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Report on Implementation of  
the Missoula Marijuana Initiative  
(Initiative 2)

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Report #2

Covering January 1<sup>st</sup> through June 30th, 2008

*Released December 1<sup>st</sup>, 2008*

Available at [www.co.missoula.mt.us/initiative2](http://www.co.missoula.mt.us/initiative2)

## Executive Summary:

In November 2006, Missoula County voters passed Initiative 2 by a vote of 55%. The initiative recommended that government officials treat adult marijuana offenses as the lowest priority, and established a Community Oversight Committee charged with publishing a report evaluating implementation of the initiative.

In March 2007, commissioners adopted an amendment proposed by the county attorney, making the initiative's lowest priority recommendation applicable only to misdemeanor offenses, which the county attorney pledged to stop prosecuting.

In this, our second report, we reviewed government data on marijuana incidents in Missoula County that occurred from January 1<sup>st</sup>, 2008 through June 30<sup>th</sup> 2008.

Law enforcement officers and deputies reported, on average, encountering an adult with marijuana every single day in this time period.

Law enforcement reports of incidents involving marijuana appear to have increased in frequency since the initiative's passage. While there has been a slight decrease in marijuana incidents reported by the Missoula County Sheriff's Department and the University of Montana, frequency of such incidents reported by the Missoula Police Department appears to have increased by over 60%.

The vast majority of marijuana incidents involve young adults with small amounts of marijuana.

The city's Municipal Court, which handles the vast majority of misdemeanor marijuana cases (possession and paraphernalia), processed nearly 200 such cases.

In short, the lowest priority recommendation issued to public officials by voters in 2006 is being generally ignored.

The exception to this trend is reflected in the current policy of the Missoula County Attorney's office, which has not prosecuted adults whose *only* crime was misdemeanor possession of marijuana. However, the county attorney has stated that he reserves the option to reverse that policy and prosecute those individuals at any time.

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## **Introduction:**

In November 2006, Missoula County voters voted on Initiative MCSO2006-02, commonly referred to as Initiative 2 or simply “the marijuana initiative”. The stated purpose of the initiative is to “alter law enforcement priorities and make adult marijuana offenses the lowest law enforcement priority in Missoula County”. Similar initiatives have passed in Seattle, WA, Fayetteville, AR, and Hawaii County, Hawaii. In March 2007, commissioners adopted an amendment proposed by the county attorney, making the initiative's lowest priority recommendation applicable only to misdemeanor offenses, which the county attorney pledged to stop prosecuting.

Almost 55% of county voters supported the initiative, with support strongest within the city of Missoula, where several precincts reported over 80% voter support.

The initiative creates a 9-member volunteer citizen board, in whose hands lies the responsibility of reporting back to the County Commissioners on implementation of the initiative. Specifically, the Committee is required to submit semi-annual reports to the Board of County Commissioners on implementation of the initiative, with these reports to include information on:

- the numbers of arrests and prosecutions,
- estimated time and money spent on said government actions,
- information on local cooperation with state and federal authorities involved with marijuana enforcement, and
- any instances of marijuana enforcement the Committee believes violated the spirit of the initiative.

Our first report established a historical, national, statewide, and local context on the topic of marijuana policy, and was delivered to the County Commissioners in November 2007. It is available online at: <http://www.co.missoula.mt.us/initiative2/reports/2007/>

We have since opted to coordinate the data-gathering associated with our reports to align with the calendar year, with fall reports covering the first six months of the current year, and spring reports reporting the second six months of the previous year. We hope that this schedule will be acceptable to all involved parties.

This is the Committee's second report, covering the period January 1<sup>st</sup>, 2008 through June 30<sup>th</sup>, 2008.

## Information Sources:

To report on the initiative's implementation, the committee must collect data from various government bodies. While Montana's Constitution and laws require public access to certain criminal justice data, our experience is that it's not always readily available or in a format conducive to analysis.

In preparing the Committee's first report, much of the data gathered by government officials for inclusion in the report had been manually extracted, parsed, polished, and prepared for us, at some taxpayer expense. Since one justification provided to voters in the initiative text was related to efficient use of government resources, the amount of administrative toil associated with report data collection was disappointing. We therefore concluded our report with several recommendations, first of which was that data collection be as automated as feasible for future reports.

