

**IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO**

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

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**ALISHA TAFOYA LUCERO,
Plaintiff/Respondent,**

v.

Ct. App. No. 35,438

**NEW MEXICO CORRECTIONS
DEPARTMENT,
Defendant/Petitioner.**

**BRIEF AMICI CURIAE OF
THE SOUTHWEST WOMEN'S LAW CENTER ("SWLC"), THE
NATIONAL ORGANIZATION FOR WOMEN NEW MEXICO ("NOW
NM"), THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN NEW
MEXICO ("AAUW NM"), AND THE NEW MEXICO WOMEN'S AGENDA**

Civil Appeal from the First Judicial District Court
Honorable David K. Thomson

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	POINTS AND AUTHORITIES	2
A.	The FPWA carries out a constitutional mandate and in doing so implements a public policy adopted, acknowledged and supported by all branches of State government	2
B.	<i>Hicks</i> and its progeny require the State to expressly assert immunity from statutorily created causes of action in order for any governmental body to be entitled to immunity	6
C.	In the absence of a provision conferring immunity on public bodies, they enjoy no immunity under the FPWA	8
D.	Public policy supports including governmental bodies as employers subject to the Fair Pay for Women Act	9
III.	CONCLUSION	19

TABLE OF AUTHORITIES

NEW MEXICO CASES

<i>Hicks v. State</i> , 1975-NMSC-056, 88 N.M. 588, 544 P.2d 1153	5, 6, 9
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<i>N.M. Right to Choose/NARAL v. Johnson</i> , 1999-NMSC-005, 126 N.M. 788, 975 P.2d 841	3
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<i>State v. Davisson</i> , 1923-NMSC-045, 28 N.M. 653, 217 P. 240	8
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<i>Zuni Public School Dist. No. 89 v. State Public Educ. Dept.</i> , 2012-NMCA-048, 277 P.3d 1252	6-7

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New Mexico Constitution, Equal Rights Amendment, N.M. Const. art. II, § 18	2
Human Rights Act NMSA 1978, § 28-1-1 <i>et seq.</i> (1969, as amended through 2005)	4, 8
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NMSA 1978, § 41-4-4(A) *et seq.* (1976, as amended in 2001) 7, 8

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NMSA 1978, § 12-2A-1(B) (1997) 9

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States: employed people, by class of worker, gender, race,
and Hispanic or Latino ethnicity, 2014 national averages,
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Narrowing the Gender Pay Gap (2013) 3, 13

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Six Reasons Why Equal Pay is Still Important (January 2009) 16

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Why is it important to tackle the gender pay gap?,
http://ec.europa.eu/justice/gender-equality/gender-pay-gap/index_en.htm 18

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Frank James, <i>The Politics of Equal Pay</i> <i>It's More Than a Women's Issue</i> , NPR (April 8, 2014), http://www.npr.org/sections/itsallpolitics/2014/04/08/300275950	15-16, 19
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Pew Research Center, <i>Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend</i> , (May 29, 2013) http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms	16
Catherine Rampell, <i>U.S. Women on the Rise as Family Breadwinner</i> , <i>New York Times</i> (May 29, 2013) http://www.nytimes.com/2013/05/30/business/economy/women-as-family- breadwinner-on-the-rise-study-says.html?_r=0%20	16
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I. INTRODUCTION

The Southwest Women’s Law Center, NOW NM (comprising New Mexico NOW, the Albuquerque Chapter of NOW, and the Santa Fe Chapter of NOW), AAUW New Mexico, and The New Mexico Women’s Agenda (hereinafter jointly “Amici”), who have all worked to narrow or eliminate gender-based wage gaps, and who advocate for economic justice for women,¹ hereby file this Amici Brief in support of the position of Plaintiff-Respondent, Alisha Tafoya Lucero (“Lucero”) and the decision of the First Judicial District Court.

It is Amici’s position that inclusion of governmental entities among the employers subject to the Fair Pay for Women Act (hereinafter sometimes “FPWA”), is required by the Act’s language and intent: by New Mexico’s Equal Rights Amendment (the constitutional guarantee that the FPWA implements); by the public policy that led to and underlies the Acts adoption; and by the decisions of the New Mexico Supreme Court.

