

Common-Sense Ideas for a Conservative Majority in the New Mexico House

By Paul J. Gessing
April 21, 2014

Introduction

New Mexico's House of Representatives has been controlled by one party, the Democrats, since 1953, early in the first term of the Eisenhower presidency. In other words, New Mexico's Legislature has been controlled by one party which has largely followed the big-government, top-down model of economic development throughout our state's history.

For a number of reasons, the partisan status of the Legislature may change with the election of 2014. Competition in politics is a good thing and regardless of the outcome of the coming election, the Rio Grande Foundation remains steadfastly non-partisan and willing to work with anyone who, even on a single issue, wishes to embrace the ideas of individual liberty, limited government, and free markets.

The following paper contains several free market ideas that we believe could be winning campaign issues in the 2014 elections and legislative priorities for the 2015 legislative session. We believe that the ideas outlined here will be popular with Republicans, Democrats, and independents alike both in the Legislature and in the electorate.

In other words, the following ideas are both good politics *and* good policy. Where possible, we have given relevant polling data.

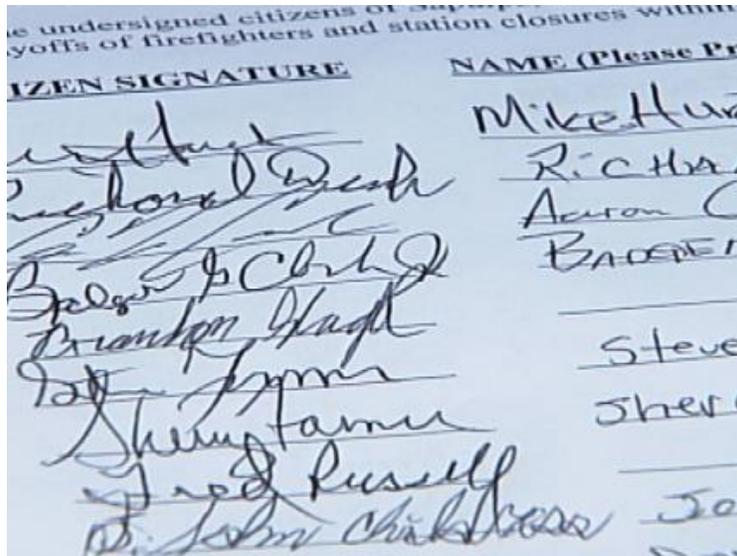
While there are dozens or even hundreds of good ideas available, priorities are important. Politicians must campaign on a few big ideas and the Legislature must prioritize its time while meeting in Santa Fe.

1) Open up the Legislature to ALL New Mexicans:

New Mexico's Constitution contains no requirements for individuals who are running for Legislature to collect a particular number of signatures in order to get on the ballot.

The advent of new ballot-access legislation prior to the 2012 filing period threw the ballot access process into chaos due to insufficient attention to detail among more than a dozen legislative candidates (including several incumbents).

Notably, these undue burdens, while signature requirements impact Democrats and Republicans alike, they disproportionately impact third-party candidates who face far-steeper signature requirements.



What can be done?

At the very least, the barrier for third party signature collection should be reduced to a level that is similar to those set for the two major parties. Ideally, the signature-gathering process should be eliminated in order to make running for New Mexico's unpaid, volunteer Legislature accessible to those who wish to serve.

2) Increase Legislative transparency while also respecting participants' time:

Anyone who has spent time in Santa Fe during the Legislative session has probably wondered why the Legislature functions (or doesn't function) as it does. The issue here is not the last week or two of a legislative session when bills pile up, compromises are struck, and the process moves at once slowly and suddenly.

In reality, the Legislature seems to have a basic disrespect for the precious time of those citizens – issue experts or otherwise – who wish to be involved in the political process. One example of this involved an expert on health care policy who a legislator had invited to fly to New Mexico to testify before a committee during the middle of a legislative session (2007 or 2008). The expert flew all the way out, but was never able to testify due a last-minute change in the schedule.

Legislative bodies are not known for their efficiency or for keeping schedules. However, anyone who has spent time in Santa Fe understands that time is often wasted in the early weeks of each session with mad scrambles over inadequately-vetted bills inevitably occurring in the waning days of each session. It is time for New Mexico's legislature and especially its committees to be run in a professional manner and on a basis that respects New Mexicans' time and encourages rather than discourages their participation.

