



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.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*,
MOTION FOR LEAVE TO EXPAND PAGE LIMITS,
AND MOTION FOR LEAVE TO PRESENT ORAL ARGUMENT**

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**Application for admission pro hac vice
prepared and will be filed imminently*

Pursuant to New Mexico Rule of Appellate Procedure 12-320, New Mexico Family Action Movement, Right to Life Committee of New Mexico, and New Mexico Alliance for Life (the “Proposed Amici”) respectfully request leave to file a brief as *amici curiae* in this action. Proposed Amici also request that this Court grant them leave to file an expanded brief conforming to the 35-page length traditionally observed for amicus briefs. Finally, Proposed Amici request that this Court grant them leave to present oral argument. In support of this motion, the Proposed Amici state the following:

Interest of Proposed Amici

1. Proposed Amici are three pro-life advocacy organizations based in New Mexico: New Mexico Family Action Movement, Right to Life Committee of New Mexico, and New Mexico Alliance for Life.

2. New Mexico Family Action Movement is a nonprofit organization that aims to educate and activate voters, as well as work hand in hand with legislators in promoting policy that protects life, families, and freedoms in New Mexico. The organization is among 40 other state groups in alliance with the national Family Policy Alliance

organization.¹ Members of New Mexico Family Action Movement believe “that life is a precious gift from God and that it should be protected from fertilization to natural end of life.”² New Mexico Family Action Movement “engages in a variety of issues at the grassroots level, the legislative process, and everything in between.”³

3. Right to Life Committee of New Mexico is “an educational, civil rights, not-for-profit, non-partisan, pro-life organization” that is an “affiliate of the National Right to Life Committee.”⁴ The organization aims to “educate the public and build pro-life support throughout New Mexico in order to protect all innocent human life from fertilization to natural death.”⁵ Right to Life Committee of New Mexico was founded in 1970 to minimize the harms from *Roe v. Wade*. Its “education and political efforts are dedicated to the proposition that all human life is precious and must be protected.”⁶

¹ N.M. Fam. Action Movement, <http://bit.ly/3YxO1vF>.

² N.M. Fam. Action Movement, Life, <http://bit.ly/3E48kZy>.

³ N.M. Fam. Action Movement, The Goal is Set!, <http://bit.ly/40SBft7>.

⁴ N.M. Right to Life, <http://bit.ly/3YxO1vF>.

⁵ N.M. Right to Life, What’s Happening, <https://www.rtlnm.org/>.

⁶ *Supra* n.4

4. New Mexico Alliance for Life is a nonprofit “nonpartisan organization focused on changing state and local laws by empowering women with better and informed choices when facing unplanned or difficult pregnancies.”⁷ The organization is also dedicated to “advocating for better protections for women and unborn children from an unsafe abortion industry.” *Id.* New Mexico Alliance for Life works to build “a Culture of Life across New Mexico.”⁸

The Amicus Brief Will Assist the Court

5. For decades, Proposed Amici have dedicated extensive time and resources to advocating for protecting unborn human life and naturally have a substantial interest in this lawsuit, which could cause great harm to unborn life by recognizing a state constitutional right to abortion.

6. Proposed Amici are well-acquainted with the history of abortion-related legislation in New Mexico and the surrounding constitutional issues. They are qualified to apprise the Court why the New Mexico Constitution does not encompass a right to abortion and

⁷ N.M. All. for Life, Mission, <http://bit.ly/3Ilyrxy>.

⁸ N.M. All. for Life, <https://bit.ly/3Ilyrxy>.

why a mandamus action is an improper vehicle for this Court to recognize a new constitutional right in what would amount to an advisory opinion.

7. The brief of Proposed Amici will materially assist this Court in deciding whether the New Mexico Constitution contains a right to abortion, and whether mandamus is an appropriate tool to render a decision on a state constitutional right to abortion.

8. Proposed Amici's entire existence—and all of their collective work—has been directed toward the issue of defending life from abortion in the State of New Mexico. As advocacy organizations thoroughly familiar with the history of abortion-related legislation in New Mexico and the constitutional issues surrounding said legislation, Proposed Amici can provide unique insight into the constitutional and historical issues presented.

9. As more fully articulated in their proposed amicus brief, Proposed Amici argue that the New Mexico Constitution does not contain a right to abortion, and that the peoples' elected representatives *criminalized* abortion when all of the relevant constitutional provisions were adopted. Proposed Amici also argue that mandamus action is not a

proper vehicle to find a constitutional right that has not been clearly recognized in the past.

