



Agenda

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CHARTER REVIEW COMMISSION

April 9, 2013

5:00 pm to 7:00 pm

Santa Fe Public Schools

610 Alta Vista

1. Roll Call
2. Approval of Agenda
3. Approval of March 28, 2013 Minutes
4. Public Comment
5. Discussion/Possible Action to Remove Ranked Choice Voting from Topics
6. Continued Discussion of Topics For Review to include Public Comment

POLICY ISSUES:

- a. Create an Auditor/Inspector General Position
- b. Marijuana Personal Possession as a Low Priority for Law Enforcement
- c. Water Conservation Issues
- d. Ban on Excessive Ammunition Clips/ Assault Weapons issues
- e. Technological Improvements

April 23, 2013 – GOVERNANCE ISSUES – Santa Fe Public Library

- a. Create Full Time Mayor
- b. Mayor to Hire/Fire City Attorney, City Clerk and City Manager
- c. Mayor to Act as Chief Executive Officer
- d. Other Governance Issues to be Discussed and/or raised

May 9, 2013 – City Council Chambers

POLICY ISSUES

- a. Limit Contributions to Candidates That Do Not Accept Public Financing
- b. Salaries to be Set by an Independent Commission
- c. Full and Complete Disclosure of Uses for Tax Bonds Prior to Election
- d. Broaden Referendum and Initiative Rights of Voters
- e. Signatures to be Required for Petitions/Recalls

7. Discussion/Possible Action Agenda Items for Future Meetings
8. Communication from Charter Commission Members
9. Public Comment
10. 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.

**MINUTES OF THE
CHARTER REVIEW COMMISSION
City Hall Chambers
200 Lincoln Avenue
Tuesday, April 9, 2013**

CALL TO ORDER.

A meeting of the Charter Review Commission was called to order by the Honorable Patricio Serna, Chair, at approximately 5:00 p.m., on Tuesday, April 9, 2013, in the Small Meeting Room, Southside Library, 6599 Jaguar Drive, Santa Fe, New Mexico.

1. ROLL CALL

Roll call indicated the presence of a quorum as follows:

The Honorable Patricio Serna, Chair
Roman Abeyta
Steven G. Farber
Brian Patrick Gutierrez
John B. Hiatt
Houston Johansen
Carol Romero-Wirth
Daniel Werwath

MEMBERS EXCUSED

Nancy R. Long, Vice-Chair

OTHERS ATTENDING

Jamison Barkley, Assistant City Attorney
Irene Romero, City Attorney's Office
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance.

Chair Serna welcomed everyone to the meeting this afternoon, commenting on the good attendance. He said Vice-Chair Long is unable to be here this evening.

Chair Serna said after the last meeting, Melessia Helberg, Stenographer for the Commission, said she had difficulty transcribing the minutes because so many people were speaking at the same time. He said he promised her that, in the future, he would "keep control and allow only one person at a time to

speak so she can do her job properly. And remember what Councilor Dominguez said last meeting, 'Promises made, promises kept.' So, Melessia I will keep my promise."

2. APPROVAL OF AGENDA

A copy of a letter dated April 8, 2013, to the Commissioners, regarding *Allowing hand counting of votes in municipal elections*, submitted for the record by John Otter, is incorporated herewith to these minutes as Exhibit "1."

Commissioner Farber said he would like to amend the agenda to postpone Item 6(A) to the next meeting of the Commission on April 23, 2013. He said this is an item with regard to the potential creation of an auditor/inspector general position. He had requested information from the City Attorney's office because he heard there was an Ordinance establishing an Audit Committee. He said we were just provided the Ordinance today with a Resolution and a report. He also requested the names and background information of those serving on the Audit Committee. He has not received the background information. He has special interest in this issue from a professional standpoint, knowing about the problems of the NM Finance Authority. He said there was a news article about Albuquerque's Inspector General quitting. He doesn't think there is sufficient time to digest the information for this meeting.

Chair Serna said we have a list of the members of the Audit Committee.

Irene Romero said we can provide background information on the Audit Committee. She said Lisa Kerr, Internal Auditor and she is prepared to make a presentation to the Commission on the issues that Commissioner Farber had requested.

Responding to the Chair, Ms. Kerr said she is prepared to move forward with her presentation today.

Commissioner Farber said would like to have the opportunity to read the Ordinance and Resolution and have an understanding so he can put the information into context. He said, "It may be that my idea and proposal is unnecessary. I just don't know."

MOTION: Commission Farber moved, seconded by Commissioner Abeyta, to postpone Item 6(A) to the meeting of April 23, 2013.

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

Commissioner Farber said, with regard to Item #5, he arrived late to the previous meeting, but he said he had been under the impression that the issue with regard to Ranked Choice Voting had been removed and was not the subject of controversy because of comments Mr. Otter made. However, today we have a letter from Mr. Otter seeking that specific language be added to the Charter in this regard. He understood we were removing items on which there was no controversy. He would like to postpone Item

#5 to the point when we begin having actual debate about the various issues that have been presented to this Commission.

Chair Serna said, "Mr Otter, I have a question. It was our understand at the last meeting that due to the advancement in voting machines that you were requesting that we remove any action on Ranked Choice Voting from our consideration. Did we misunderstand you."

John Otter said, "Somewhat. What I was suggesting is that particular proposal to remove the contingency on voting machines, that that proposal be withdrawn, not that the whole subject of Ranked Choice Voting that the voters wanted to see implemented be dropped."

Commissioner Hiatt asked, "So, Mr. Otter, in terms of your letter to us, is this specific language in the first paragraph that you want us to consider now."

Mr. Otter said, "Yes. Instead of removing the contingency, I'm suggesting we add language which would allow implementation of Ranked Choice Voting through hand counting or hand sorting in combination with machines."

Commissioner Hiatt said he agrees with Commissioner Farber that we should postpone this item as suggested.

MOTION: Commissioner Farber moved, seconded by Commissioner Hiatt, to postpone Item #5 to the point when we begin having actual debate about the various issues that have been presented to this Commission for consideration.

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

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

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

3. APPROVAL OF MARCH 28, 2013 MINUTES

The following correction was made to the minutes:

Page 5, paragraph 5, correct as follows: "Chair Serna said the U.S. Supreme Court ruled on contribution limits, although the State Supreme Court ~~did~~ has not.."

Page 14, paragraph 5, correct as follows: "...referendum and initiative are in the Charter..."

MOTION: Commissioner Hiatt moved, seconded by Commissioner Johansen, to approve the minutes of the meeting of March 28, 2013, as amended.

VOTE: The motion was approved on a voice vote, with Commissioners Abeyta, Gutierrez, Hiatt, Johansen, Romero-Wirth and Werwath voting in favor of the motion, no one voting against, and Commissioner Farber abstaining because he was absent for most the last meeting.

4. PUBLIC COMMENT

A copy of Miranda Viscoli's statement for the record, entered for the record by Ms. Viscoli, is incorporated herewith to these minutes as Exhibit "2."

A copy of a Memorandum dated April 9, 2013, to the Santa Fe Charter Review Commission, from the League of Women Voters of Santa Fe County, submitted for the record by Karen Heldmeyer for the League, is incorporated herewith to these minutes as Exhibit "3."

Chair Serna said this Commission is unique in inviting public comment at the beginning and end of the meeting, as well as during the meeting. He believes this is what is meant by transparency and inviting participation of the citizens.

Miranda Viscoli spoke as a representative for New Mexicans for gun safety, as well as a third generation native of Santa Fe. Ms. Viscoli read her statement into the record, urging the Charter Commission to step outside of the box and find what may seem like an unexpected path toward reasonable gun safety laws." Please see Exhibit "2" for the text of Ms. Viscoli's statement.

Chair Serna said there are several issues on the national agenda, one of which are assault weapons and high capacity magazines. He said the one that appears to have a chance at the national level is registration of weapons at gun shows and private sales. He asked her which of these she is pushing.

Ms. Viscoli said she is pushing for all three, commenting "I'm not anti-gun, I celebrate people owning guns and going hunting. This isn't what that's about at all." She said, "I think on the city level, what we're looking at, what I'm interested in is Patti Bushee's bill on the excessive capacity [magazines], so that's why I'm speaking here today. I know that Santa Fe isn't in a position to go after the background checks. So, specifically for Santa Fe, I think as a City, as a capitol city of a State that has one of the worst records in terms of gun violence, we could stand as a role model, not only for New Mexico, but for other states, to say, come on, let's get on board, enough is enough - Connecticut, New York, Oregon, California, Colorado, and the list is getting longer, but we don't have the best reputation. So I think as a three generation native of this City, I would like to work to see something happen."

Karen Heldmeyer noted she distributed a Memorandum from the League of Women Voters containing proposed language for the various issues as indicated, which have been discussed at prior

meetings, and issues that will be coming up, in response to a request from this Commission at the previous meeting. She noted the proposal to limit campaign contributions does not limit it to only candidates that do not take public finance. She said, in thinking of the limitations, there are limits on candidates who take public financing as well. She said the Charter language should be as broad as possible, so they suggest setting limits on contributions which could be different for publicly and non-publicly financed candidates, and they are suggesting that go into the Ordinance rather than the Charter. She said the one thing that isn't in the Memo is the issue with regard to the City Manager and Mayor, noting there is no definition of Chief Executive Officer and Chief Operating Officer. They want to know what these terms mean and what the compare and contrast is, before they provide specific language. There has been confusion in the past in terms of the roles of the Mayor and the City Manager.

Former Councilor Heldmeyer said she just read Mr. Otter's letter on hand-counting ballots [Exhibit "1." She said the League has no position on hand-counting ballots. However, in terms of this Commission making informed decisions on the issue, she would refer, once again, the Commission to the two websites for the Minnesota League of Women Voters and San Jose League of Women Voters who took very different positions on Ranked Choice Voting. She said there are pros and cons on this issue, and if this issue is coming back, she would suggest the Commission look at the issue. She also would suggest a very clear explication of what the City Clerk and Denise Lamb, Former Santa Fe County Bureau of Elections Director, feel that they observed with the test of ranked choice voting. She said, "They are the front line people in this regard. Mr. Otter says in his letter that he feels that what happened at that test has been mischaracterized. I would say, try to get it from the horse's mouth."

Chair Serna asked if it would be advisable to invite them to the meeting when we discuss that issue.

Former Councilor Heldmeyer said yes, and suggested that the Commission ask Ms. Vigil specific questions about Ranked Choice Voting. She said the Commission asked Ms. Vigil a lot of questions about a lot of things when she was here, but that particular test was not discussed in any detail. She said you need to know about this in a fair amount of detail, and these two people can give you the most coherent description of it. She said the Commission might want to invite Rick Lass, "at whose instigation that test was done, and he was present as well."

Commissioner Hiatt said, "I would like to specifically thank the League and you, Councilor Heldmeyer for doing that. I think it helps us a lot when we have the specific language, rather than look to us to come up with the language."

Chair Serna said, "The City Attorney's Office can put it in legalese language at the appropriate time."

John Otter said, "I'm not a lawyer, so I have difficulty parsing all the language in the Constitution and the Charter, etc., but in reading the Constitution carefully again, I find that the Secretary of State's approval of electronic or mechanical voting systems requires that those preclude over-votes. And so, because Ranked Choice Voting involves choices of first, second and third, etc., choices to identify over-

votes in those choices, the machines that would do that, would be ones which actually take an electronic snapshot of the ballot before the rejection by the voter would be enabled to correct that. Those types of machines are being used, however, their federal certifications process is behind other kinds of machines that do Ranked Choice Voting. So it would be apparently a few years before they would be available, and besides which, there would have to be a machine at each polling place which would be expensive I assume."

Mr. Otter continued, "So, my interest in the subject, comes from the fact that the voters have had arguments for and against Ranked Choice Voting thoroughly. When the matter came up for the voters to vote on the Charter Review Commission recommendations previously, and they voted, I think it was 66% or some sizable majority in favor of Ranked Choice Voting. And so, that is not the subject of my interest. It is the implementation of that will of the voters. And so, perhaps I was a little precipitous earlier in withdrawing the previous idea of removing the contingency on voting machines and identification of errors that is currently in the Charter. That would be one alternative to get early implementation. However, my latest proposal here, which does have specific language to insert at a particular place in the Charter, currently, to the best of my [inaudible] legal ability, would allow for hand counting, hand sorting, in conjunction with the machines we have now. The usual procedure or most common procedure is to read the ballots of first choices and that determines whether or not there needs to be a Ranked Choice count, and then that proceeds. And I will probably not take your time now to repeat the arguments in my brief and further arguments which indicate the viability of this hand count procedure. So I'll do that when the matter comes up again. But, I would appreciate your attention to this particular matter. And there are a number of reference given in the brief if you wish to pursue it, or I would be happy to talk to you about it."

Commissioner Hiatt said he has questions, but he would like to postpone further discussion until it comes up on the agenda again.

Alejandra Seluja, Chair, Santa Fe Immigration Committee, said, "We will be submitting a memorandum with this recommendation, but we would like to ask that be included as a consideration by the Commission, that: *No municipal resources will be used to identify or apprehend any non-citizen resident on the sole basis of their immigration status, unless otherwise required by law to do so.*

Ms. Seluja said Resolution 1999-6, adopted by the City Council, appointed the Immigration Task Force and this is part of the language that was in the Resolution. She said, "We respectfully ask for that to be included in the Charter."

Commissioner Hiatt asked Ms. Seluja to submit specific language in writing.

Ms. Seluja said they do have specific language, and the Commission will receive it in a Memorandum in writing, noting it does reflect what is in Resolution 1999-6.

Jim Harrington, speaking as the former Chair, said, "First I have to congratulate the Commission on getting such an attendance. We never got anything like this. You did better than we did. But I had to add to and correct something I said about our work that I was asked about last time, and off the top of my head, made a guess and I shouldn't have, and I researched it. It concerns the number of signatures for initiative and referendum. The Charter now provides that you have to get 1/3 of the actual voters from the last Mayoral election, and that's the same as the percentage for recall. It turns out, our Commission actually recommended 20% of the actual voters in the last mayoral election for initiative and referendum and 1/3 for recall. And the Council saw fit to raise it from 20% to 1/3. So, just that bit of history. The purpose was still to lower it a great deal from where it was before that, which was 20% of the registered voters or 60% of the actual voters in the last mayoral election. But I'm sorry, I did mention that the Council had done something to that number that I couldn't quite remember. Thank you."

5. DISCUSSION/POSSIBLE ACTION TO REMOVE RANKED CHOICE VOTING FROM TOPICS.

This item is postponed to the meeting of April 23, 2013.

6. CONTINUED DISCUSSION OF TOPICS FOR REVIEW TO INCLUDE PUBLIC COMMENT.
A. CREATE AN AUDITOR/INSPECTOR GENERAL POSITION

This item is postponed to the meeting of April 23, 2013.

B. MARIJUANA PERSONAL POSSESSION AS A LOW PRIORITY FOR LAW ENFORCEMENT

A copy of §30-31-25.1 NMSA *Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "4."

A copy of HB 465, sponsored by Representative Emily Kane, with attached vote by the House of Representatives adopting the bill, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "5."

A copy of an article from the internet, *New Mexico Medical Marijuana*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "6."

A copy of *Seattle Initiative 75 Initiative 75 Text*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "7."

A copy of *Marijuana: Historical, Legal and Medical Facts*, prepared by NORML, Fall 2012, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "8."

A copy of a publication *Emerging Clinical Applications for Cannabis and Cannabinoids: A Review of the Recent Scientific Literature 2000-2010*, prepared by NORML Foundation, Washington, D.C., Paul Armentano, Deputy Director, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "9."

A copy of an internet article from *U News Center The university of Utah regarding Drivers on Cell Phones are as bad as drunks*, dated June 29, 2006, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "10."

Commissioner Farber said I have prepared some materials to hand out, and I'll present a brief idea of my ideas. He said, "I am also the proponent of the ban on excessive ammunition clips and assault weapons issues. It's really a prevention of gun violence initiative as well, not initiative in the context of referendum, initiative and recall, but with regard to a provision in our Charter. One isn't more important than the other. They're both very different and both very significant in my mind, and I have materials with regard to those."

Commissioner Farber continued, "The idea that I had from actually practicing law now for 40 years, and being involved in the criminal justice world for 40 years, starting as a Public Defender in Philadelphia, moving to Santa Fe, from 1976-1978 being the Acting District Defender of the Santa Fe Public Defender's Office. I was an Assistant Attorney General, serving under Attorney General Anaya and served with Justice Serna at the Attorney General's Office prosecuting complex prosecution. I turned down the opportunity to serve as the head of a task force with the interdiction of marijuana smuggling, because I felt back then, and feel now, that it is not a wise use of resources, and was being directed in a way that's not effective. The Attorney General, Toney Anaya, was gracious in his understanding of my personal position with regard to that issue. I've been a Member of the National Organization for the Reform of Marijuana Laws, for about as long as I can remember, since the early 1980s. I'm a supporter of the Drug Policy Alliance, and in support, not necessarily monetarily, of the Marijuana Policy Project and a number of other initiatives to try to bring about, from my perspective, some sanity to this issue that confronts us."

Commissioner Farber continued, "The War on Drugs is an abject failure, there's no question about it. People who are non-violent offenders are being locked up, maybe not in Santa Fe, but around the State that's happening. People are getting in jail, people are getting arrested and prosecuted for small amounts of marijuana. And I distinguish between marijuana and other types of drugs. This is not a legalization of drugs initiative. I disagree with many of the positions that our former Governor Gary Johnson took, but I did agree, profoundly, with his courage to come forward, in his second term though, to attempt to create a different environment. Things are moving forward and I have documentations that I would like to share with you in a moment, but I wanted to have these preliminary remarks."

Commissioner Farber continued, "In this past Legislative Session, the New Mexico House of Representatives passed a bill by a vote of 37 to 33, HB 465, sponsored by Representative Emily Kane, who is a firefighter in Albuquerque, and who was publicly quoted as stating that she had never had a problem as a firefighter ever responding to any incident that involved just the possession or use of marijuana, unlike alcohol and other drugs. And we know from experience, around the country, there are studies and I'm going to hand this out, that a marijuana arrest is an easy arrest for a police officer. And

this is not to denigrate or criticize police officers. People who are in possession or have consumed marijuana are not combative. They are not, generally, giving a police officer a hard time, regardless of what their age is. They go along. And there is a study from New York City showing this, and police officers, when they go through the arrest process, get overtime. And there is a cost to society by the officers not being on the street patrolling and prosecuting for those offenses which are in fact serious threats to the health, safety and welfare of this community, such as burglary, rape, robbery, assault and domestic violence."

Commissioner Farber continued, "I feel on a personal and private level that the time has come to have a discussion. It was discussed in the House of Representatives, I think it should be discussed at the Charter Commission level, that we should have a provision in the Charter that states very similar to the Seattle Initiative [Exhibit "7"], of which I have copies that was an Ordinance. But I think this should be in the Charter. And it then went in, in terms of how it was implemented, that the Seattle Police Department and City Attorney's Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City's lowest law enforcement priority."

Commissioner Farber continued, "No one I know, who is responsible, is in favor of adolescent use of marijuana. No one I know who is responsible does not speak to kids and/or young adolescents and young males to say that smoking or using marijuana isn't a good idea. But that is different than prohibiting it, because we know that prohibition didn't work for alcohol. What it does, is that it builds a disrespect for the law. What we need is to build up respect for the law, not build up a disrespect for the law, because we see and know that smoking or taking marijuana isn't the demon that everybody says that it is in the public persona. Yet, if people in positions in power and authority say that it is, then kids who are growing up and who are impressionable, who are adolescent somehow think, well that's not really reality, and I think it's counter-productive."