Amici hereby adopt Ms. Lucero’s statement of facts and agree with her that the issue before this Court is one of legislative intent, to be determined by the language, history and purposes of the FPWA, and in accordance with Supreme Court decisions and the rules governing construction of statutes. Because the

¹ The interests of Amici are more fully set forth in the Motion for Leave to Participate as Amici, filed August 25, 2016.

matter has already been capably addressed by Ms. Lucero, Amici specifically adopt Ms. Lucero's analysis of the interplay between the FPWA and the Human Rights Act (hereinafter sometimes "HRA") and the incorporation of the HRA into the FPWA.

II. POINTS AND AUTHORITIES

A. **The FPWA carries out a constitutional mandate and in doing so implements a public policy adopted, acknowledged and supported by all branches of State government.**

The Equal Rights Amendment, adopted by the citizens of this State in 1972 and codified as part of the Equal Protection Clause of the New Mexico Constitution, provides:

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. *Equality of rights under law shall not be denied on account of the sex of any person.*

N.M. Const. art. II, § 18 (emphasis added). New Mexico's voters' approval of this Amendment before the federal Equal Rights Amendment was adopted signified that their vote:

would be understood as an unequivocal commitment by ordinary men and women in our state to the ideal of equal treatment without regard to sex, and to the concomitant ideal that people ought to be treated in law and society as individual human beings and not merely as members of a 'class' to which they belong but whose general characteristics may or may not conform to their individual attributes.

Leo Kanowitz, *The New Mexico Equal Rights Amendment: Introduction and Overview*, 3 N.M. L. Rev. 1, 9 (1973).

New Mexico's Supreme Court addressed this Amendment in *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 36, 126 N.M. 788, 975 P.2d 841, explaining that:

New Mexico's Equal Rights Amendment is a specific prohibition that provides a legal remedy for the invidious consequences of the gender-based discrimination that prevailed under the common law and civil law traditions that preceded it [and] requires searching judicial inquiry concerning state laws that employ gender-based classifications.

Gender-based pay gaps fly in the face of this equal rights guarantee.

Examination of pay gaps in New Mexico began in 2003 with the Governor's appointment of an Equal Pay Task Force, which was directed "to study the extent of wage disparities between women and men and between minority and non-minority workers in New Mexico" and to "study the effects of such pay disparities and make recommendations for their elimination." Martha Burk, Ph.D., *Fair and Equal Pay for All New Mexicans Initiative Task Force Report to the Governor* (2009). The Task Force made numerous recommendations, including pay equity legislation, which were not immediately acted upon. Martha Burk, Ph.D., *The New Mexico Pay Equity Initiative: A Template for Narrowing the Gender Pay Gap*, Center for Advancement of Public Policy (2013).

In 2009, the Fair and Equal Pay for All New Mexicans Initiative established the Task Force on Fair and Equal Pay. Dr. Burk was appointed as the Senior Policy Advisor for Women's Issues. The Task Force conducted a pilot study of wages in the New Mexico classified workforce of six departments—small, medium and large. As a result of this pilot study report, published in September 2009, the Governor, on December 18, 2009, issued Executive Order 2009-049 “formally declar[ing] that it is the policy of the State of New Mexico to identify and combat pay inequity and job segregation.” *Executive Order 2009-049*.

Thereafter, the Task Force directed a subcommittee to examine the New Mexico state workforce, with a focus on the “specific pay gaps that were affecting state employees” and a goal of reducing those gaps. Burk, *Fair and Equal Pay for All New Mexicans Initiative Task Force Report to the Governor, supra*, at 2. The Task Force's findings, discussed in more detail, *infra*, established that, for the most part, the State had been acting as a model for private sector employers and making progress in reducing gender-based wage gaps, but that there was still much to be done.

Accordingly, in 2013, the Legislature adopted the Fair Pay for Women Act, NMSA 1978 § 28-23-1 *et seq.* (2013), codifying it as part of Chapter 28, which also contains New Mexico's Human Rights Act, NMSA 1978 § 28-1-1 *et seq.* The FPWA implements New Mexico's Equal Rights Amendment. It protects

“[e]quality of rights under the law” for women and prohibits pay discrimination based on sex or gender, providing that:

No employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate that the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility and that are performed under similar working conditions

NMSA 1978, § 28-23-3(A) (2013).