To that end, we submitted a proposal in February 2008 for the automated query and reporting of marijuana crime data from the city-county criminal justice records management system. While county legal, administrative, and technical staff initially approved the plan with some amendments in May, the Missoula County Sheriff's Department (MCS) and the Missoula Police Department (MPD) objected, citing concerns regarding perceived redundancy and the scope of the committee's charter. The proposal was consequently vetoed in June.

Despite their objections to a fully automated data export system, MCS and MPD promptly sent staff-reviewed spreadsheets of marijuana incident data for the first half of 2008.

We later requested similar spreadsheets covering the 2007 calendar year for the purpose of comparison, but were advised by MCS to use the annualized estimates contained in our first report. We received no response from MPD. For year-by-year analysis, we used a spreadsheet provided by the Montana Board of Crime Control (MBCC).

We had hoped to correlate the local incident data with prosecutions and court cases. Unfortunately, as we understand it from District Court staff, there is no way to trace an incident through the court system without a perpetrator's name. Because charges had not necessarily been filed against individuals involved in the reported incidents, privacy law required that no names be included.

The incidents documented in the spreadsheets include an incident number, and may later result in a citation number, and a case number, but without any administrative "glue" holding them all together, we were unable to do any incident-to-resolution analysis.

To gather city-level marijuana prosecution data, we contacted the office of the Missoula City Attorney. Kelleen Roseboom referred us to the Municipal Court, where 100% of the drug possession and paraphernalia cases are marijuana-related. In other words, all non-marijuana drug cases are referred to the District Court. The Municipal Court's Pat Morgan provided printed reports and email summaries of the municipal prosecutions.

At the District Court level, the county provides public terminals for citizens to conduct queries concerning public criminal justice information, and so we were able to generate basic reports concerning drug offenses. Finally, information on adult misdemeanor crimes referred to the office of the county attorney was provided to us in an October 15<sup>th</sup> email from that office.

## Findings:

*All spreadsheets used in this report are available at:*

*<http://i2files.montanadrugpolicy.org/2008data/>*

Misdemeanor marijuana cases can pass through several government entities in Missoula. A simplified summary follows:

- The Missoula Police Department and Missoula County Sheriff's Department issue citations and refer the cases to the offices of the city and county attorney respectively.
- The city attorney refers felonies to District Court and prosecutes misdemeanors in Municipal Court.
- The county attorney refers misdemeanors to Justice Court and prosecutes felonies in District Court.

### ***Incident Reports:***

The Missoula Police Department (MPD) and Missoula County Sheriff's Office (MCS) provided data in the form of spreadsheets containing one row per object of evidence seized, with 178 unique incident numbers. The spreadsheets did not provide a count of individuals involved.

A single incident may involve multiple individuals and multiple items of evidence. For example, a single incident number might represent two individuals and three items of evidence, such as a bag of marijuana, a pipe, and rolling papers.

We estimate that 205 individuals crossed paths with city or county law enforcement officials in the first half of 2008. This estimate is based on an analysis of unique combinations of age, gender, and race recorded for each incident. In other words, if two thirty-year-old white males were involved in an incident, we could only record it as a single individual rather than two separate people. The actual number of individuals may therefore be higher than 205.

The MCS data provided do not include any multi-jurisdictional drug task force actions in which deputy sheriffs were involved, except in cases involving deputy sheriffs only. In other words, deputies may have participated in other drug task force cases involving marijuana, and we have no information on these actions.

A summary of these incidents is provided in the following table:

**Table #1: Marijuana Incidents Reported by Law Enforcement**

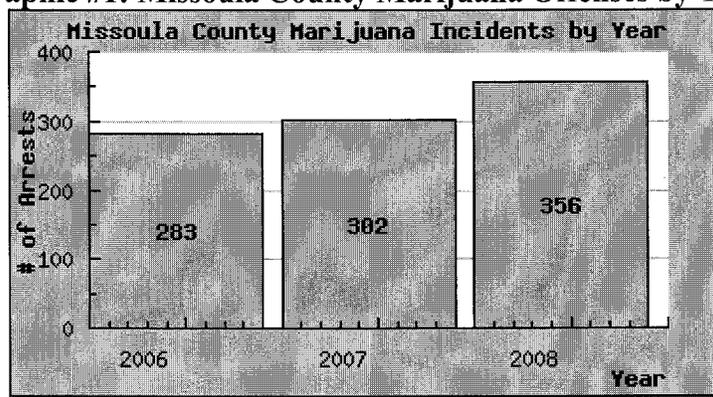
Entity/Dept	# Incidents (1 <sup>st</sup> half 2008)	2008 est.*	2007 est.**	% change
University	18	36	52	-31%
City Police (MPD)	142	284	174	+63%
County Sheriff (MCS)	36	72	82	-13%
Totals:	196	392	308	+27%

