are cast in Santa Fe municipal elections.

Most RCV elections historically have been tallied by hand. In Ireland's presidential election in 2011, over 1.6 million RCV ballots for seven candidates were hand counted (three runoff rounds) in two days.^{6,7} Australia has elected members of its national House of Representatives with RCV since 1918. There are frequently 10 or 12 candidates for a seat now. The ballots are hand counted on the night of the election and typically completed within two hours.⁸

The ES&S M100 machines currently use to tabulate the votes in our elections could be used to tabulate first-preference RCV votes, then runoff votes tabulated by hand. Minneapolis, MN did that for their 70,000-vote, RCV election for mayor in 2009. The overseer of this implementation of RCV (termed IRV), said "We proved that IRV could be well administered, (and) quickly and accurately counted,..."³ In St. Paul MN, after a machine count of first preferences, three runoff rounds for a race having 5300 votes were hand counted in one day in its first use of RCV in 2011. The election official praised the process.^{10,11} RCV runoff ballots were counted by hand in a recent election in Cary, NC. Cary County Board of Elections stated that IRV was very easy to administer. They have provided a useful analysis.³

With RCV, runoff rounds would be invoked only in races having no first-preference majority winner and having more than two listed candidates. Santa Fe ballots do not allow write-in-candidates, so runoff rounds would likely be invoked in a minority of races here.

The State of New Mexico hand counts ballots to perform the audits of machine tabulations mandated for every State election. Since paper ballots are the legal vote record in New Mexico, no auditing would be needed for hand counted RCV races.

Exhibit '3'

The ability to correct incorrectly marked, inperson ballots has been demonstrated to be unimportant for accuracy of results in the use of RCV. Data from RCV elections in the U.S. show no overall increase of invalid ballots, with some jurisdictions actually showing a decrease.¹ In American elections using RCV, more than 99% of voters typically cast a valid ballot.² 99.7% of voters cast a valid ballot in San Francisco, CA's first use of RCV (2004) despite educational efforts not having reached 30% of voters and the city's wide racial, ethnic and economic diversity. 99.84% of voters cast a valid ballot in Portland, ME's first use of RCV (2011) despite very little spent on voter education and with 15 candidates.¹ Of Oakland voters indicating a preference in the mayoral race, 99.8% cast a valid ballot.⁴

1. <http://www.fairvote.org/ranked-choice-voting-in-portland#.UOBpwYVuNOw>.
2. "Instant Runoff Voting and Its Impact on Racial Minorities". New America Foundation. 1 August 2008.
3. Fair Vote archives: Wake County Board of Elections Answers to Questions on IRV Election Administration <http://archive.fairvote.org/?page=2543>.
- 4 <http://www.oaklandrising.org/blog/key-facts-about-oaklands-first-rcv-election>.
6. "Live: Michael D Higgins elected President". RTE. 29 October 2011..
7. http://archive.fairvote.org/sf/SFLawsuit_Richie.pdf.
8. Australian Electoral Commission.
10. <http://www.minnpost.com/two-cities/2011/11/st-pauls-dave-thune-wins-re-election-after-ranked-choice-vote-reallocation>
11. <http://www.minnpost.com/two-cities/2011/10/st-paul-ready-give-ranked-voting-its-first-try>

John Otter jmotter@q.com 471-9073

To: Charter Commission
From: Marcos D. Martínez
Date: February 26, 2013
Re: Contribution Limits

The U.S. Supreme Court has upheld some Campaign Contribution Limits. *Buckley v. Valeo*, 424 U.S. 1, 21 (1976) (upholding a \$1,000 contribution limit). In upholding the \$1,000 contribution limit before it, the Buckley Court recognized that such limits, unlike expenditure limits, “involve little direct restraint on” the contributor’s speech, 424 U.S., at 21, and are permissible as long as the government demonstrates that they are “closely drawn” to match a “sufficiently important interest,” *id.*, at 25. It found that the interest there advanced, “prevent[ing] corruption” and its “appearance,” was “sufficiently important” to justify the contribution limits, *id.*, at 25–26, and that those limits were “closely drawn.”

In determining whether a particular contribution limit was “closely drawn,” the amount of that limit could make a difference, see *id.*, at 21, but the Court added that such “distinctions in degree become significant only when they ... amount to differences in kind,” *id.*, at 30. Pointing out that it had “no scalpel to probe, whether, say, a \$2,000 ceiling might not serve as well as \$1,000,” *id.*, the Court found “no indication” that FECA’s contribution limitations would have “any dramatic adverse effect on the funding of campaigns,” *id.*, at 21.