Obviously, during the waning days and hours of a legislative session schedules tend to fly out the window, but this can and should be minimized by maximizing time early on in the session.



What can be done?

Aside from keeping and maintaining reasonable schedules, one way to increase transparency and engagement in the political process might be to allow for remote testimony from central locations (like community colleges) to participate in legislative hearings.

In a geographically large state with a dispersed population, the adoption of virtual testimony would allow for greater participation of all New Mexicans. A salutary side impact of virtual testimony is that its implementation would necessitate the creation of a more orderly committee schedule process with predictable start and ending times.

Other geographically large states including Alaska and Nevada already allow remote testimony. Policymakers in Washington and Colorado are considering remote testimony.

There are plenty of improvements that can be made to the legislative process in Santa Fe, but the simple idea must be that the legislative process respects the fact that people want to engage in the process, but have limited time to do so.

All committee votes should be posted on the Internet with committee hearings both web-cast and archived in their entirety.

3) Obtain voter approval for all tax hikes;

In the landmark case *McCulloch v. Maryland*, Chief Justice John Marshall wrote “the power to tax involves the power to destroy.”¹ Repeatedly, New Mexico governments have raised taxes with no direct input from voters. This needs to change.

It is true that a number of amendments to New Mexico’s Constitution were proposed during the 2014 legislative session. Most of those were justifiably rejected on the grounds that they were both bad policy and not meant to be addressed in a constitutional framework. This doesn’t mean

¹ Clarence Carson, “The Power to Tax is the Power to Destroy,” *The Freeman*, October 1, 1976, http://www.fee.org/the_freeman/detail/the-power-to-tax-is-the-power-to-destroy.

that conservatives should shy away from making politically-popular and sound policy changes to the New Mexico Constitution.



What can be done?

As a means of protecting taxpayers at the state and local levels, the Legislature should consider adopting an amendment requiring a referendum whether that be at the state level in the case of a state tax hike or a local referendum in the case of a local tax increase (city or county) before that tax hike can become law.

New Mexico is the only contiguous Western state that does not have the initiative and referendum processes². While such processes can be abused for the adoption of ill-conceived policy ideas from the left and right, simply allowing citizens the final say before government takes more of their hard-earned money is a simple, politically-defensible idea to convey with real-world benefits.

Colorado is just one nearby state with a Constitutional mandate that all tax hikes be voted on by the electorate. Washington and Missouri have similar limitations.³

4) Get more roads and schools without spending more:

New Mexicans are overpaying by up to 15 percent for the construction of roads and schools. Alternatively, we are receiving 15 percent fewer road and school projects than we should be for the money we're spending. Laws have been passed by New Mexico's Legislature for the sole benefit of a powerful special interest group that are unnecessarily forcing you to sit in traffic and causing your children to sit in decaying, inferior schools.

² Initiative and Referendum Institute, http://iandrinstute.org/statewide_i&r.htm.

³ Bert Waisanen, "State Tax and Expenditure Limits 2010," <http://www.ncsl.org/research/fiscal-policy/state-tax-and-expenditure-limits-2010.aspx>.

Why is that? In 2009 the New Mexico State Legislature passed SB 33, which mandates that prevailing wages be set by collective bargaining agreements.⁴ The law's supposed purpose is to ensure that workers who are hired for public works projects are paid a prevailing wage which is equal to collectively bargained union wages. This regulation holds despite the fact that only 8.7 percent of private-sector construction workers in New Mexico are union members.

By negating the merit system which was used by 92 percent of the construction industry, the law places wage setting power among the 8 percent who do use collective bargaining agreements. Economically speaking, this is a form of price fixing which pushes out competitors who are willing to work for lower wages. The federal Davis-Bacon law (1931) is estimated to raise costs to taxpayers by 15 percent on federally funded projects.

Additional legislation such as SB 33 only raises this cost, and arguably siphons money that could be used for other projects.⁵

Resources are scarce. Adding costs to construction projects means fewer roads and schools for New Mexicans. The Legislature should repeal SB 33 and any other New Mexico law that forces taxpayers to pay a higher-than-market price for public works projects.



What can be done?

Average New Mexicans compete with workers in their industries and around the globe on a daily basis. They are paid based on the demand for their skills, not their ability to convince legislators to give them special privileges. The Legislature should repeal any and all “prevailing wage” provisions in New Mexico law.

⁴ Paul Gessing, “Pay Market Wage, not Union-Imposed Prevailing Wage for Public Projects,” January 10, 2013, <http://www.errorsofenchantment.com/2013/01/10/day-7-pay-market-wage-not-union-imposed-prevailing-wage-for-public-projects/>.

