No. 33,630

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

KATHERINE MORRIS, M.D., AROOP MANGALIK, M.D., and AJA RIGGS,

Plaintiffs-Appellees,

vs.

GARY K. KING, Attorney General of the State of New Mexico,

Defendant-Appellant.

ON APPEAL FROM THE 2ND JUDICIAL DISTRICT, BERNALILLO COUNTY, NEW MEXICO

DEFENDANT-APPELLANT'S BRIEF IN CHIEF

Scott Fuqua
NEW MEXICO ATTORNEY GENERAL'S OFFICE
408 Galisteo Street
Santa Fe, NM 87501
(505)827-6920

Attorney for Defendant-Appellant

ORAL ARGUMENT IS REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Cases

Cases From Other Jurisdictions

New Mexico Statutes

Statutes From Other Jurisdictions

New Mexico Constitutional Provisions

Other Authorities

STATEMENT OF THE ISSUES PRESENTED

1. Does any provision of the New Mexico Constitution establish a fundamental right to the aid of a third party in the ending of one's own life?

2. Did the District Court legalize physician assisted suicide in violation of the separation of powers established by Article III, Section 1 of the New Mexico Constitution?

SUMMARY OF PROCEEDINGS

On March 22, 2012, Appellees filed a lawsuit concerning the legality of physician assisted suicide, or "aid in dying," and filed an amended complaint on May 16, 2012. (RP 23.) The lawsuit alleged first that NMSA 1978, § 30-2-4, the statute prohibiting assisted suicide, did not prohibit the conduct Appellees defined as "aid in dying." (RP 30.) Appellees further alleged that, to the extent Section 30-2-4 did prohibit "aid in dying," it did so in violation of several provisions of the New Mexico Constitution. First, Appellees alleged a violation of their due process rights flowing from the vagueness of the law. (RP 31.) Second, Appellees alleged a due process violation based on an infringement of their privacy rights and other fundamental liberties. (*Id.*) Third, Appellees alleged that the application of Section 30-2-4 to "aid in dying" violated New Mexico's guarantee of equal protection. (RP 32.) Fourth, Appellees asserted that applying Section 30-2-4 to "aid in dying" violated their right to free speech. (RP 33.) Fifth and finally, Appellees alleged a violation of their inherent and inalienable rights, most

specifically the right to happiness found in Article II, Section 4 of the New Mexico Constitution. (RP 33-34.)

The District Court dismissed Appellees' free speech claim, but the remainder of Appellees' claims went to trial on December 11 and 12, 2013. (RP 187, 217.) At the conclusion of the trial, the District Court issued findings of fact and conclusions of law (and ultimately a final declaratory judgment and permanent injunction). (RP 217, 231.) The District Court found that Section 30-2-4 prohibits "aid in dying." (RP 226.) The District Court also held that a terminally ill, mentally competent patient has a fundamental right to choose "aid in dying" under the rights to the protection of life and liberty and to the seeking and obtaining of happiness guaranteed by Article II, Section 4. (RP 229.) In light of that conclusion, the District Court applied strict scrutiny to its review of Section 30-2-4. (*Id.*) Applying that standard, the Court found that Appellant had not shown a compelling state interest in prohibiting "aid in dying" and thus declared Section 30-2-4 to be an unconstitutional deprivation of the due process rights guaranteed by Article II, Section 8 of the New Mexico Constitution. The Court expressly declined to decide the questions of whether Section 30-2-4 was unconstitutionally vague or whether it violated the guarantee of equal protection found in Article II, Section 18. (*Id.*)

The District Court also permanently enjoined Appellant and Kari Brandenburg, the District Attorney for the Second Judicial District, from prosecuting under Section 30-2-4 any individual who engages in the conduct Appellees describe as "aid in dying." (RP 231.) This appeal followed.

STATEMENT OF FACTS

Appellees are New Mexico citizens who would like the choice of physician assisted suicide, also called "aid in dying," and certain physicians practicing New Mexico who would like to be able to provide such assistance or aid to their patients. (RP 23.) "Aid in dying" consists of providing to a mentally competent, terminally ill patient a prescription for a lethal medication that the patient may then choose to take in order to end his or her life. (RP 27.) New Mexico criminalizes the deliberate assistance in the suicide of another. NMSA 1978, § 30-2-4.

