



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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

Petitioner,

v.

No. S-1-Sc-39742

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

Respondents.

**BOARD OF COUNTY COMMISSIONERS FOR LEA COUNTY
RESPONSE TO PETITIONER'S EMERGENCY
PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR STAY**

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ORAL ARGUMENT REQUESTED

Respondent Board of County Commissioners for Lea County (hereinafter “Lea County”) files its Response to Petitioner’s Emergency Petition for Writ of Mandamus and Request for Stay.

I. Introduction

In passing County of Lea Ordinance No. 99, Lea County found that federal law imposes criminal liability on persons who violate 18 U.S.C. Sections 1461 and 1462. The State Constitution of New Mexico does not and cannot secure a right, privilege, or immunity to act in violation of federal statutes or to engage in criminal conduct as defined by federal law. Each member of a Board of County Commissioners takes an oath to support and defend the Constitution of the United States, which declares it and laws made in furtherance of the Constitution to be the supreme law of the land.

Lea County’s ordinance does not address or regulate abortion. The ordinance addresses only the mailing, use of express or common carriers, or receiving of any item proscribed by 18 U.S.C Sections 1461 and 1462.

The ordinance imposes a \$300 fine for each violation of the ordinance. It does not create a civil cause of action, and it does not regulate any medical aspect of abortion procedures. The ordinance merely reflects what is required by federal law.

II. Discussion

NMSA 1978 Section 4-37-1 states in part, "...Included in this grant of powers to the counties are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. The board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties."

Lea County Ordinance No. 99, Section 6 *Prohibited Acts* makes it unlawful for any person to violate 18 U.S.C § 1461 by using the mail for the mailing, carriage in the mails, or delivery of: A. Any article or thing designed, adapted, or intended for producing abortion; or B. Any article, instrument, substance, drug, medicine, or thing that is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

In Section 6.2 the ordinance prohibits any person from violating 18 U.S.C § 1462 by: A. Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion; or B. Knowingly taking or receiving from such express company or other common carrier or interactive computer service any matter or thing described in section 6.2A.

In Section 6.3 the ordinance prohibits any person from engaging in conduct that aids or abets the violations of 18 U.S.C. §§ 1461 and 1462 as described in Sections 6.1 and 6.2 of the ordinance.

State law does not address these federal statutes. Regardless, there is no basis for State Law to disregard Federal Law. Lea County's ordinance merely requires its residents to comply with Federal Law regarding those items cited in 18 U.S.C. §§ 1461 and 1462.

Lea County adopts those arguments concerning preemption of federal law by state law and whether the State has the authority to ignore federal law made by Respondent Roosevelt County in its Response to Petitioner's Emergency Petition for Writ of Mandamus and Request for Stay. Lea County further adopts Respondent Roosevelt County's argument regarding the ability of political subdivisions to regulate civil relationships among private third parties.

In 2019 Lea County adopted *A Resolution in Support of the Unborn* in which it declared that every human life is unique, human life begins at the moment of conception continuing until the moment of natural death, and the protection of human life is important to the people of Lea County. Lea County further declared that "innocent human life, including fetal life, must always be protected and that Society must protect those who cannot protect themselves."

There is no express right to abortion in the State of New Mexico's Constitution or statutory law. None of the constitutional clauses cited by Petitioner expressly provides a right to abortion. As stated by Respondent Roosevelt County, constitutional rights "have a better chance of enduring if they are found in actual text." This matter would be better decided by a law from the elected legislature or a Constitutional Amendment adopted by the people.

III. CONCLUSION

For the above reasons, Lea County respectfully asks the Court to deny Petitioner's Emergency Petition. Lea County does not oppose the Stay requested by Petitioner while the matter is pending.

Respectfully submitted,

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STATEMENT OF COMPLIANCE

As required by Rule 12-504(G), undersigned counsel hereby certifies that this brief was prepared in 14-point Time New Roman typeface using Microsoft Word for Microsoft 365 version 2205, and that the body of the brief contains 788 words.

CERTIFICATE OF SERVICE

I certify that on February 7, 2023, I filed the above pleading electronically through the Court's Odyssey File and Serve System. I further certify that a copy of the above document was sent by electronic mail to the following:

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