

FOR IMMEDIATE RELEASE  
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## **The Marijuana and Hemp Ordinances to be Challenged in Court**

(Hailey, Idaho) – Hailey City Council discussion of the voter-adopted initiatives, the Hailey Industrial Hemp Act, the Hailey Lowest Police Priority Act and the Hailey Medical Marijuana Act, took a new turn following a discussion during the regular meeting of the Hailey City Council on January 28, 2008. The Hailey City Council has been discussing the voter-adopted initiatives for several meetings. Several legal issues with the initiatives have been identified by the Hailey City Attorney and the Idaho Attorney General's Office. To be compliant with state and federal law, City Attorney Ned Williamson, advised the city council that the initiatives could be amended, repealed or litigated.

After the conclusion of the recent meeting, Mayor Rick Davis announced that he intends to file a complaint with the Fifth Judicial District Court. The lawsuit would seek review by the court of the ordinances, and a judgment relative to the legality of the ordinances in whole and in part. Davis said that the resulting declaratory judgment complaint would be the document by which Hailey would guide its implementation or potential future amendment of the ordinances.

Davis announced that he will be joined as a plaintiff by Hailey City Council Member, Don Keirn, and Hailey Police Chief, Jeff Gunter. The mayor, city council members and the chief of police are required by the ordinances to administer and implement the initiatives.

The issues with the initiatives identified in the discussions are:

- The Idaho Constitution provides that cities can enact and enforce laws that are not in conflict with the general laws of the State of Idaho. The Hailey Medical Marijuana Act purports to legalize the use and possession of 35 grams of marijuana for medicinal purposes. This act conflicts with state and federal law and in such a circumstance, the courts have held that a local ordinance is invalid.
- All three laws require the City of Hailey and its officers to advocate for changes in marijuana laws, which potentially impacts an individual's first amendment rights of freedom of speech and political expression.
- Idaho prohibits adoption of legislation that is administrative in nature. The Hailey Lowest Police Priority Act potentially legislates the administration of the Hailey Police Department. For example, this act requires the creation of a Community Oversight Committee which is empowered to address grievances about police officers, to discipline

police officers, and to request police reports and other information that would be confidential under the public records law. In addition, this act impacts the ability of Hailey police officers to be deputized under federal law and reduces the ability of the Hailey Police Department to receive federal funds for drug enforcement purposes.

- Under the Hailey Medical Marijuana Act, the law constrains the city prosecutor's ability to prosecute marijuana offences.
- The requirement to advocate for changes in marijuana laws creates a potential conflict issue for any federal employee who is also an elected official. One city council member, Carol Brown, is a federal employee. Council Member Brown will have to recuse herself from any discussion of these laws in order to retain her federal position. However, these initiatives mandate that Ms Brown advocate changes in marijuana laws and appoint one member of the oversight committee. To comply with initiatives, Council Member Brown may have to resign from the Hailey City Council.
- Questions have been raised about the special status provided to the Liberty Lobby. The initiatives grant the Liberty Lobby automatic membership on the oversight committee. Providing an entitlement to a specific group may not be appropriate.

Mayor Davis, Council Member Keirn and Chief Gunter will be represented by an attorney of their choice.

On January 22, 2008, the Liberty Lobby filed four initiative petitions with the Hailey City Clerk's office. The submitted initiatives are identical to the initiatives voted upon by Hailey voters on November 6, 2007. These initiatives, if complete, are subject to a May 27, 2008 election.

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