



**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

STATE OF NEW MEXICO,  
ex rel. RAUL TORREZ,  
New Mexico Attorney General,

*Petitioners,*

No. S-1-SC-39742

vs.

BOARD OF COUNTY  
COMMISSIONERS FOR LEA  
COUNTY, BOARD OF COUNTY  
COMMISSIONERS FOR  
ROOSEVELT COUNTY,  
CITY OF CLOVIS, and CITY  
OF HOBBS,

*Respondents.*

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**EASTERN NEW MEXICO RISING'S MEMORANDUM BRIEF  
AS AMICUS CURIAE**

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## **IDENTITY AND INTEREST OF AMICUS CURIAE<sup>1</sup>**

Amicus Curiae Eastern New Mexico Rising (“ENMR”) is a non-partisan, progressive advocacy group that empowers individuals from Eastern New Mexico and connects communities by promoting bodily autonomy, equality, diversity, human rights, and civil liberties through dialogue, education, and advocacy. Started in July 2022 after the Supreme Court overruled *Roe v. Wade*, ENMR engages with local City and County Commissions, the New Mexico State Legislature, and national organizations and movements that align with its values and goals. ENMR also supports local non-profit organizations such as children’s homes, local schools, domestic violence shelters, and food banks.

ENMR is committed to fighting for abortion access and advancing reproductive justice, a movement that ensures that every person, and especially Black women and people of color, can access reproductive healthcare and the resources they need to be healthy citizens. Its members have obtained abortion care, experienced miscarriages, have birthed and raised children, and have first-hand knowledge about the importance of abortion access to reproductive healthcare and

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<sup>1</sup> Pursuant to Rule 12-320(D)(1) NMRA, counsel of record received timely notice of the intent to file this brief. Pursuant to Rule 12-320(C) NMRA, no counsel for a party authored this brief in whole or in part. No person or entity made a monetary contribution for the preparation or submission of this brief.

the challenges that rural New Mexicans face in accessing reproductive healthcare including pregnancy care and abortion care.

ENMR engaged in advocacy against the Challenged Ordinances in Clovis and Roosevelt County, canvassing in person and online. Its members testified at City and County Commission Meetings; gave interviews in local publications explaining the harm that the Challenged Ordinances would bring upon New Mexicans; and widely published the text of the Roosevelt County Ordinance so that residents could learn what it contained. When the Clovis and Roosevelt County Ordinances were enacted by the City and County Commissions through irregular proceedings without adequate democratic safeguards, ENMR petitioned for municipal special elections to enable each municipality's residents to vote, but their efforts were thwarted.

ENMR's familiarity with the Challenged Ordinances and the communities they will affect makes the organization well suited to discuss the harms they will cause.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Abortion is an important part of reproductive healthcare and is essential to the autonomy, dignity, and equality of women and all people who can become pregnant. Preserving access to abortion is a New Mexico value, as reflected in the State’s constitution and laws.

The product of out-of-state special interest groups, the Clovis, Hobbs, Roosevelt County and Lea County Ordinances (“Challenged Ordinances”) disregard these truths by restricting access to abortion. The Challenged Ordinances in Clovis, Hobbs, and Roosevelt County create licensing schemes designed to stop abortion providers from opening clinics in those municipalities.<sup>2</sup> The licensing schemes require clinics to certify that they will not use the mail or common carriers for the mailing, delivery, or receipt of “[a]ny article or thing designed, adapted or intended for producing abortion.”<sup>3</sup> And, while the Lea County Ordinance does not create a licensing scheme, it bans the same conduct.<sup>4</sup>

The Challenged Ordinances also serve to ban the provision of medication abortion via telemedicine when the medications are sent by mail. They do this by prohibiting “any person” from using the mail or an express carrier for the delivery

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<sup>2</sup> Clovis, N.M., Ordinance No. 2184-2022, § 2; Hobbs, N.M., Ordinance No. 1147, §§ 5.52.01–70; Roosevelt Cty., N.M., Ordinance 2023-01, §§ 5–9.