SUMMARY OF THE ARGUMENT

The District Court erred in two respects by partially invalidating NMSA 1978, § 30-2-4. First, the District Court improperly determined that the aid of a third party, and in particular a physician, in the ending of one's own life is a fundamental right and that any abridgment of that right is thus subject to strict scrutiny. While end-of-life decisions undoubtedly implicate an important and fundamental right, that right does not encompass the affirmative aid of third parties. Second, the District Court overstepped its bounds by legalizing conduct

that has, for decades, been illegal in New Mexico. That decision is a fundamentally legislative one and, as such, is properly left to the legislature.

ARGUMENT

I. NO ONE HAS A FUNDAMENTAL RIGHT TO ENGAGE THE AFFIRMATIVE ASSISTANCE OF A THIRD PARTY IN ENDING HIS OR HER OWN LIFE.

The District Court determined that choosing the means by which one ends his or her own life is a fundamental right: "This Court cannot envision a right more fundamental . . . than the right of a competent, terminally ill patient to choose aid in dying." (RP 228.) Appellant agrees that end of life decisions implicate rights that many rightly regard as fundamental. The question, however, is not whether a person has a fundamental right in making his or her own end-of-life decisions; Appellant would contend that a person does have such a fundamental right. The question is whether that right can encompass not just the act of ending one's life, but also the enlistment of a third party – here a physician – who takes a deliberate action with the specific intent of aiding one in the ending of his or her life. Because New Mexico law does not recognize such a fundamental right, the District Court incorrectly applied strict scrutiny to Section 30-2-4. Applying the appropriate standard – the rational basis test – the statute constitutionally prohibits "aid in dying."

A. Article II, Section 4 Of The New Mexico Constitution Does Not Provide A Basis For Finding A Fundamental Right To The Assistance Of A Physician In Ending One's Own Life.

The District Court concluded that the ability to choose "aid in dying" implicated the guarantee found in Article II, Section 4 of the New Mexico Constitution of "natural, inherent and inalienable rights" including "enjoying life and liberty" and "seeking and obtaining happiness." (RP 228.) Relying on *Richardson v. Carnegie Library Restaurant, Inc.*, 1998-NMSC-084, 107 N.M. 688, 763 P.2d 1153, the District Court determined that, as a right explicitly or implicitly guaranteed by the New Mexico Constitution, "aid in dying" was thus a fundamental right.[1] (RP 228.) Importantly, because Article II, Section 4 enshrines rights not protected by the United States Constitution, the District Court determined that it was able to "diverge from federal precedent." (*Id.*)

Having determined that the choice of "aid in dying" is a fundamental right, the District Court concluded that any restriction on that right was subject to strict

---

[1] According to *Richardson*, an implicit or explicit guarantee of a right in the Constitution is a litmus test for determining whether the right is fundamental. If it is guaranteed by the Constitution, it is a fundamental right. If it is not so guaranteed, it is not. *Richardson*, 107 N.M. at 696. Appellant has been unable to find any New Mexico case finding a right to be fundamental when it was not guaranteed by the Constitution, and the United States Supreme Court case upon which *Richardson* relied on this point establishes the same kind of litmus test. *See San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33 (1973). Thus, the District Court's statement that it could not "envision a right more fundamental . . . than the right of a competent, terminally ill patient to choose aid in dying" (RP 228), while compelling, adds little to the constitutional analysis. If "aid in dying" is not guaranteed by Article II, Section 4, it is not a fundamental right.

scrutiny and that Appellant did not establish a compelling state interest in criminalizing "aid in dying." (RP 229.) Though Appellant does not disagree with the importance and seriousness of end-of-life decisions, the District Court painted with too broad a brush in finding a fundamental right to the assistance of a physician in bringing about one's own death.

In *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997), the United States Supreme Court held that "the asserted 'right' to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause." The Court was, of course, interpreting a different provision than that upon which the District Court relied in this case, but the depth of the Supreme Court's discussion of assisted suicide and its legal reasoning are persuasive, particularly in determining whether a person has a fundamental right to assistance of another in ending his or her own life.

