Bail Reform on the 2016 November Ballot

"[A] proposed constitutional amendment that makes historic and needed changes in the state’s bail bond system, which now allows dangerous defendants to bond out and terrorize the community while keeping poor, but nonviolent, defendants locked up at taxpayer expense while awaiting trial. . . .

This is a common sense fix that deals both with so-called 'boomerang thugs' and poor, nonviolent defendants who are costing the taxpayers big money."

There are two serious failings of New Mexico’s money-for-freedom constitutional bail provisions:

1. The Wrong Defendants are Released to Endanger the Community
   - Under the current New Mexico Constitution, copied from provisions of a pre-revolutionary war Pennsylvania constitution, our judges have no meaningful authority to deny release to a defendant known to be a danger to the community.
   - As a result, dangerous defendants are repeatedly arrested and repeatedly released to commit new crimes against the community if they find a way, lawful or unlawful, to come up with bail money, often targeting domestic violence and other especially vulnerable victims.
   - Most offenders who commit serious crimes have previously been released on money bonds.
   - Posting of money bond, whether in cash or through a commercial bondsman, can do nothing to protect the community against commission of new crimes.
   - The law does not allow bond money to be forfeited for commission of new crimes, no matter how serious.

2. The Wrong Defendants are Held in Jail Before Trial
   - New Mexico jails are housing defendants awaiting trial who neither pose a real danger to the community nor are substantial flight risks, but who are jailed simply because they cannot raise the money to pay their way out of jail, to the detriment of themselves, their families, and our taxpayers.
   - Studies show that pretrial release on court-imposed conditions or bonds that do not require advance payment of money can be at least as effective in minimizing flight risk or commission of crime as bonds that require advance payment of money.
   - Bond schedules that result in jailing otherwise releasable low-risk defendants just because they cannot afford to post a money bond have repeatedly been held by federal courts to be unlawful under the Due Process and Equal Protection Clauses of the U.S. Constitution.
The Solution

The bail reform constitutional amendment will correct the failings of the current money bond system for individuals charged with crimes and awaiting trial to determine whether they are guilty.

1. Judges Will Be Able to Hold the Most Dangerous Defendants in Jail Without Bail Pending Trial

- The amendment will give the following new authority to state district court judges in deciding the conditions of pretrial release for defendants: “Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.”

- Federal courts, the District of Columbia and a number of other states have similar pretrial detention authority for dangerous defendants who threaten public safety. New Jersey voters recently adopted a constitutional change giving their judges that authority.

- The New Mexico constitutional amendment will replace a pretrial detention provision that applies to few crimes and is virtually useless to prevent release of dangerous defendants.

2. People Awaiting Trial Who are Not Dangerous or a Flight Risk Will Not Be Held in Jail Just Because They Cannot Afford a Money Bond

- Key language in the amendment states: “A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond.”

- The provision will establish a clear, consistent constitutional principle that criminal defendants awaiting trial will be held in jail based on their danger to the community, not because they lack the money to buy their freedom with a bond.

- The provision is consistent with requirements of the U.S. Constitution and national justice standards.

- The amendment will save taxpayer money by preventing the use of jail space for persons accused of non-violent crimes who do not need to be detained pre-trial because they pose no threat to public safety nor are flight risks. On average, 39% of the people in county jails awaiting trial have been unable to post bail.
On The Ballot:

“CONSTITUTIONAL AMENDMENT 1

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO PROTECT COMMUNITY SAFETY BY GRANTING COURTS NEW AUTHORITY TO DENY RELEASE ON BAIL PENDING TRIAL FOR DANGEROUS DEFENDANTS IN FELONY CASES WHILE RETAINING THE RIGHT TO PRETRIAL RELEASE FOR NON-DANGEROUS DEFENDANTS WHO DO NOT POSE A FLIGHT RISK.”

FOR  ○  AGAINST

The Full Text of the Amendment:

“All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. An appeal from an order denying bail shall be given preference over all other matters.

A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond. A defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The court shall rule on the motion in an expedited manner.”