<sup>3</sup> *See, e.g.*, Clovis, N.M., Ordinance No. 2184-2022, § 2.

<sup>4</sup> Lea Cty., N.M., Ordinance No. 99, § 6.



or receipt of “[a]ny article or thing designed, adapted or intended for producing abortion.”<sup>5</sup> This has made New Mexicans afraid that receiving medication needed for abortion by mail would break the law, even when prescribed by a licensed clinician in accordance with State law.

The Roosevelt County Ordinance goes further, creating a private civil enforcement mechanism that allows any person other than a government entity to bring a civil action against anyone (other than an abortion patient) who violates or intends to violate the Roosevelt County Ordinance, and seek damages of at least \$100,000.<sup>6</sup> The Roosevelt County Ordinance also demeans and misgenders transgender people, defining “woman” as “any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.”<sup>7</sup>

Enacted through proceedings rife with irregularities, the Challenged Ordinances do not reflect New Mexico values. Instead, they reflect the values of out-of-state special interest groups who seek to impose their extreme and intolerant beliefs on the people of New Mexico. And they harm New Mexico’s most

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<sup>5</sup> See Clovis, N.M., Ordinance No. 2184-2022, § 2; Hobbs, N.M., Ordinance No. 1147, § 5.52.070; Roosevelt Cty., N.M., Ordinance 2023-01, § 2; Lea Cty., N.M., Ordinance No. 99, § 6.

<sup>6</sup> Roosevelt Cty., N.M., Ordinance 2023-01, § 3.

<sup>7</sup> *Id.* § 1 (E).

marginalized residents who already struggle to access abortion and reproductive healthcare.

Amicus Curiae urges this Court to declare the Challenged Ordinances void and prohibit their enforcement.

## ARGUMENT

### I. ABORTION ACCESS IS ESSENTIAL TO HEALTH AND AUTONOMY.

Abortion, whether provided in a clinic or by telemedicine, is a common and safe part of reproductive healthcare. Approximately one in every four women in the United States will have an abortion by age forty-five,<sup>8</sup> and abortion is significantly safer than carrying a pregnancy to term.<sup>9</sup> The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion.<sup>10</sup> And every pregnancy-related complication is more common among patients giving birth than among those having abortions.<sup>11</sup>

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<sup>8</sup> Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortions: United States, 2008-2014*, 107 Am. J. Pub. Health 1904, 1908, <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304042>.

<sup>9</sup> See Nat'l Acads. of Scis., Eng'g, & Med. *The Safety and Quality of Abortion Care in the United States* 74–76 (The Nat'l Acads. Press ed. 2018), <http://nap.edu/24950>; Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 216–17 (2012), <http://unmfamilypplanning.pbworks.com/w/file/fetch/119312553/Raymond%20et%20al-Comparative%20Safety.pdf>.

<sup>10</sup> See Raymond & Grimes, *supra* note 9, at 216–17.

<sup>11</sup> *Id.*

The importance of abortion access goes beyond healthcare. Abortion access is essential to the autonomy and dignity of women and people who can become pregnant.<sup>12</sup> It enables those who can become pregnant to make the personal, spiritual, educational, and professional choices that are best for them and their families. For instance, a member of ENMR who had an abortion in 2019 credits her ability to access abortion as both protecting her mental health and enabling her to work towards her life goals, hopes, and aspirations.

## **II. THE CHALLENGED ORDINANCES UNDERMINE EQUALITY IN NEW MEXICO.**

### **1. The Challenged Ordinances Restrict Access to Abortion in Places Where Reproductive Healthcare is Already Difficult to Access.**

The Challenged Ordinances restrict abortion in Clovis, Hobbs, Lea County, and Roosevelt County, places where reproductive healthcare, including abortion care, is already difficult to access. There are no abortion clinics within nearly 200 miles of these municipalities.<sup>13</sup> When a member of ENMR needed an in-clinic

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<sup>12</sup> Although most people with the capacity to become pregnant are women, some transgender men and nonbinary people also have the capacity to become pregnant. See, e.g., Heidi Moseson et al., *Development of an Affirming and Customizable Electronic Survey of Sexual and Reproductive Health Experiences for Transgender and Gender Nonbinary People*, 15(5) PLOS ONE: e0232154, at 2–3 (2020), <https://doi.org/10.1371/journal.pone.0232154>; Juno Obedin-Maliver & Harvey J. Makadon, *Transgender Men and Pregnancy*, 9 OBSTETRIC MED. 4, 4–6 (2016). The language used in the scientific literature and caselaw does not always reflect this reality.