Commissioner Farber continued, "And we also know from the scientific study that young males' pre-frontal cortex is not developed until their early twenties. So what we need to be doing is telling young guys, don't do it, because it's not good for you. But we need to not be arresting and prosecuting kids that happen to have this, because what happens is they have an arrest, as long as it's criminal, it's on their record, it will never go away, except for the first offense sometimes as a conditional discharge. And then there's an issue about whether that even applies in Magistrate Court or whether Magistrate Judges even give conditional discharges. And that's something I can get into at some other point."

Commissioner Farber continued, "So that's essentially the premise that I have. I think that there should be, in the Charter, a provision similar to the Seattle Ordinance which says that it is the lowest priority, and leave it up to the Council to adopt an ordinance, that's not our job. I'm not saying that's something we should be doing, but we can, as a community have this discussion, and I'd like to move it forward."

Commissioner Farber distributed copies of a publication from NORML called *Marijuana: Historical, Legal and Medical Facts* [Exhibit "8"]; the Legislation passed by the New Mexico House of Representatives [Exhibit "5"]; a copy of the Seattle Initiative [Exhibit "7"] and a packet of materials along with a listing of cities who have passed similar legislation – Seattle, Oakland, Santa Barbara, Santa Cruz, San Francisco,

Santa Monica, West Hollywood, Eureka Springs, Arkansas, Missoula, Montana, Denver, Fayetteville, Arkansas, Hawaii, Kelly, Idaho, Kalamazoo, Michigan, Tacoma, Washington. He said this is independent of informal policies announced by law enforcement in New Orleans, Philadelphia, New York City. He said there is a recognition that we need police patrolling streets rather than arresting non-violent offenders who are not creating harm in a societal way.

Commissioner Farber said New Mexico is one of about 20 states that have the medical marijuana laws. He said, "It is recognized in scientific literature that cannabis has extraordinary health benefits for people through the endo-cannabinoid system. It gets complicated, but we all as individuals have an endo-cannabinoid system in our bodies called ECD, and then there are ECN's. And it has a beneficial effect and a therapeutic effect in many ways. Unfortunately the New Mexico Statute is limited to 15-17 approved conditions. They're all very serious, and we wouldn't wish anyone to have these medical conditions, but there are lesser ailments for which it has been shown to be beneficial throughout the country." He said this is a monograph he sent to a doctor at Mayor Clinic who sent a note back saying it was very interesting, thank you very much, noting he is a pain and spine specialist.

Commissioner Farber said, "I just want to close with one other very significant aspect of this. I know the Chief's here, I don't know what the Chief's position is. I don't think there's a written policy that prosecution of personal possession and use of marijuana is a low priority enforcement. I would like to see a written policy in the Police Department. I've seen a quote that says, well it's not really being done that much, but I think the statistics may not be entirely accurate with regard to that, because I think that different officers view things differently. And oftentimes these kinds of laws can be used in a disparate fashion against minorities, youth and people who just don't seem to be the norm. I doubt that I'm going to get stopped walking down the street, but you never know. But other people do and they get frisked and they end up getting charged and arrested and having to call me. I get calls all the time and I have to walk people through this."

Commissioner Farber continued, "And there's another aspect that also makes it very significant, is that we may not realize it, but if a kid, an adolescent, a young adult, has less than an ounce of marijuana, but has papers for rolling it, has a bowl which they smoke out of, has a pipe, has a bong, has a vaporizer in their car because they don't want it into their lungs – that is paraphernalia. And paraphernalia, unless you practice criminal law you don't understand, is a misdemeanor under New Mexico law. That means people usually get arrested, taken to jail, post a bond, and have a misdemeanor arrest on their record as opposed to possession of less than an ounce here is a fine of \$100 generally, with up to 15 days in jail. So there's an enormous consequence to this and that is why I raise it for discussion, for debate for questions. Thank you Chair. I have a copy of the paraphernalia statute if anybody wants to read it. [Exhibit "4"]

Chair Serna opened the floor for public comment, which he said will be followed by comments from the Commissioners. He noted Police Chief Rael and his cousin State Policeman Eric Jaramillo and his wife Karen are in attendance.

Police Chief Rael said, "The Santa Fe Police Department does not set policy in terms of what is criminal or not criminal. The fact of the matter is that possession of marijuana is a criminal offense at this time, and we merely enforce the laws that are broken. Now, we do not make them a top priority. The mere possession of marijuana is not something we expend our resources on, nor do we allocate overtime, nor target individuals for possession. Generally speaking, when we encounter and charge an individual, it is incident to an arrest or as an included offense part of another crime. The issue of personal consumption, I don't believe it is necessary... it's a drug of choice and I believe it can be regulated."

Chief Rael continued, "I would caution that completely eliminating any criminal offenses may tie our hands in terms of certain situations. We've received several complaints in terms of the Plaza, the Cathedral Park, where we have had individuals that are public smoking marijuana and potentially using other drugs. In those cases, I believe it is appropriate to have some enforcement ability. Consumption in private may be another matter. In any case, we do not concentrate and focus large amounts of energy, manpower efforts or overtime. We do, however, pursue those individuals who possess marijuana with intent to distribute, or large amounts. We definitely focus on those. I think the policy for this body, the Senate, the City Council, the House of Representatives, and we will follow whatever direction we receive. But please keep in mind that we do not primarily focus on possession. I am available to answer any questions you may have."

Commissioner Farber said, "I recognize and the reason I'm bringing this forward as a policy statement is that the Santa Fe [inaudible] cannot do anything that is contrary to State law. And under State law, marijuana today is illegal, except to the extent that people have actively registered and gotten recommendations through the medical part of the program and are in compliance with that program. The attempt in the Legislature of Representative Kane, was to decriminalize certain amounts. So I realize our limitations. And my thought was that there should be a policy statement, because the Chief may not be the Chief forever, there may be other Chiefs, there may be other philosophies that we as a community can say, we don't want to be putting out resources into, not that it's okay, but let's be doing other things, and let it be stated as a low enforcement priority. We have no power to legalize it, I understand that."

Commissioner Hiatt said, "I'm not quite sure I know exactly what you said, but I think I understand that it's not a priority that you put out to the law enforcement people that serve under you. But if this Commission were to pass a recommendation to the City Council, similar to what Commissioner Farber read from Seattle, and if the Council put it out to a vote of the public, and if it were approved by the public, would that then have some effect in terms of costs or threats to our society that would concern you. First of all costs in a positive way I presume. Would you see anything that would benefit?"

Chief Rael said he is unsure he understand's Commissioner Hiatt's question.

Commissioner Hiatt said, "I'm not sure I do either. I'm trying to pin you down, at least if I can, is there going to be a benefit to communities cost-wise if this were recommended to the Council and to the voters and they passed it. What would be the impact you think on the City Police Department."

Chief Rael said, "That's a difficult question to answer, simply because I don't have a lot of the information, and I haven't studied this in detail. But I will tell you this, and maybe this is a matter that I have to refer to Legal, but an Officer is sworn to enforce the law, and as long as those laws are on the books and were passed, if we observe a violation, I'm not sure how we ethically turn the other way and not enforce what is an actual law. We can reduce priorities in terms of enforcement, but to say that we are now going to legalize, in essence, something has been made illegal by the State Legislature, puts the police officer in somewhat of a difficult position I believe."

Commissioner Hiatt asked, "If again, language similar to Seattle's was approved by the public and became law as part of the Charter, would you see the threat to our community to be any greater or lesser as a result of this?"

Chief Rael said, "I don't necessarily believe that marijuana is a direct threat to our community. I believe that many of the harder drugs, heroin, cocaine, methamphetamines are the root cause of a lot of potential danger to our citizens. A direct relationship exists between those drugs and property crimes, so I see those as much more hazardous. The thing I would tell you, is if that decision was made, I still think there needs to be a prohibition in certain locations about the consumption of marijuana where it should be prohibited in public places, if you will."

Commissioner Farber thanked the Chief for distinguishing between different kinds of illegal substances. He asked, "Wouldn't a Police Officer observing somebody, let's just say, possessing and/or smoking marijuana in public, have the ability to issue a non-traffic citation to summon that person to court for both the cigarette paper, the bowl and the marijuana, rather than arrest him."

Chief Rael said, "The ability currently exists in many cases. In many cases it is, in fact utilized. Generally, when an individual is charged for possession of marijuana it's in relation to another associated crime. As an example, there is a public affray, two individuals are fighting, the arrest is made, subject is then found to be in possession of marijuana, the subject is arrested, he subsequently is charged with both the public affray and the possession."

Commissioner Farber said, "You are equating public affray with marijuana, that doesn't necessarily happen all the time, or even most of the time. Correct."

Chief Rael said, "No, I'm equating it necessarily in every occasion. I'm saying this is an example of where the individual would be charged. It may be DWI, Careless Driving, where marijuana is detected and the subject admits that he or she is in possession. It may be any number of incidents, but generally speaking, we do not go out and target individuals simply for the mere possession of marijuana. There has to be an additional charge or an additional crime."

Commissioner Farber said he isn't talking about targeting, but what happens in these situations. He asked the Chief if he is familiar with the University of Utah Study that equates cell phone use while driving with a 0.08 which the presumptive limit for driving while intoxicated, and Chief Rael said he is.

Commissioner Farber said he sees people talking on cell phones constantly throughout the City, but he doesn't see them getting stopped.

Chief Rael said unfortunately they have limited resources, and where appropriate they do stop and cite individuals, but he can't speak to each and every incident.

Commissioner Farber said, "Similarly, as with someone talking on a cell phone, because that's presumably against City Ordinance, someone in possession of a small amount of marijuana for personal use could be given the same kind of citation and expect a summons."

Chief Rael said, "It's my understanding that some do, and many are not charged if it is a small amount and the propose to dispose of it, if they do, they walk."

Eric Jaramillo said, "I want to emphasize that I am in no way, shape or form representing the State Police tonight. But I do want to say that, Mr. Farber I do agree with a lot that you do have to say tonight. In my 10 years experience as a law enforcement officer, the vast majority of times I've dealt with people for possession of marijuana under 1-2 ounces, they are very compliant, very respectful. I've never had any issues with them when compared to people who are under the influence of alcohol or other illicit drugs. Marijuana, I don't know if it is a cliché or a stereotype, but they're very mellow. They're not always violent or disrespectful, so that's been my experience in 10 years. So a lot of what you say, I do agree with. However, I'm wondering, you say these people are arrested, my experience and the experience of my other officers that I've seen, we don't arrest them, unless you mean we've issued a citation. 99.9% of the time, we issue them a non-traffic citation and cite them into court, unless they are being difficult or very disrespectful, then we will arrest them, or in lieu of other charges, DWI, public affray or something like that, then we will arrest them. But, the majority of the time we don't, we'll just issue a non-traffic citation for possession under one ounce or what have you."

Mr. Jaramillo continued, "You asked the question a while ago, how it would benefit our community if we were to pass this resolution. I haven't done the research on it, but I can tell you off the top of my head, first and foremost it would free up the dockets in Magistrate Court if we were to legalize it. And I'm not condoning or pushing to pass this resolution, I'm just stating my opinion. So it would free up the dockets in Magistrate Court, freeing up time for judges to hear other possibly more serious cases. From our Department standpoint, it would free the officer's court time. It would free up the amount of evidence we have logged in our evidence vaults, which I can tell you, possibly the majority of it is marijuana under one ounce and various drug paraphernalia items. So, from that perspective, that's what I see would be the benefit."

Commissioner Hiatt thanked Mr. Jaramillo for attending and giving us his personal opinion. He asked, "In your 10 years experience, if this were passed, similar to the Seattle language that you heard Commissioner Farber talk about previously, and approved by citizens of Santa Fe, do you have an opinion as to whether or not that would pose an additional threat to our society."

Mr. Jaramillo said, "I don't know for sure. My instinct would say no, I don't see an additional threat. However, I'm sure you've heard, in research into marijuana, it is a gateway drug to harder drugs. I don't know what the research shows one way or another. My instinct though would be to say no, because my experience is these people are typically mild mannered and respectful and don't want to cause any issues."

Chair Serna thanked Sergeant Jaramillo.

Emily Kaltenbach, State Director, New Mexico Drug Policy Alliance, said she is here this evening to voice her support for this discussion and conversation. She said, "I applaud the Commission for being willing to have this conversation, to look at this as the lowest priority for law enforcement. The Drug Policy Alliance has been working both at the State and local level for many years on policy issues like this. We worked closely with Representative Kane during the last Legislative Session to reduce the penalties for possession from four ounces and below to be a civil infraction and taking away the jail time. And while we were doing that we were quite astounded by the data. I think, oftentimes there's misconception in New Mexico that we don't arrest people for having small amounts of marijuana. In fact, the data tells another story. Over 3,000 arrests in New Mexico were made for possession of marijuana, again, we're talking about adults, and that varied from community to community and county to county. But it's a concern, because those numbers actually were higher than some of the more serious property crimes we saw in this State."

Ms. Kaltenbach said, "We've done some preliminary research on looking at the Santa Fe Police Department Data in 2012, and it shows there were 103 arrests for marijuana possession, compared to about 81 for heroin or opiates. We have to understand, and both the law enforcement officers mentioned this, that oftentimes these are coupled with other more serious crimes. What we did was look preliminarily at how many of those arrests were solely for possession or the most serious crime, the highest charge. And what we found was that about 50% were solely for marijuana or where it was the highest crime, and those were the ones that we're most concerned about. Again, and I don't want to reiterate what we heard very eloquently stated, but again, this is a burden on the system, law enforcement and the criminal justice system, but also on families."

Ms. Kaltenbach continued, "Misdemeanors are no small issue. They can tear people apart, people can lose their jobs as a result or perhaps not be able to get a job in the future. So, I'm concerned that those arrests can really impact our economy in a small city like Santa Fe, or as we look at this across the State. And then also just imagine the time one arrest consumes for the law enforcement officer – driving all the way out to the County jail to book someone, driving back in. We know we've had serious property crimes issues in the City. If we could only divert those law enforcement officers to deal with those issues, I think we would be better off as a community."

Ms. Kaltenbach continued, "I also just want to mention that we did some polling during the Session of New Mexicans on this issue, and what we found is that 57% of New Mexicans support reducing penalties for marijuana possession and basically support what Rep. Kane's bill was. We're seeing a shift here in New Mexico on our public perception. And I also want to mention that a majority of those we polled

who had children under the age of 18 also supported this, so we're seeing parents who recognize that oftentimes an arrest of their children creates a great burden, and we should be treating this as a health issue in our children, and not a criminal issue."

Ms. Katlenbach continued, "And I also want to add, on the Seattle Initiative that Commissioner Farber mentioned, that there was an independent panel review of this ordinance, of this policy, and what they found was there is no evidence to increased crime, no evidence of increased use among our youth or young adults, no adverse impact on the public health. And they also found that there was a significant reduction in arrests, where there had been hundreds in the City of Seattle, and that was down to just dozens after this ordinance went into effect. So I'll just end with, during the time when we have really tight City budgets as well as tight household budgets, that our taxpayers are entitled to a system that works. And I think this is a common sense approach. It's nothing new or nothing novel, as Commissioner Farber mentioned, it started in 1979 in Berkeley and many communities have followed suit and so I think it's a policy that can work for Santa Fe. Thank you."

Chair Serna said he heard some time back that many years ago in New Mexico that 80% of the prison population were minorities, and the greatest offense they were there for was on possession of marijuana. He said we have made advances through the years.

Chair Serna welcomed Councilor Peter Ives.

Councilor Ives said he represents District 2, and apologized for his lateness, noting he was attending the Water Conservation Committee which he chairs, and got here as quickly as possible. He said Councilor Wurzbarger said she is out of State, and won't be able to be here this evening. He thanked the Commissioners for their service on the Commission and said he knows the City anxiously awaits the recommendations of the Commission.

Commissioner Hiatt thanked Commissioner Farber for bringing this forward and for doing his homework, commenting this won't be an easy be an easy topic. He will commit to approaching the topic with an open mind.

Chair Serna thanked Commissioner Farber for the information.

Commissioner Romero-Wirth asked said she is curious as to how many municipalities actually put this provision in their charter or their constitutional governing document, which is what Commissioner Farber is requesting here, commenting this would be an important piece of information.

Commissioner Farber said he can get that information. He said, "I can tell you that Colorado, our neighboring state, put in by a vote of its population, a provision that allows personal possession for medical use initially, and just passed in this last year, as a part of their Constitution, Initiative #64 which legalizes personal possession of marijuana for recreational uses."

Commissioner Romero-Wirth said she is aware that passed in Colorado, but it was a constitutional change.

Commissioner Farber said it is more significant that it was in the state constitution.

Chair Serna said the Charter is the constitution for the City of Santa Fe.

Commissioner Werwath thanked Commission Farber for putting all of this together. He said, "In the spirit of making informed decisions about this, he would like to request that you produce the actual text of what you would like included in the Charter. We also share concerns about the ambiguity of putting ordinance-like language into a charter document. So, I would be interested in seeing how you end up formulating that."

Commissioner Farber said, "It would be my idea, but we can discuss it when we decide when we will be discussing this, that it would be a policy statement very similar to the Seattle ordinance, without going into creating an ordinance."

C. WATER CONSERVATION ISSUES

Chair Serna asked who put forward this issue, and former Councilor Heldmeyer said it was the League of Women Voters..

Former Councilor Heldmeyer said Section 2.03 of the Charter deals with Environmental Protect, and they were surprised that there is nothing specifically in it about water, given the importance of water to this area. She said the City League has a specific position on water, and there is an even more detailed position from the State League.

Former Councilor Heldmeyer said, "In keeping with the idea that this is the constitution and not the ordinance, we are recommending the following be added to the Environmental Protection section, which is a policy statement: *Because water quality and availability are extremely important to the citizens of Santa Fe, the Governing Body shall protect, preserve and enhance the City's water resources, to regulation, conservation and tying development to water availability.* And that's more or less a direct quote of the local League's position. If other people want to add further details than this, the League could probably support it given the State League's position which is more detailed."

Chair Serna asked Councilor Ives his thoughts about the proposed language.

Councilor Ives said, "I am seeing this for the first time in the last 5 minutes, and I don't have the original provision to compare and contract. My recommendation of that provision is that it generally requires protection of the environment in the broad context. Certainly that broad context, in my mind, is very appropriate for the Charter in terms of how the Charter should be expressed. There should be broadly based goals. And I suppose the only reservation I might have is that a lot of this is, to some degree, drilling down to the day to day operations of these City. And I can tell you, coming from the Water Conservation Committee and knowing the work that the Public Utilities Committee does regularly, water conservation and water issues are continually and constantly in our mind. The Public Utilities Committee gets regular reports on drought issues, on the National Oceanographic and Aeronautics Administration

Reports in terms of anticipated weather patterns across the country. Indeed, the last one we spoke about at the Water Conservation Committee in the last hour was the one which suggested that the El Nino effect was going to be minimal, meaning we are going to have a fairly dry again summer, and our monsoons might not be as productive as we were otherwise hoping."

