



March 8, 2023

The Honorable Michelle Grisham
Governor of New Mexico
State Capitol Building
490 Old Santa Fed Trail
Room 400
Santa Fe, NM 87501
Ph: (505) 476-2200

RE: HOUSE BILL NO. 7

Dear Governor Grisham:

We are writing to oppose New Mexico House Bill 7, which was introduced during the 2023 legislative session, and will soon reach your desk. The American Center for Law and Justice (“ACLJ”) addresses this bill on behalf of itself and over 594,000 of its members, including 4,924 New Mexico residents, who value the sanctity of human life.¹

By way of introduction, the ACLJ is a national nonprofit organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. Counsel for the ACLJ have presented expert testimony before state (including Maryland) and federal legislative bodies, and have presented oral argument, represented parties, and submitted amicus briefs before the Supreme Court of the United States and numerous state and federal courts in cases involving a variety of issues, including the right to life. *See, e.g., Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); *June Medical Servs. v. Russo*, 140 S. Ct. 2103 (2020); *Dobbs v. Jackson Women’s Health Org.*, No. 19-1393 (Sup. Ct.).

On February 9, 2023, House Bill 7 – entitled the Reproductive and Gender-Affirming Health Care Freedom Act – introduced by Representatives Linda Serrato, Charlotte Little, Kristina Ortez, and Reena Szczepanski, was passed by the state House, referred to the Senate, and has been referred back to the House for a concurrence vote which is imminent.

The ACLJ and its supporters opposed this anti-life bill while it was in Senate committee, and we continue to oppose it now. It is dangerous for New Mexican women and girls, and will

¹ *Stop Barbaric New Abortion Laws*, ACLJ.ORG, <https://aclj.org/pro-life/stop-barbaric-new-abortion-laws> (last visited Mar. 8, 2023).

present a plethora of issues for New Mexico’s citizens as a whole. We respectfully request that you veto House Bill 7 and reject the unnecessary and radical threat it poses to both existing and future laws that value both life and conscience.

Legal Analysis of H.B. 7

I. Background

Abortion advocates have a long history of using euphemisms in an attempt to disguise the horrific nature of the act that they support and promote – namely, the killing of innocent, preborn, human beings. Since the Supreme Court’s decision in *Roe v. Wade* in which the Court purported to find a constitutional “right” to abortion under the scope of “privacy,” words such as “privacy,” “freedom,” and “equity,” when combined with “reproductive” have become synonymous with “abortion.”²

House Bill 7 is yet another in a long line of bills to use these sorts of euphemistic terms, namely, “reproductive health care,” in an attempt to disguise the fact that it would strip an entire class of human beings—preborn babies—of all dignity and human rights while simultaneously endangering the health and welfare of women and girls across the state. If signed into law, House Bill 7 would serve to preempt all public entities from infringing, *in any way*, on this “fabricated right.” The bill purports to modernize New Mexico law by “affirming health care freedom,” but in reality punishes localities for enacting rules infringing on abortion, permits the attorney general or private individuals to sue if the state or local government and its agents seek to protect life and the welfare of women and young girls.³

Moreover, House Bill 7 is wholly unnecessary, as abortion has long been legal in New Mexico, and is in no danger of becoming illegal, especially because – in 2021 – the legislature repealed dormant abortion legislation from 1969 which prohibit it.⁴ In fact, the only restriction against abortion in New Mexico is a ban against partial birth abortions,⁵ allowing abortion on demand for any reason up until birth – with no restriction even for minor girls. As such, New Mexico is one of the most radically pro-abortion places *in the world*.

II. The Full Scope and Repercussions of House Bill 7 Severely Impact the Rights and Freedoms of New Mexico Citizens.

Roe v. Wade, a sweeping decision that many New Mexicans and other Americans have outright rejected over the past several decades, is largely responsible for creating the pro-life movement. In the wake of *Roe v. Wade* being overturned last year by the Supreme Court’s decision in *Dobbs*. The issue presented in *Dobbs* was solely whether abortion is protected under the Federal Constitution. Contrary to popular myth, the overruling of *Roe* and *Casey* did not create a nationwide prohibition of abortion, nor did it undo any states laws on abortion. Rather, the

² 410 U.S. 113, 154 (1973).