Thus, New Mexico’s history following adoption of its Equal Rights Amendment has consisted of identical public policy determinations by all three of its branches of government. Their support for eliminating discrimination and achieving gender equality, in both the public and private sectors, is not subject to question. Yet, despite this unanimous and paramount public policy, which animates and underlies the FPWA, the Corrections Department (“Corrections”) argues that it is immune from enforcement of the equal rights guarantee of the FPWA.

In advancing its argument, Corrections ignores the fact that the FPWA implements a constitutional mandate and that the public policy determinations that preceded and underlie the FPWA require its application to public bodies. Corrections also misreads *Hicks v. State*, 1975-NMSC-056, 88 N.M. 588, 544 P.2d 1153, and fails to address controlling case law interpreting and applying *Hicks*. As

a result, Corrections gets the immunity analysis exactly backwards, misconstruing Legislative silence as an implied grant of immunity.

B. *Hicks* and its progeny require the State to expressly assert immunity from statutorily created causes of action in order for any governmental body to be entitled to immunity.

In *Hicks*, 1975-NMSC-056, ¶ 10, New Mexico’s Supreme Court recognized that the common law doctrine of sovereign immunity was “causing a great degree of injustice.” It abolished the doctrine “in all its ramifications, whether in tort or contract or otherwise, except as implemented by statute or as might otherwise be interposed by judicial decision for sound policy reasons.” *State ex rel. Hanosh v. State ex rel. King*, 2009-NMSC-047, ¶ 10, 147 N.M. 87, 217 P.3d 100 (quoting *Torrance County Mental Health Program, Inc. v. N.M. Health & Env’t. Dep’t.*, 1992-NMSC-026, ¶ 14, 113 N.M. 593, 830 P.2d 145. In place of the “archaic and medieval notions of common-law sovereign immunity (‘the King can do no wrong’),” sovereign immunity in New Mexico must be asserted as “statutory immunity.” *Id.* ¶ 11.²

Hicks and *Hanosh* require the Legislature to explicitly assert immunity whenever it intends to reinstate immunity. *Zuni Public School Dist. No. 89 v. State Public Educ. Dept.*, 2012-NMCA-048, ¶ 20, 277 P.3d 1252 (where the Legislature

² The type of immunity at issue herein is common law immunity, rather than constitutional sovereign immunity. See *Hanosh*, 2009-NMSC-047, ¶¶ 6-8.

has not “explicitly asserted” immunity, action against the State is permitted). The Legislature responded to *Hicks* by partially reinstating immunity for tort liability and contract liability. *See* NMSA 1978, § 41-4-4(A) *et seq.* (1976, as amended in 2001) (Tort Claims Act, “TCA”) and NMSA 1978, § 37-1-23 (1976) (waiving immunity for written contracts while asserting it for unwritten contracts); *see also Hanosh*, 2009-NMSC-047, ¶ 10 (abolition of immunity applied “in all of its ramifications, whether in tort or contract or otherwise, *except as implemented by statute...*”)(emphasis added). But the Legislature chose not to assert immunity for employment matters and, in fact, in the TCA, NMSA 1978, § 41-4-21, it specifically provided that:

The provisions of the Tort Claims Act shall not affect the provisions of any personnel act, any rules or regulations issued thereunder or any other provision of law governing the employer-employee relationship.

Of equal importance, the Legislature adopted no statute generally conferring immunity upon the State or local governmental bodies for causes of action arising from the New Mexico Constitution or enacted by the Legislature.

Therefore, as explained in *Hanosh*, the Legislature must affirmatively assert immunity before the State will be entitled to immunity. 2009-NMSC-047, ¶ 10. The FPWA contains no such assertion of immunity. As Corrections itself stoutly maintains, the FPWA is “silent” on the matter of governmental immunity. [BIC 13, 20, 31]. Silence means that the State is subject to the statute.

C. In the absence of a provision conferring immunity on public bodies, they enjoy no immunity under the FPWA.

The TCA and NMSA § 37-1-23 demonstrate that our Legislature knows how to create immunity when it intends to do so. Thus, the Legislature's silence in the FPWA manifests a legislative intent to include public bodies among the employers subject to its provisions. Consistent with the constitutional provision that the FPWA implements, and the public policy determinations that preceded it and underlie it, the FPWA defines an "employer" as "a person employing four or more employees and any person acting for an employer." *See* NMSA 1978 § 28-23-2(E) (2013). The term it chose, "person," had already been defined to include "legal entities" in both the HRA, NMSA 1978, § 28-1-10, and the Uniform Statute and Rule Construction Act, NMSA 1978, § 12-2A-3(E).