Councilor Ives continued, "We get regularly the statistics on what the storage in our reservoirs are, what the inflow into the reservoirs are, and in fact that information is reported almost daily in *The New Mexican* so that information is readily available. We do have programs in place tying development to water availability, depending on the size of the project. Various developers are required to bring water rights into the City as part of their approval process. We also water bank conservation measures which allow smaller development in some circumstances to ensure that there is always a proper balance between the City water supplies and uses on those supplies during the year. We've been fortunate, in terms of its progressive and forward looking plan, especially with the Buckman Diversion and San Juan/Chama diversion which basically allocates 5,040 afy of water from that basin specifically for the City of Santa Fe, and that's the water that is stored at El Vado Lake."

Councilor Ives continued, "I'm not sure that expressing this [in the Charter] would change anything in current practices. Watching the papers in the past week, you would have seen that based on the new Office of the State Engineer calculation algorithm, City water use is at 109 gallons per day per capita across the City, which represents one of the lowest consumption rates in the entire U.S. And as we drill down into those numbers, based on the OSE numbers, household use per capita is approximately 59 gallons, which again, evidences the good work that the City has been doing continually in this area. And, certainly, from my perspective, in terms of what we're doing at Water Conservation, new volunteer programs to encourage landscape proper usage and the like, and doing a great deal to continue that trend."

Councilor Ives continued, "Again, I'm simply not sure that this is necessary to change any attitude or effort that the City is currently undertaking. I think Santa Fe stands as one of the best examples in the country for water conservation issues. We have an executive summary of those measures that we shared with the Legislature during the Session. We have talked with our Congressional staff about potential imbalances. That would be it in a nutshell, and I'm happy to try to answer any questions."

Commissioner Farber said, "You understand that it is not the intent of the League of Women Voters to be critical of the City of Santa Fe, but rather to insert, within our constitution, a statement that articulates, for all future generations, a value that we would like the community perhaps to have, that's represented in our constitution, independent and irrespective or regardless of all the wonderful programs that the City has been since before I was on the Council, when I was on the Council and after I was on the Council. It's simply a policy statement for the future."

Councilor Ives said, "Understood. It's simply a question of how much detail you want to put into those policy statements."

Commissioner Farber said, "I believe that the sum and substance of the language is what was read."

Councilor Ives reiterated he doesn't have the existing provision in front of him, and he knows it calls for protection of the environment in a broad context.

Commissioner Farber said the suggestion is to insert, after the second sentence in 2.03, under Environmental Protection the following language: *"Because water quality and availability are extremely important to the citizens of Santa Fe, the Governing Body shall protect, preserve and enhance the City's water resources through regulation, conservation and tying development to water availability."*

Councilor Ives said he would like to look at the language and then try and answer your question more fully.

Commissioner Farber said, "My only question is do you understand this is just a policy statement, not an intent to legislate."

Councilor Ives said, "I think so, and it's a question of detail one asks for as part and parcel of that. I think it's appropriate for, and I think the City has evidenced the capacity to properly balance those issues, perhaps without the additional language that is here, and I'm not sure, given future generations, whether we need to change any of the language which has brought us to being a leader across the United States on those issues. So, not meaning to quibble words, but rather suggesting that what's there is sufficient and clearly has been to accomplish that goal in a very significant way. I'm not sure why a change would be needed, given again what Santa Fe does regularly in this area."

Commissioner Hiatt said, "I'll try to say this less articulately than my colleague, and that is, in case there are people elected in the future who aren't as enlightened as you, that's why I think it's important for the voters to consider this kind of language. And we don't know that, but I would never expect anybody not to understand water conservation is critical for us. Thank you, I appreciate that."

Councilor Ives said it is hard for me to imagine that somebody that said we simply have to develop every square inch of ground, regardless of water availability, would ever be elected.

Commissioner Romero-Wirth said, "I would be interested in your thoughts, once you've had the chance to look at the League's language and what's in this section. We do talk about the City's natural endowments, which probably is an old fashioned way of referring, maybe, to water, I don't know, and other natural resources. So maybe there's some way to bring water in here that's not as detailed as this, and sort of flows with what's already here, but I think I would be open to other suggestions as well. I'm also curious, you thoughts about the end of the League language, 'tying development to water availability,' and what the City's role is in what sort of development the City has jurisdiction over, and what the League means by "tying." And just a little bit more on that."

Former Councilor Heldmeyer said, "Let me start out by saying, the reason that this in here is, when we heard there was going to be a Charter Commission, a number of people on the League's action committee took a look at the Charter to figure out how the League's position could relate to the Charter. And one of the comments we got back frequently from people, is how can there be a Charter that doesn't even mention water. We understand it talks about natural resources, natural endowments, all those shorts

of things. I didn't take a poll, but for many people in the League, water is one of the most crucial issues facing the City, and that's not denigrating the measures that the City has taken, some of which Councilor Farber voted for, some of which I voted for, some of which Councilor Ives has voted for. And there was a feel that because this was such a crucial issue, it ought to be included in a specific way. "

Councilor Romero-Wirth asked, "And you don't think any of this language already captures it, again this is the Constitution and it should be a broad policy statement."

Former Councilor Heldmeyer said, "This is the Constitution. It doesn't say what regulation, it doesn't say what conservation. The most specific of the three is tying development to water availability, but it also doesn't say how one goes about doing that. Do you have a toilet program. Do you have a program developed."

Commissioner Romero-Wirth said, "What I want to know is tying. And tying is an interesting verb."

Former Councilor Heldmeyer said, "It is an interesting verb, but it's the verb that's in the League's position, but there are many different ways to implement that, that certainly over the years, the City has tied different ways to implement that. But, we think it's important, because... however the City wants to do that, the relationship between development and water is an important one, so it's, I won't say deliberately vague, but it's deliberately general, but is what presumably you want in the Charter. And, I can think of probably half a dozen ordinances that have been passed in the last 15 years that might fall under that rubric. But, it's something that the League really feels is important, that it needs to go forward in the future. And needs to be in the Charter in case the day comes, as many other things we're proposing to put in the Charter, the day comes when there's a Governing Body that says, well nuts to that. We're just going to get rid of that idea. It's an idea."

Councilor Ives said, "Just to follow up, and I certainly have the utmost respect for the League of Women Voters, and they do a fabulous job all across our country, and certainly have known of them since I was a kid growing up back in Connecticut. I would be happy to take a more considered look at this, rather than try and speak off the cuff. The other thing, I think, it's always important to get the input from the balance of City staff on this. And I would be happy to undertake that and come back to the Charter Commission by its next meeting with any follow-up on it, potential language modifications, if any seem appropriate and also talk with the League about those changes from the City's perspective as well. I'm certainly not trying to avoid any good things for the City by just taking a somewhat cautionary note here tonight."

Chair Serna said, "And remember that the City Council will have the final word on what is sent out to the public for a vote. I appreciate and understand that you and the City Council will have the final say-so."

Commissioner Romeo-Wirth said, "But I would appreciate some thought into this. And again, my issue is this is the Constitution, this isn't an ordinance. We don't want to get into the day to day. We want very broad policy statements, and I just want to be sure that we aren't causing problems, because constitutions are a lot harder to change than ordinances."

Councilor Ives said, "True and as they should be. Just trying to look quickly to see whether there is any reference to air quality in this Environmental Protection provision. I don't see that there."

Commissioner Romero-Wirth said, "And again, we talk about the City's natural endowments, which are pretty broad statements. If we want to start listing all of the City's natural endowments, what if we forget one. And again, the constitution is broad, very broad, very general, and we shouldn't get into the day to day, that's why we have you to do the ordinances."

Councilor Ives said, "I certainly appreciate that perspective, so let me make the commitment to get back to the Commission will get back by the next meeting with something in writing, just a little more cogent expression of an idea for your consideration."

Chair Serna noted the next meeting will be on April 23, 2013, at the Santa Fe Public Library at 5:00 p.m.

D. BAN ON EXCESSIVE AMMUNITION CLIPS/ASSAULT WEAPONS ISSUES

A copy of an article from www.NYTimes.com, *Weekend Gun Report: March 29-31, 2013*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "11."

A copy of an article from www.NYTimes.com, *Weekend Gun Report: April 5-7, 2013*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "12."

A copy of the Supreme Court Opinion in *State Ex Rel. New Mexico Voices for Children, Inc. v. Denko*, 2004-NMSC-011, 135 N.M. 439, 90 P.3d 458, denying the petition and holding entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "13."

Commissioner Farber said he is mindful of the time, and that he is going through this very quickly does not in any way indicate that I think this is less important than the issue with regard to law enforcement priority or personal possession of marijuana, and is in fact in many ways, it's more important.

Commissioner Farber said, "It is somewhat coincidental that today, of all days, is National Call-in-Day of the faith communities, to make their voices heard, by calling senators of all faith communities to pass meaningful gun violence prevention legislation. And I would like to refer to this as gun violence prevention legislation. And the language that I would propose is that, ultimately, subject to tweaking is '*The City of Santa Fe shall have gun violence prevention ordinances.*' That means that we have to comply with State law. We understand that. Article 2, Section 6 of the Constitution provides that 'municipalities and counties cannot interfere with the right to bear arms, incident to the right to bear arms.' But there are other things that can be done that don't take away firearm possession from individuals, even assault weapons from individuals. We are allowed, it seems to me, to be thoughtful and to come forward with reasonable regulations that move forward toward gun violence protection [prevention?], such as an excessive ammunition feeding device [inaudible]."

Commissioner Farber continued, "In my mind, though I have heard some City staff say, incidence of firearms means you can't even touch anything. You can't talk about ammunition. If we were to recommend to the Council that they have a provision that says 'you should have an ordinance,' perhaps in a report under the rubric of gun violence prevention measures, of excessive capacity magazines, giving them an idea of what they can do. Because, to my knowledge, and the Justice was on the Court at the time, but I read *State of New Mexico Voices for Children, Inc. v. Denko*, and I have copies to provide [Exhibit "13"]. There's not a word in this opinion about ammunition or that you can't regulate ammunition. There are potential other careful, thoughtful approaches to developing local ordinances at our level that would not be inconsistent with State law. And we need to do this. We need to do it for moral reasons. We need to do it to set a path for other municipalities to follow."

Commissioner Farber said, "I'm also sending out... Senator Blumenthal from Connecticut has just introduced in the U.S. Senate, or stated that he intends to introduce, and this is just a page that anybody can get from the Hill, legislation regulating and banning excessive ammunition clips, strips and magazines. In the last Congress, in both the House and the Senate, though they were not passed, there were these pieces of legislation pending. The fact that one Representative stopped Representative Easley's bill from going forward by an amendment, I think is unfortunately tragic. Because that could have, at least, set the stage for a debate about who we are as a State, who we are as a community, that we're against gun violence. It can happen anywhere, anytime to any community. And I think we need to be attentive to that. And, I recommend to any Commissioner who has an hour to listen to Mayor Bloomberg on C-SPAN. He gave a remarkable, remarkable speech at the Bloomberg School of Public Policy and Research at John Hopkins University, regarding his view of measures for gun violence."

Commissioner Farber continued, "Again, we have to understand our role is limited. I understand that, but it doesn't mean that we should do nothing. And it doesn't mean that we can do nothing. We have to be creative. The Council has to be creative. And I'd also like to... several weeks ago, in looking at this, I noted in *The New York Times*, Joe Nocera, who is actually their business writer, has been writing a blog that he calls *The Weekend Gun Report*. And I made copies of this [Exhibits "11" and "12"] for the Commissioners to read and review. This is two weeks ago. He talks about the more than 3,000 people who have been killed by guns since Newtown. And he updated it again this week. And if you go onto *The New York Times* under blogs, and you find it, he has links to where he gets this information. It's shocking. It's upsetting. It's disturbing, and we can do better. We as a community, it seems to me, can set the standard and say we want gun violence prevention ordinances, and let the City Council figure out what is permissible under State law, but as a community say, this is something we should have. And that's why I brought it forward and refined the idea and thank you for allowing me to take this time."

Chair Serna then asked if there is public comment.

Paul Schmitt, Coordinator, New Mexicans for Gun Safety, noting Miranda Viscoli is a member of the organization. He said his family hasn't been here for 3 generations, although he has been here for 42 years, so he guesses that counts for something.

Responding to the Chair, Mr. Schmitt said there are two Paul Schmitts, noting he is a landscaper and the other guy is a lawyer. Mr. Schmitt said, "I have been married for 30 years, so if you were there many years ago, there is a chance."

Mr. Schmitt said, "We're all aware that there are many reasons why our country is experiencing the epidemic of violence that we are experiencing right now with firearms. It is my belief that we are experiencing this because firearms are easily accessible to people that really shouldn't have them, and that the pull of the trigger can do so much damage, so quickly. So I'm asking you to do something right now. I'm asking you to make me proud of this City, a City that I've been a citizen of for the past 42 years. I want you to do something about this. I want you to help. I know that you have the ability to do this. I know you have the ability to do something positive for the City, something that might give us something to be proud of, as far as this issue, and that's really all I have to say."

Commissioner Hiatt asked, "Are you pro or con."

Mr. Schmitt said, "I want you to do something that we can be proud of that can prevent more gun deaths. Yes. I'd like to see you do something that could help us enforce better protection for our citizens. Thank you."

Commissioner Hiatt asked Chief Rael if he has anything to offer, and if not, he has some questions for the Chief.

Chief Rael said, "I'd be more than happy to answer your questions, sir."

Commissioner Hiatt said, "I have to tell you personally, that every time I watch this on television, and I see some chief of police somewhere in the United States standing up and trying to explain what happened, and perhaps why it happened, that I don't see your face, and wonder when it's going to happen here. And so, while I haven't made up my mind, whether or not to enforce this in terms of something we might do, I really do want to hear your opinion and whether or not you think that this kind of policy, if it were approved by the voters, could a positive impact on the safety of our community."

Chief Rael said, "I do believe that there is a place, both in our society and in our City, for gun violence prevention. Now the extent of that, and what will work, I don't know. I will tell you that I think that some steps are common sense. Steps such as improving background checks, ensuring that people are qualified to possess these guns, following up with the appropriate charges against individuals who have no business possessing guns, such as felons who are prohibited. I don't know that the prohibition of any specific item, weapon, or piece of ammunition is necessarily going to prevent any more gun violence. There's one weapon, whether it's single shot or multiple shot, can be just be as deadly as another."

Chief Rael continued, "The reality of it is, that I believe our culture needs some changes. I believe there's a whole lot more that needs to be done to educate the public. I believe that anyone that carries a firearm should meet minimum qualifications to carry and receive some training. But, talking about any specific item, as I see this recommendation doing, I don't necessarily know it's going to have an immediate or long term impact, simply because the 'devil's in the details,' as the attorneys like to say. How are we

going to enforce it. We have no ability to go into peoples' houses and verify that they have an ammunition magazine of a certain capacity as opposed to others. And we're back to the situation where it has to be incidental to arrest or as part of a lesser included crime. We make an arrest for something else, we find that, then we charge."

Chief Rael continued, "In and of itself, is it going to prevent anything. No. I think the more effective approach is to educate people and come up with common sense approaches to ensure that those people that have weapons are qualified to carry them, that they're safely secured. And that, although we have some other checks and balances to address our cultural love of violence and handguns, as opposed to outlawing any one specific items or group of items, the reality is, there's a bunch of them out there."

Commissioner Hiatt said, "I want to look specifically at what Commissioner Farber has said, because I may have been a part of perpetuating this. When we started early on, and we were talking about this, I picked up on the language of assault weapon ban or something. And he's now focused our attention of gun violence prevention legislation. And so, without being more specific, I think I've heard you say specifically that background checks and training and those kinds of things are all things that you would be supportive of, I think, in terms our local community. So if, indeed the community passed this proposal from this Commission that had those kinds of elements in it, you would be supportive of that. That's what I've heard, I think you said,"

Chief Rael said, "Absolutely, sir. I am firmly in support of any common sense approach that would minimize violence, not just with guns, extended to knives, extended to bats, whatever the case is. There's a deeper cause for this problem I believe, and guns are just one part of the problem. So, any form of crime prevention, violence prevention, I think any police chief would be crazy to tell you they wouldn't support that."

Chair Serna said, "I'd like to share something with the Commissioners and the public. I went to my home town of Reserve, New Mexico last summer. And while I was there, they happened to be having a gun show at the Fairgrounds. So, I told my wife, why don't we go and see what that's all about. Frankly, I was shocked, because my home town is a small town and it's a hunting community. In high school, we would get a week off to go hunting and all that, so I'm familiar with all that. But what shocked me at that show was the availability of assault rifles, 30 round banana clips, [inaudible] with 16 round magazine clips. Now obviously that's not for hunting, and anyone could go, and it could have been convicted felons maybe even escapees, and if they had the money, they bought it. No background check, nothing. And it just scared the dickens out of me, the availability, and those that want these types of dangerous weapons. They're going to these gun shows in small towns throughout the country and they are buying them, and that's a threat to our safety. I just wanted to share that with you."

Commissioner Farber said last week, March 29th, *The New Mexican* had an editorial, which is entitled, "Powerful Facts in Gun Debate," if anybody didn't see it and wants to go back and review it.

Commissioner Farber said, "I'm just pointing out, as the Chief said, violence isn't just with guns. Today there was a report of 18 people who were stabbed and harmed in some school. The difference with firearms, is that when it happens, it happens immediately. And aside from the assault weapon issue, more

suicides happen successfully through the use of firearms. When you do it, you are going to pretty much succeed. Pills maybe not, stabbing maybe not, choking maybe not, asphyxiation maybe not, but the firearm, I think it's in the high nineties. So we have a problem, and we need to somehow as a community, it seems to me, to take a stand and say, we're in favor of gun violence prevention. That's the reason I brought this forward. Thank you."

E. TECHNOLOGICAL IMPROVEMENTS

Chair Serna asked the proponent of this topic.

Commissioner Werwath said it was him, and he is willing to postpone this. He said the point he was making is that he was suggesting including language in the Charter which encourages the City, to the greatest extent possible, to use modern technologies to increase the transparency of government to the public, and public participation in City government. He said he will take a stab at drafting language in this regard for consideration by the Commission at a future meeting.

Chair Serna said that would be great.

F. APRIL 23, 2013 – GOVERNANCE ISSUES – SANTA FE PUBLIC LIBRARY

- 1) CREATE A FULL TIME MAYOR**
- 2) MAYOR TO HIRE/FIRE CITY ATTORNEY, CITY CLERK AND CITY MANAGER**
- 3) MAYOR TO ACT AS CHIEF EXECUTIVE OFFICER**
- 4) OTHER GOVERNANCE ISSUES TO BE DISCUSSED AND/OR RAISED**

G. MAY 9, 2013 – CITY COUNCIL CHAMBERS

POLICY ISSUES

- 1 LIMIT CONTRIBUTIONS TO CANDIDATES THAT DO NOT ACCEPT PUBLIC FINANCING.**
- 2) SALARIES TO BE SET BY AN INDEPENDENT COMMISSION.**
- 3) FULL AND COMPLETE DISCLOSURE OF USES FOR TAX BONDS PRIOR TO ELECTION.**
- 4) BROADEN REFERENDUM AND INITIATIVE RIGHTS OF VOTERS.**
- 5) SIGNATURES TO BE REQUIRED FOR PETITIONS/RECALLS.**

7. DISCUSSION/POSSIBLE ACTION AGENDA ITEMS FOR FUTURE MEETINGS.

8. COMMUNICATION FROM CHARTER COMMISSION MEMBERS

Commissioner Hiatt said he would like to express his appreciation publicly to Commissioner Romero-Wirth for the summary of issues that came out this week which was very helpful, and it will be helpful as we go forward, in terms of drafting language.