⁵ Roxeanne Rivera-West, “Discriminatory Wage Laws Stifle Competition,” *Albuquerque Journal*, January 13, 2014, <http://www.abqjournal.com/335483/opinion/discriminatory-wage-laws-stifle-competition.html>.

5) Enact real school choice through a system of tax credits

New Mexico has a limited form of school choice, predominantly in the form of charter schools. While still a taxpayer-financed school subject to many state rules and regulations, charters do have somewhat greater flexibility in how they are designed and operated than do traditional public schools. Charters in New Mexico are tremendously popular with an estimated 95 schools currently serving students statewide and more than 21,000 students attending these schools.⁶

This is a good thing and to be applauded, but charters are not right for all students. Private and parochial schools can and should be part of the school choice equation.



What can be done?

Tax credits for school choice are an “outside-the-system” tool for school choice. The idea is to allow individuals and businesses to take a tax credit against taxes paid to Santa Fe and donate a portion of that money and give it to a 501c3 scholarship organization operating in their community.

Legislation to set up systems of tax credits to create school choice for children in low-income families and those with special needs was introduced by four Democrat legislators (Reps. Begaye and Maestas and Sens. Campos and Ortiz Y Pino) in the 2012 legislative session, moved through all necessary House Committees, but was never given a floor vote by then-Speaker Ben Lujan. The special needs bill was HB 166 in the 2012 legislative session⁷ while the “special needs” bill was SB 31.⁸

⁶ National Alliance for Public Charter Schools, “Measuring Up to the Model,” <http://www.publiccharters.org/get-the-facts/law-database/states/nm/>.

⁷ New Mexico Legislature, “Equal Opportunity Scholarship Act,” <http://www.nmlegis.gov/lcs/legislation.aspx?chamber=H&legtype=B&legno=%20166&year=12>.

⁸ New Mexico Legislature, “Special Needs Student Scholarship Act,” <http://www.nmlegis.gov/lcs/legislation.aspx?chamber=S&legtype=B&legno=%20%2031&year=12>.

Polling indicates that between 62 and 71 percent of New Mexico voters would support a system of education tax credits (depending on the population served).⁹ Better still, such a program would operate at a net savings to taxpayers.

6) Stop giving worker's compensation to those injured on job while drunk or on drugs:

It would seem obvious in these days of smoke-free workplace and ergonomically-correct tools that government policy would discourage workers that show up to the workplace while drunk or high. Unfortunately, in New Mexico workers who injure themselves in an accident caused while they are stoned or high are still able to receive worker's compensation benefits in New Mexico.



What can be done?

Legislation, HB 113 was introduced by Rep. Dennis Roch during the 2014 legislative session.¹⁰ The bill would have stripped drunk or stoned workers of worker's compensation benefits under such circumstances. A similar bill, HB 139, was introduced in 2013.¹¹

The average voter intuitively understands that showing up to the workplace while stoned or drunk is both wrong and dangerous. Current policy is indefensible and is a great opportunity for conservative candidates to separate themselves from those who support the *status quo* which is a danger to workers, business owners, and New Mexico's economy alike.

⁹ Paul DiPerna, "New Mexico K-12 and School Choice Survey," Friedman Foundation for Educational Choice, December 8, 2011, <http://www.edchoice.org/Newsroom/News/Poll-Finds-New-Mexico-Voters-Support-Private-School-Choice.aspx>.

¹⁰ New Mexico Legislature, "Worker's Comp for Intent or Drug Use," <http://www.nmlegis.gov/lcs/legislation.aspx?Chamber=H&LegType=B&LegNo=113&year=14>.

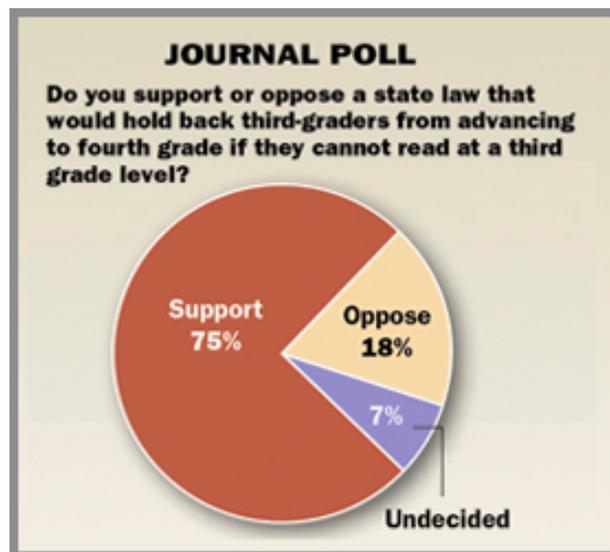
¹¹ New Mexico Legislature, "Reduce Worker's Comp Payment for Drug Use," <http://www.nmlegis.gov/lcs/legislation.aspx?Chamber=H&LegType=B&LegNo=139&year=13>.