The State and its Departments, counties and other governmental entities are legal entities. Black's Law Dictionary (10th ed. 2014) (a "legal entity" is "a body, other than a natural person, that can function legally, sue or be sued, and make decisions through agents"); *State v. Davisson*, 1923-NMSC-045, ¶ 8, 28 N.M. 653, 217 P. 240 (recognizing county's board of commissioners as a legal entity); Eugene McQuillan, *The Law of Municipal Corporations* (3d ed. 2010), § 2:54, at 238, 286 ("counties have been declared to be separate and distinct legal entities") *and see* [BIC 6](acknowledging that Corrections is considered to be "the State" for purposes of an immunity analysis).

The Uniform Statute and Rule Construction Act, enacted in 1997, specifically states that it applies to all statutes enacted after its effective date “unless the statute...expressly provides otherwise, the context of its language requires otherwise or the application of that act to the statute...would be infeasible.” NMSA 1978, § 12-2A-1(B) (1997). Thus, the Legislature’s choice of the term “person,” a broadly defined term that includes legal entities, which in turn includes governmental bodies, must be presumed to have been an informed choice. *Luboyeski v. Hill*, 1994-NMSC-032, ¶ 10, 117 N.M. 380, 872 P.2d 353 (Legislature is presumed to be aware of existing statutes).

Corrections errs when it argues that the absence of a more specific reference to governmental entities means they are not included within the FPWA, first because the underlying premise—that silence means exclusion—is wrong, and second because there is no authority supporting the notion that the Legislature can adopt immunity for the State by inference or implication. The notion of implied immunity is antithetical to *Hicks*. And it was effectively rejected in *Hanosh*, a case Corrections fails to discuss or even cite.

D. Public policy supports including governmental bodies as employers subject to the Fair Pay for Women Act.

The results set forth in the Task Force’s Report establish that Corrections and the New Mexico Association of Counties are wrong in predicting dire outcomes should public bodies face liability for non-compliance with the FPWA.

Perhaps as a result of the commitment to ending discrimination embodied in the Equal Rights Amendment and voiced by the three branches of government, New Mexico's public sector had made great strides in pay equity by 2009. The Task Force's September 2009 Report included the following findings:

- Fully one-third of the 396 pay bands³ with both women and men show no gender pay gaps. Some departments, such as the Taxation and Revenue Department, are very close to parity in all pay bands.
- Those gender wage gaps found in the New Mexico classified workforce are moderate, and are much lower than national averages. Nationally, females make 77 cents to the male dollar for full-time, year-round work, resulting in a gender wage gap of 23% favoring males. Of the 396 pay bands analyzed for gender pay disparities, only 15 had gaps exceeding 20%, affecting a mere 76 individuals of 19,811 in the classified workforce (0.003%).

³ The term pay band is defined by the State Personnel Office as "the range of pay rates, from minimum to maximum." 1.7.1.7(BB) NMAC. "The State Personnel Office classifies jobs based on a point system reflecting the complexity of each job. The system measures the amount of technical, managerial, and problem-solving skills a job requires, as well as the level of accountability for the position. Once the job is scored, the position is assigned to a pay band, which determines the pay range, or the minimum and maximum possible salary for the position." Legislative Finance Committee, *Finance Facts: State Employee Compensation* (January 2015), <https://www.nmlegis.gov/Entity/LFC>.

- Gender wage gaps were found in most departments in this study, across the majority of pay bands. Overall, the gender wage gaps slightly favored women, both in number and size. These findings are consistent with the pilot study of [the six state agencies].

Burk, *Fair and Equal Pay for All New Mexicans Initiative Task Force Report to the Governor, supra*, 2-3.

The Task Force stated in summary, “We know that the problem of gender pay gaps in the public sector employment in New Mexico is far better than in many other states but there are specific areas of concern....” *Id.* The Task Force then made specific recommendations for addressing those areas of concern and issued its Report with two cautionary statements.