Commissioner Farber said, "May I just share, through communications I had with Jamison, I will be submitting something that refines, as we did today, sort of where I was coming from, [inaudible] but in a different way."

Commissioner Werwath said he would encourage all Charter Commission members to "take a look at that and suggest any changes, or fill in the gaps, and the sooner, the better, if there is any way you guys could do that before early next week, around Tuesday or Wednesday. I'd love to get that on the website and out to the public as soon as possible."

Commissioner Farber said at some point, perhaps at the next meeting, we need to set a deadline that says, "okay, we've heard the discussion, this is the date for submission of proposed language. And then we can figure out at what meetings we would then vote on those proposals."

Commissioner Romero-Wirth said, "I think we had decided that we are not taking any action until we have been to all the Council Districts, and we have two more to go, right."

Ms. Romero said there is only one more to go.

9. PUBLIC COMMENT

Sherry Johansen, Neighborhood Network, said the Neighborhood Network is very concerned that a provision be included in the Charter for the preservation of neighborhoods, and the character of neighborhoods, and that neighborhoods are an integral part of our community, and the unique characteristics of each of the neighborhoods should be considered in terms of land use, planning and permits are concerned. She said, "I think after being at the meeting today, I would like to have that be considered, and we would propose language similar to the language that is included in the Human and Civil Rights Preservation and the Environmental Protection Preservation of the policy statement, which is more general than what my Board has originally proposed. So now I need to go back to my Board."

Chair Serna noted that Rick Martinez, President of the Neighborhood Network, was at the last meeting and asked if she is working with him on this.

Ms. Johansen said, "Yes. We need to provide the language, but I'll be sure that goes forward and is considered by the Commission."

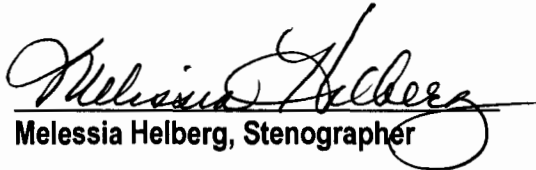
Chair Serna said, "We are very receptive to that and we are supportive of you, and we ask for your help."

10. ADJOURNMENT

There was no further business to come before the Commission.

MOTION: Commissioner Abeyta 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 7:05 p.m.


The Honorable Patricio Serna, Chair
Melessia Helberg, Stenographer

2300 W. Alameda St. #D3
Santa Fe, NM 87507
April 8, 2013

Commissioners,

Subject: Allowing hand counting of votes in municipal elections.

I hereby request the Charter Review Committee recommend an amendment to the Municipal Charter Section 4.06. Ranked-choice voting to add to the first sentence “, or a timely process for tabulation of votes by hand or by sorting or tabulation of votes by hand in combination with voting equipment and software for tabulation is available,” after “is available at a reasonable price”.

This amendment will allow citizens of Santa Fe to enjoy the many benefits of RCV, that a sizable majority voted for in 2008, starting with the municipal election in 2014. Hand counting is an allowed procedure. Although the Constitution requires the county clerk to make available to a municipality located in the county a sufficient number of voting systems to conduct the municipal election, use of a voting system is not required (1-9-6 NMSA 1978). A “voting system” is a combination of equipment and software et al. used to cast and count votes (1-9-1 NMSA 1978). Regulations for validating hand-tallied votes on paper ballots are given in 1-9-4,2 NMSA 1978.

The State of New Mexico hand counts ballots to perform the audits of machine counts 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.

Counting RCV votes by hand has been demonstrated to be both efficient and accurate. Historically, most RCV elections 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 counting 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 used to record and count votes could be used to count first-choice ranked-choice votes, then, if additional round(s) of counting are needed to determine a majority winner, votes counted 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, ...” In St. Paul MN, after a machine count of first preferences, three additional rounds were counted by hand in one day for a race having 5300 votes in its first use of RCV in 2011. The election official praised the process.^{10,11} Pierce County, WA, population 808,000, reported results on election night for an RCV election using the same level of voting machine technology currently used in Santa Fe.

Exhibit "1"

Implementation of RCV without the use of specialized equipment and software for counting RCV votes has been efficient for many more votes than are cast in Santa Fe municipal elections. 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. With RCV, additional counting rounds would be invoked only in races having more than two listed candidates when there was no first-preference majority winner. Since historically many races have only two listed candidates and Santa Fe ballots do not allow write-in candidates, additional rounds of counting would likely be invoked in a minority of races. The experience of hand counting related in the previous paragraph clearly indicates that hand counting of the number of votes in Santa Fe municipal elections could be completed in the stipulated 3 days.

The M100 machines are programmed to reject ballots with overvotes. 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 despite 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

Comment on a pilot study in Santa Fe given to the Commission was inaccurate. The method tested was not hand counting, but hand sorting and machine counting. The Green Party was not a participant. The participants were three administrators from the County, one representative from Automated Election Services, and one RCV proponent. The proponent, Rick Lass, can provide details. This hand sorting and machine counting process was used in a recent election in Cary, NC. Cary County Board of Elections stated that IRV (their term or RCV) was very easy to administer. They have provided a useful analysis.³

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 jmottter@q.com 471-9073

Miranda Visserli

I am speaking tonight not only as a representative of New Mexicans for Gun Safety, but also as a three-generation native of Santa Fe. In the four months since Sandy Hook there have been 3,325 deaths from guns in our country. That statistic was from this morning, as of this evening there will likely to have been another 30 to 40 deaths. Last week, New Mexico was ranked the 7th worst state in the country in terms of gun violence. In addition, our weak gun laws make this state a haven for gun traffickers to purchase guns. As the capitol city of New Mexico we can sit back and do nothing, hope the feds will get something passed (which we all know due to the filibuster and the strength of our gun lobby that is unlikely to happen,) or we can use the tired second Amendment rights argument which I have come to call the "Lets sit back and do nothing while people get" shot campaign. The "right to bear arms" was never meant to be at the exclusion of our citizen's safety.

In the past two months our group as worked with ProgressNOWNM, Mayors against Illegal Guns and MoveOn. We have gathered over 7000 signatures for gun violence prevention, sat with Santa Fe citizens sometimes until 1:00 am at committee hearings to have our voices heard on gun legislation bills in both the Senate and House. We have rallied in the streets, wrote editorials, made endless calls, sent thousands of emails, met with the staffers of senators and put in countless hours to fight for what seems every day, like an uphill battle to nowhere. And why?.... because the people of Santa Fe care deeply about this issue. I urge this charter commission to step outside of the box and find what may seem like an unexpected path towards reasonable gun safety laws.

Exhibit "2"

Karen Alden

To: Santa Fe Charter Review Commission
From: League of Women Voters of Santa Fe County
Date: April 9, 2013
Topic: Proposed Charter Amendments

The League of Women Voters studies issues and develops positions based on member consensus. Over the years, the Santa Fe League has adopted positions directly and indirectly related to the city's charter. Based on these positions, the League offers some possible wording for specific amendments. Please note that we are not attorneys or technical writers, so final wording should be developed with input from the appropriate city staff.

Article II. Policy Statements

2.03. Environmental protection

insert after the second sentence: **Because water quality and availability are extremely important to the citizens of Santa Fe, the governing body shall protect, preserve, and enhance the city's water resources through regulation, conservation, and tying development to water availability.**

Article IV. Elections

new 4.07. Limits on campaign contributions

The governing body shall adopt an ordinance or ordinances that limit the amount of campaign contributions that can be accepted by candidates.

New 4.08. Tax and bond measure elections

The governing body shall adopt an ordinance or ordinances that ensure that the city will disseminate a clear, comprehensive schedule of proposed expenditures for any tax increase or bond measure that needs to be ratified by the voters.

Article V. The Mayor.

New 5.01.B. (replacing the existing 5.01.B)

Vote on all matters before the governing body;

Article VIII. City Manager

8.03. Powers and duties.

The city manager shall:

A. be the chief administrative officer of the city;

B. have the power to hire and fire all city employees except the city attorney and the city clerk; [new language replacing existing 8.03.B]

Exhibit "3"

C. have such other powers as are provided for in the city ordinances and state law.

Article IX. Miscellaneous Governmental Issues

new 9.04 Redistricting

The city shall adopt an ordinance or ordinances regulating redistricting that provide the people with a meaningful choice in electing their representatives.

The governing body shall adopt an ordinance or ordinances that create an independent citizen commission that will develop a plan for redistricting council districts. The public must have access to all information used in the redistricting process on a timely basis, and have the opportunity to comment and be heard on the proposed redistricting processes, criteria, and results.

The criteria for preparing redistricting maps should require that districts meet all Federal criteria including equal population and the provisions of the Voting Rights Act. In addition, it is important that districts:

- be contiguous**
- be reasonably compact, in terms of travel time from one part of the district to another**
- avoid crossing geographic barriers to travel, such as mountain ranges**
- minimize the partition of major jurisdictions (counties, municipalities) to the extent possible**
- not intentionally favor nor disfavor any candidate**

30-31-25.1. Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act [24-2C-1 NMSA 1978].

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act [61-11-1 NMSA 1978]

C. A person who violates this section with respect to Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) or by imprisonment for a definite term less than one year, or both. A person who violates this section with respect to Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years his junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 30-31-25.1, enacted by Laws 1981, ch. 31, § 2; 1997, ch. 256, § 7; 2001, ch. 189, § 1.

The 2001 amendment, effective June 15, 2001, in the section heading, deleted "or delivery to a minor" following "manufacturer" and inserted "exceptions"; in Subsection B, inserted the Paragraph (1) designation and added Paragraph B(2).

The 1997 amendment, effective June 20, 1997, added the second sentences in Subsections A and B

RCS# 4158

NEW MEXICO HOUSE OF REPRESENTATIVES
Fifty-First Legislature
FIRST SESSION, 2013

3/11/13
4:02 PM

HB 465
Rep Kane, E.
FINAL PASSAGE

Absent: 0 Yeas: 37 Nays: 33 Excused: 0

Y Alcon, E.	Y Gentry, N.	N Roch, D.
N Anderson, T.	Y Gonzales, R.	N Rodella, D.
Y Archuleta, P.	N Gray, W.	Y Roybal Caballero, P.
N Baldonado, A.	N Hall, J.	Y Saavedra, H.
N Bandy, P.	N Hamilton, D.	Y Salazar, N.
N Bratton, D.	N Harper, J.	Y Salazar, T.
N Brown, C.	N Herrell, Y.	Y Sandoval, E.
Y Chasey, G.	N Irwin, D.	N Smith, J.
Y Chavez, E.	N Jeff, S.	Y Stapleton, S.
N Clahchischilliage	Y Kane, E.	Y Steinborn, J.
N Cook, Z.	N Larranaga, L.	Y Stewart, M.
Y Cote, N.	N Lewis, T.	N Strickler, J.
N Crook, A.	Y Louis, G.	N Taylor, T.
Y Dodge, G.	Y Lundstrom, P.	Y Thomson, E.
Y Easley, S.	Y Madalena, J. R.	N Tripp, D.
Y Egolf, B.	Y Maestas, A.	Y Trujillo, CA.
N Espinoza, N.	Y Martinez, R.	Y Trujillo, CH.
N Ezzell, C.	Y Martinez, W. K.	Y Trujillo, J.
N Fajardo, K.	Y McCamley, B.	Y Varela, L.
N Gallegos, D.M.	Y McMillan, T.	N White, J.
Y Gallegos, D.Y.	Y Miera, R.	N Wooley, B.
Y Garcia, M.H.	N Pacheco, P.	N Youngblood, M.
Y Garcia, M.P.	N Powdrell-Culbert, J.	
Y Garcia Richard	N Rehm, W.	

CERTIFIED CORRECT TO THE BEST OF OUR KNOWLEDGE

(Speaker)

(Chief Clerk)

Exhibit "5"

underscored material = new
[~~bracketed material~~] = delete

HOUSE BILL 465

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Emily Kane

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECREASING PENALTIES FOR
POSSESSION OF MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION
PROHIBITED.--

A. It is unlawful for a person intentionally to
possess a controlled substance unless the substance was
obtained pursuant to a valid prescription or order of a
practitioner while acting in the course of professional
practice or except as otherwise authorized by the Controlled
Substances Act. It is unlawful for a person intentionally to
possess a controlled substance analog.

.191558.1

underscored material = new
[bracketed material] = delete

1 B. A person who violates this section with respect
2 to:

3 (1) one ounce or less of marijuana is subject
4 to a civil penalty of fifty dollars (\$50.00); and, for a second
5 or subsequent offense, guilty of a petty misdemeanor and,
6 notwithstanding the provisions of Section 31-19-1 NMSA 1978,
7 shall be punished by a fine of up to one hundred dollars
8 (\$100);

9 (2) more than one ounce and up to four ounces
10 of marijuana, is subject to a civil penalty of up to one
11 hundred dollars (\$100); and, for a second or subsequent
12 offense, guilty of a petty misdemeanor and, notwithstanding the
13 provisions of Section 31-19-1 NMSA 1978, shall be punished by a
14 fine of up to two hundred dollars (\$200);

15 (3) more than four ounces and up to eight
16 ounces of marijuana, is guilty of a misdemeanor and,
17 notwithstanding the provisions of Section 31-19-1 NMSA 1978,
18 shall be punished by a fine of up to three hundred dollars
19 (\$300); or

20 (4) more than eight ounces marijuana, is
21 guilty of a fourth degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978.

23 ~~[B.]~~ C. A person who violates this section with
24 respect to:

25 (1) one ounce or less of ~~[marijuana or]~~

underscored material = new
[bracketed material] = delete

1 synthetic cannabinoids is, for the first offense, guilty of a
2 petty misdemeanor and shall be punished by a fine of not less
3 than fifty dollars (\$50.00) or more than one hundred dollars
4 (\$100) and by imprisonment for not more than fifteen days, and,
5 for the second and subsequent offenses, guilty of a misdemeanor
6 and shall be punished by a fine of not less than one hundred
7 dollars (\$100) or more than one thousand dollars (\$1,000) or by
8 imprisonment for a definite term less than one year, or both;

9 (2) more than one ounce and less than eight
10 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a
11 misdemeanor and shall be punished by a fine of not less than
12 one hundred dollars (\$100) or more than one thousand dollars
13 (\$1,000) or by imprisonment for a definite term less than one
14 year, or both; or

15 (3) eight ounces or more of [~~marijuana or~~]
16 synthetic cannabinoids is guilty of a fourth degree felony and
17 shall be sentenced pursuant to the provisions of Section
18 31-18-15 NMSA 1978.

19 [G.] D. A minor who violates this section with
20 respect to the substances listed in this subsection is guilty
21 of a petty misdemeanor and, notwithstanding the provisions of
22 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
23 fine not to exceed one hundred dollars (\$100) or forty-eight
24 hours of community service. For the third or subsequent
25 violation by a minor of this section with respect to those

.191558.1

underscored material = new
[bracketed material] = delete

1 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
2 govern punishment of the minor. As used in this subsection,
3 "minor" means a person who is less than eighteen years of age.
4 The provisions of this subsection apply to the following
5 substances:

6 (1) synthetic cannabinoids;

7 (2) any of the substances listed in Paragraphs
8 (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978;
9 or

10 (3) a substance added to Schedule I by a rule
11 of the board adopted on or after ~~[the effective date of this]~~
12 March 31, 2011 ~~[act]~~ if the board determines that the
13 pharmacological effect of the substance, the risk to the public
14 health by abuse of the substance and the potential of the
15 substance to produce psychic or physiological dependence
16 liability is similar to the substances described in Paragraph
17 (1) or (2) of this subsection.

18 ~~[D-]~~ E. Except pursuant to Subsections B, C and G
19 of this section, and for those substances listed in Subsection
20 ~~[E]~~ F of this section, a person who violates this section with
21 respect to any amount of any controlled substance enumerated in
22 Schedule I, II, III or IV or a controlled substance analog of a
23 substance enumerated in Schedule I, II, III or IV is guilty of
24 a misdemeanor and shall be punished by a fine of not less than
25 five hundred dollars (\$500) or more than one thousand dollars

.191558.1

underscored material = new
[bracketed material] = delete

1 (\$1,000) or by imprisonment for a definite term less than one
2 year, or both.

3 [E-] F. A person who violates this section with
4 respect to phencyclidine as enumerated in Schedule III or a
5 controlled substance analog of phencyclidine; methamphetamine,
6 its salts, isomers or salts of isomers as enumerated in
7 Schedule II or a controlled substance analog of
8 methamphetamine, its salts, isomers or salts of isomers;
9 flunitrazepam, its salts, isomers or salts of isomers as
10 enumerated in Schedule I or a controlled substance analog of
11 flunitrazepam, including naturally occurring metabolites, its
12 salts, isomers or salts of isomers; gamma hydroxybutyric acid
13 and any chemical compound that is metabolically converted to
14 gamma hydroxybutyric acid, its salts, isomers or salts of
15 isomers as enumerated in Schedule I or a controlled substance
16 analog of gamma hydroxybutyric acid, its salts, isomers or
17 salts of isomers; gamma butyrolactone and any chemical compound
18 that is metabolically converted to gamma hydroxybutyric acid,
19 its salts, isomers or salts of isomers as enumerated in
20 Schedule I or a controlled substance analog of gamma
21 butyrolactone, its salts, isomers or salts of isomers; 1-4
22 butane diol and any chemical compound that is metabolically
23 converted to gamma hydroxybutyric acid, its salts, isomers or
24 salts of isomers as enumerated in Schedule I or a controlled
25 substance analog of 1-4 butane diol, its salts, isomers or

.191558.1

underscored material = new
[bracketed material] = delete

1 salts of isomers; or a narcotic drug enumerated in Schedule I
2 or II or a controlled substance analog of a narcotic drug
3 enumerated in Schedule I or II is guilty of a fourth degree
4 felony and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978.

6 ~~[F-]~~ G. Except for a minor as defined in Subsection
7 ~~[G]~~ D of this section, a person who violates Subsection A of
8 this section while within a posted drug-free school zone,
9 excluding private property residentially zoned or used
10 primarily as a residence and excluding a person in or on a
11 motor vehicle in transit through the posted drug-free school
12 zone, with respect to:

13 (1) one ounce or less of marijuana or
14 synthetic cannabinoids is, for the first offense, guilty of a
15 misdemeanor and shall be punished by a fine of not less than
16 one hundred dollars (\$100) or more than one thousand dollars
17 (\$1,000) or by imprisonment for a definite term less than one
18 year, or both, and for the second or subsequent offense, is
19 guilty of a fourth degree felony and shall be sentenced
20 pursuant to the provisions of Section 31-18-15 NMSA 1978;

21 (2) more than one ounce and less than eight
22 ounces of marijuana or synthetic cannabinoids is guilty of a
23 fourth degree felony and shall be sentenced pursuant to the
24 provisions of Section 31-18-15 NMSA 1978;

25 (3) eight ounces or more of marijuana or

underscored material = new
[bracketed material] = delete

1 synthetic cannabinoids is guilty of a third degree felony and
2 shall be sentenced pursuant to the provisions of Section
3 31-18-15 NMSA 1978;

4 (4) any amount of any other controlled
5 substance enumerated in Schedule I, II, III or IV or a
6 controlled substance analog of a substance enumerated in
7 Schedule I, II, III or IV, except phencyclidine as enumerated
8 in Schedule III, a narcotic drug enumerated in Schedule I or II
9 or a controlled substance analog of a narcotic drug enumerated
10 in Schedule I or II, is guilty of a fourth degree felony and
11 shall be sentenced pursuant to the provisions of Section
12 31-18-15 NMSA 1978; and

13 (5) phencyclidine as enumerated in Schedule
14 III, a narcotic drug enumerated in Schedule I or II, a
15 controlled substance analog of phencyclidine or a controlled
16 substance analog of a narcotic drug enumerated in Schedule I or
17 II is guilty of a third degree felony and shall be sentenced
18 pursuant to the provisions of Section 31-18-15 NMSA 1978."