<sup>13</sup> See, e.g., <http://www.ineedana.com> (last checked April 17, 2023); [www.abortionfinder.org](http://www.abortionfinder.org) (last checked April 29, 2023).

abortion in 2019, she had to drive over 200 miles from Roosevelt County to Albuquerque.

Having to travel long distances for abortion care exacerbates the obstacles that many people already face when trying to access care.<sup>14</sup> These obstacles include the cost of care and of travel, a shortage of abortion providers, difficulty finding safe and reliable transportation, challenges obtaining reliable childcare, and difficulty taking time off from work or school.<sup>15</sup> They are cumulative and disproportionately burden low-income people, people of color, Indigenous people, and young people without parental support.<sup>16</sup> Additionally, for individuals who are undocumented or whose families, friends or partners are undocumented, the risks of encountering

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<sup>14</sup> Jenna Jerman, et al., *Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States*, 49 *PERSP. ON SEXUAL & REPROD. HEALTH* 49(2):95-102 (2017), <https://doi.org/10.1363/psrh.12024>.

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* at 95, 98 & tbl.2 (showing that barriers to abortion care are cumulative and have a disproportionate impact on low-income people); Kate Bahn et al., Ctr. For Am. Progress, *Linking Reproductive Health Care Access to Labor Market Opportunities For Women* 6-7, 10 (2017), [https://www.americanprogress.org/wp-content/uploads/sites/2/2017/11/110817\\_ReproRightsEconOpportunity-report1.pdf](https://www.americanprogress.org/wp-content/uploads/sites/2/2017/11/110817_ReproRightsEconOpportunity-report1.pdf) (highlighting the disproportionate impact of barriers to healthcare caused by structural inequality).

immigration checkpoints compounds the challenges of traveling long distances for care.<sup>17</sup>

The Challenged Ordinances restrict access to abortion in the region further by creating a regulatory environment designed to prevent new providers from opening clinics in Clovis, Hobbs, Roosevelt County and Lea County.<sup>18</sup> And the scheme appears to be working. Even though new clinics have opened in New Mexico since nearby states like Texas and Oklahoma banned abortion, the Ordinances have made it inhospitable for providers to come to Eastern New Mexico.<sup>19</sup>

In addition, the Challenged Ordinances' restrictions on access to telemedicine care are particularly harmful for people who live far from abortion clinics, as in Eastern New Mexico, and for patients in communities that experience the most obstacles to care. *See supra* 6-8. This is because telemedicine allows abortion patients to consult virtually with healthcare providers, who can then send their medications by mail. And because telemedicine abortion care does not require a

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<sup>17</sup> See Daniel Grossman et al., *Change in Abortion Services After Implementation of a Restrictive Law in Texas*, 90 *CONTRACEPTION* 496, 496–501 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4179978/> (discussing obstacles faced by undocumented people in Texas due to border patrol stations).

<sup>18</sup> See Brad Brooks, *New Frontline of U.S. Abortion Battles Emerges in New Mexico*, Reuters (Oct 28, 2022), <https://www.reuters.com/legal/new-frontline-us-abortion-battles-emerges-new-mexico-2022-10-26/>; Susan Montoya Bryan, *New Mexico Supreme Court Blocks Local Abortion Ordinances*, AP News (March 31, 2023), <https://apnews.com/article/abortion-rights-new-mexico-ee02c3cb2560fd0a566c9f70eae6ec60>.

