



State of New Mexico
House of Representatives
Santa Fe

JAMES G. TOWNSEND
REPUBLICAN FLOOR LEADER
R - Chaves, Eddy & Otero
District 54

69 W. Compress Road
Artesia, NM 88210
Home Phone: (575) 748-3827
Cell Phone: (575) 703-0153
E-mail: james.townsend@nmlegis.gov

COMMITTEES:
Energy, Environment & Natural Resources
Judiciary
Printing & Supplies
Rules & Order of Business

March 11, 2019

The Honorable Maggie Toulouse Oliver
Office of the Secretary
New Mexico Secretary of State
325 Don Gaspar Ave. #300
Santa Fe, NM 87501

RECEIVED
19 MAR 11 PM 5:02
OFFICE OF
SECRETARY OF STATE

Dear Madam Secretary,

On March 7, 2019 our office sent you a letter to inform you of our intent to avail New Mexican voters of their constitutional right to a referendum as found in Article IV, Section 1 of the New Mexico Constitution, which states:

The people reserve the power to disapprove, suspend and annul any law enacted by the legislature, except general appropriation laws; laws providing for the preservation of the public peace, health or safety; for the payment of the public debt or interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of the public schools or state institutions, and local or special laws.

As you know, New Mexicans have expressed overwhelming disapproval of Senate Bill 8: RELATING TO CRIME; REQUIRING A BACKGROUND CHECK WHEN CONDUCTING SALES OF A FIREARM; PROVIDING PENALTIES [POPULARLY CALLED "MANDATING CITIZEN BACKGROUND CHECKS"].

Because Senate Bill 8 is properly subject to Article IV, Section 1 of the New Mexico Constitution it does not address a public safety emergency as established by its lack of an emergency clause. As stated by both the New Mexico Courts and the Attorney General's Office laws relating to the preservation of public peace, health, and safety are bound by Article IV, Section 23 of the New Mexico Constitution, which states:

Any act necessary for the preservation of the public peace, health and safety, shall take effect immediately upon its passage and approval, provided it be passed by two-thirds vote of each house and *such necessity be stated in a separate section*.

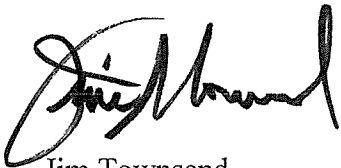
Because the effective date in Senate Bill 8 is July 1, 2019 and the bill did not include an emergency clause stated in a separate section, the law is not presumed to be for the preservation of the public peace, health or safety and is thus subject to the referendum process. The Supreme Court of New Mexico noted “the force of the rule is that the Legislature cannot give immediate effect to any measure which is subject to referendum, but may or may not (by an emergency clause) give immediate effect to nonreferable laws.” Todd v. Tierney, 27 P.2d 991, 1008 (N.M. 1933) Thus, an emergency clause is the appropriate mechanism to establish immediacy. The lack of immediacy demonstrates that the law, while it may be argued that it serves the public peace, health, and safety, is not *necessary* as required by Article IV, Section 23.

Most concerning, the vast majority of New Mexico law enforcement personnel have stated their grave concerns that this law will not improve public safety outcomes, is unenforceable and also infringes on the rights of legal firearm owners.

Lastly, Senate Bill 8 violates well-established, fundamental Second Amendment rights found in the U.S. Constitution. “For a gun registration law to survive intermediate scrutiny on a Second Amendment challenge, the government must show: (1) that the law promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and (2) that the means chosen are not substantially broader than necessary to achieve that interest.” Heller v. District of Columbia, 801 F.3 264, 295 (D.C. 2015). Specifically, the definition of sale within the law effectively applies to all transfers and is broader than necessary to achieve any state interest.

Therefore, because SB 8 violates U.S. Constitutional rights and furthermore, since the law will not promote the preservation of the public peace, health and safety pursuant to Article IV, Section 23 in standards established by New Mexico courts, it is subject to the referendum process pursuant to the New Mexico Constitution. We look forward to your prompt approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Townsend". The signature is stylized and cursive.

Jim Townsend
House Republican Leader