19 SECTION 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2013.

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25

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New Mexico Medical Marijuana (/legal/item/new-mexico-medical-marijuana)

SUMMARY: Governor Bill Richardson signed Senate Bill 523, "Lynn and Erin Compassionate Use Act," into law on April 2, 2007. The new law took effect on July 1, 2007. The law mandates the state Department of Health by October 1, 2007, to promulgate rules governing the use and distribution of medical cannabis to state-authorized patients. These rules shall address the creation of state-licensed "cannabis production facilities," the development of a confidential patient registry and a state-authorized marijuana distribution system, and "define the amount of cannabis that is necessary to constitute an adequate supply" for qualified patients.

The medical use provisions in New Mexico do not include reciprocity provisions protecting visitors from other medical use states.

AMENDMENTS: Yes. In January 2009, the New Mexico Department of Health finalized rules (<http://www.health.state.nm.us/marijuana.html>) governing the production, distribution, and use of medicinal cannabis under state law. Patients registered with the state Department of Health and who are diagnosed with the following illnesses are afforded legal protection under these rules:

- Arthritis
- Severe chronic pain
- Painful peripheral neuropathy
- Intractable nausea/vomiting
- Severe anorexia/cachexia
- Hepatitis C infection currently receiving antiviral treatment
- Crohn's disease
- Post-traumatic Stress Disorder
- Amyotrophic Lateral Sclerosis (Lou Gehrig's disease)
- Cancer
- Glaucoma
- Multiple sclerosis
- Damage to the nervous tissue of the spinal cord with intractable spasticity

Exhibit "6"

- Epilepsy
- HIV/AIDS
- Hospice patients

Other conditions are subject to approval by the Department of Health. Patients may legally possess six ounces of medical cannabis (or more if authorized by their physician) and/or 16 plants (four mature, 12 immature) under this act.

State regulations also authorize non-profit facilities to apply with the state to produce and dispense medical cannabis. State licensed producers may grow up to 95 mature plants at one time. **(UPDATE! The New Mexico Department of Health finalized (<http://www.bizjournals.com/albuquerque/news/2010/12/17/state-revises-regs-on-medical-marijuana.html>) revised regulations in December 2010 increasing the number of plants that may be produced at one time from 95 to 150. The updated regulations also allow licensed producers to obtain plants, seeds, and/or usable cannabis from other non-profit producers. The licensing fee for producers is: \$5,000 for producers licensed less than one year, \$10,000 for more than one year, \$20,000 for more than two years and \$30,000 for more than three years. For further information, please see: http://nmhealth.org/idb/medical_cannabis.shtml (http://nmhealth.org/idb/medical_cannabis.shtml))**

MEDICAL MARIJUANA STATUTES: Lynn and Erin Compassionate Use Act, N.M. Stat. Ann. § 30-31C-1 (2007).

CAREGIVERS: Yes. Primary caregiver is designated by patient's practitioner as necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis. Primary caregiver must be a resident of New Mexico. The caregiver must be 18 years of age or older. N.M. Stat. Ann. §26-2B-3(F) (2007).

CONTACT INFORMATION: Please contact the Medical Cannabis Program Coordinator at (505) 827-2321 or medical.cannabis@state.nm.us (<mailto:medical.cannabis@state.nm.us>) or visit www.nmhealth.org/marijuana.html (<http://www.nmhealth.org/marijuana.html>) for more information.

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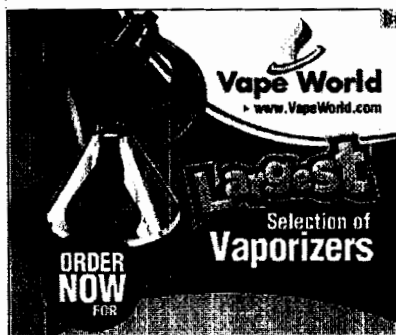
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Medical Marijuana

These states have medical marijuana laws enacted. Modern research suggests that cannabis is a valuable aid in the treatment of a wide range of clinical applications. These include pain relief, nausea, spasticity, glaucoma, and movement disorders. Marijuana is also a powerful appetite stimulant and emerging research suggests that marijuana's medicinal properties may protect the body against some types of malignant tumors, and are neuroprotective. Select a state to get detailed information.

Information for each state

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SEATTLE INITIATIVE 75

Why Vote Yes? Informational Conference November 14, 2001 Initiative 75 Text Contact

Initiative 75 Text

AN ORDINANCE to Establish a Sensible Marijuana Law Enforcement Policy in Seattle

WHEREAS, Seattle and other Washington taxpayers are burdened by the substantial costs of investigating, arresting, prosecuting and jailing people for charges involving marijuana;

WHEREAS, federal education loans are denied to middle-income and lower-income students pursuant to Congressional amendments to the Higher Education Act where applicant students have been convicted of charges involving marijuana;

WHEREAS, Americans were subjected to more than 700,000 arrests for possession of marijuana and arrests related to marijuana and such arrests accounted for nearly half of all drug arrests in the United States in 2000;

WHEREAS, the failures and harms of the Drug War have fallen most heavily on racial minorities and lower income communities, and no racial or economic group in Washington or the United States has escaped the Drug War unharmed;

Now, Therefore, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

A new section 12A.20.060 of the Seattle Municipal Code is added to read as follows:

SMC 12A.20.060 Enforcement Priority -- Marijuana.

A. The Seattle Police Department and City Attorney's Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City's lowest law enforcement priority.

B. On or before December 31, 2002, the President of the City Council shall appoint an eleven (11) member Marijuana Policy Review Panel to assess and report on the effects of this ordinance. The Panel shall consist of two (2) members of the City Council, two (2) citizen members, one (1) drug abuse prevention counselor, one (1) harm reduction advocate, one (1) representative of the Seattle Police Department, two (2) criminal defense attorneys, one (1) representative of the King County Prosecuting Attorney's Office and one (1) representative of the Seattle City Attorney's Office. The President of the City Council shall appoint members to vacancies on the Marijuana Policy Review Panel as necessary. The Marijuana Policy Review Panel shall:

1. Elect a chairperson and meet at least quarterly or more frequently as necessary;
2. By March 31, 2003, establish reporting criteria for the Seattle Police Department and City Attorney's Office to report marijuana arrests and prosecutions; and
3. Submit a comprehensive written report with recommendations to the City Council that will include, but not be limited to, information concerning the public safety, public administration, public health and

Exhibit "7"

fiscal impacts of paragraph A. above. This report shall be completed and presented at the first meeting of the full City Council for calendar year 2006.

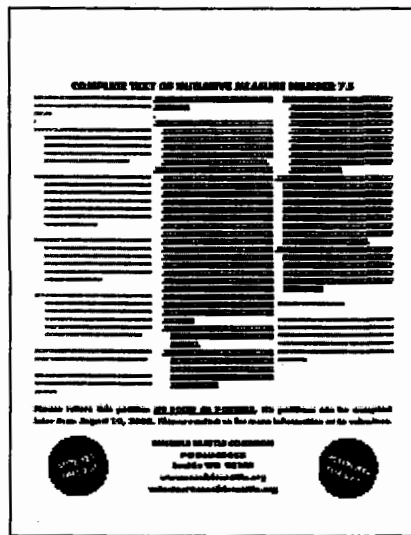
C. The Seattle Police Department shall report marijuana arrests and the City Attorney's Office shall report marijuana prosecutions, including those undertaken in Seattle by the King County Prosecutor's Office for arrests made in Seattle, to the Marijuana Policy Review Panel on a semi-annual basis in compliance with the criteria established by the Panel.

D. Upon consideration of the report and recommendations submitted by the Marijuana Policy Review Panel pursuant to subparagraph B.3. above, the City Council may modify, repeal or let stand this ordinance.

Severability of provisions

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance or the application of the terms and provisions to other persons or circumstances shall not be affected.

-
- [Click here](#) for the I-75 text on the City Clerk's web site
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SEATTLE INITIATIVE 75

How do you? Enforcement? Conflicts? Resolution? Budget? Political Control?

City of Seattle Marijuana

Policy Review Panel

The next meeting is cancelled.

Tuesday, April 10, 2007 at 5:30 p.m. in

City Hall, Room 370

Panel Minutes:

- [Jan 29, 2007 Minutes \(pdf\)](#)
- [Nov 20, 2006 Minutes \(pdf\)](#)
- [Oct 11, 2006 Minutes \(pdf\)](#)
- [Sep 21, 2006 Minutes \(pdf\)](#)
- [Jun 15, 2006 Minutes \(pdf\)](#)
- [Mar 16, 2006 Minutes \(pdf\)](#)
- [Dec 15, 2005 Minutes \(pdf\)](#)
- [Sep 15, 2005 Minutes \(pdf\)](#)
- [Jun 16, 2005 Minutes \(pdf\)](#)
- [Mar 2, 2005 Minutes \(pdf\)](#)
- [Dec 13, 2004 Minutes \(pdf\)](#)
- [Nov 22, 2004 Minutes \(pdf\)](#)
- [Oct 25, 2004 Minutes \(pdf\)](#)
- [Sep 20, 2004 Minutes \(pdf\)](#)
- [Jun 21, 2004 Minutes \(pdf\)](#)
- [May 12, 2004 Minutes \(pdf\)](#)
- [Mar 24, 2004 Minutes \(pdf\)](#)
- [Mar 10, 2004 Minutes \(pdf\)](#)
- [Feb 25, 2004 Minutes \(pdf\)](#)

Panel Documents:

- [Reporting Criteria \(pdf\)](#)
- [Panel members named 12/23/2003](#)

Endorsements

- League of Women Voters of Seattle
- King County Bar Association
- King County Democrats
- American Civil Liberties Union of Washington
- 32nd, 34th, 36th, 37th, 43rd, and 46th District Democrats
- Jeanne Kohl-Welles, Washington State Senator
- Adam Kline, Washington State Senator
- Nick Licata, Seattle City Councilmember

San Francisco supes enact lowest enforcement priority

[Marijuana now a low priority in SF](#)

Bay Area Reporter -- December 28, 2006

More communities deprioritize marijuana laws

[Missoula Joins Other Western Cities on Marijuana Prioritization](#)

New West Missoula -- November 21, 2006

Montana county passes lowest enforcement initiative

[Missoula County approves marijuana initiative](#)

Missoulain -- November 8, 2006

More recent media

See the [media page](#) for more published news articles.

Marijuana Policy Review Panel to meet April 10

Initiative 75, passed by 58% of Seattle voters in September 2003, created an eleven member panel to monitor the effects of the initiative. Panel members were appointed by the Council President in 2003 and the first meeting was held February 25, 2004.

The **next meeting** of the Marijuana Policy Review Panel will be held **Tuesday, April 10, 2007 at 5:30 p.m.** in City Hall, Room 370. This meeting is open to the public and interested citizens are encouraged to attend.

The panel has established reporting criteria for the Seattle Police Department and City Attorney's Office to report marijuana arrests and prosecutions. This document can be found on the left of this page under "Panel Documents."

Panel members include:

- Erin Becker, King County Prosecuting Attorney's Office
- Steven Brown, Seattle Police Department

- Judy Nicastro,
Seattle City Councilmember
- Heidi Wills,
Seattle City Councilmember
- Larry Gossett,
King County Councilmember
- Fred Noland, JD
- Robert Killian, MD
- Bob Santos

and more...

- Tom Carr, Seattle City Attorney
- D'Adre Beth Cunningham, Public Defender's Association
- Alison Chinn Holcomb, attorney
- Dominic Holden, Sensible Seattle Coalition
- Theryn Kigvamusud' Vashti, Communities Against Rape and Abuse
- Nick Licata, Seattle City Council
- Kris Nyrop, Street Outreach Services
- Tom Rasmussen, Seattle City Council
- Dr. Roger Roffman, University of Washington School of Social Work

For more information, visit the Seattle City Council web site.

sensibleseattle.org



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LOWEST LAW ENFORCEMENT PRIORITY JURISDICTIONS

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More than a dozen cities and counties have directed local law enforcement to de-prioritize marijuana possession enforcement in their areas, either through voter initiatives or through action by elected officials. Some municipalities, such as Seattle and Santa Monica, are faithfully following the ordinances. Unfortunately, others seem to be ignoring the lowest priority measures. Please see the following chart for information on LLEP (lowest law enforcement priority) jurisdictions.

Jurisdiction	Year Passed	Vote Percentage
Seattle, WA	2003	Passed with 58% of the vote.
Oakland, CA	2004	Passed with 65% of the vote.
Santa Barbara, CA	2006	Passed with 66% of the vote.
Santa Cruz, CA	2006	Passed with 64% of the vote.
San Francisco, CA	2006	San Francisco Board of Supervisors passed the ordinance in an 8-3 vote.
Santa Monica, CA	2006	Passed with 65% of the vote.
West Hollywood, CA	2006	West Hollywood City Council passed the resolution in a 4-0 vote.
Eureka Springs, AR	2006	Passed with 62% of the vote.
Missoula County, MT*	2006	Passed with 54% of the vote.
Denver, CO	2007	Passed with 55% of the vote.
Fayetteville, AR	2008	Passed with 66% of the vote.
Hawaii County, HI	2008	Passed with 53% of the vote.
Hailey, ID	2010	The initiative passed with 51% of the vote in 2007, and again in 2008 with 54% of the vote, but due to a redaction by a district court judge, the measure did not officially go into effect until 2010.
Kalamazoo, MI	2011	Passed with 66% of the vote.
Tacoma, WA	2011	Passed with 65% of the vote.

* In 2011, Missoula County prosecutor Fred Van Valkenburg convinced the state legislature to attempt to thwart the will of voters by passing a bill — H.B. 391 — saying that a local initiative cannot determine local police priorities. Whether the new law applies to Missoula County's ordinance — which is now an ordinance, not an initiative — has not been litigated. However, Van Valkenburg has said he is prosecuting marijuana possession again.

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Medical Marijuana Laws and Teen Marijuana Use

D. Mark Anderson
University of Washington - Economics

Benjamin Hansen
University of Oregon

Daniel I. Rees
University of Colorado at Denver, National Bureau of Economic Research (NBER)

IZA Discussion Paper No. 6592

Abstract:

While at least a dozen state legislatures are considering bills to allow the consumption of marijuana for medicinal purposes, the federal government has recently intensified its efforts to close medical marijuana dispensaries. Federal officials contend that the legalization of medical marijuana encourages teenagers to use marijuana and have targeted dispensaries operating within 1,000 feet of schools, parks and playgrounds. Using data from the national and state Youth Risk Behavior Surveys, the National Longitudinal Survey of Youth 1997 and the Treatment Episode Data Set, we estimate the relationship between medical marijuana laws and marijuana use. Our results are not consistent with the hypothesis that legalization leads to increased use of marijuana by teenagers.

Number of Pages in PDF File: 49

Keywords: marijuana, youth risky behavior, medical marijuana laws

JEL Classification: K4, I1, D8

working papers series

Date posted: June 16, 2012

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Suggested Citation

Anderson, D. Mark, Hansen, Benjamin and Rees, Daniel I., Medical Marijuana Laws and Teen Marijuana Use. IZA Discussion Paper No. 6592. Available at SSRN: <http://ssrn.com/abstract=2085179>

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United States

Paper statistics

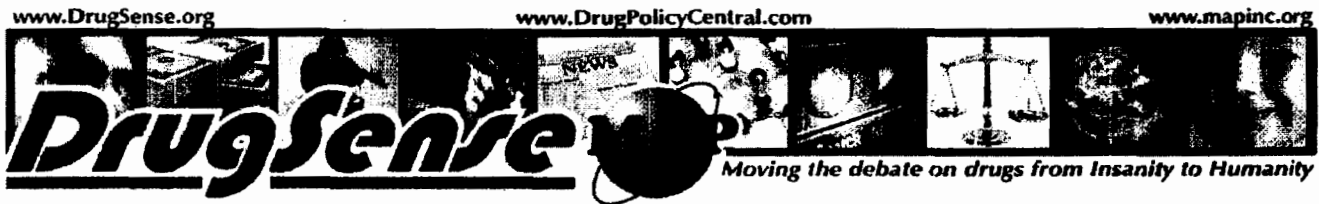
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References:	54

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Community Audits and Initiatives Project

Ferndale Medical Marijuana Ordinance

Status: passed
Location: Ferndale
Area: Michigan
Date: 11/08/2005

On Tuesday, November 8th, 2005, Ferndale voters came out strongly in support of Proposal D, which removed all criminal penalties under local law for marijuana used by patients with the recommendation of their physician.

The unofficial final results are 61%-39% in favor of Proposal D, with 1894 votes in favor and 1222 votes opposed.

Public Policy Question 4: Districts 1, 6, 13 and 21 - MA

Status: Passed
Location: Massachusetts
Area: Massachusetts
Date: 11/04/2008

Massachusetts Public Policy Question 4: Districts 1, 6, 13 and 21

Results:

Passed with 74% of the vote in the 1st District: Towns of Ayer, Dunstable, Groton, Pepperell, and Townsend.

Passed with 71% of the vote in the 6th District: Towns of Hanson, Pembroke, precincts 2,3,4,5 of Duxbury, precinct 2 of Halifax.

Passed with 73% of the vote in the 13th District: Towns of Medfield, Needham, and precincts 1 and 2 of Dover.

Passed with 71% of the vote in the 21st District: Towns of Bedford, Burlington, precinct 3 of Wilmington.

Question 4 directs the district's state representative to vote in favor of legislation that would allow seriously ill patients, with their doctor's written recommendation, to possess and grow small amounts of marijuana for their personal medical use.

Full Text: "Shall the State Representative from this district be instructed to vote in favor of legislation that would allow seriously ill patients, with their doctor's written recommendation, to possess and grow small amounts of marijuana for their personal medical use?"

MassCann/NORML:
 P.O. Box 266
 Georgetown, MA 01833-0366
 Phone: 781-944-2266

"Cannabis as Low Police Priority" Initiative -ES, AR

Status: passed
Location: Eureka Springs
Area: Arkansas
Date: 11/07/2007

Eureka Springs, AR "Cannabis as Low Police Priority" Initiative

Measure language: "When any law enforcement officer suspects any adult in possession of a misdemeanor amount of marijuana and/or possession of marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose nor detained for any reason other than the issuance of a citation. There shall be a strong presumption that the proper disposition of any such case is to suspend the imposition of sentence and/or require community service work and/or drug counseling and education."

Voters in the Arkansas community of Eureka Springs passed this initiative with 62% of the vote on November 7, 2006 to 'deprioritize' cannabis possession. City election officials confirmed in August that a municipal initiative that seeks to decriminalize minor marijuana possession offenses would appear on the fall municipal ballot. The proposal directs local law enforcement to issue a summons in lieu of a criminal arrest for adults found to be in possession of up to one ounce of cannabis and or marijuana paraphernalia.