<sup>19</sup> See Susan Montoya Bryan, *supra* note 18; Brad Brooks, *supra* note 18.

patient to go to a clinic and allows patients to pass their pregnancies from the comfort of their own homes, it has reduced some barriers to abortion care, such as the need to travel long distances.<sup>20</sup> Amicus Curiae has seen firsthand that the restrictions on telemedicine abortion are making people afraid that receiving abortion medications through the mail will violate the law.

The Challenged Ordinances restrict abortion access in a part of New Mexico that already lacks adequate infrastructure to support healthy pregnancies. For instance, when a member of ENMR was pregnant in 2022, a lack of prenatal care providers in Clovis forced her to seek care in Lubbock, Texas, over an hour and a half away by car. And the care she ultimately received in Clovis was inadequate because her provider lacked the capacity for weekly visits after 36 weeks, in accordance with the standard of care,<sup>21</sup> causing her to fear for her health and the health of her baby. Pregnant people in Eastern New Mexico thus face higher stakes for their health.

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<sup>20</sup> Erica Chong et al., *Expansion of a Direct-to-Patient Telemedicine Abortion Service in the United States and Experience During the COVID-19 Pandemic*, 104 *Contraception* 43, 44 (2021), <https://www.contraceptionjournal.org/action/showPdf?pii=S0010-7824%2821%2900091-3>.

<sup>21</sup> Am. Acad. of Pediatrics & Am. Coll. of Obstetricians and Gynecologists, *Guidelines for Perinatal Care* 150 (8th ed. 2017), <https://www.acog.org/clinical-information/physician-faqs/-/media/3a22e153b67446a6b31fb051e469187c.ashx>.

## 2. The Challenged Ordinances Disproportionately Harm Marginalized Communities.

The Challenged Ordinances, like all abortion restrictions, disproportionately harm low-income people, people of color, Indigenous people, and young people without parental support. *See supra* 7-8. Three quarters of all abortion patients are considered “low-income.”<sup>22</sup> And people who have limited financial resources and/or are already marginalized are most impacted by barriers to care.<sup>23</sup> The challenges of overcoming these barriers and restrictions force some pregnant people to delay their care or to forego obtaining abortion care altogether.<sup>24</sup>

Additionally, pregnancy and childbirth are more dangerous for people from marginalized communities. Maternal mortality rates are higher for Black and Indigenous women.<sup>25</sup> And in New Mexico, Indigenous women have worse health

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<sup>22</sup> Jenna Jerman, et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* 7 (May 2016), [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf) (reporting that 49% of abortion patients in 2014 had incomes below the federal poverty line, and another 26% had incomes between 100% and 199% of the federal poverty line).

<sup>23</sup> *See, e.g.*, Jenna Jerman, et al., *supra* note 14 at 95, 98 tbl.2; Kate Bahn et al., *supra* note 16 at 10.

<sup>24</sup> Jenna Jerman, et al., *supra* note 14 at 100-01.

<sup>25</sup> N.M. Birth Equity Collaborative & N.M. Dep’t of Health, *New Mexico Birth Equity Collaborative Legislative Brief 2* (Feb 2020), <https://www.nmlegis.gov/handouts/LHHS%20103122%20Item%201%20Birth%20Equity.pdf>; Latoya Hill et al., *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF (Nov. 01, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities->

outcomes from pregnancy and are less likely to access prenatal care than other women in the state.<sup>26</sup> When abortion restrictions prevent individuals from marginalized communities from accessing the abortion care that they seek, the risks to their health are even more significant. *See supra* 7-10.