Although the Court had “no scalpel to probe,” 424 U.S., at 30, with exactitude whether particular contribution limits are too low and normally defers to the legislature in that regard, it recognizes the existence of some lower bound. While the interests served by contribution limits, preventing corruption and its appearance, “directly implicate the integrity of our electoral process,” *McConnell V. Fed. Election Comm’n*, 540 U.S. 93, 136 (2003), that does not simply mean the lower the limit, the better.

The court has indicated that contribution limits that are too low also can harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders. Where there is strong indication in a particular case of such risks courts must review the record independently and carefully with an eye toward assessing the statute’s “tailoring,” i.e., toward assessing the restrictions’ proportionality. See, *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984).

In *Randall v. Sorrell*, the Court considered

the constitutionality of a Vermont campaign finance statute that limits both (1)
the amounts that candidates for state office may spend on their campaigns

Elizabeth "4"

(expenditure limitations) and (2) the amounts that individuals, organizations, and political parties may contribute to those campaigns (contribution limitations). Vt. Stat. Ann., Tit. 17, § 2801 et seq. (2002). We hold that both sets of limitations are inconsistent with the First Amendment. Well-established precedent makes clear that the expenditure limits violate the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 54–58, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam). The contribution limits are unconstitutional because in their specific details (involving low maximum levels and other restrictions) they fail to satisfy the First Amendment's requirement of careful tailoring. *Id.*, at 25–30, 96 S.Ct. 612. That is to say, they impose burdens upon First Amendment interests that (when viewed in light of the statute's legitimate objectives) are disproportionately severe.

Randall v. Sorrell, 548 U.S. 230, 236–37, 126 S. Ct. 2479, 2485, 165 L. Ed. 2d 482 (2006).

In sum, a court will find a contribution limit that is too low to be unconstitutional. (Vermont had a limit for the governor, lieutenant governor, and other statewide offices of \$400; state senator, \$300; and state representative, \$200. *Id.* at 238)

Finally, the Court is currently considering a new challenge to federal contribution limits in the 2013 term. See, *McCutcheon v. FEC*, 12-536. The Supreme Court provides the questions in that case as follows:

QUESTION PRESENTED:

Federal law imposes two types of limits on individual political contributions. Base limits restrict the amount an individual may contribute to a candidate committee (\$2,500 per election), a national-party committee (\$30,800 per calendar year), a state, local, and district party committee (\$10,000 per calendar year (combined limit)), and a political-action committee ("PAC") (\$5,000 per calendar year). 2 U.S.C. 441a(a)(1) (current limits provided). Biennial limits restrict the aggregate amount an individual may contribute biennially as follows: \$46,200 to candidate committees; \$70,800 to all other committees, of which no more than \$46,200 may go to non-national-party committees (e.g., state parties and PACs). 2 U.S.C. 441a(a)(3) (current limits provided) (see Appendix at 20a (text of statute)). Appellants present five questions:

1. Whether the biennial limit on contributions to non-candidate committees, 2 U.S.C. 441a(a)

(3)(B), is unconstitutional for lacking a constitutionally cognizable interest as applied to contributions to national-party committees.

2. Whether the biennial limits on contributions to non-candidate committees, 2 U.S.C. 441a(a) (3)(B), are unconstitutional facially for lacking a constitutionally cognizable interest.

3. Whether the biennial limits on contributions to non-candidate committees are unconstitutionally too low, as applied and facially.

4. Whether the biennial limit on contributions to candidate committees, 2 U.S. C. 441a(a)(3) (A), is unconstitutional for lacking a constitutionally cognizable interest.

5. Whether the biennial limit on contributions to candidate committees, 2 U.S.C. 441a(a)(3) (A), is unconstitutionally too low.

See, <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-536.htm> (last visited February 26, 2013).

PROPOSED MEETING DATES

Meeting Date	Meeting Purpose	Meeting Location
2/13/13	Present, amend and adopt process	Council Chambers
2/28/13	District One Presentation Topic: Elections	Council Chambers
3/14/13	District Four Presentation Topic: TBD	Genoveva Chavez Center
3/28/13	District Three Presentations Topic: TBD	Southside Library
4/11/13	District Two Presentation Topic: TBD	Senior Center
4/25/13	Review 3-5 additional amendment proposals	Council Chambers
5/9/13	Review 3-5 additional amendment proposals	Council Chambers
5/22/13	Review 3-5 additional amendment proposals	Council Chambers
6/13/13	Consider public input and additional amendment recommendations	Council Chambers
6/27/13	Adopt final recommendations through commission vote	Council Chambers

Exhibit "5"