Initiative 2 - Missoula

Status: passed
Location: Missoula County
Area: Montana
Date: 11/07/2006

An Initiative to Alter Law Enforcement Priorities and Make Adult Marijuana Offenses the Lowest Law Enforcement Priority in Missoula County

Voters in Missoula passed Initiative 2 on November 7, 2006 with 53% of the vote. I-2 directs local police to make the enforcement of minor pot violations their lowest priority, and appoints a community oversight committee to ensure that the police are obeying the voters' mandate.

"We want to make our community safer, and we believe law enforcement agencies spend too much time and money on adult marijuana issues as compared to more serious crimes that threaten people's lives and property," states the initiative's backers, Missoula Citizens for Responsible Crime Policy. "[The] 30-plus years of current marijuana policies haven't worked. It's time to talk about alternatives and smarter use of taxpayer dollars."

Attachment	Size
Missoula County Initiative No. MSLA2006-02.pdf	20.34 KB

Lowest Law Enforcement Priority Policy Ordinance - SM,CA

Status: passed
Website: http://www.taxandregulate.org/santamonica_archive/
Location: Santa Monica
Area: California
Date: 11/07/2006

Santa Monica Lowest Law Enforcement Priority Policy Ordinance

On May 24th, 2006 Santa Monicans for Sensible Marijuana Policy filed 8,395 signatures, nearly 3,000 more than the 5,580 needed to place the measure on the November ballot. On November 7, voters passed the initiative with 65% of the vote.

The ordinance makes marijuana offenses, where cannabis is intended for adult personal use, the lowest police priority, and by doing so would free up police resources to focus on violent and serious crime, instead of arresting and jailing non-violent cannabis users.

Flint Code Amendment-Medical Marihuana

Status: passed
Website: http://www.minorml.org/flint_compassionate_care_coaliti.htm
Location: Flint
Area: Michigan
Date: 02/27/2007

Flint, MI Flint Code Amendment-Medical Marihuana

Supported by 62% of voters, the Flint Compassionate Care Medical Marijuana Initiative passed on February 27th, 2007 gives legal protection to patients with serious medical conditions who obtain relief from the symptoms of their illness through the use of cannabis under the supervision of a medical professional.

Attachment	Size
flint_ordinance_feb07.pdf	68.68 KB
flint_petition_feb07.pdf	30.99 KB

Lowest Police Priority, Medical Marijuana, and Industrial Hemp Acts

Status: passed
Location: Hailey

Area: Idaho
Date: 11/06/2007

Hailey, Idaho: Lowest Police Priority, Medical Marijuana, and Industrial Hemp Acts

On November 6, 2007, Hailey voters passed three initiatives called The Hailey Industrial Hemp Act, The Hailey Lowest Police Priority Act and The Hailey Medical Marijuana Act:

- 1) The Hailey Medical Marijuana Act is a marijuana medical initiative passed by a vote of 687-581.
- 2) The Hailey Lowest Police Priority Act is an initiative that makes adult cannabis possession the lowest police priority. It passed by a margin of 637-601.
- 3) The Hailey Industrial Hemp Act is an industrial hemp measure that passed by 683-565.

A fourth initiative would have mandated the city to regulate and tax marijuana sales and to establish a Community Oversight Committee to iron out the details for legalization, but it failed 573-674.

Contacts:
 Ryan Davidson, Chairman of The Liberty Lobby of Idaho
 121 East 36th Street
 Garden City, Idaho 83714
 Phone: 208-353-8157

Press on the Hailey Initiatives:
 Idaho Mountain Express: November 7, 2007

Lowest Law Enforcement Priority Policy Ordinance - SB,CA

Status: passed
Location: Santa Barbara
Area: California
Date: 11/07/2006

Santa Barbara Lowest Law Enforcement Priority Policy Ordinance

The Santa Barbara Lowest Law Enforcement Priority Policy Ordinance passed with 65% of the vote on November 7, 2006. This initiative makes marijuana offenses, where the marijuana was intended for adult personal use, the city's lowest police priority - allowing police to focus on serious and violent crime.

The initiative was filed by Sensible Santa Barbara.

Attachment	Size
Sensible Santa Barbara.pdf	101.21 KB

Lowest Law Enforcement Priority Policy Ordinance - SC,CA

Status: passed
Website: <http://www.taxandregulate.org/sc06/index.htm>
Location: Santa Cruz
Area: California
Date: 11/07/2006

Santa Cruz Lowest Law Enforcement Priority Policy Ordinance

According to a recent Santa Cruz, California poll, more than 80% of city voters agree that the Drug War is a failure and adults who use marijuana should not be criminalized.

On May 25th, the Santa Cruz City Clerk officially announced that an initiative to make adult marijuana offenses the Santa Cruz police department's lowest priority has qualified for the November ballot!!! Santa Cruz Citizens for Sensible Marijuana Policy submitted over 6,000 signatures in April, well more than the minimum 3,423 required to put a measure to a vote. On November 7, 2006, voters passed this initiative with 64% of the vote.

The initiative:

- Makes investigations, citations, arrests, property seizures, and prosecutions for adult marijuana offenses the City of Santa Cruz's lowest law enforcement priority;
- Enables the city to save tax dollars and police resources so that they can spend them fighting violent and serious crime;
- Establishes a city policy supporting changes in state and federal laws that call for taxation and regulation for adult use of marijuana.

Attachment	Size
Santa Cruz Citizens for Sensible Marijuana Policy.pdf	87.47 KB

Law Enforcement and Prosecutorial Priority Policy Ordinance

Status: Passed, 66%
Location: Fayetteville
Email: jd hollow@uark.edu
Area: Arkansas
Date: 11/04/2008

Require Fayetteville police and prosecutor to treat adult marijuana possession offenses as their lowest priority. Further, the measure requires the city clerk to send an annual letter to state and federal legislators, governor, and president stating: "The citizens of Fayetteville have passed an initiative to de-prioritize adult marijuana offenses, where the marijuana is intended for personal use, and request that the federal and Arkansas state governments take immediate steps to enact similar laws." This duty shall be carried out until state and federal laws are changed accordingly.

Question 100 - DEN.,CO

Status: passed
Website: <http://saferdenver.saferchoice.org/>
Location: Denver
Area: Colorado
Date: 11/06/2007

Denver, CO: Question 100

On November 6th, 2007, 57% of Denver voters agreed to make the adult use of cannabis the lowest law-enforcement priority.

Initiative Language:

"Shall the voters for the City and County of Denver adopt an ordinance to the Denver Revised Municipal Code that would make the private use and possession of marijuana by persons 21 years of age and older the City's lowest law-enforcement priority?"

Further details available at: <http://saferdenver.saferchoice.org/>

Contacts:
Citizens for a Safer Colorado
P.O Box 40332
Denver, Colorado 80204
Phone: 303-861-0033
Fax: 303-861-0915
mail@saferchoice.org

Press on Question 100:
Denver Post: November 6, 2007
Denver ABC Affiliate: November 7, 2007

Ballot Question 1 - HI

Status: passed
Website: <http://peacefulskyalliance.com/>
Location: Hawaii County
Area: Hawaii
Date: 11/04/2008

Hawaii County, Hawaii: Ballot Question 1

Results: Passed 58-42% on November 4th, 2008

Requires adult marijuana possession laws to be the lowest priority for local law enforcement.

Full Text: <http://hawaii.gov/elections/factsheets/fsbo134.pdf>

Website: <http://www.mpp.org/states/hawaii/>

Press: <http://www.mpp.org/news/in-the-news/?state=HI>

Contact Info: www.mpp.org

Measure JJ - BERK,CA

Status: Passed
Location: Berkeley

Area: California
Date: 11/04/2008

Results: Passed 62-38 on November 4th, 2008.

Expands the non-residential zones where dispensaries can locate, creates an oversight commission to create standards and determine whether relocating or future operators are in compliance, issues zoning certificates, and brings Berkeley marijuana possession limits in line with recent court rulings determining that such limits are unconstitutional in the state.

Full Text: "Shall the City's ordinances be amended to eliminate limits on medical marijuana possessed by patients or caregivers; establish a peer review group for medical marijuana collectives to police themselves; and permit medical marijuana dispensaries as a matter of right under the zoning ordinance rather than through a use permit subject to a public hearing?"

Contact Info: 510-277-0455

Lowest Law Enforcement Priority Initiative - Niles, MI

Status: failed to make it on ballot
Location: Niles
Area: Michigan
Date: 11/07/2006

August 2006: Unfortunately, this initiative did not make the November 7, 2006 ballot due to lack of signatures.

The Lowest Law Enforcement Priority Ballot Initiative is expected to appear on the Nov 7, 2006 ballot in the City of Niles. It will ask the voters of the City to stipulate that investigating, arresting and prosecuting adults who use or possess small quantities of marijuana in private should be considered the lowest priority of City Police and Attorney.

This initiative only affects adult (19 yrs and older) behavior in private that does not create a public nuisance. It would still be unlawful to sell marijuana, possess more than one and one tenth ounce (1.1) of marijuana (about the amount of tobacco found in a pack of cigarettes), use marijuana in public or drive under the influence of marijuana. It would also still be illegal for anyone less than 19 yrs old to use and possess marijuana anywhere, public or private, under any circumstances.

Traverse City Medical Marijuana Ordinance

Status: passed
Location: Traverse
Area: Michigan
Date: 11/08/2005

Traverse City Medical Marijuana Ordinance

Michigan's Coalition for Compassionate Care's Proposal 3, which makes physician-supported medical cannabis use the lowest possible priority for Traverse City police, was passed on Nov. 8th, 2005. Voters approved the new city ordinance by a margin of 1,594 to 925, with 63% casting ballots in favor. The measure doesn't legalize marijuana possession but calls for the possession, delivery or use of marijuana by a medical patient to be the "lowest law enforcement priority of the city."

Alcohol-Marijuana Equalization Initiative - DEN, CO

Status: passed
Website: <http://www.saferchoice.org/safercolorado06/>
Location: Denver
Area: Colorado
Date: 11/04/2005

Alcohol-Marijuana Equalization Initiative:

The Denver Alcohol-Marijuana Equalization Initiative (passed by 54% of voters in November 2005) makes the personal use of one ounce or less of cannabis legal in the city of Denver (despite state and federal laws that still prohibit its possession and use).

Safer Alternative For Enjoyable Recreation (SAFER) is a non-profit organization based in Denver, Colorado. SAFER began in January 2005 in response to the fatal student alcohol overdoses that occurred on Colorado college campuses during the 2004-2005 school years.

SAFER envisions a society in which the private adult possession and use of marijuana is treated in the same or similar manner as the private adult possession and use of alcohol. Thus, SAFER's mission is to educate the public about the harms of alcohol compared to the much safer-yet illegal-drug: marijuana.

Ann Arbor Medical Marijuana Ordinance

Status: passed

Location: Ann Arbor

Area: Michigan

Date: 11/02/2004

Ann Arbor Medical Marijuana Ordinance

Ann Arbor's Proposal C, which was approved by 74% of voters on Nov. 2nd, 2004, amended section 16.2 of the city's municipal charter in support of medical cannabis users. Primarily, it amended section (b) to create an exception and an affirmative defense for medical cannabis. The passing of Prop. C also changed the wording of a portion of section (b) which pertains to cannabis offenses in general, substituting "not less than \$100.00 for the third or subsequent offense" with simply "\$100.00 for the third or subsequent offense."

[Chapters \(/chapters\)](#)[Lawyers \(/lawyers\)](#)[Doctors \(http://legalmarijuanadispendary.com/doctors/\)](http://legalmarijuanadispendary.com/doctors/)[Español \(/espanol\)](#)[Women's Alliance \(/womens-alliance\)](#)[NORML tv \(http://www.youtube.com/user/NatINORML\)](http://www.youtube.com/user/NatINORML)[Tax-Deductible Gifts \(/aboutdonate-to-the-norml-foundation\)](#)[About NORML \(/about\)](#)[About Marijuana \(/marijuana\)](#)[State Info \(/states\)](#)[Legal Issues \(/legal\)](#)[Library \(/library\)](#)[News Releases \(/news\)](#)[Blog \(http://blog.norml.org\)](http://blog.norml.org)[Take Action \(/act\)](#)[Support \(/support\)](#)

[Main \(/\)](#) » [About Marijuana \(/aboutmarijuana\)](#) » [Personal Use \(/marijuana/personal\)](#) » [Decriminalization \(/aboutmarijuana/decriminalization-2\)](#) » [States That Have Decriminalized](#)

States That Have Decriminalized

The following states have passed laws decriminalizing marijuana. Typically, decriminalization means no prison time or criminal record for first-time possession of a small amount for personal consumption. The conduct is treated like a minor traffic violation.

- [Alaska \(http://norml.org/laws/item/alaska-penalties?category_id=844\)](http://norml.org/laws/item/alaska-penalties?category_id=844)
- [California \(http://norml.org/laws/item/california-penalties?category_id=847\)](http://norml.org/laws/item/california-penalties?category_id=847)
- [Colorado \(http://norml.org/laws/item/colorado-penalties?category_id=848\)](http://norml.org/laws/item/colorado-penalties?category_id=848)
- [Connecticut \(http://norml.org/laws/item/connecticut-penalties?category_id=849\)](http://norml.org/laws/item/connecticut-penalties?category_id=849)
- [Maine \(http://norml.org/laws/item/maine-penalties-2?category_id=863\)](http://norml.org/laws/item/maine-penalties-2?category_id=863)
- [Massachusetts \(http://norml.org/laws/item/massachusetts-penalties-2?category_id=865\)](http://norml.org/laws/item/massachusetts-penalties-2?category_id=865)
- [Minnesota \(http://norml.org/laws/item/minnesota-penalties-2?category_id=867\)](http://norml.org/laws/item/minnesota-penalties-2?category_id=867)
- [Mississippi \(http://norml.org/laws/item/mississippi-penalties-2?category_id=868\)](http://norml.org/laws/item/mississippi-penalties-2?category_id=868)
- [Nebraska \(http://norml.org/laws/item/nebraska-penalties-2?category_id=871\)](http://norml.org/laws/item/nebraska-penalties-2?category_id=871)
- [Nevada \(http://norml.org/laws/item/nevada-penalties-2?category_id=872\)](http://norml.org/laws/item/nevada-penalties-2?category_id=872)
- [New York \(http://norml.org/laws/item/new-york-penalties-2?category_id=876\)](http://norml.org/laws/item/new-york-penalties-2?category_id=876)
- [North Carolina \(http://norml.org/laws/item/north-carolina-penalties-2?category_id=877\)](http://norml.org/laws/item/north-carolina-penalties-2?category_id=877)
- [Ohio \(http://norml.org/laws/item/ohio-penalties-2?category_id=879\)](http://norml.org/laws/item/ohio-penalties-2?category_id=879)
- [Oregon \(http://norml.org/laws/item/oregon-penalties-2?category_id=881\)](http://norml.org/laws/item/oregon-penalties-2?category_id=881)
- [Rhode Island \(http://norml.org/laws/item/rhode-island-penalties-2?category_id=884\)](http://norml.org/laws/item/rhode-island-penalties-2?category_id=884)



House Bill 1006 didn't decriminalize possession of small amounts of marijuana, as Tallian wanted. But it almost did: One of the bill's strongest supporters, conservative Republican Sen. Brent Steele of Bedford, chairman of the Senate Judiciary Committee, had drafted decriminalization language to add to the bill.

Steele said he backed off when he didn't think he could get the support from the bill's sponsors.

But both Steele and Tallian thought there was enough support for lowering the state's marijuana penalties, which are some of the toughest in the nation.

Both cited the shift in public opinion, as evidenced in the October 2012 Howey/DePauw Indiana Battleground Poll that showed 54 percent of voters agreed with decriminalizing marijuana, while 37 percent disagreed.

Steele and Tallian also cited the relief it would provide to local courts that process more than 12,000 marijuana possession cases each year.

"What's fair is what's right, and this bill makes our laws more fair," Steele said of the original House Bill 1006.

Under current Indiana law, possessing marijuana is a felony unless it's a first-time offense or under one ounce. As originally drafted, House Bill 1006 dropped all the marijuana possession charges down to a misdemeanor level.

It also made a first-time offense of possessing less than one ounce of marijuana into a class C misdemeanor punishable with up to 60 days in jail. Currently, it's a Class A misdemeanor, which carries a penalty of up to a year in prison.

Pence was particularly critical of the original bill's language that dropped possession of up to 10 pounds of marijuana from its current felony level down to a Class A misdemeanor.

Under changes made by the Senate courts and corrections committee last week, most of the penalties have been pushed back up a level but are still lower than what the current law calls for. Possessing between one-third of an ounce and 10 pounds is now a Class D felony, with a prison sentence between six months and 2.5 years.

Andrew Cullen is the legislative liaison for the Indiana Public Defender Council, which worked with the Indiana Prosecuting Attorneys Council to help craft the original House Bill 1006.

Cullen hopes the changes made by the Senate committee last week are enough to keep Pence from vetoing the bill. The marijuana drug penalties are just a small part of a massive piece of legislation that also includes tougher penalties for murderers, rapists, sex offenders and other violent criminals. It's the first rewrite of the state's criminal laws since 1978.

"This is Indiana's first opportunity to do something big in criminal justice reform in 35 years," said Cullen. "It's perplexing that Gov. Pence focused on minor drug offenses as his No. 1 concern when we have the opportunity to reshape criminal justice in the state of Indiana."

Maureen Hayden covers the Statehouse for the CNHI newspapers in Indiana. She can be reached at maureen.hayden@indianamedia.com.

Current laws in U.S.

15 states have reduced marijuana possession to a fine-only offense.

9 states (California, Colorado, Connecticut, Maine, Massachusetts, Nebraska, New York, Oregon and Rhode Island) have passed laws that define the private, non-medical possession of marijuana by adults as a civil, non-criminal offense.

5 states (Minnesota, Mississippi, Nevada, North Carolina and Ohio) treat marijuana possession offenses as a fine-only misdemeanor offense.

4 states (Hawaii, Maryland, New Hampshire, and New Jersey) have legislative chambers that have passed measures this year to reclassify minor marijuana offenses as non-criminal violations, punishable by a fine only — no arrest, no jail, and no criminal record.

2 states (Colorado and Washington) recently imposed separate legislation legalizing the private possession of marijuana.

1 state (Alaska) imposes no criminal or civil penalty for the private possession of small amounts of marijuana.

NORML ...working to reform
marijuana laws...