### **3. The Restrictions Limit the Ability of People Who Can Become Pregnant to Attain Educational and Professional Goals.**

The Challenged Ordinances also limit people who can become pregnant in their ability to create and participate in their educational and professional lives on their own terms.<sup>27</sup> As this Court has recognized, “[s]ince time immemorial, women’s biology and ability to bear children have been used as a basis for discrimination against them.” *N.M. Right to Choose/NARAL v. Johnson*, 1995-NMSC-005, ¶ 41,

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[in-maternal-and-infant-health-current-status-and-efforts-to-address-them/#:~:text=Black%20and%20American%20Indian%20and,13.7%20per%20100%2C000](#)

<sup>26</sup> *See* Vanessa G. Sanchez, *Maternal Health Crisis in New Mexico: Services Shrink, Risks Grow*, Searchlight N.M. (April 13, 2023), <https://searchlightnm.org/maternal-health-crisis-in-new-mexico-services-shrink-risks-grow>; N.M. PRAMS & N.M. Dep’t of Health, *New Mexico PRAMS: Pregnancy Risk Assessment Monitoring System 2016–2018* 30, <https://www.nmhealth.org/data/view/maternal/2723> (reporting that just 69% of American Indian women access prenatal first-trimester care).

<sup>27</sup> *See, e.g.*, Kate Bahn et al., *supra* note 16 at 11, 13–18 (highlighting the impact of access to reproductive healthcare on economic opportunity); Amalia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 J. of Population Econs., 1071, 1097–98 (2011) (finding that delaying motherhood leads to increased earnings and that women experience reduced earnings after motherhood); *see also* Brief of Amici Curiae Economists in Support of Respondents, *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022) (No. 19-1392) (collecting studies on impact of abortion access on advancement in social and economic life).



126 N.M. 788 (1998) (citing *Doe v. Maher*, 515 A.2d 134, 159 (Conn. Super. Ct. 1986)).<sup>28</sup> And social science research has established the connection between access to abortion and access to economic security and educational and professional opportunities.<sup>29</sup> For instance, access to abortion increases the likelihood that women who experience unintended pregnancies will attend college, finish college, and enter a professional occupation, with the greatest impacts among Black women.<sup>30</sup> Moreover, studies show that that women face economic and professional penalties for becoming parents.<sup>31</sup> Accordingly, by restricting abortion access, the Challenged Ordinances threaten the ability of people with the capacity for pregnancy to participate fully and equally in professional and educational spaces and to make the choices that are best for their lives and families.

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<sup>28</sup> See also *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2338 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting) (“Pregnancies continue to have enormous physical, social, and economic consequences.”).

<sup>29</sup> See, e.g., Kate Bahn et al., *supra* note 16, at 13–18; Amalia R. Miller, *supra* note 27, at 1097–98; see also Brief of Amici Curiae Economists in Support of Respondents, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) (No. 19-1392).

<sup>30</sup> Kelly Jones, *At a Crossroads: The Impact of Abortion Access on Future Economic Outcomes* (American Univ. Working Paper, 2021), <https://doi.org/10.17606/0Q51-0R11>.

<sup>31</sup> See e.g., Danielle H. Sandler & Nichole Szembrot, *New Mothers Experience Temporary Drop in Earnings*, U.S. CENSUS BUR. (June 16, 2020), <https://www.census.gov/library/stories/2020/06/cost-of-motherhood-on-womensemployment-and-earnings.html> (finding that women’s earnings fall in the first quarter after giving birth compared to their pre-pregnancy and early-pregnancy earnings); Amalia R. Miller, *supra* note 27 at 1097–98.

### **III. THE CHALLENGED ORDINANCES DISREGARD THE VALUES EMBRACED BY NEW MEXICANS AND ENSHRINED IN STATE LAW**

The Challenged Ordinances are antithetical to New Mexico's clear proclamations that abortion care is essential healthcare, that abortion access is necessary for gender equality, and that the right to abortion is protected by State law. The source of this blatant disregard for New Mexico's values is a group of anti-abortion extremists from outside New Mexico who wish to impose their beliefs on Eastern New Mexico residents through the Challenged Ordinances.