As the *Glucksberg* Court noted, "opposition to and condemnation of suicide – and, therefore of assisting suicide – are consistent and enduring themes of our philosophical, legal, and cultural heritages." *Id.* at 711. At present, three states (Oregon, Washington, and Vermont) have statutes legalizing physician assisted suicide. In a fourth state, Montana, physicians who assist in the suicide of a patient and are then prosecuted for homicide may raise a consent defense to the charge

(assuming, of course, that those physicians can demonstrate the consent of the patient). In every other State, assisted suicide is illegal.[2]

This history, and the history more completely reviewed in *Glucksberg*, raises serious questions about the extent to which the aid of a physician in bringing about one's own death is the kind of right guaranteed by Article II, Section 4. It also helps put into context the interpretation of constitutional language that has, to this point, been rarely discussed by New Mexico courts.

In *Lucero v. Salazar*, 1994-NMCA-066, 117 N.M. 803, 877 P.2d 1106, this Court considered whether the "seeking and obtaining safety and happiness" clause of Article II, Section 4 provided a basis for the waiver of sovereign immunity where an on-duty police officer had shot and killed the plaintiff's father. After noting that the scope of the right conferred by that language had "not been determined," the Court held that it was "clear, however, that mere references to the right to enjoy life and seek and obtain safety and happiness are not sufficient to serve as a basis for a waiver of sovereign immunity under Section 41-4-12." *Id.* at 804. Quoting from *Blea v. City of Española*, 1994-NMCA-008, 117 N.M. 217, 221, 870 P.2d 755, 759, this Court noted that waiving sovereign immunity on such

---

[2] As a result of the District Court's order, the District Attorney of the Second Judicial District and the Attorney General are permanently enjoined from undertaking any prosecution of a physician providing "aid in dying," but the District Attorneys of the remaining twelve judicial districts are not so enjoined. The State and its citizens need a decision with statewide application.

grounds would "emasculate the immunity preserved" by the Tort Claims Act. *Lucero*, 117 N.M. at 804.

In other words, the right to seek and obtain happiness was an insufficient basis on which to disregard the straightforward application of a provision of New Mexico law. So whatever that clause of Article II, Section 4 means, it does not mean that a citizen can invalidate a law that makes him or her subjectively unhappy.[3]

But *Lucero* goes a bit deeper. Because though the serious end-of-life concerns of New Mexico's terminally ill citizens obviously constitute more than subjective unhappiness, so too did the issues raised by the plaintiffs in *Lucero*. There, the plaintiffs asserted a violation of "their personal rights to associate with their father and receive his love, guidance, and protection." *Lucero*, 117 N.M. at 804. Giving due consideration to the weight properly afforded Appellees' rights to make end-of-life decisions, Appellant suggests that the right of a child to enjoy the companionship of his or her parents is no less important. Nonetheless, this Court found it to be an insufficient basis to override an otherwise clear statutory mandate.

This brings the Court to the nub of the question presented by the District Court's conclusion that the right to the aid of a physician in the commission of

---

[3] That is also the lesson of *Farrel v. Ahrens*, 1975-NMSC-044, 88 N.M. 284, 288, 540 P.2d 214, 218, where the Supreme Court held that Article II, Section 4 did not guarantee to students at New Mexico State University the right to "intervisitation of men and women in a dormitory room."

suicide is a fundamental right: does the right of seeking and obtaining happiness encompass enlisting such aid? There is nothing in New Mexico law to suggest that is does, and federal law answering the closely related question of whether due process encompasses such aid has definitively answered the question in the negative. The District Court erred in concluding otherwise.

B. The Interstitial Approach To Interpreting New Mexico's Due Process Clause Does Not Indicate That Our Constitution Is More Protective Of Assisted Suicide Than The Fourteenth Amendment.

The District Court relied in part on New Mexico's interstitial approach to interpreting provisions of the New Mexico Constitution that use similar or identical language to its federal counterparts in finding greater protection under Article II, Section 8 of the New Mexico Constitution than that found in the Fourteenth Amendment of the United States Constitution.[4] In *Gomez v. State*, 1997-NMSC-006, ¶ 19, 122 N.M. 777, 932 P.2d 1, the Supreme Court adopted the interstitial approach and recognized that its application is appropriate in three circumstances: "a flawed federal analysis, structural differences between state and federal government, or distinctive state characteristics."