Representing cannabis consumers since 1970

Marijuana:

Historical, Legal and Medical Facts

*** EXHIBIT "8" IS AVAILABLE IN IT'S ENTIRETY IN THE CITY
CLERK'S OFFICE**

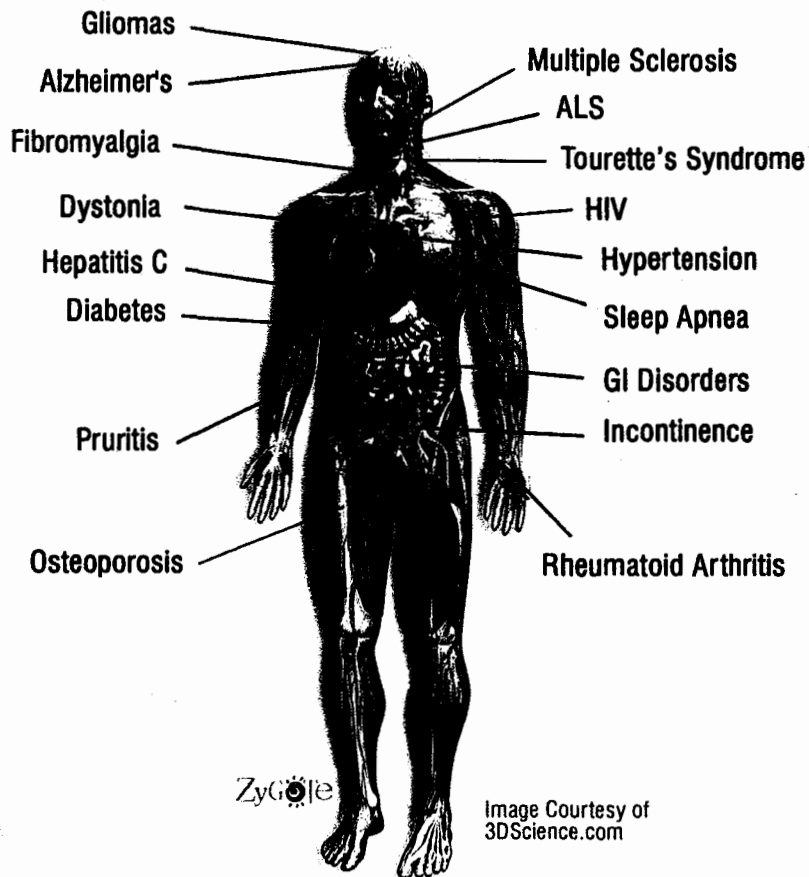
Fall, 2012

Exhibit "8"

Emerging Clinical Applications for Cannabis and Cannabinoids:

A Review of the Recent
Scientific Literature

2000 – 2010



NORML Foundation
Washington, DC
Paul Armentano
Deputy Director

Exhibit "9"

*** EXHIBIT 9 IS AVAILABLE IN IT'S ENTIRETY IN THE CITY
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PRESS IMAGES



A student talks on a hands-free cell phone while operating a high-tech driving simulator. The simulator was used during a University of Utah study that found motorists who talk on cell phones while driving are as impaired as drunken drivers with blood-alcohol levels at the legal limit of 0.08 percent.

Photo Credit: Jim Moutin

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DRIVERS ON CELL PHONES ARE AS BAD AS DRUNKS

UTAH PSYCHOLOGISTS WARN AGAINST CELL PHONE USE WHILE DRIVING

29

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June 29, 2006 -- Three years after the preliminary results first were presented at a scientific meeting and drew wide attention, University of Utah psychologists have published a study showing that motorists who talk on handheld or hands-free cellular phones are as impaired as drunken drivers.

"We found that people are as impaired when they drive and talk on a cell phone as they are when they drive intoxicated at the legal blood-alcohol limit" of 0.08 percent, which is the minimum level that defines illegal drunken driving in most U.S. states, says study co-author Frank Drews, an assistant professor of psychology. "If legislators really want to address driver distraction, then they should consider outlawing cell phone use while driving."

Psychology Professor David Strayer, the study's lead author, adds: "Just like you put yourself and other people at risk when you drive drunk, you put yourself and others at risk when you use a cell phone and drive. The level of impairment is very similar."

"Clearly the safest course of action is to not use a cell phone while driving," concludes the study by Strayer, Drews and Dennis Crouch, a research associate professor of pharmacology and toxicology. The study was set for publication June 29 in the summer 2006 issue of *Human Factors: The Journal of the Human Factors and Ergonomics Society*.

The study reinforced earlier research by Strayer and Drews showing that hands-free cell phones are just as distracting as handheld cell phones because the conversation itself -- not just manipulation of a handheld phone -- distracts drivers from road conditions.

Human Factors Editor Nancy J. Cooke praised the study: "Although we all have our suspicions about the dangers of cell phone use while driving, human factors research on driver safety helps us move beyond mere suspicions to scientific observations of driver behavior."

The study first gained public notice after Strayer presented preliminary results in July 2003 in Park City, Utah, during the Second International Driving Symposium on Human Factors in Driver Assessment, Training and Vehicle Design. It took until now for the study to be completed, undergo review by other researchers and finally be published.

Key Findings: Different Driving Styles, Similar Impairment

Each of the study's 40 participants "drove" a PatrolSim driving simulator four times: once each while undistracted, using a handheld cell phone, using a hands-free cell phone and while intoxicated to the 0.08 percent blood-alcohol level after drinking vodka and orange juice. Participants followed a simulated pace car that braked intermittently.

Both handheld and hands-free cell phones impaired driving, with no significant difference in the degree of impairment. That "calls into question driving regulations that prohibited handheld cell phones and permit hands-free cell phones," the researchers write.

The study found that compared with undistracted drivers:

- Motorists who talked on either handheld or hands-free cell phones drove slightly slower, were 9 percent slower to hit the brakes, displayed 24 percent more variation in following distance as their attention switched between driving and conversing, were 19 percent slower to resume normal speed after braking and were more likely to crash. Three study participants rear-ended the pace car. All were talking on cell phones. None were drunk.
- Drivers drunk at the 0.08 percent blood-alcohol level drove a bit more slowly than both undistracted drivers and drivers using cell phones, yet more aggressively. They followed the

pace car more closely, were twice as likely to brake only four seconds before a collision would have occurred, and hit their brakes with 23 percent more force. "Neither accident rates, nor reaction times to vehicles braking in front of the participant, nor recovery of lost speed following braking differed significantly" from undistracted drivers, the researchers write.

"Impairments associated with using a cell phone while driving can be as profound as those associated with driving while drunk," they conclude.

Are Drunken Drivers Really Less Accident-Prone than Cell Phone Users?

Drews says the lack of accidents among the study's drunken drivers was surprising. He and Strayer speculate that because simulated drives were conducted during mornings, participants who got drunk were well-rested and in the "up" phase of intoxication. In reality, 80 percent of all fatal alcohol-related accidents occur between 6 p.m. and 6 a.m. when drunken drivers tend to be fatigued. Average blood-alcohol levels in those accidents are twice 0.08 percent. Forty percent of the roughly 42,000 annual U.S. traffic fatalities involve alcohol.

While none of the study's intoxicated drivers crashed, their hard, late braking is "predictive of increased accident rates over the long run," the researchers wrote.

One statistical analysis of the new and previous Utah studies showed cell phone users were 5.36 times more likely to get in an accident than undistracted drivers. Other studies have shown the risk is about the same as for drivers with a 0.08 blood-alcohol level.

Strayer says he expects criticism "suggesting that we are trivializing drunken-driving impairment, but it is anything but the case. We don't think people should drive while drunk, nor should they talk on their cell phone while driving."

Drews says he and Strayer compared the impairment of motorists using cell phones to drivers with a 0.08 percent blood-alcohol level because they wanted to determine if the risk of driving while phoning was comparable to the drunken driving risk considered unacceptable.

"This study does not mean people should start driving drunk," says Drews. "It means that driving while talking on a cell phone is as bad as or maybe worse than driving drunk, which is completely unacceptable and cannot be tolerated by society."

University of Utah Cell Phone Research

Previous research by Strayer, Drews and colleagues include:

- A 2001 study showing that hands-free cell phones are just as distracting as handheld cell phones.
- A 2003 study showing that the reason is "inattention blindness," in which motorists look directly at road conditions but don't really see them because they are distracted by a cell phone conversation. And such drivers aren't aware they are impaired.
- A 2005 study suggesting that when teenagers and young adults talk on cell phones while driving, their reaction times are as slow as those of elderly drivers.

The University of Utah psychologists conducted the alcohol study because a 1997 study by other researchers evaluated the cell phone records of 699 people involved in motor vehicle accidents and found one-fourth of them had used their phone in the 10 minutes before their accident – a four-fold increase in accidents compared with undistracted motorists.

Those researchers speculated there was a comparable risk from drunken driving and cell phone use while driving. So Strayer and Drews conducted a controlled laboratory study.

The study included 25 men and 15 women ages 22 to 34 who were social drinkers (three to five drinks per week) recruited via newspaper advertisements. Two-thirds used a cell phone while driving. Each participant was paid \$100 for 10 hours in the study.

The driving simulator has a steering wheel, dashboard instruments and brake and gas pedals from a Ford Crown Victoria sedan. The driver is surrounded by three screens showing freeway scenes. Each simulated daylight freeway drive lasted 15 minutes. The pace car intermittently braked to mimic stop-and-go traffic. Drivers who fail to hit their brakes eventually rear-end the pace car. Other simulated vehicles occasionally passed in the left lane, giving the impression of steady traffic flow.

Each study participant drove the simulator during three sessions – undistracted, drunk or talking to a research assistant on a cell phone – each on a different day.

The simulator recorded driving speed, following distance, braking time and how long it would take to collide with the pace car if brakes were not used.

The study was funded by a \$25,000 grant from the Federal Aviation Administration – which is interested in impaired attention among pilots – and by Strayer's and Drews' salaries. The Utah Highway Patrol loaned the researchers a device to measure blood-alcohol levels.

Driving while Distracted: A Growing Problem

The researchers cited figures from the Cellular Telecommunications Industry Association indicating that more than 100 million U.S. motorists use cell phones while driving. The National Highway Transportation Safety Administration estimates that at any given moment during daylight hours, 8 percent of all drivers are talking on a cell phone.

"Fortunately, the percentage of drunk drivers at any time is much lower," Drews says. "So it means the risk of talking on a cell phone and driving is probably much higher than driving intoxicated because more people are talking on cell phones while driving than are driving drunk." The main reason there are not more accidents is that "92 percent of drivers are not on a cell phone and are compensating for drivers on cell phones," he adds.

Cell phone use is far from the only distraction for motorists. The researchers cite talking to passengers, eating, drinking, lighting cigarettes, applying makeup and listening to the radio as the "old standards" of driver distraction.

"However, over the last decade many new electronic devices have been developed, and they are making their way into the vehicle," the researchers write. "Drivers can now surf the Internet, send and receive e-mail or faxes, communicate via a cellular device and even watch television. There is good reason to believe that some of these new multitasking activities may be substantially more distracting than the old standards because they are more cognitively engaging and because they are performed over longer periods of time."

News media may obtain a copy of the study by emailing leesiegel@ucomm.utah.edu or, starting June 29, by going to <http://hfes.org> and clicking on "What's New"

Other studies by Strayer and colleagues on cell phones and driving may be downloaded from: <http://www.psych.utah.edu/AppliedCognitionLab/>

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 Joe Nocera - Just another nytimes.com Blogs site

APRIL 1, 2013, 10:30 AM

Weekend Gun Report: March 29-31, 2013

The volume of gun violence on the weekend can be overwhelming. To better acknowledge that sad truth, we have decided to change the nature of the Gun Report on weekends. Rather than highlighting only a handful of shootings, as we do during the week, we are going to try to give a more complete roundup of weekend gun violence. Our own synopsis of each shooting will necessarily be brief, but we will link to the original media source in case readers want more detail. Here is the first volume of our revised Weekend Gun Report.

—Joe Nocera and Jennifer Mascia

Friday:

A 50-year-old man is suspected of shooting and killing two of his neighbors in his backyard in Cabarrus County, N.C., before killing himself. Two men were critically wounded in a shooting on the South Side of Chicago. A possible drug-related shooting left one man dead inside a car at a Harris County, Tex., shopping center. A woman is accused of shooting and killing her husband, a pharmacist at Walter Reed National Military Medical Center, in Washington, D.C., Thursday morning.

A 14-year-old boy allegedly shot another man while he was riding his bicycle in South Miami, Fla. A 14-year-old boy was shot and killed in south Bakersfield, Calif., around midnight. A man shot two other men in the Tremont section of the Bronx Thursday night before fleeing. A man was shot in a road rage incident on U.S.1 south of St. Augustine, Fla., Friday night. Two men were shot in the Mattapan section of Boston Thursday evening, one of whom has life-threatening injuries.

Saturday:

The documentary filmmaker and humanitarian John Upton was shot and killed in Encinitas, Calif., Thursday morning by a neighbor after the two got into an argument about tree-trimming. An alleged gang member, 23, was shot and killed and another man was injured Friday evening during a gang-related shooting in the Logan Square neighborhood of Chicago. A woman was in critical condition after an accidental shooting in Jacksonville, Fla., Friday night. A 7-year-old boy was shot in the stomach in Antioch, Calif., and airlifted to a nearby hospital Saturday afternoon. A 38-year-old man and his 12-year-old son were wounded in a spray of gunfire Saturday morning in the South Side Washington Park neighborhood of Chicago. A 17-year-old was shot in the head in a drive-by shooting early Saturday after leaving a southwest Houston nightclub. A 29-year-old

Exhibit "11"

man was killed early Saturday after he was shot at his home, possibly by his brother, in Vero Beach, Fla.

A woman wounded a man in a domestic shooting in Avondale, Ohio, Saturday evening. A security employee at a Fredericksburg, Va., club was killed in a drive-by shooting early Saturday. A 19-year-old college student was shot and killed early Saturday morning in San Francisco's Mission District. A 19-year-old man died after he was ambushed and shot by a masked suspect Friday night in Seattle's Central District. A 20-year-old man has been charged in the shooting of a 19-year-old man early in Newark, N.J., early Saturday. Two people were shot and wounded in Kansas City, Kan., around 4:30 a.m. Saturday. A shooting at a shopping center near Pittsburgh left three bystanders wounded Saturday. A woman was shot in the head and killed after a fight with a security guard early at an International House of Pancakes in Cleveland Heights, Ohio, Saturday morning. A 33-year-old man was shot and killed early Saturday outside the sprawling Edgewood Terrace complex in Washington, D.C. A man shot another man in a shopping center in Watauga, Tex., shortly after 5:00 p.m. Saturday.

A sales manager at a Melbourne, Fla., car dealership was fatally shot Saturday by a man who rear-ended him during a test drive. A man was shot in the head and wounded in a shooting in Escondido, Calif., late Friday. An 18-year-old man shot his 26-year-old uncle and attempted suicide in Harrah, Wash., after the older man wanted to end an intimate relationship between the two. One person was critically hurt in a shooting in Fort Wayne, Ind., Saturday afternoon.

Sunday:

Kaufman County District Attorney Mike McLelland and his wife, Cynthia, were found shot to death in their rural home just outside the town of Forney, Tex., a couple of months after his colleague, Assistant District Attorney Mark Hasse, was shot and killed a block from his courthouse office. A 4-year-old girl was shot dead with a handgun inside a car outside her grandparents' home in Northwest Miami-Dade, Fla., Saturday night; a 6-year-old was found holding the weapon. A woman was shot multiple times in south Wichita, Kan., near McConnell Air Force Base Saturday night. One man was killed and another injured in a shooting near Riverview Plaza in St. Louis, Mo., Saturday night. A man was shot and killed outside an Ashtabula, Ohio, church after an Easter service on Sunday.

A man in Las Vegas came home to find his wife with another man and killed her; the other man jumped off a balcony to escape the gunfire. A 40-year-old man was shot and wounded during a car-to-car shooting in San Bernardino, Calif., Friday night. A man was shot and critically wounded at an Easter gathering in Apopka, Fla., Sunday. A man and woman found shot to death in a home near Socastee, S.C., are likely the victims of a murder-suicide. At least five people, including a teenager, were hospitalized for gunshot

wounds Sunday evening in Vero Beach, Fla. Two people were injured in a shooting outside a Hagerstown, Md., pub, early Sunday. Two men were shot outside a Westchester, N.Y., bar early Sunday. Gunfire erupted in the parking lot of a popular Auburn, Wash., sports bar early Sunday, leaving three dead and one injured.

A 42-year-old man was shot and killed by his brother-in-law during a domestic dispute in Phoenix, Ariz., on Sunday afternoon. A man in his 20s died in a shooting in downtown Austin, Tex., early Sunday. A teenage girl was shot during an apparent drive-by shooting in West Mifflin, Pa., Sunday afternoon. A man crashed his car into an empty police van in Brooklyn, N.Y., and fatally shot himself in the head. Five people were shot during a gang-related shooting at a party in Atwater, Calif., Saturday night; three died. A deadly nightclub shooting in Southfield, Mich., claimed the life of a 33-year old woman early Sunday. A 17-year-old male was shot multiple times in Escondido, Calif., Saturday night.

A 21-year-old man was shot and killed in Pittsburgh, Pa., early Saturday morning; nearly 60 shots were fired during the incident. A man died after a shooting in North Houston, Tex., Saturday night. A man in Lansing, Iowa, fired a gun at a tree outside his home and the bullet bounced back and hit him. An adult man with gunshot wounds showed up at a Fort Wayne, Ind., hospital Sunday night. A 26-year-old man was fatally shot in Jamaica Plain in Boston Sunday evening. Three shooters killed a man in East Oakland, Calif., on Sunday morning.

According to Slate's gun-death tracker, an estimated 3,206 people have died as a result of gun violence in America since the Newtown massacre on December 14, 2012.

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APRIL 8, 2013, 10:50 AM

Weekend Gun Report: April 5-7, 2013

Another violent weekend in America. Here is our report.

Friday:

Joshua Petersen, 21, shot his son Ryker, 5 months, in the head with a rifle, killing him, in American Fork, Utah. A 46-year-old man was charged Friday with aggravated assault after shooting his friend in the stomach in Holladay, Utah. A man shot and killed his brother in Millbrook, Ala., Friday night. Reginald Hill, 20, was found shot in Indianapolis, Ind., Thursday night, and in a separate incident, Larry Cole, 21, suffered multiple gunshot wounds. 26-year-old Richard Eichler was found shot inside a New Haven, Conn., deli, Friday night and died soon after. A 17-year-old boy was shot several times and wounded after an altercation in Columbus, Ohio, Friday afternoon. A woman was shot outside of a home in rural Meade County, Ky., by her former husband Friday evening. A 17-year-old was shot in the head and killed Friday night when gunfire erupted outside a party in Victorville, Calif.

Lionel "Ray" Fluker, 54, a former freelance photographer for the Oakland Tribune, was fatally shot as he drove home from the gym Friday night. A possible gang-related shooting left one young man dead and another hospitalized in Tucson, Ariz., Thursday night. Isiah Cantu, 13, was shot in the back of the head and killed during an attack at a San Antonio, Tex., apartment complex Friday night. A 17-year-old male was shot multiple times and injured in northeast Columbus, Ohio, after an argument Friday afternoon. An intruder shot a 15-year-old while he was sleeping in his Greenville, S.C., home Friday morning. A woman was found shot dead Friday afternoon with her two-month-old daughter still in her arms at a Holbrook, Idaho, home; the bodies of her father and boyfriend were found nearby. A 23-year-old man was shot and wounded in Dunkirk, N.Y., by bullets intended for someone else Friday evening. A 20-year-old male and a 17-year-old female were shot outside a birthday party in Richland County, S.C., Friday night.

