

NEW MEXICO

State ex rel. Torrezy. Bd. of Cty. Comm'rs for Lea Cty., No. S-1-SC-39742, 2025 N.M. LEXIS 1 (Jan. 9, 2025)

Writ of Mandamus prohibiting the enforcement of local anti-abortion ordinances is granted. The local ordinances (Clovis, Hobbs, Roosevelt County, Lea County) sought to prohibit the mailing or receipt of abortion-related materials. Additionally, three ordinances sought to create exclusive licensing requirements for abortion clinics and providers mandating compliance with the Comstock Act. The Court held the ordinances are preempted by state laws. (N.M. Stat. Ann. § 24-34-1 to 5, N.M. Stat. Ann. § 61-6-1, N.M. Stat. Ann. § 41-5-1, N.M. Stat. Ann. § 24A-1-1 and N.M. Stat. Ann. § 61-1-1. The Court declined to address state constitutional issues.

N.M. Stat. Ann. § 24-34-2. Definitions.

As used in the Reproductive and Gender-Affirming Health Care Freedom Act [Chapter 24, Article 34 NMSA 1978]:

- A. “gender-affirming health care” means psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies provided to support a person’s gender identity;
- B. “public body” means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education; and
- C. “reproductive health care” means psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies that relate to the human reproductive system, including services related to:
 - (1) preventing a pregnancy;
 - (2) abortion;
 - (3) managing a pregnancy loss;
 - (4) prenatal, birth, perinatal and postpartum health;
 - (5) managing perimenopause and menopause;
 - (6) managing fertility;
 - (7) treating cancers of the reproductive system; or
 - (8) preventing or treating sexually transmitted infections.

N.M Stat. Ann. § 24-34-3. Public body prohibited action.

- A. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not discriminate against a person based on that person’s use of or refusal to use reproductive health care or gender-affirming health care services.
- B. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not deny, restrict or interfere with a person’s ability to access or provide reproductive health care or gender-affirming health care within the medical standard of care.
- C. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not deprive, through prosecution, punishment or other means, a person’s ability to act or refrain from acting during the person’s pregnancy based on the potential, actual or perceived effect on the pregnancy.
- D. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not impose or continue in effect any law, ordinance, policy or regulation that

violates or conflicts with the provisions of the Reproductive and Gender-Affirming Health Care Freedom Act [Chapter 24, Article 34 NMSA 1978].

E. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a health care provider or entity to provide care:

(1) that the health care provider or entity does not otherwise provide or have a duty to provide under state or federal law;

(2) when the provision of service is against the medical judgment of the treating health care provider while acting within the standard of care; or

(3) when an individual does not provide payment or a source of payment for the service when it is required in the ordinary course of business, unless the health care provider has a duty to provide services under state or federal law, regardless of the ability to pay.

F. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a managed care organization or health insurance company to cover claims that are not otherwise required to be covered by the terms and conditions of an insurance contract, managed care contract or state or federal law.

N.M. Stat. Ann. § 24-34-4. Enforcement; penalties.

A. The attorney general or a district attorney may institute a civil action in district court if the attorney general or district attorney has reasonable cause to believe that a violation has occurred or to prevent a violation of the Reproductive and Gender-Affirming Health Care Freedom Act [Chapter 24, Article 34 NMSA 1978] from occurring.

B. In any action brought under Subsection A of this section, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief. The court may assess a civil penalty for a violation of the Reproductive and Gender-Affirming Health Care Freedom Act in the amount of five thousand dollars (\$5,000) or actual damages resulting from each violation, whichever is greater.

C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual

N.M. Stat. Ann. § 24-34-5. Private right of action.

A. A person claiming to be aggrieved by a violation of the Reproductive and Gender-Affirming Health Care Freedom Act may maintain an action in district court for appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages or punitive damages, or the sum of five thousand dollars (\$5,000) for each violation of the Reproductive and Gender-Affirming Health Care Freedom Act [Chapter 24, Article 34 NMSA 1978], whichever is greater.

B. In any action brought pursuant to Subsection A of this section, the court shall award a prevailing plaintiff reasonable attorney fees and costs to be paid by the defendant.

C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual.

N.M. Stat. Ann. §24-35-3 Public body; prohibited release of information related to a protected health care activity

A A public body or an individual or entity acting on behalf of or within the scope of the authority of a public body shall not release information or use resources available to it in furtherance of a foreign investigation or proceeding that seeks to impose civil or criminal liability or professional disciplinary action upon an individual or entity for engaging in a protected health care activity.

B. A public body or an individual or entity acting on behalf of or within the scope of the authority of a public body that receives a request for information related to a protected health care activity

shall notify the individual or entity that is the subject of the information request and shall move to modify or quash the subpoena to prevent the release of protected health care activity information. Any request for information related to a protected health care activity shall be made in writing.

C. The provisions of this section shall not apply if the individual or entity that is the subject of the investigation or proceeding provides affirmative written consent to release the requested information.

D. This section shall not apply to an investigation or proceeding in which the conduct subject to potential liability would be subject to liability under the laws of this state.

N.M. Stat. Ann. § 30-5A-3. Prohibition of partial-birth abortions.

No person shall perform a partial-birth abortion except a physician who has determined that in his opinion the partial-birth abortion is necessary to save the life of a pregnant female or prevent great bodily harm to a pregnant female:

A. because her life is endangered or she is at risk of great bodily harm due to a physical disorder, illness or injury, including a condition caused by or arising from the pregnancy; and

B. no other medical procedure would suffice for the purpose of saving her life or preventing great bodily harm to her.

N.M. Stat. Ann. § 24-14-18. Report of induced abortions.

A. Each induced abortion which occurs in this state shall be reported to the state registrar within five days by the person in charge of the institution in which the induced abortion was performed. If the induced abortion was performed outside an institution, the attending physician shall prepare and file the report.

B. The reports required under this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics. The report shall not include the name or address of the patient involved in the abortion. The department shall not release the name or address of the physician involved in the abortion. A schedule for the disposition of these reports shall be provided for by regulation.

N.M. Stat. Ann. § 30-5A-5. Criminal penalty; exception.

A. Except as provided in Subsections B, C, D and E of this section, a person who violates Section 3 [30-5A-3 NMSA 1978] of the Partial-Birth Abortion Ban Act is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. The provisions of the Partial-Birth Abortion Ban Act [30-5A-1 NMSA 1978] shall apply only to the exact procedure specified in that act.

C. The provisions of the Partial-Birth Abortion Ban Act [30-5A-1 NMSA 1978] are not intended to criminalize any other method of terminating a woman's pregnancy.

D. The provisions of the Partial-Birth Abortion Ban Act [30-5A-1 NMSA 1978] are not intended to subject a woman, upon whom the procedure specified in that act is performed, to criminal culpability as an accomplice, aider, abettor, solicitor or conspirator.

E. The provisions of the Partial-Birth Abortion Ban Act [30-5A-1 NMSA 1978] are not intended to subject any person to criminal culpability pursuant to laws governing attempt, solicitation or conspiracy to commit a crime.

