



New Mexico

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Via electronic mail to:

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Re: Resolution No. 7-14-22/ 111-09, A Resolution Declaring Otero County as a Sanctuary for Life

Dear Otero County Commissioners,

This letter is to inform you that Resolution No. 7-14-22/ 111-09, A Resolution Declaring Otero County as a Sanctuary for Life (hereinafter “the resolution”) has no force of law, and any attempt to enforce it would be a violation of the New Mexico Constitution and state law.

Although the Otero County Attorney stated that the resolution merely expresses an “opinion” by the County Commission against abortion, you, the commissioners of Otero County, particularly Commissioners Couy Griffin and Gerald Matherly, have made remarks suggesting that you will attempt to enforce the resolution. Not only does the resolution itself say it will and shall be enforced, but Commissioner Griffin declared at the commission meeting on July 14, 2022, that the Commission will not allow abortion clinics into Otero County.

The resolution contains restrictions on abortion care, like that it be provided only by physicians and only in a hospital setting. The resolution also requires the Otero County Sheriff’s Department to conduct a full criminal investigation when a person seeking an abortion identifies themselves as a victim of rape and/or incest. It further declares that “the Board of County Commissioners of Otero County, New Mexico, hereby resolves to enforce this resolution by all means within its power and authority, in accordance with its responsibility as the people’s elected local representatives.”

Any attempt to enforce the provisions of the resolution will expose Otero County to significant legal liability under the New Mexico Constitution and state law, including, but not limited to, Article II, Section 18 of the New Mexico Constitution, the New Mexico Human Rights Act (NMHRA), and the New Mexico Civil Rights Act (NMCRA) The NMHRA enables a harmed party to collect damages, attorney’s fees, and may require regulatory action and compliance enforcement by the New Mexico Human Rights Commission. *See* NMSA 1978 § 28-

1-1. The NMCRA entitles a successful plaintiff to recover attorney's fees, damages and equitable or injunctive relief for violations of state constitutional rights. *See* NMSA 1978 § 48-4A-3. These remedies are in addition to any other available remedies, including attorney's fees. *See* NMSA 1978 § 48-4A-3-5.

Furthermore, Otero County is preempted from imposing restrictions on health care services, including reproductive health care, under state law. The regulation of health care lies solely within the purview of the highest offices of the state. The legislature and executive office have enacted and implemented an extensive framework of statutes, rules, and regulations governing the field of healthcare – and explicitly reproductive healthcare, including abortion. In fact, the legislature explicitly expressed its intention to protect access to abortion in New Mexico when it repealed an antiquated abortion ban just last year.

To reiterate, the resolution has no force of law. Any attempt to try to enforce the resolution would be in violation of the New Mexico Constitution and state law, and the ACLU of New Mexico would have no choice but to take legal action. In such a case, the County could be responsible for damages, attorney's fees, and any other remedy ordered by the court.

Sincerely,

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