A shooting Friday night left one man dead and another injured in Trenton, N.J. Henry Rodgers, 51, was found with a fatal gunshot wound to the chest in Tulsa, Okla., Friday night. A man was in critical condition after he was shot in the head in the Waverly neighborhood of Baltimore. A 22-year-old was shot and wounded with a .40-caliber handgun in a busy Pittsburgh intersection Friday afternoon. Two people were hospitalized Friday evening following a shooting in downtown Norfolk, Va. A 29-year-old man was shot in Newark, N.J., Friday night. Kelsey Coleman, 32, was shot in the back and killed shortly after midnight Friday during a home invasion in Peoria, Ill. A shooting

in a home in Perris, Calif., left two men dead and another wounded. A man was killed and a woman was wounded after a homeowner shot them as they burgled his home early Friday in Maple Valley, Wash.

A 28-year-old man was shot and wounded early Friday in the Austin neighborhood of Chicago. D'Angello Simmons, 22, was killed and another man was wounded when a gunman walked up and opened fire in South Chicago Friday evening. A shooting Friday morning sent a woman to the hospital in Hapeville, Ga. Deonte J. Shackelford, 26, a Maryland man who was visiting relatives in Carteret, N.J., was shot and killed Friday night. One man is dead after a fatal shooting in Pahokee, Fla.

20-year-old Zachary Hernandez and 23-year-old Carlos Garcia were killed after a shooting Friday night evening in Kenosha, Wis. A shooting Friday afternoon at a Birmingham, Ala., hotel left one man dead. A 34-year-old man was injured in a drive-by shooting in San Jose, Calif., Friday morning. David N. Gore was shot to death by his nephew inside of a home in Coshocton, Ohio. A man was dead and a woman was hospitalized after a shooting in Colorado Springs, Colo., Thursday night. Two men, both 31, were shot multiple times as they stood outside a Texas City, Tex., home Friday evening. In Bloomington, Ind., a 19-year-old who didn't realize his shotgun was loaded accidentally discharged the weapon and the round went through the bathroom door, wounding his roommate. A man in the crowd at a birthday party at the Polish Heritage Center in St. Louis, Mo., was shot in the leg Friday night. A shooting left one man dead and another in critical condition Friday night near the Mills College campus in East Oakland, Calif. A Papa John's Pizza employee is in stable condition after he was shot while delivering food at a Maitland, Fla., apartment Friday night.

Saturday:

A Twinsburg Township, Ohio, 16-year-old is hospitalized after he accidentally shot himself in the chest while cleaning a gun Saturday night. Malik Birshon Padgett, 15, was shot and killed during a birthday party in Greenwood, S.C. A man was shot multiple times and wounded near downtown Reno, Nev., early Saturday morning. A shooting between rival gangs after a birthday party for a 15-year-old girl in Stamford, Conn., early Saturday sent three victims to the hospital. A Greenwood, S.C., teenager is dead and four others are recovering after they were gunned down at a birthday party Saturday night. Jer'ray Moore, 23, was shot and killed at an apartment complex in central Omaha, Neb., Saturday afternoon. A man was shot twice in West Louisville, Ky., shortly after the University of Louisville basketball win over Wichita State Saturday night. Tommy Johnson, 27, and Kenneth Thornton, 34, were shot by two masked suspects in Bartow, Fla., early Saturday morning. A 19-year-old woman was shot and killed by her boyfriend after a verbal fight on Detroit's east side Saturday morning. John J. Robles was shot and killed Saturday night at a construction site at Longwood University in Farmville, Va. A

16-year-old was shot as he walked through a vacant parking lot near Laclede's Landing in downtown St. Louis, Mo., Saturday night.

Tara S. Cutlip, a pregnant 21-year-old, was found shot to death at her Lima, Ohio, home Saturday afternoon, and the father of her child is a suspect. A shooting Saturday afternoon in North Charlotte, N.C., has left one person with life-threatening injuries. A 25-year-old man shot five times in the torso in West Philadelphia, Pa., early Saturday is in critical condition. One man was hospitalized after another opened fire when a fight broke out outside a San Antonio, Tex., nightclub early Saturday. A drive-by shooting injured at least one person in Albany, Ga., Saturday evening. An 18-year-old was shot and wounded after a shooting on the Oneida reservation in upstate New York early Saturday. A man was shot in the wrist Saturday evening in what is believed to be a drive-by shooting in Rockford, Ill. A shooting killed Ismael Garcia Ramirez, 25, at a family party in Concord, Calif., Saturday night. A shooting at a banquet hall in Kansas City, Mo., late Saturday night sent five people to the hospital, including one listed in critical condition. Two men were wounded in a shooting Saturday evening on Monroe Street in New Orleans, La., less than a week after an 18-year-old AmeriCorps volunteer was shot to death in the same neighborhood.

Two people have died following a double shooting in Flint, Mich., Saturday evening. Scott Allen Rider, 34, was rushed to the hospital after being shot during a drug transaction outside a gas station in Huntsville, Ala. Jemar Williams was shot in the leg after two people came to his hotel room and demanded money for drugs in Huntsville, Ala., Saturday; it was Huntsville's third shooting in 24 hours. A man was walking along a street in Davenport, Iowa, when he was shot in the foot by someone in a passing car. A 25-year-old man underwent surgery after he was shot in his upper body during an attempted robbery early Saturday in Miami-Dade County, Fla. One person was shot and another was injured on the southwest side of Birmingham, Ala., Saturday afternoon. A 53-year-old man was found shot to death in Skagit County, Wash.

A man was shot and wounded in northwest Atlanta, Ga., Saturday evening, but the victim is not cooperating with police. 20-year-old Brad Coleman was shot Friday night in Wilkes-Barre, Pa., Saturday evening and is listed in critical condition. A sheriff's deputy was wounded by a man wielding a shotgun in Acadia Parish, La., early Saturday. A man shot someone trying to rob him in downtown Lexington, Ky., Saturday night. A shooting in central Lubbock, Tex., sent Felix Aaron Tijerina, 26, to the hospital with serious injuries early Saturday. A man is dead after being shot by a man who, minutes before, was standing on downtown Stockton, Calif., street corner yelling a barrage of expletives. A man was walking on a sidewalk on the far South Side of Chicago when someone shot him in the leg just past midnight Saturday. A man in his 20s was injured in a shooting in the South Side Chatham neighborhood in Chicago Saturday night.

An overnight shooting in Far Northeast Dallas, Tex., left Jessie Bell, 42, dead and another person hospitalized Saturday morning. A man is dead after a gunman shot into his truck several times in the third shooting in two days in Prichard, Ala.; Ezekiel Scott was shot in the head and wounded in Prichard Friday night. A young man was taken to the hospital after police say he was targeted in a shooting in Muskegon Heights, Mich., late Saturday night. A Saturday shooting following a party in Shelby, N.C., sent Willie Early, 32, and Linda Cannon, 55, to the hospital. 31-year-old Esmeralda Covarrubias was shot and killed by her boyfriend in Houston, Tex., Saturday night. A 16-year-old boy and an 18-year-old man were struck by gunfire in Covina, Calif., Saturday night.

Sunday

A 16-year-old was fatally shot in the chest by a 19-year-old in Southeast Washington, D.C., early Sunday. Gary Roscoe, Jr. was shot and wounded in central Toledo, Ohio. Two patrons were shot following an altercation at the Down Beat Club in Coward, S.C., early Sunday. A shooting at a Manhattan, Kan., apartment complex has left one person dead and three injured. A boy was shot in the chest and critically wounded in the Heart of Chicago neighborhood in Chicago, Ill., Sunday afternoon. A person was shot at a Mobile, Ala., apartment complex Sunday afternoon. A shooting left two men and a woman dead after a domestic argument in south Lincoln County, Tenn., Sunday afternoon. A 32-year-old woman was discovered dead of gunshot wounds between two buildings in Clarksville, Tenn. A man using force to get into an apartment in northwest Charlotte, N.C., was shot and killed Sunday morning. A man was shot and wounded in a Jurupa Valley, Calif., backyard early Sunday. An employee taking out the trash at an Akron, Ohio., McDonald's was fatally shot after he was approached by a man.

Two people were shot and wounded in the Power and Light District of Kansas City, Mo., early Sunday. A man in his 20s is dead and another wounded after an overnight shooting on Kansas City's east side. One person is dead and two remain in the hospital after a large house party in DeLand, Fla., turned violent early Sunday morning. 33-year-old John David Carney and 30-year-old Erica Nicole Davis are dead after a shooting late Sunday morning in Posey County, Ind. A man shot his estranged wife, Magdalena Cook, in the legs during an argument in Louisville, Ky. A man is in the hospital after he was shot in the face early Sunday morning in Phoenix, Ariz. Milwaukee, Wis., police are busy investigating eight separate shooting incidents over the weekend, including a 37-year-old woman shot in the buttocks and the shooting of two 35-year-old men.

A man died in a shooting Sunday morning in Walla Walla, Wash., after a friend shot him with a shotgun. A man died and a man and a woman were injured in a shooting early Sunday at a bar in Colorado Springs, Colo. One man was killed and three others injured in a shooting on a residential street in Long Beach, Calif., early Sunday morning. Sandtonio Knott Jr., 15, was shot and wounded as he and two other teens walked down a

Henderson, N.C., street Sunday afternoon.

According to Slate's gun-death tracker, an estimated 3,296 people have died as a result of gun violence in America since the Newtown massacre on December 14, 2012.

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**STATE EX REL. NEW MEXICO VOICES FOR CHILDREN, INC. V. DENKO,
2004-NMSC-011, 135 N.M. 439, 90 P.3d 458**

**STATE OF NEW MEXICO ex rel.
NEW MEXICO VOICES FOR CHILDREN, INC.,
A New Mexico Not for Profit Corporation, and
DR. VICTOR LaCERVA, M.D.,
Petitioners,**

v.

**JOHN DENKO, JR., SECRETARY
OF THE NEW MEXICO DEPARTMENT
OF PUBLIC SAFETY,
Respondent.**

Docket No. 28,373
SUPREME COURT OF NEW MEXICO
2004-NMSC-011, 135 N.M. 439, 90 P.3d 458
January 15, 2004, Filed
ORIGINAL PROCEEDING.

Released for Publication May 17, 2004.

COUNSEL

Vogel, Campbell & Blueher, P.C., David S. Campbell, Albuquerque, NM, for Petitioner.
Patricia A. Madrid, Attorney General, Jerome Marshak, Assistant Attorney General, David K. Thomson, Assistant Attorney General, John W. Wheeler II, Special Assistant Attorney General, Santa Fe, NM, for Respondent.

JUDGES

RICHARD C. BOSSON, Justice. WE CONCUR: PETRA JIMENEZ MAES, Chief Justice, PAMELA B. MINZNER, Justice, PATRICIO M. SERNA, Justice.
AUTHOR: RICHARD C. BOSSON.

OPINION

BOSSON, Justice.

{1} Petitioners, New Mexico Voices for Children and Dr. Victor LaCerva, seek a writ of mandamus directing the Secretary of the Department of Public Safety, John Denko, to cease enforcing the provisions of the Concealed Handgun Carry Act, NMSA 1978, §§ 29-19-1 to -13 (2003), recently passed by the Legislature. Petitioners contend that Article II, Section 6 of the New Mexico Constitution prohibits carrying concealed weapons, and the Act violates this prohibition. As we indicated after oral argument on January 5, 2004, we deny the petition. We hold that Article II, Section 6 does not prohibit the carrying of concealed weapons, and the Act does not violate our Constitution. Standing

{2} Petitioners seek to invoke this Court's constitutional power of original jurisdiction in mandamus. See N.M. Const. art. VI, § 3. "[W]e exercise our power of original jurisdiction in mandamus if the case presents a purely legal issue that is a fundamental constitutional question of great public importance." County of Bernalillo v. N.M. Pub. Regulation Comm'n (In re Adjustments to Franchise Fees), 2000-NMSC-035, ¶ 6, 129 N.M. 787, 14 P.3d 525.

{3} Two years ago, we conferred standing on a petitioner who challenged the previous Concealed Handgun Carry Act because the validity of that Act raised a constitutional question of fundamental importance to the people of New Mexico. See Baca v. N.M. Dep't of Pub. Safety, 2002-NMSC-017, ¶ 4, 132 N.M. 282, 47 P.3d 441 (per curiam). In Baca, we issued a writ of mandamus on the alternative ground that the 2001 Act unconstitutionally allowed municipalities and counties, as opposed to the state, to regulate an incident of the right to bear arms. Id. ¶ 6. We did not reach the argument that Article II, Section 6 prohibits the carrying of concealed weapons. Id. ¶ 12. The issue is again before us, and as in Baca, we confer standing in recognition of the importance of the constitutional question involved. Constitutionality of the Concealed Handgun Carry Act

{4} The Concealed Handgun Carry Act authorizes the New Mexico Department of Public Safety to issue concealed handgun licenses to qualified members of the public who satisfy the requisite education and training. See §§ 29-19-4, -6. The Act defines "concealed handgun" as "a loaded handgun that is not visible to the ordinary observations of a reasonable person." Section 29-19-2(D).

{5} Petitioners argue that licensing persons to carry concealed, loaded handguns violates Article II, Section 6 of the New Mexico Constitution. That provision states:

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

N.M. Const. art. II, § 6. Petitioners focus on the phrase "nothing herein shall be held to permit the carrying of concealed weapons." They interpret that language as a prohibition against carrying concealed weapons and a restriction on the Legislature from enacting laws allowing the carrying of concealed handguns.

{6} In reviewing a constitutional challenge to a statute, we do not pass judgment on the wisdom of the legislation. Instead, we measure the Act against the provisions of our state's Constitution to determine its validity. A statute is presumed constitutional. City of Albuquerque v. Jones, 87 N.M. 486, 488, 535 P.2d 1337, 1339 (1975). For the reasons that follow, we conclude that Petitioners' challenge has not overcome that presumption of constitutionality.

{7} As an initial point of inquiry, we note that the right to bear arms is located in Article II,

the Bill of Rights section of the Constitution. Unlike its federal counterpart, the New Mexico Constitution grants the Legislature general police powers as long as their exercise does not violate the Constitution. See N.M. Const. art. IV, § 2 ("In addition to the powers herein enumerated, the legislature shall have all powers necessary to the legislature of a free state . . ."). Thus, Article II, Section 6 is designed to establish the right of individual citizens "to keep and bear arms," and to limit interference with that right. This right, however, is subject to a condition: the Constitution does not protect the carrying of concealed weapons. Just as there is no constitutional right to carry concealed weapons, though, there is also no constitutional prohibition against the Legislature providing so by statute.

{8} Looking at the language of the Constitution, we find the word "herein" critical to our understanding of the phrase, "but nothing herein shall be held to permit the carrying of concealed weapons." Petitioners argue that the language, "but nothing herein" precludes any legislation that would permit the carrying of concealed weapons. As Respondent Denko counters, "nothing herein" means "nothing in this constitution," or nothing in Article II, Section 6. The constitutional provision, on its face, means nothing in Article II, Section 6 shall be held to permit the carrying of concealed weapons. The Constitution neither forbids nor grants the right to bear arms in a concealed manner. Article II, Section 6 is a statement of neutrality, leaving it to the Legislature to decide whether, and how, to permit and regulate the carrying of concealed weapons. To read Article II, Section 6 as a prohibition against carrying concealed weapons, as Petitioners urge, would require us to excise the word "herein" from the face of the Constitution. It is not in our power to do so.

{9} We observe that in other provisions, the Constitution uses definite language to preclude legislative action on a subject. For example, Article IX, Section 5 uses "The legislature shall never enact any law," to expressly limit the Legislature's power. See also N.M. Const. art. IX, § 6 ("No law shall ever be passed by the legislature."). Even Article II, Section 6 itself unequivocally and expressly limits legislative activity relevant to the right to keep and bear arms: "No law shall abridge the right of the citizen to keep and bear arms No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms." (Emphasis added.) The remainder of Article II, Section 6 does not speak in the same language; it does not clearly proscribe anything in regard to the carrying of concealed weapons.

{10} Our interpretation of Article II, Section 6 finds firm roots in New Mexico history. New Mexico has long regulated concealed weapons, allowing it in some circumstances and prohibiting it in others. At the time the Constitution was adopted, the territorial law of New Mexico had for many years prohibited the carrying of concealed weapons in most circumstances while allowing concealed weapons to be carried outside of settlements, at one's residence, in the lawful defense of person or property, for protection while traveling, and by law enforcement officers. See 1869 N.M. Laws, ch. 32, § 1, § 11; 1887 N.M. Laws, ch. 30, § 1, § 9, § 10; 1891 N.M. Laws, ch 63, §§ 1-6; 1907 N.M. Laws, ch. 36, § 18. After approval of the Constitution, the statutes of 1915 substituted "state" for "territory," but otherwise remained essentially unchanged.

See NMSA 1915, §§ 1701, 1708, 1709. That same construct of generally prohibiting concealed weapons while creating limited exceptions for their use, has continued in effect to the present. See NMSA 1978, § 30-7-2 (2001) (declaring it a crime to carry a concealed loaded firearm except in a persons's residence or real property, in a car, or by a peace officer). Under Section 30-7-2, the Concealed Handgun Carry Act does no more than add another exception to the general prohibition against carrying concealed weapons: carrying with a concealed handgun license. See § 30-7-2(A)(5).

{11} Under Petitioners' reading of Article II, Section 6 none of these laws would be constitutional. If Article II, Section 6 were an absolute prohibition against carrying concealed weapons, the Legislature could not have permitted it in certain instances. Yet it has done so for over 100 years, even before Article II, Section 6 was originally enacted. Our courts have addressed these same laws over the years without anyone questioning their constitutionality. See *State v. Ramirez*, 79 N.M. 475, 478, 444 P.2d 986, 989 (1968) (noting that statute allows carrying of an unloaded concealed weapon); *Lopez v. Chewiwie*, 51 N.M. 421, 423, 186 P.2d 512, 513 (1947) (acknowledging that statutes permit carrying deadly weapons in residence or on estate and when traveling); *State v. Starr*, 24 N.M. 180, 195, 173 P. 674, 679-80 (1917) (noting the right of travelers to carry weapons); *State v. McDuffie*, 106 N.M. 120, 121, 739 P.2d 989, 991 (Ct. App. 1987) (noting provision that home and vehicle owners may properly conceal weapons). This history demonstrates the novelty of Petitioners' reading, one that would put this Court at odds with at least a tacit understanding on the part of the people and the Legislature as to the clear meaning of Article II, Section 6 of the Constitution.

{12} Finally, we note that other states with constitutional provisions similar to New Mexico's have statutes allowing permits for concealed handguns. For example, Montana has a constitutional provision nearly identical to New Mexico's, but also has a statute that provides for permits to carry concealed weapons. See Mont. Const. art. II, § 12 ("but nothing herein contained shall be held to permit the carrying of concealed weapons"); Mont. Code Ann. § 45-8-321 (2003). Colorado's constitutional provision is also similar to New Mexico's, yet Colorado allows a person to obtain a permit to carry a concealed weapon. See Colo. Const. art. II, § 13 ("but nothing herein contained shall be construed to justify the practice of carrying concealed weapons"); Colo. Rev. Stat. § 18-12-201 (2003). Conclusion

{13} Not being persuaded by Petitioners' argument, we hold that the Concealed Handgun Carry Act does not violate Article II, Section 6 of the New Mexico Constitution. Therefore, the petition for a writ of mandamus is denied.

{14} IT IS SO ORDERED.

RICHARD C. BOSSON, Justice

WE CONCUR:

PETRA JIMENEZ MAES, Chief Justice

PAMELA B. MINZNER, Justice

PATRICIO M. SERNA, Justice

EDWARD L. CHAVEZ, Justice