First, it pointed out that it “is tempting to review the results of this study and conclude that the gender wage gaps ‘even out,’” but that:

[v]iewing gender wage gaps as virtually equal and therefore canceling out is illogical and does nothing to remedy inequalities for individuals or groups of workers on the wrong side of any given gap.

Id. at 4. The Task Force concluded that “[e]very gender wage gap is a problem, and remedial steps should be taken, regardless of whether there is a countervailing gap on the other side.” *Id.*

Second, the Task Force said that “[d]ismissing gender wage gaps as insignificant because they appear small or do not reach the level of national

averages is also a disservice to employees.” *Id.* The Task Force pointed to three examples: (1) the Public Defender’s department gender wage gap of only 3.48% in pay band 70 translates to a shortfall of \$700 over a year’s time; (2) the Aging and Long Term Services gender wage gap of 6.93% in pay band 85 translates to \$5,096 a year; and (3) the Transportation gender wage gap of 10.43% in pay band 85 translates to \$7,155 a year. *Id.*

In the study, the Corrections Department reported the highest gender wage gap in pay band 30 with 18.12% in favor of males, and in pay band 80 with 14.11% in favor of females. Its lowest gender wage gap was in pay band 55 with 0.68% in favor of males. *See* Burk, *Fair and Equal Pay for All New Mexicans Initiative Task Force Report to the Governor, supra*, Appendix II at 49.

The Task Force’s results indicate that remaining pay gaps are outliers in a system that is already engaged in State-sponsored, public-policy driven self-correction. Many agencies are complying with the FPWA and have virtually eliminated pay inequity and job segregation, making New Mexico a national leader in supporting families and New Mexico’s economy. Where pay inequity persists, however, an agency’s failure to remedy pay gaps, despite the State Personnel Office and State Auditor monitoring and assistance, is unacceptable behavior that must be addressed.

In October 2013, Dr. Burk prepared a report for the U.S. Department of Labor, "*The New Mexico Pay Equity Initiative: A Template for Narrowing the Gender Pay Gap*" focusing primarily on efforts with state contractors, noting that "[c]urrently, New Mexico is the only state systematically studying gender wage gaps and implementing procedures to combat pay inequity by state contractors." Burk, "*The New Mexico Pay Equity Initiative: A Template for Narrowing the Gender Pay Gap*," at 6. The report indicated that both the City of Albuquerque, the state's largest city, and the County of Bernalillo, its most populous county, are implementing a comparable initiative. *Id.* at 8. Importantly, the report concluded:

Beyond fairness for women, men, and persons of color, support for such initiatives can be built on public policy benefits broader than ending pay discrimination alone. Fair wages benefit the tax bases and result in a healthier overall economy. By increasing wages, closing pay gaps can lower the burden on public services such as Medicaid, subsidized child care, and food stamps.

Id.

Because the goal of eliminating the remaining disparities is one that is being pursued within most public bodies, the FPWA does no more than provide additional impetus to continue on that path. It will, therefore, be problematic only for recalcitrant agencies, departments, counties or divisions within them, that are failing to abide by and implement an important public policy of this state.

Given the State's longstanding effort to root out discrimination, the cost to eliminate remaining pay disparities is likely to be small and is, in any event, in line

with the State's commitment to equal rights. The fact that outliers remain within state and local governments merely establishes that more effort is needed. The FPWA meets that need. It gives the individuals directly affected by pay disparities the ability to compel the changes that the State itself desires and imposes consequences for the few remaining outliers' who continue to resist achieving pay equity. It is, therefore, very much in the State's interest that the FPWA apply to public bodies.

While the cost in dollars of compliance for public bodies is unlikely to be significant, and because the State needs to serve as a model for the private sector, and cannot do so while claiming immunity, the cost of non-compliance for employees, and to the State's commitment to pay equality, will be high. In 2014, the Bureau of Labor Statistics reported New Mexico had a total of 779,000 wage and salary workers. Of those, 561,000 were employed in private sector jobs and 218,000 were employed in the government sector – including 160,000 employed by state and local governments. Of those state and local government employees, 76,000 were men and 84,000 were women. Women, thus, made up 53.5 percent of state and local government employees. Bureau of Labor Statistics, *Table 21. States: employed people, by class of worker, gender, race, and Hispanic or Latino ethnicity, 2014 national averages*, http://www.bls.gov/opub/gp/pdf/gp14_21.pdf (last visited on August 31, 2016).

