



New Mexico

August 2, 2022

Via electronic mail to:

Nick Paul

Stephen Burnett

Karl Melton

Josh Rardin

Sharon McDonald

Dusty Wright

npaul@ci.alamogordo.nm.us

sburnett@ci.alamogordo.nm.us

kmelton@ci.alamogordo.nm.us

jrardin@ci.alamogordo.nm.us

smcdonald@ci.alamogordo.nm.us

dwright@ci.alamogordo.nm.us

Re: Resolution No. 2022-38, A Resolution Declaring the City of Alamogordo a Sanctuary for the Unborn

Dear Alamogordo mayor and city commissioners,

This letter is to inform you, members of the City commission and your constituents, that Resolutions No. 2022-37 and 2022-38, A Resolution Declaring the city of Alamogordo a Sanctuary for the unborn (hereinafter “the resolution”) have no force of law.

Any attempt to enforce a resolution or ordinance by imposing restrictions on reproductive health care in Alamogordo will expose Alamogordo 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, the city of Alamogordo 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.

To reiterate, the passing of either resolution will have no force of law. The ACLU of New Mexico cautions you that any attempt to restrict access to reproductive health care, whether by ordinance or otherwise, 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 City would be responsible for damages, attorney's fees, and any other remedy ordered by the court.

Sincerely,

Ellie Rushforth
Reproductive Rights Counsel
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
erushforth@aclu-nm.org

Nadia Cabrera-Mazzeo
Staff Attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
ncabrera@aclu-nm.org

CC:
Petria Bengoechea
City Attorney
cityattorney@ci.alamogordo.nm.us