#### **1. New Mexico Law Protecting Abortion Access Exemplifies the State's Values.**

New Mexico has expressed the high value it places on abortion access through its Constitution and statutes. For example, New Mexico's Equal Rights Amendment provides strong constitutional protection for abortion. *See N.M. Right to Choose/NARAL*, 1995-NMSC-005, ¶¶ 27-54 (striking down, under the Equal Rights Amendment, restrictions on public funding for abortion as gender-based classification with no compelling justification). And although this Court has not yet had occasion to address the issue, the New Mexico Constitution's expansive privacy protections, as well as its due process clause and inherent rights clause, provide

additional sources of protection for abortion rights. *See* N.M. Const. art II, §§ 4, 10, 18.

Likewise, in response to overwhelming support for abortion by New Mexicans, the New Mexico Legislature has decisively acted to protect abortion care in New Mexico. For instance, in 2021, it repealed the State’s pre-*Roe* abortion ban after it became apparent that the U.S. Supreme Court might overturn *Roe v. Wade*, 410 U.S. 113 (1973). *See* S.B. 10, 55th Leg., 1st Reg. Sess. (N.M. 2021). In signing the repeal, Governor Lujan Grisham left no questions as to the political will of the State: “Anyone who seeks to violate bodily integrity, or to criminalize womanhood, is in the business of dehumanization. New Mexico is not in that business—not anymore.”<sup>32</sup>

The Legislature reaffirmed these protections by repudiating the Challenged Ordinances in the first session following their enactment. House Bill 7, the Reproductive and Gender-Affirming Health Care Freedom Act, and Senate Bill 13, the Reproductive and Gender-Affirming Health Protection Act, were signed into law on March 16, 2023, and April 5, 2023, respectively.<sup>33</sup>

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<sup>32</sup> Press Release, Office of the Governor Michelle Lujan Grisham, Gov. Lujan Grisham Signs Senate Bill 10, a Victory for Reproductive Rights (Feb. 26, 2021), <https://www.governor.state.nm.us/2021/02/26/gov-lujan-grisham-signs-senate-bill-10-a-victory-for-reproductive-rights/>.

<sup>33</sup> *See* N.M. Legislature, H.B. 7, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&Leg>

Both statutes prohibit the type of arbitrary restrictions on abortion access that the Challenged Ordinances impose. House Bill 7 prohibits any “public body,” including any local government, advisory board, commission, or agency from “deny[ing], restrict[ing] or interfer[ing] with a person’s ability to access or provide reproductive health care or gender-affirming health care within the medical standard of care.” H.B. 7, 2023 Reg. Sess. (N.M. 2023), §§ 2(B), 3(B). Senate Bill 13, meanwhile, defines reproductive healthcare, including abortion care, as “protected health care activity” and shields anyone who provides, receives, or assists someone in seeking such care from investigation in furtherance of out-of-state prosecutions stemming from those activities. S.B. 13, 2023 Reg. Sess. (N.M. 2023), §§ 2(B),(D); 3(A); 4(A). It also offers protection from “abusive litigation” meant to chill engaging in “protected health care activity.” *Id.* § 5.

In her signing statement for H.B. 7, Governor Lujan Grisham affirmed that “New Mexicans *in every corner of our state* deserve protections for their bodily autonomy and right to health care.”<sup>34</sup> And Representative Charlotte Little, a co-sponsor of the legislation, stated that “House Bill 7 will ensure that *all New Mexicans*

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No=7&year=23; N.M. Legislature, S.B. 13, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=13&year=23>.

<sup>34</sup> Press Release, Office of the Governor Michelle Lujan Grisham, *Governor signs House Bill 7, Reproductive and Gender-Affirming Health Care Act* (Mar. 16, 2023), <https://www.governor.state.nm.us/2023/03/16/governor-signs-house-bill-7-reproductive-and-gender-affirming-health-care-act/> (emphasis added).

can get the care they need to live healthy, happy lives.”<sup>35</sup> Likewise, speaking about S.B. 13, Senator Linda Lopez, another co-sponsor, lauded that “[w]hile other states continue turning back the clock on reproductive rights and gender affirming care, New Mexico continues to lead with compassion.”<sup>36</sup>