\* 2008 estimates are derived by simply doubling the numbers reported by law enforcement for the first half of the year.

\*\* 2007 estimates are taken from the annualized estimates provided in our 2007 report.

Missoula County reports crime statistics to the Montana Board of Crime Control (MBCC). MBCC data for Missoula do not include University data, and report 302 misdemeanor marijuana offenses in Missoula County in 2007, and 283 for 2006, the year the initiative passed. If we exclude our University data and project our 2008 MCS and MPD totals for the full year, a trend appears evident:

**Graphic #1: Missoula County Marijuana Offenses by Year**



Source: MBCC, MCS, MPD

While campus and MCS marijuana incidents declined slightly, the entirety of the overall increased marijuana incident rate is accounted for by the Missoula Police Department.

### ***City Attorney Prosecutions:***

Unlike the county, there is not a non-prosecution policy for adult misdemeanor marijuana offenses consistent with the initiative.

All marijuana cases referred to the office of the city attorney are reviewed and some action taken on them, including prosecution, deferred prosecution, or occasionally, dismissal upon the defendant pleading guilty to other charges which may have led to the arrest. This variance may account for the large increase in marijuana incident reports and only a modest increase in Municipal Court cases, reported below. However, we have no data from the city attorney's office on this point.

### ***Municipal Court Cases:***

This is the city court that handles the bulk of misdemeanor marijuana charges. In fact, all drug possession and paraphernalia charges handled in this court are for marijuana, according to City Attorney Legal Office Manager Kelleen Roseboom.

**Table #2: Marijuana Cases in Municipal Court**

	2007	Jan 1-Jun 30 2008	2008 estimated*	% Change (est.)
<b>Possession</b>	175	94	188	+7.4%
<b>Paraphernalia</b>	180	97	194	+7.7%

\* 2008 estimates are derived by simply doubling the numbers reported by the court for the first half of the year.

Prosecution for misdemeanor marijuana possession or marijuana paraphernalia in Circuit Court generally results in a criminal conviction and a fine of several hundred dollars.

### ***County Attorney Prosecutions:***

The policy of the Missoula County Attorney's office is to prosecute only those misdemeanor adult marijuana crimes that are incidental to a more serious crime such as robbery or assault. For cases in which adult misdemeanor marijuana was the *only* offense, criminal prosecution is not pursued. While we are informed that this policy could be rescinded at any time, unprosecuted cases that languish for more than one year are no longer prosecutable.

During the entire County fiscal year, July 1<sup>st</sup>, 2007 through June 30<sup>th</sup>, 2008, the county attorney's office received 43 cases of adults charged with misdemeanor marijuana crimes only.

None was prosecuted. The county attorney's office prepared deferred prosecution agreements for 16 of the 43 cases, and no action was taken on the remainder.

### ***District Court Cases:***

The county does prosecute adults charged with misdemeanor marijuana crimes if the marijuana crime is incidental to a more serious crime.

In the first half of 2008, there were charges filed in District Court against 9 individuals for misdemeanor possession of marijuana (45-9-102(2) [1<sup>st</sup>]) incidental to other crimes – usually, felony possession of another prohibited drug, in addition to one charge of obstructing a peace officer and one charge of theft.

Four were found guilty, one was dismissed, two cases two were referred to Justice Court, and two have not concluded at the time of this writing.

### ***Justice Court Cases:***

Justice Court is the County entity that handles most misdemeanors. The two District Court cases that were referred to Justice Court involved illicit prescription painkillers (a felony), charges which were dropped (possibly as part of a plea agreement), leaving misdemeanors only.