³ Morgan Lee, *New Mexico Legislators may Block Local Abortion Ordinances*, AP NEWS (3 Feb. 2023), <https://apnews.com/article/abortion-new-mexico-state-government-hobbs-health-5c492ba34db67bd0858b32064cec3580>; H.B. 7, 56th Leg., First Sess. 2023 (N.M. 2023).

⁴S.B. 10, 55th Leg. First Reg. Sess. 2021 (N.M. 2021).

⁵ *New Mexico*, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/maps/state/new-mexico/> (last visited Mar. 8, 2023); N.M. Stat. Ann. § 30-5A-3.

Supreme Court removed the abortion issue from its purview and restored to the states their rightful constitutional authority to regulate whether, and under what conditions, abortion should be permitted within the state. Thus, each state is now free to legislate on the matter as its voters see fit. That being said, House Bill 7 goes far beyond legislating the legality of abortion and is a coercive move by pro-abortionists to shut down pro-life voices, including those found in local governments, schools, and hospitals. Indeed, House Bill 7 was drafted in response to local citizens' and governments' desire to protect the innocent from murder. This bill intentionally tramples on the right and ability of New Mexicans to oppose abortion democratically at the local level by prohibiting any "public body" from restricting access to abortion.⁶ As has been stated, abortion "rights" are under no threat of changing, even from the decision in *Dobbs*.

New Mexicans rights should not be annexed by this bill, abrogating authority of the most basic and democratic level of government. House Bill 7 proscribes "public bodies" which 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."⁷ If this bill becomes law, it is difficult to imagine how there would ever be any limitations on abortion whatsoever in New Mexico, including commonsense restrictions such as sanitation or location requirements.

III. V. H.B. 7 Discriminates Against Religious Objectors and Protects Pedophiles and May Protect Certain forms of Infanticide

There are multiple issues with H.B. 7, one of which is the violation of the "conscientious objectors" rights.⁸ The bill would inevitably require medical professionals and public employees to facilitate the murder of infants in violation of the conscience and religious beliefs.⁹ Further, since the institutions would be held liable for the actions of individual teachers and faculty, schools and government bodies will refuse to hire employees who hold deeply religious views concerning abortion as they seek to avoid long and costly litigation.

Another issues is H.B. 7's prohibition on any public body to "deny, restrict or interfere with a person's ability to access or provide reproductive health care."¹⁰ The bill defines public body as "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."¹¹ The proposed legislation would levy a minimum fine of \$5,000 against anyone who interfered with a pregnant woman's "right" to abortion. However, the state defines

⁶ H.B. 7.

⁷ *Id.*

⁸ *Senate Republicans Condemn House Bill 7 Assault on Parental Rights and Conscience Protections*, THE GRANT COUNTY BEAT (Mar. 1, 2023), <https://www.grantcountybeat.com/news/2023-nm-legislative-session/76925-senate-republicans-condemn-house-bill-7-assault-on-parental-rights-and-conscience-protections>

⁹ H.B. 7, 56th Leg., First Reg. Sess. 2023 (N.M. 2023)

¹⁰ *Mandatory Reporting Requirements: Children New Mexico*, RAINN (March 2020), <https://apps.rainn.org/policy/policy-state-laws-export.cfm?state=New%20Mexico&group=4>

¹¹ H.B. 7.

Sexual Abuse: which “includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law.”¹²

New Mexico requires physicians, interns treating children, school employees, and nurses, to name a few, to report cases of suspected sexual abuse.¹³ When asked, during a legislative session, if this bill would punish the reporting of an 8 year-old girl seeking to have an abortion, the legislator defending the bill avoided responding directly by referring to mandatory reporter laws.¹⁴ However, the possibility of a \$5,000 minimum fine hanging over the head of mandatory reporters if they improperly interfere with an eight-year-old girl’s “right” to abortion will likely result in mandatory reporters choosing not to notify authorities.¹⁵ Further, Senator Duhigg made it very clear that any violation could be punished under private action.¹⁶ That means that if a mandatory reporter mistakenly reports even an eight year old girl seeking an abortion, they could be sued by a private party.