[4] It is unclear why the District Court included this discussion in its conclusions of law. This case turns on whether physician assisted suicide is a right guaranteed by Article II, Section 4. If it is, it is a fundamental right the burdening of which is subject to strict scrutiny under the due process jurisprudence of both the New Mexico and United States Constitutions. It is otherwise subject only to rational basis review under both Constitutions. The District Court does not seem to have based its ruling on greater protections afforded under Article II, Section 8, but Appellant addresses the issue to the extent the reasoning could be an independent basis on which to affirm the District Court.

The Court recognized, however, that

> [w]hen federal protections are extensive and well-articulated, state court decisionmaking that eschews consideration of, or reliance on, federal doctrine not only will often be an inefficient route to an inevitable result, but also will lack the cogency that a reasoned reaction to the federal view could provide, particularly when parallel federal issues have been exhaustively discussed by the United States Supreme Court and commentators.

Id., ¶ 21 (quoting Developments in the Law – The Interpretation of State Constitutional Rights, 95 Harv. L. Rev. 1324, 1357 (1982)).

The Court also reiterated its acknowledgment of "the responsibility of state courts to preserve national uniformity in development and application of fundamental rights guaranteed by our state and federal constitutions." *Gomez*, 1997-NMSC-006, ¶ 21 (quoting *State v. Gutierrez*, 1993-NMSC-062, 116 N.M. 431, 436, 863 P.2d 1052, 1057). This case does not present circumstances sufficient to depart from federal precedent determining that there is no fundamental right to assisted suicide.

This issue does not implicate any differences between the structure of our government and that of the federal government. It also does not concern any distinctive characteristics of New Mexico. The only reason to apply the interstitial approach here is a potentially flawed federal analysis. The District Court did not identify the basis on which it undertook an interstitial analysis and did not specifically identify what it considered to be flaws in the federal analysis of

assisted suicide. It is thus difficult to determine whether the Court's interstitial approach was proper.

The record provides no basis for determining that the United States Supreme Court's analysis in *Glucksberg* is flawed. The Court's determination that the Fourteenth Amendment does not guarantee a right to assistance in one's suicide was based on a thorough review of Fourteenth Amendment jurisprudence and an exhaustive review of the legal treatment of assisted suicide in the United States. With near uniformity – both in 1997 when *Glucksberg* was decided and now – the States have criminalized assisted suicide, including physician assisted suicide. It is difficult to identify a fundamental right in something so widely prohibited.

In short, the District Court lacked a sufficient basis for finding greater protection for "aid in dying" in Article II, Section 8 of the New Mexico Constitution than the United States Supreme Court has found in the Fourteenth Amendment. Without such a basis, and without any New Mexico law on point, the District Court erred in finding a fundamental right to "aid in dying" despite the unambiguous finding to the contrary in *Glucksberg*.

C. Applying The Appropriate Level Of Scrutiny To Section 30-2-4 Leads To The Conclusion That It Constitutionally Prohibits Physician Assisted Suicide.

Because "aid in dying" is not a fundamental right, Section 30-2-4 is not properly subject to the strict scrutiny analysis applied by the District Court. On

this point, there is no meaningful basis on which to depart from the framework established in *Glucksberg*.

There, the United States Supreme Court applied rational basis scrutiny in upholding Washington's ban on assisted suicide in the face of a due process challenge not unlike the one Appellees brought here. Rational basis is the appropriate standard in this case as well.

Even in *Richardson*, the Court did not apply strict scrutiny to a right that it found implicit in the New Mexico Constitution (and thus fundamental). The Court invalidated a $50,000 damages cap set by the Dramshop Act, NMSA 1978, § 41-11-1, under the Equal Protection Clause of Article II, Section 8 of the New Mexico Constitution, *Richardson*, 107 N.M. at 699, but applied intermediate scrutiny to do so, despite the fact that it found the right of access to the courts to be a fundamental right.[5]

In any event, rational basis scrutiny is appropriate here because, as in *Glucksberg*, assisted suicide is not a fundamental right. *See Glucksberg*, 521 U.S. at 728. And, as in *Glucksberg*, New Mexico has a rational basis for prohibiting assisted suicide, including an interest in preserving human life, an interest in

[5] The Court did hold that the right to full tort recovery was not a fundamental right protected by the same happiness clause of Article II, Section 4 forming the basis of the District Court's opinion here. *Richardson*, 107 N.M. at 696. In a later opinion, *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 25, 125 N.M. 721, 965 P.2d 305, the Supreme Court limited the holding of *Richardson* by declining to extend its holding and reasoning to the damages cap found in the Tort Claims Act.

preventing suicide and treating its causes, and an interest in protecting the integrity and ethics of the medical profession.[6] *Id.* at 728-31.