## **Limitations and Caveats:**

### ***Comparisons to previous data:***

Ideally, data from public officials would be received by the committee in a standardized format. While we are getting closer to that goal with this report, our 2007 data was imperfect, and so drawing comparative conclusions may not be sound.

Beginning with this report, we are more on track to deliver “apples to apples” comparisons of city and county offenses in the future.

In order to provide a more accurate comparison between 2007 numbers and 2008, we requested incident data updates from MCS and MPD for calendar year 2007, but both agencies declined to provide them. It is therefore possible that differences in 2007 data collection, or irregular incident occurrence rates, could make our estimates of marijuana incident trends flawed.

We requested and received crime data from the Montana Board of Crime Control for 2007, and used this for some comparisons.

### ***Not all marijuana incidents reported:***

Data received from MPD and MCS include all marijuana offenses in which staff from those two agencies constituted the entirety of law enforcement involvement. If other government agencies (such as DEA or Montana Highway Patrol) or multi-jurisdictional entities (such as regional task forces) were involved in the incident, we have no information about it.

Therefore, this report underestimates the number of marijuana incidents in Missoula County.

### ***Taxpayer cost centers not reported:***

The purpose of these reports is to assess the extent to which public officials are complying with the voters' recommendation that adult marijuana offenses be their lowest possible priority, and to answer the question: “**How much taxpayer money is spent prohibiting marijuana?**”

We posit marijuana enforcement expenditures in Missoula County across a wide range of government functions and agencies. We have some data from a subset thereof:

- Missoula City Police Department
- Missoula County Sheriff's Department
- University of Montana Public Safety Department
- Missoula City Municipal Court
- Missoula County Justice Court
- Missoula County District Court

However, we have not collected information from a longer list of local and state government bodies

incurring expenses associated with marijuana prohibition:

- State Highway Patrol
- Missoula Airport Police
- Multi-jurisdictional drug task forces
- Court-ordered drug education/treatment/counseling
- Court-ordered chemical dependency testing
- Court-ordered body fluid testing
- County Detention Center
- City jail, evidence locker costs
- Public Defenders
- Probation & Parole

There are also potential indirect costs such as:

- Defendants taking time off work to attend court and compulsory drug education
- College students losing financial aid, ending their education
- Drug convictions can trigger a loss of government housing
- Denial of employment, economic productivity loss
- Increased use of public assistance
- Separation of children from their parents

In this report, we've barely scratched the surface of the costs borne by Missoula taxpayers to continue marijuana prohibition.

Because of the array of agencies and data collection, collation, and analysis tasks required, we are moved to conclude that to provide a truly comprehensive accounting of these costs may be beyond the current capabilities of this volunteer committee.

If the public (or public officials) want such an accounting, funding for professional policy analysts will be required.

## Discussion:

### *How much are we spending on marijuana enforcement?*

Using the time estimates and wage data collected for our 2007 report, and acknowledging that we are analyzing only a portion of the resources expended on adult marijuana misdemeanors, we can summarize the basic law enforcement costs as follows:

**Table #3: Estimated Direct Marijuana Law Enforcement Costs, Jan 1 – Jun 30, 2008**

Entity/Dept	# Cases	Hours/case	Avg. Wage	Taxpayer cost
University	18	0.43	\$18.50	\$143.19
City Police	142	2	\$22.50	\$6,390.00
City Attorney	191	2	\$32.50	\$12,415.00
County Sheriff	36	2	\$21.21	\$1,527.12
County Attorney	8	1	\$28.00	\$224.00

For the county attorney's estimates, our estimate is based on the fact that that office prepared 16 deferred prosecution agreements in the 12-month period ending June 30<sup>th</sup>; we assume that half of those occurred during the time period reflected in this report, and that reviewing the details, communicating with the defendant's attorney, and preparing such an agreement takes roughly half the time a regular prosecution would take.

**It should be noted that these cost estimates are nowhere near comprehensive.** Besides the fact that the estimates of time required per case were informal guesses by department heads, costs not reflected at all include administrative, judicial, training, detention/incarceration, evidence storage, public defenders, records storage, probation and supervision, treatment or any other costs incidental to marijuana law enforcement.