7) End “social promotion” of third graders who can’t read:

“Social promotion” refers to the process of moving students forward along with their age cohort regardless of whether they have mastered the skill of reading by the third grade. While we at the Rio Grande Foundation look towards the day when age cohorts are no longer relevant in the area of education, there are good reasons to ensure that students have reading skills before sending them forward beyond third grade.

Giving a student a second chance to learn to read will encourage students and their parents to focus on these skills where other students are focused on learning to read. After this point, reading is used as a tool for learning in a variety of subject areas. Students who cannot read are simply not going to survive in a science class where they are expected to read course material but cannot do so.

A 2012 poll found that 75 percent of New Mexico voters supported the end of social promotion. Putting an end to social promotion for non-reading 3rd graders would be an obvious political and policy win.



8) Work to unlock the potential of New Mexico lands that are managed by Washington:

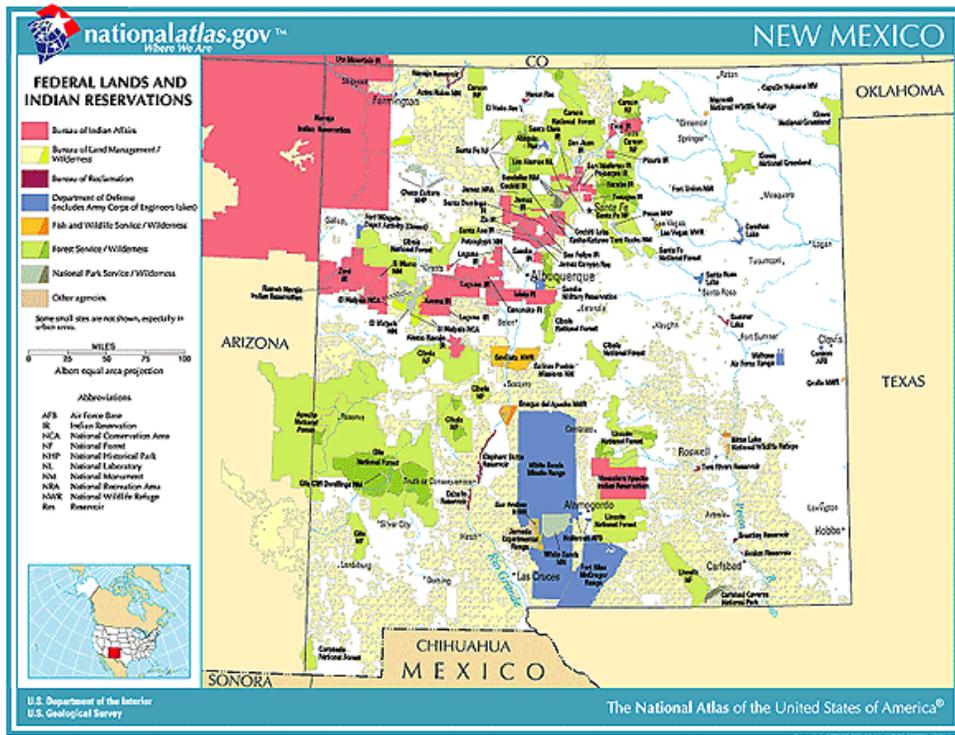
It is a basic principal of good government that the best form of government is that which is closest to the people. New Mexicans will be better at managing the resources located in their state than will bureaucrats based in Washington, DC. Throw in other political calculations and revenue distribution and there is no doubt that many of New Mexico’s federally-controlled lands would be better managed by the state as opposed to federal government.