10. The brief of Proposed Amici will illuminate numerous important matters that are not covered in the briefs of other parties. At present, the Respondents' briefs have primarily focused on whether local ordinances are preempted by some State law. Unlike the other parties' briefs, only Proposed Amici will provide a detailed analysis of each constitutional provision relied upon by the Attorney General and demonstrate that none can support a right to abortion. Further, only Proposed Amici will provide a detailed history of abortion regulations in the State, including laws enacted and enforced at the times when relevant constitutional provisions were adopted. And only Proposed Amici will illuminate the requirements for a writ of mandamus, showing that mandamus is an improper tool to find or declare a right as a matter of first impression.

Request for Leave to File Traditional 35-Page Brief

11. Amicus briefs are generally subject to a 35-page limit under New Mexico Rules of Appellate Procedure 12-320(D)(3) & 12-318(F)(2).

12. In extraordinary writ proceedings, a 20-page limit applies for the petition and to any “response” filed by the respondents. *See* New Mexico Rule of Appellate Procedure 12-504(C), (G)(2). The Court may either allow amici to file a 20-page amicus brief or may grant leave for amici to file an expanded brief. *See* New Mexico Rule of Appellate Procedure 12-320(E).

13. Proposed Amici are not entitled to file a “response” to the writ, and instead seek to file a traditional 35-page amicus brief.

14. Leave to file an expanded brief is appropriate and is practically necessary here. This case involves issues that are numerous, complex, and perhaps most importantly, not currently addressed in the existing parties’ briefs.

15. The issues in this case are numerous and complex. This case involves controversial and weighty constitutional matters of first impression, which could affect the lives of countless unborn children. The Attorney General invokes no fewer than four distinct constitutional provisions, each with substantial interpretive authority from this Court. This case also calls for an analysis of the history of New Mexico law concerning abortion, which is considerable. Further, this case comes

before the Court by a unique procedural mechanism—an extraordinary writ of mandamus—raising important issues that could significantly change this Court’s analysis.

16. It is nearly impossible to adequately address the issues above without a modest expansion of the page limit.

17. Finally, only the Proposed Amici currently address many of the important issues described above, each of which will assist the Court in deciding this case. Without leave to file an expanded brief, some of these issues will not be adequately presented for the Court’s benefit and consideration.

Request for Leave to Present Oral Argument

18. Under New Mexico Rule of Appellate Procedure 12-320(B), amici are not allowed time for oral argument unless the Court grants leave or a supported party decides to share its own limited time.

19. As explained above, Proposed Amici raise several important constitutional, historical, and procedural issues that no other party addresses in their briefs. Further, this case raises matters of existential importance to Proposed Amici and to many New Mexicans, including countless unborn children.

20. Proposed Amici respectfully request that the Court grant leave for time to present oral argument at any hearing.

Notice and Conferral

21. Pursuant to New Mexico Rule of Appellate Procedure 12-320(D)(1), on February 1, 2023, counsel for Proposed Amici notified counsel for Petitioner of their intention to file an amicus brief. On the same day, counsel for Proposed Amici provided notice to counsel believed to represent all Respondents. Upon learning that this counsel only represents City of Hobbs and City of Clovis, Proposed Amici similarly notified counsel for Roosevelt and Lea Counties.

22. Pursuant to New Mexico Rule of Appellate Procedure 12-309, counsel for Proposed Amici attempted to ascertain whether their motions will be opposed by email and telephone. Counsel for Respondents Roosevelt County, City of Hobbs, and City of Clovis indicated they consent to this motion. Counsel for Lea County indicated that he is unable to provide a response prior to filing of this motion. Counsel for Petitioner provided the following response:

New Mexico does not oppose the organizations' request for leave to file an amicus brief. New Mexico does oppose the organizations' request for leave to file an amicus brief longer than the word length permitted for the petition and response. The organizations' amicus brief should be limited to the length for the response it supports, pursuant to Rule of Appellate Procedure 12-320(E), at least absent the Court inviting further briefing by the parties with greater word limits. New Mexico believes that the organizations' request to present oral argument is premature as the Court has not yet set the case for oral argument. If, however, the organizations are to participate in oral argument, they should do so by sharing time with the parties they support, pursuant to Rule of Appellate Procedure 12-320(B).

For the foregoing reasons, Proposed Amici respectfully request that the Court grant them leave to present an amicus curiae brief in support of Respondents, grant leave to file an expanded 35-page brief, and grant leave to present oral argument.

Respectfully submitted this 14th day of February, 2023.

s/ Joseph Gribble

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CERTIFICATE OF SERVICE

In accordance with the electronic filing manual, State of New Mexico Supreme Court, I hereby certify that service of this document was made on February, 14, 2023, via the notice transmission facilities of the case management and electronic filing system of the Supreme Court to all counsel of record and/or email to counsel of record.

s/Joseph Gribble
Joseph Gribble

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