A 2005 report by Harvard economist Dr. Jeffrey Miron estimated that the state of Montana spends around \$9 million annually on marijuana prohibition. If that estimate is reasonable, and expenditures are roughly distributed by population density, then Missoula County total expenditures on marijuana prohibition are probably close to **one million dollars annually**. (Source: <http://www.prohibitioncosts.org/>)

### *How much marijuana is being seized?*

In an informal review of the marijuana incident reports provided by MCS and MPD, we calculated the median quantity of marijuana seized to be approximately 2 grams for both agencies. MPD reported at least 27 incidents in which the amount of marijuana seized was one gram or less.

For perspective, the ten-cent Eisenhower Dime, our smallest coin, weighs 2.2 grams. A small kitchen spice jar of dried basil contains 10 grams of the herb.



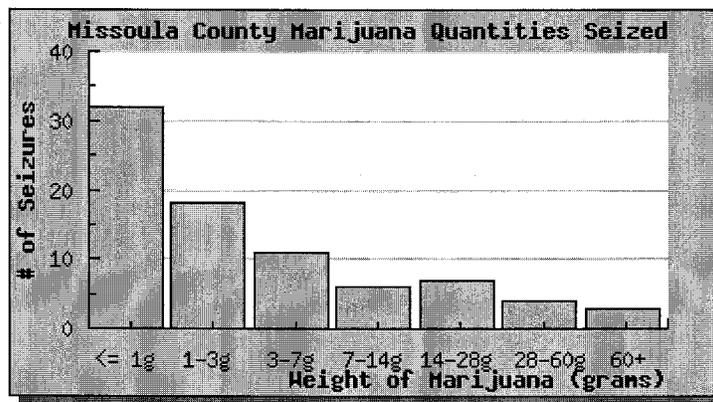
**Median weight of marijuana seizures in Missoula County: 2 grams, slightly less than the weight of a Dime.**

We examined 214 MPD and 89 MCS property seizure line items, which include items such as rolling papers, magazines, video games, scales, and cigar boxes, searching for seizures which documented the weight of marijuana seized. We calculated the median quantity seized by reviewing those 81 incidents in which the weight of seized marijuana was specifically noted, excluding those which listed only the weight of marijuana plus the container in which it was found.

For example, if a line item only mentioned “2.3 GRAMS OF MARIJUANA INCLUDING PACKAGING”, we excluded it, since the weight of the packaging is irrelevant to the amount of marijuana seized. That packaging might have been a wooden or metal box, for example.

Additionally, we ignored the phrase “less than”, so that “less than one gram” was treated as exactly one gram. This means the actual median weight may be even lower than our estimate.

**Graphic #2: Weight of Marijuana Seized, Jan 1 – Jun 30, 2008:**



Source: MCS, MPD

In summary, the vast majority of marijuana seizures in Missoula County are of small personal amounts.

***Who is being affected by marijuana enforcement?***

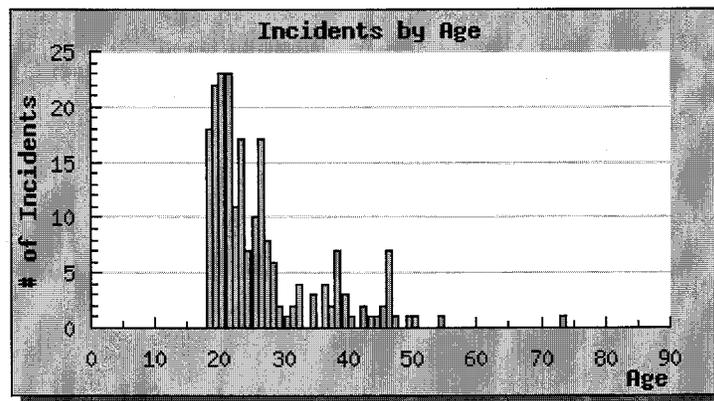
Mirroring trends nationwide, marijuana enforcement affects mainly the young and people of color.

*Age:*

Eighty percent of individuals involved in marijuana incidents in the first half of 2008 were under age 30. Nearly half were age 18-22. Because the language and intent of the initiative specifically excludes children, no data were requested or received concerning people under the age of 18.

Besides being the most common targets of marijuana prohibition enforcement, young people may suffer more severe consequences of arrest (criminal record, fines, compulsory treatment and urine testing, loss of financial aid) due to the likelihood that they will not have the financial resources to employ a vigorous defense.