Utah has already passed legislation *demanding* that Washington return lands within its borders. While New Mexico should not and will not demand the return of tribal lands, national parks, and military installations, there is no doubt that lands managed by the Bureau of Land Management (BLM) and National Forest Service should be considered for transfer. Broadly-speaking, this

idea has drawn support from several conservative legislators as well as New Mexico Land Commissioner Ray Powell, a Democrat.¹²

Research from the Rio Grande Foundation has found that if New Mexico was able to take back all of its BLM and Forest Service lands, it could generate an economic windfall for the State. This windfall would include:

- More than \$8 billion in added economic activity within the state;
- More than \$1 billion in additional tax revenue;
- Nearly 68,000 new jobs.



What can be done?

Political reality in New Mexico, regardless of who controls the New Mexico House of Representatives, is such that we're not going to immediately follow Utah in adopting a bill that *demand*s our BLM and National Forest Service lands back from Washington. Nonetheless, the concept should be studied closely as a means of generating bi-partisan support from policymakers and community leaders statewide.

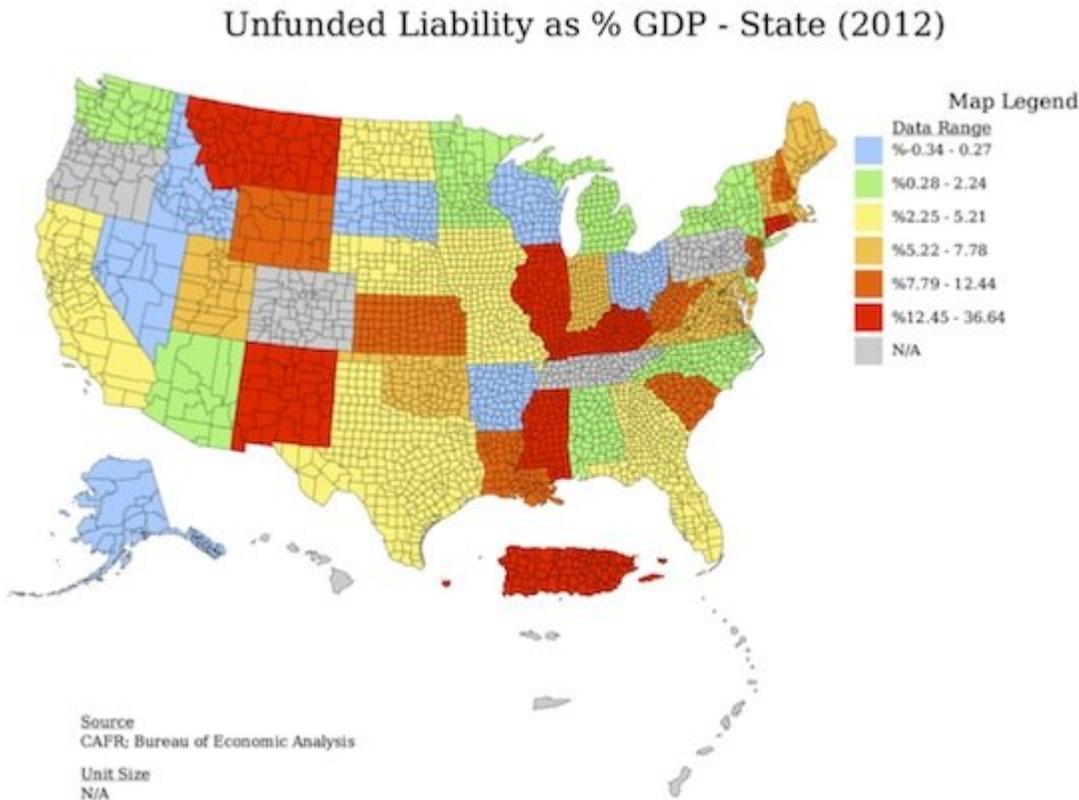
During the 2014 legislative session, Rep. Yvette Herrell introduced HB 102 which would have set up a task force for the purpose of studying the transfer of certain federal lands back to New

¹² Deborah Baker, "Proposal: NM Gets More Land, Funds Education," *Albuquerque Journal*, December 1, 2013, <http://www.abqjournal.com/312009/news/ex-state-land-commissioner-ray-powell-says-idea-is-an-alternative-to-using-land-grant-funds.html>.

Mexico.¹³ Adoption of such legislation would be an excellent first step in studying whether New Mexico would truly benefit and to what extent from re-asserting control over lands now managed by Washington.

9) Begin Necessary Pension Reforms:

New Mexico faces some daunting problems with regards to its pension system. According to *Business Insider*, New Mexico is one of the worst-funded states when the unfunded liabilities contained in its pension system are compared against the overall state economy.¹⁴ In other words, how do our pension liabilities stack up against our ability to pay for them?