Additionally, the bill restricts private institutions of higher education which do not comply with the state’s standards. The state provides tuition support to students—including those attending private universities.¹⁷ Since this legislation mandates entities that receive state funding, it could punish religious institutions and faculty who, for religious reasons, choose to interfere with the states fabricated right of abortion.¹⁸

Finally, language in Section 3 (C) is nearly identical to some of the language that we saw in the California law passed last year that may effectively legalize some forms of infanticide and the similar bill that was introduced in Maryland. Section 3 (C) of H.B. 7 prohibits state or local governments and agents from “depriv[ing], 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.”¹⁹

The California law, AB 2223 states: “. . . a person shall not be subject to civil or criminal liability or penalty, or otherwise deprived of their rights under this article, based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, including miscarriage, stillbirth, or abortion, or perinatal death due to causes that occurred in utero.”²⁰

Similarly, two identical bills were proposed in Maryland last year that stated, “This section may not be construed to authorize and form of investigation or penalty for a person (a) terminating

¹² *Id.*

¹³ N.M. Stat. Ann. § 32A-4-3.

¹⁴ *Debate on H.B. 7 Before the Senate Chamber* (statements of Sen. Crystal R. Diamond & Sen. Katy M. Duhigg), <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20230306/-1/72210> (1:20).

¹⁵ *Id.*

¹⁶ *Id.* (2:12).

¹⁷ *New Mexico Scholars*, N.M. HIGHER EDUC. DEP’T, <https://hed.nm.gov/financial-aid/scholarships/nm> (last visited 7 Mar. 2023)

¹⁸ H.B. 7 § 2(b).

¹⁹ H.B. 7 § 3(C).

²⁰ California A.B. 2223

or attempting to terminate the person's own pregnancy; or (2) experiencing a miscarriage, perinatal death related to a failure to act, or stillbirth.”²¹

As we pointed out in our testimony opposing the California and Maryland bills, both contained the term “perinatal death” in relation to the actual or perceived outcome of a woman’s pregnancy referenced in each respective bill. As a reminder for our readers, the term “perinatal” refers to a period of time generally encompassing the 20th to 28th week of gestation up until 28 days after birth.

Here, H.B. 7 does not contain the term “perinatal death,” but it does contain the term “perinatal” as one of the elements of “reproductive health care” with which the government cannot interfere, deny, or restrict. H.B. 7 defines “reproductive health care” as:

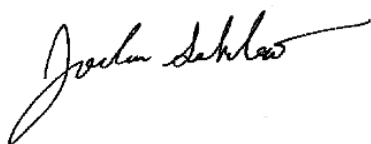
psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies that related to the human reproductive system, including services related to . . . abortion . . . prenatal, birth, perinatal and postpartum health.²²

As a law firm that frequently dissects pro-abortion legislation, we are all too familiar with the euphemistic terms that the abortion industry pushes to hide its true agenda. This is why it is concerning, and a red flag, that a discussion of perinatal health is contained in a bill that clearly is pushing abortion on demand and without restriction or pushback of any kind. It is even more concerning that this bill wants to prevent prosecution or punishment of a person for “acting or refraining from acting” because of the effect on the pregnancy.

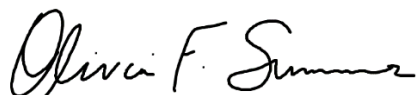
CONCLUSION

For the reasons stated above, we oppose House Bill 7 and respectfully request your veto of this bill.

Sincerely,



Jordan Sekulow
Executive Director



Olivia F. Summers
Senior Litigation Counsel

²¹ Maryland S.B. 669.

²² H.B. 7 § 2(C).