

STATE OF NEW MEXICO  
COUNTY OF LEA  
ORDINANCE NO. 99

**AN ORDINANCE REQUIRING COMPLIANCE WITH FEDERAL ABORTION LAWS**

**SECTION 1. SHORT TITLE**

This Ordinance will be known as the Federal Abortion Law Compliance Ordinance.

**SECTION 2. PURPOSE AND INTENT**

The purpose and intent of this ordinance is to ensure compliance with federal abortion laws, including 18 U.S.C. §§ 1461-1462, within Lea County.

**SECTION 3. AUTHORITY**

Section 4-37-1 NMSA 1978 provides that all counties are granted the same powers of municipalities and included in this grant of powers 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 Lea County and its inhabitants.

**SECTION 4. APPLICABILITY**

This ordinance shall be effective and enforced within the geographical boundaries of Lea County, except for those areas that lie within the boundaries of any incorporated municipality.

**SECTION 5. FINDINGS**

The Board of County Commissioners finds that:

A. Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia in interstate or foreign commerce, see 18 U.S.C. §§ 1461-62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

B. The state constitution of New Mexico does not and cannot secure a right, privilege, or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461-62, or to engage in criminal and racketeering conduct as defined by federal law.

C. The Board of County Commissioners is bound by oath to support and defend the Constitution of the United States, which declares it and laws made in furtherance of the Constitution are the supreme law of the land, binding the judges in New Mexico regardless of any state law to the contrary.

D. We call upon the United States Attorney for the District of New Mexico, both present and future, to investigate and enforce compliance with 18 U.S.C. §§ 1461-62

## **SECTION 6. PROHIBITED ACTS.**

6.1 It is prohibited 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;

6.2 It is prohibited for any person to violate 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 6.2(A).

6.3 It is prohibited for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in sections 6.1 or 6.2.

## **SECTION 7. PENALTY**

Anyone who violates this ordinance shall be fined \$300 for each violation. The penalties required by this section may not be suspended, deferred, or taken under advisement.

## **SECTION 8. SEVERABILITY**

8.1 Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Board of County Commissioners that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance to every person, group of persons, or circumstances, are severable from each other.

8.2 If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this ordinance shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the Board of County Commissioners' intent and priority that every single valid application of every provision in this ordinance be allowed to stand alone.

8.3 The Board of County Commissioners further declares that it would have enacted this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this ordinance, irrespective of the fact that any provision, section, subsection,

sentence, clause, phrase, or word, or applications of this ordinance were to be declared invalid, preempted, or unconstitutional.

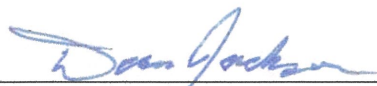
8.4 If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Sections 8.1, 8.2, and 8.3.

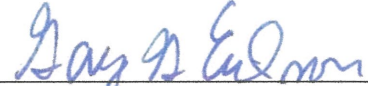
8.5 No court may decline to enforce the severability requirements of Sections 8.1, 8.2, 8.3, or 8.4 on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New Mexico Constitution or United States Constitution, and it no more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

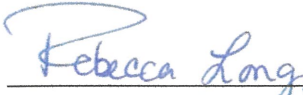
8.6 If any court, including any state or federal court, disregards any of the severability requirements in Sections 8.1, 8.2, 8.3, 8.4, or 8.5 and declares or finds any provision of this ordinance facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of county law, as if the county had enacted provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.


**PASSED, APPROVED AND ADOPTED** on this 8<sup>th</sup> Day of December, 2022, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

**LEA COUNTY BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Dean Jackson (District 1), Chair  
Voted:  Yes No Abstain

  
\_\_\_\_\_  
Gary G. Eidson (District 3), Vice Chair  
Voted:  Yes No Abstain

  
\_\_\_\_\_  
Rebecca Long (District 2), Member  
Voted:  Yes No Abstain

  
\_\_\_\_\_  
Jonathan Sena (District 4), Member  
Voted:  Yes No Abstain

*Pat Sims*

Pat Sims (District 5), Member  
Voted:  Yes  No  Abstain

**ATTEST:** Keith Manes  
Lea County Clerk

By: *Tryon Hassen*  
Tryon Hassen, Chief Deputy Clerk

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:**

*John W. Caldwell*  
John W. Caldwell, County Attorney