**Graphic #3: Marijuana Incidents by Age, Jan 1 – Jun 30, 2008:**



Source: MCS, MPD

*Race:*

The data provided by MCS and MPD indicate that non-white people are more likely be involved in marijuana law enforcement incidents than their population would suggest. Comparing incident data to US Census data from 2006 (<http://quickfacts.census.gov/qfd/states/30/30063.html>), non-whites are over-represented in marijuana incidents, as can be seen in the following table:

**Table #4 Marijuana Incidents by Race, Jan 1st through June 30th, 2008**

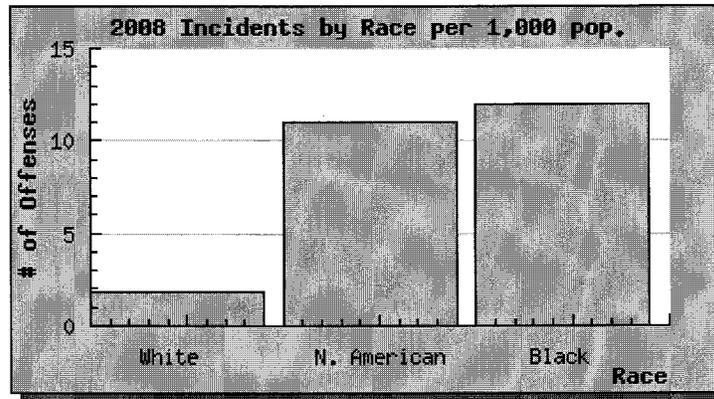
Race	# of Incidents	Percentage of Incidents	Percentage of County Population (2006)
White	174	81.0%	94.0%
Native American/Indian	29	13.4%	2.6%
Black	5	2.0%	0.4%

Source: MCS, MPD

When depicted as ratios of incidents per population, it becomes apparent that non-whites are much

more likely to be involved in a adult misdemeanor marijuana incident.

**Graphic #4: Marijuana Incidents by Race per 1,000 population, Jan 1 – Jun 30, 2008:**



Source: US Census, MCS, MPD

According to the data we collected, non-whites are roughly five times more likely than whites to be involved in a misdemeanor marijuana incident in Missoula County. According to the federal government, in small metropolitan counties, Native Americans age 12 and over are only slightly more likely (11.6%) to have used marijuana in the last month than black (6.7%) and white (6.4%) people. (Source: <http://www.drugabusestatistics.samhsa.gov/2k7/popDensity/popDensity.htm>)

## Conclusions:

The Community Oversight Committee's primary role in implementation of Initiative #2 is to assess compliance with the lowest priority policy recommended by voters. The Committee has earnestly striven to do so. With a few exceptions, our information-gathering efforts have proven challenging, and our sense is that the custodians of the public information we have requested only reluctantly provide it. Nevertheless, from the information we have gathered, we can say this:

**The voters' recommendation is apparently being ignored by most of the officials in a position to heed it.**

The only evident exception is the County Attorney's current policy of non-prosecution of cases involving an adult charged with misdemeanor marijuana possession only. However, we have been advised that this policy could be rescinded at any time.

On average, an adult with marijuana had an encounter with law enforcement officials in Missoula County every single day from January 1<sup>st</sup> through June 30<sup>th</sup>, 2008. The vast majority of these incidents involved young adults possessing small quantities of marijuana. While law enforcement officials may not, as a general rule, specifically seek to make arrests or issue citations for personal marijuana use, they are nevertheless doing so every day.

Since the amended initiative asks government officials to make adult misdemeanor marijuana law enforcement their lowest possible priority, one might conclude that *any* citations of adults for such small quantities of marijuana would constitute a violation of the spirit of the initiative.

If it is true, as the data suggest, that marijuana incidents involving the Missoula Police Department have risen more than 60% in the last year, that may be disappointing particularly to city residents, where the initiative passed overwhelmingly in most precincts.

The initiative defines a more expansive role of the Community Oversight Committee in ascertaining local cooperation with federal agencies on marijuana prohibition activities, and assessing the gamut of direct and indirect costs associated with such activities. We were unable to complete those comprehensive data collection and analysis tasks prior to the publication of this report. We will continue to work to improve our capabilities and, by extension, these semiannual reports.