These interests are sufficient to overcome Appellees' constitutional challenge to New Mexico's ban on assisted suicide. The District Court erred in holding otherwise, and this Court should reverse.

II. THE DISTRICT COURT VIOLATED THE SEPARATION OF POWERS BY LEGALIZING CONDUCT THAT NEW MEXICO HAS CRIMINALIZED FOR DECADES.

The legislature enacted Section 30-2-4 in 1963. For the last forty-one years, it has been illegal in New Mexico to deliberately aid another in the taking of his or her own life. The District Court's order impermissibly changed that.

That, in and of itself, is not entirely unusual. Any time a court strikes down a criminal prohibition on constitutional grounds the court is legalizing previously illegal conduct. *See, e.g., City of Chicago v. Morales*, 527 U.S. 41 (1999) (striking down as unconstitutionally vague the City of Chicago's anti-loitering ordinance). The difference in this case is twofold. First, Section 30-2-4 has been the law in New Mexico for forty-one years. Second, the legal landscape surrounding physician assisted suicide is unclear and filled with the kind of uncertainty the resolution of which demands legislative action.

---

[6] The interest in preventing suicide is particularly important because, as discussed in the next section, as it stands now there are no legal boundaries to guide the conduct of physicians who practice "aid in dying" in New Mexico.

The District Court properly recognized that, on its face, Section 30-2-4 prohibits "aid in dying." Significantly, in the forty-one years since the passage of Section 30-2-4, it has never been amended. What this demonstrates is a long-standing prohibition, reflecting the values and social mores of New Mexico's citizenry, of deliberate conduct by which one aids in the suicide of another. With this decision, the District Court has found a fundamental right heretofore unknown in New Mexico – the right to the assistance of a medical professional in the taking of one's own life.

The quintessential difference between the judicial and legislative powers is that the former consists of interpreting the law while the latter consists of creating or modifying it. *See, e.g., State ex rel. State Engineer v. Lewis*, 1995-NMCA-019, ¶ 16, 121 N.M. 323, 910 P.2d 957 ("It is the province of the legislature and not the court to change a statute.") (citing *Varos v. Union Oil Co.*, 1984-NMCA-091, 101 N.M. 713, 715, 688 P.2d 31, 33); *State v. Public Defender ex rel. Muqqddin*, 2012-NMSC-029, ¶ 37, __ N.M. __, 285 P.3d 622 (in the absence of clear evidence from the legislature about the meaning of a statute, courts "should not do ourselves what the Legislature has declined to do."). And while Appellant does not contend that it is legally impossible or inappropriate for a court to interpret otherwise static constitutional provisions differently than they have been interpreted before (and on the basis of evolving societal values), Appellant does contend that in this case the

District Court crossed the line between interpretation and alteration. In essence, the District Court amended Section 30-2-4 to exclude from its prohibition the conduct that Appellees describe as "aid in dying." Thus, it is now legal in New Mexico for a physician to prescribe to a terminally ill, mentally competent patient a medication given solely for the purpose of ending that patient's life. For the forty years preceding the District Court's opinion, New Mexico law had never drawn that distinction.

Were the District Court reaching its conclusions on a cleaner slate, this concern might be less pronounced. But the length of time for which New Mexico has prohibited physician assisted suicide bolsters the conclusion that the District Court's opinion and order amended a law, and in doing so encroached on the exclusive province of the legislature. The legislature is, after all, directly accountable to the people of the State, and decisions about whether New Mexico should permit the deliberate involvement of a third party in the intentional taking of a person's own life are best left to that branch of government. *See, e.g., Hartford Ins. Co. v. Kline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176 (recognizing the unique role of the legislature in creating public policy) (quoting *Torres v. State*, 1995-NMSC-025, 119 N.M. 609, 612, 894 P.2d 386, 389).