Defined benefit pension plans are ultimately unsustainable. Politicians have strong incentives to over-promise and under-deliver when it comes to government employee pensions. After all, if you as an elected official can promise today's workers (and voters) more generous pensions in the future without having to provide the money at that moment, it is a win-win for your political career.

¹³ Transfer of Public Lands Task Force,

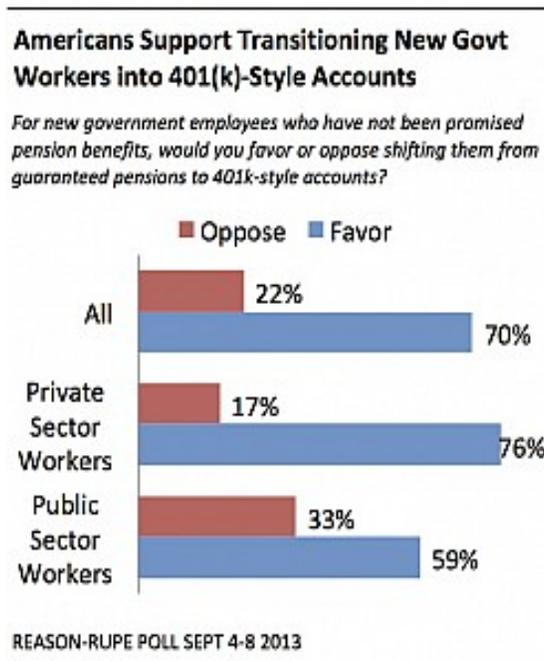
<http://www.nmlegis.gov/lcs/legislation.aspx?chamber=H&legtype=B&legno=%20102&year=14>.

¹⁴ John Mauldin, "MAPS: Here's Where State Pension Systems are in the Most Trouble," *Business Insider*, September 22, 2013, <http://www.businessinsider.com/rich-state-poor-state-2013-9>.

What can be done?

Start reforming the system by entering all new government employees into defined contribution retirement plans. A defined contribution system would allow those workers to save more or less based on their own needs at particular stages in their lives. Ultimately, while labor union leaders prefer to have their members' interests tied to government and the political system (and the unions), a shift to individually-controlled accounts undermines the one-size-fits-all mentality perpetuated by unions while also empowering workers.

One of the best ways to reform the pension system is to start transitioning new workers out of the old defined benefit system and into the new defined contribution model. At least nationally, current government workers are completely fine with shifting new government workers into a defined contribution system. According to a September 2013 national Reason-Rupe poll, a majority of private sector and government employees alike would rather see new government workers receive defined contribution retirement accounts rather than defined-benefit pensions.¹⁵



So, by shifting new government workers to 401(k)-Style accounts, New Mexico's Legislature can begin to really tackle pension reforms in a way that is popular, if not with union leadership, but at least with rank-and-file government employees.

Conclusion

New Mexico is in dire need of dramatic economic and education policy reforms so much so that a serious discussion of those woes is unnecessary. Having conservatives in control of the New Mexico House for the first time in generations could move the policy debate in the direction of

¹⁵ Scott Shackford, "Even Public Workers Know Ailing Cities Need to Changer Their Benefit Systems," *Hit & Run Blog*, September 12, 2013, <http://reason.com/blog/2013/09/12/even-public-workers-know-ailing-cities-n>.

free markets, limited government, and educational choice and accountability, but in order to maintain and expand upon conservative majorities, we recommend targeted efforts like those included in this document which represent both free market *and* popular policy.

One point left unmentioned is a “Right to Work” law. Make no mistake about it; New Mexico should adopt such a law. And, according to national polling, 74 percent of Americans support the principles of “Right to Work.”¹⁶ However, given the current political makeup of the Senate and the controversy that inevitably surrounds the mere consideration of such proposals; the battle over such a proposal would overwhelm any other agenda item.

It is our view that the battle over Right to Work should be fought only when advocates are relatively sure it will be achieved. That will have to wait until the New Mexico Senate has more conservative members and is led by conservatives.

¹⁶ Rasmussen Reports, “74 Percent Favor Right-to-Work Law Eliminating Mandatory Union Dues,” January 31, 2012, http://www.rasmussenreports.com/public_content/business/jobs_employment/january_2012/74_favor_right_to_work_law_eliminating_mandatory_union_dues.