## **2. The Challenged Ordinances Represent the Will of Out-of-State Special Interest Groups, Not Local Communities.**

The Challenged Ordinances’ contravention of State law is no accident: They are the result of targeted lobbying from out-of-state special interest groups seeking to impose their beliefs on the people of New Mexico.<sup>37</sup> ENMR members saw this firsthand at a Clovis City Commission meeting, where they learned that the Mayor of Clovis and a number of Clovis City Commissioners had taken private meetings with anti-abortion activists from Texas. These Texas activists brought so many Texans to the October 2022 meeting that there was not enough space to accommodate many Clovis residents who wanted to participate. In fact, after the meeting, ENMR had to petition the mayor to ensure that Clovis residents could

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<sup>35</sup> *Id.* (emphasis added).

<sup>36</sup> Press Release, Office of the Governor Michelle Lujan Grisham, *Governor Signs Into Law Protections for Reproductive, Gender-affirming Health Care Providers and Patients* (April 5, 2023), <https://www.governor.state.nm.us/2023/04/05/governor-signs-into-law-protections-for-reproductive-gender-affirming-health-care-providers-and-patients/>.

<sup>37</sup> See Brad Brooks, *supra* note 18.

attend subsequent City Commission meetings and that all City Commission meetings remained a safe environment for all in attendance.

### **3. Procedural Irregularities in the Proceedings to Adopt the Challenged Ordinances Hampered the Democratic Process.**

New Mexicans opposed to the Challenged Ordinances, including ENMR, struggled to make sure that their voices were heard when the Ordinances were being considered by elected officials. For instance, the Clovis Ordinance, which had been rejected in consecutive City Commission meetings, ultimately passed in a meeting where only one person was permitted to testify, essentially silencing opposition. Moreover, those promoting the Clovis Ordinance harassed and threatened the City Commissioners who they perceived as holdouts.

In addition, ENMR's attempts to subject the Clovis and Roosevelt County Ordinances to a direct vote by municipal residents were thwarted by City and County officials. Pursuant to NMSA 1978, Section 3-1-5 (1978, amended 2018), ENMR distributed a petition to put the ordinances up for special election. ENMR gathered almost 500 signatures for the Clovis petition, yet the City Clerk deemed only 238 valid, about thirty signatures short of the number required to prompt a citywide vote. Pursuant to State law, Clovis published the names of the people whose signatures were purged in *The Eastern New Mexico News*, after which those signatories had ten days to have their signature reinstated. *See* NMSA 1978, § 3-1-5(L). But on information and belief, the City Clerk declined to reinstate any signatures, even

though several residents presented evidence to the Clerk to show that their signatures had been wrongfully purged. Instead, the City Clerk sent denial letters citing, as reason for the continued denial, Section 30-1-5 (1963), a statute that simply states: “Crimes are classified as felonies, misdemeanors and petty misdemeanors.” This statutory provision plainly has no bearing on the validity of petition signatures. ENMR contacted the City Clerk to seek redress within the ten-day statutory period, *see* § 3-1-5(L), but never received a response.

A similar attempt to put the Roosevelt County Ordinance to a county-wide vote was likewise thwarted by local officials.

### **CONCLUSION**

The Challenged Ordinances are antithetical to New Mexico values, and their very existence chills the provision of abortion care and creates fear for those who seek it. The residents of Clovis, Hobbs, Lea County, and Roosevelt County, as well as neighboring areas, will be harmed by the abortion restrictions and the ban on telemedicine abortion by mail if the Challenged Ordinances are permitted to stand.

Amicus Curiae Eastern New Mexico Rising respectfully requests that this Court grant the emergency petition for writ of mandamus.

Respectfully submitted,

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## **STATEMENT OF COMPLIANCE**

The body of this Memorandum Brief as Amici Curae uses a proportionally-spaced typeface (Times New Roman), contains 4,670 words, and thus complies with the limitations of Rule 12- 320(E) NMRA and Rule 12-504(G)(3) NMRA.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was electronically filed on May 1, 2023, which caused counsel of record to be served by electronic means.

/s/ Nicholas J. Rimmer  
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