This is particularly true in a case like this one, where the District Court's order sows significant uncertainty as to exactly what physicians may do without

running afoul of what remains of Section 30-2-4. The District Court did not strike down the law in its entirety; the State may still, for example, constitutionally prohibit a person from plunging a knife held by another into that other person's body. But how far may a physician go in providing "aid in dying?" What procedural safeguards must a physician follow before writing a lethal prescription with the specific intent that the patient take it to end his or her own life? Given the consequence that attends ingestion of the drug obtained by that prescription – the inevitable death of the patient – there are valid and serious concerns about the circumstances under which a physician is able to provide it.

The District Court's order does nothing to address those concerns. To highlight a few of them, it is instructive to look to Oregon's Death With Dignity Act. Pursuant to that law, in order to obtain a lethal prescription, a patient must, among other things: (1) be diagnosed as terminally ill (with a prognosis of no more than six months to live); (2) request the lethal prescription twice orally and once by means of a signed and dated written request that also bears the signatures of two witnesses; and (3) be determined capable of making the decision to end his or her life. Ore. Rev. Stat. 127.800, 127.805, and 127.840. The physician seeking to write the prescription must, among other things, inform the patient of his or her prognosis, inform the patient of the risks of the prescribed medication, and refer

the patient for counseling if there is any question as to the patient's competence to make the decision to take a lethal prescription. Ore. Rev. Stat. 127.815.

As it now stands in New Mexico, physicians are not bound by the same or similar restrictions. Appellees would no doubt argue that the District Court's order permits only a mentally competent, terminally ill patient to legally receive a lethal prescription from a physician, but New Mexico law provides absolutely no guidance as to what it means to be either "mentally competent" or "terminally ill" in this context. At best, that guidance comes from the medical profession itself in the form of ethical guidelines a physician must follow in order to keep his or her license to practice medicine. Accordingly, a physician who erroneously determines that a patient is "mentally competent" and "terminally ill" and, on the basis of those erroneous determinations, provides a lethal drug to the patient that is used to kill that patient, is subject only to the loss of his or her license. Indeed, without legislative definitions of "mentally competent" and "terminally ill," a physician who prescribed lethal medication to a perfectly healthy patient could well face no sanction beyond loss of his or her professional license.

There is also no regulation of the manner in which the patient makes his or her request. Nor is there any safeguard in place to guarantee that the patient has made the kind of informed decision required by the Oregon law. *See* Ore. Rev. Stat. 127.830. No provision exists in New Mexico to document any of these

safeguards (even if they were required by the District Court's order). *See* Ore. Rev. Stat. 127.855. And, importantly, the District Court lacks the constitutional power to put these safeguards in place.

Why? Because these are quintessential legislative determinations. By amending Section 30-2-4 to exclude "aid in dying," the District Court invaded the legislature's exclusive province to make those determinations through the deliberative democratic process by which New Mexico passes its laws. This Court accordingly should reverse.

CONCLUSION

For the foregoing reasons, the Attorney General of New Mexico respectfully requests that this Court reverse the order of the District Court declaring NMSA 1978, § 30-2-4 unconstitutional as a violation of Article II, Section 8 of the New Mexico Constitution and lift the permanent injunction restricting prosecution under Section 30-2-4.

STATEMENT CONCERNING ORAL ARGUMENT

This case presents an issue of first impression, both in terms of the legality of physician assisted suicide, or aid in dying, and in terms of the scope of Article II, Section 4 of the New Mexico Constitution. Appellant respectfully submits that oral argument would aid the Court in considering the issues presented by this appeal.

Respectfully submitted,

GARY K. KING
NEW MEXICO ATTORNEY GENERAL

Scott Fuqua
Assistant Attorney General
408 Galisteo Street
Santa Fe, NM 87501
(505)827-6920 – Telephone
(505)827-6036 – Facsimile

Attorney for Appellant
Gary K. King

CERTIFICATE OF SERVICE

I certify that on June 16, 2014, I caused the foregoing document to be mailed via First Class mail on counsel of record as follows:

Laura Schauer Ives
The Kennedy Law Firm
1000 2nd Street NW
Albuquerque, NM 87102

Alexandra Freedman-Smith
ACLU of New Mexico
1410 Coal Avenue SW
Albuquerque, NM 87104

Kathryn Tucker
152 Baldwin Road
Ojai, CA 93023

Maureen Sanders
Sanders & Westbrook, P.C.
102 Granite Avenue NW
Albuquerque, NM 87102

Scott Fuqua