The State and its agencies are the largest employers in New Mexico. In 2014, the State of New Mexico employed over 67,000 employees, of which 62.8 percent were women. U.S. Census Bureau, *American Community Survey, 2014 American Community Survey 1-Year Estimates, Table B24080*; generated by Angelica Hall using American Factfinder; available at <http://factfinder2.census.gov> (last visited on August 30, 2016). If State agencies exempt themselves from the statute, the FPWA would be rendered inapplicable to tens of thousands of employees. That cannot have been the Legislature's intent. And the message governmental immunity and a continuation of pay inequity sends would reduce the incentive for private employers to treat their employees fairly. The State's goals simply don't permit the State to compel private employers to comply with the FPWA while its own agencies march to a different drum.

At the individual level, the pay equity that the FPWA seeks to achieve is of immense significance for the employees affected, and that, in turn has immense significance for the wellbeing of New Mexico's citizenry and for its economy. As of 2015, 56.7 percent of women are participating in the labor force and they make up 51.1 percent of the labor force. U.S. Department of Labor, *Labor force by sex, race, and Hispanic ethnicity, 2015 annual averages and 2024 projections*, https://www.dol.gov/wb/stats/latest_annual_data.htm (last visited August 31, 2016). "Two-income families are part of a long-term trend, as many families find

two paychecks essential to cover the bills in an era of rising prices and stagnant, if not falling wages.” Frank James, *The Politics of Equal Pay: It’s More than A Women’s Issue*, NPR (April 8, 2014), <http://www.npr.org/sections/itsallpolitics/2014/04/08/300275950/the-politics-of-equal-pay-its-more-than-a-womens-issue>.

According to the Center for American Progress, the economic downturn of 2008 and 2009 in the United States “resulted in men losing their jobs at a higher rate than women, also placing greater burden on women to earn a larger income.” Chris Joseph, *What are the benefits of equal pay for women & men?*, Small Business, Chron.com, available at <http://smallbusiness.chron.com/benefits-equal-pay-women-men-11771.html> (citing Center for American Progress, *Six Reasons Why Equal Pay is Still Important* (January 2009)). A Pew Research Center analysis of the Census and polling data shows that “[f]our in 10 American households with children under 18 now include a mother who is either the sole or primary earner for her family,” a number which has “quadrupled since 1960.” Catherine Rampell, *U.S. Women on the Rise as Family Breadwinner*, New York Times (May 29, 2013), http://www.nytimes.com/2013/05/30/business/economy/women-as-family-breadwinner-on-the-rise-study-says.html?_r=0%20 (citing Pew Research Center, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend*, (May 29, 2013), <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms>). Equal pay

for women increases the chances that these women will be able to support their families.

The average salary for women who hold full-time jobs in New Mexico is \$32,437; whereas the average salary for men who hold full-time jobs is \$41,561. National Partnership for Women & Families, *New Mexico Women and the Wage Gap* (April 2016), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2016-nm-wage-gap.pdf>. When women earn less on each paycheck, the results in pay over a lifetime are significant. The gender wage gap can also result in devastating effects on retirement income, a matter of increasing concern to the State as the population ages. See U.S. Joint Economic Committee, *Gender Pay Inequality: Consequences for Women, Families and the Economy*, 7 (April 2016), http://www.jec.senate.gov/public/_cache/files/0779dc2f-4a4e-4386-b847-9ae919735acc/gender-pay-inequality---us-congress-joint-economic-committee.pdf.

"A persistent wage gap not only cheats women and their families out of the earnings they deserve, but artificially constrains the purchasing power of women, and therefore hampers the American economy as a whole." U.S. Joint Economic Committee, *Invest in Women, Invest in America: A Comprehensive Review of Women In the U.S. Economy*, 8 (December 2010), available at <http://www.jec.senate.gov/public/index.cfm/democrats/2010/12/invest-in-women-invest->

in-america-a-comprehensive-review-of-women-in-the-u-s-economy. Pay equity, on the other, hand increases purchasing power of women, their labor market participation and their economic independence.

In a recent equal pay campaign, the European Commission identified numerous benefits for employers and workers within the European Union in providing equal pay for women:

Equality between women and men is vital for the creation of quality jobs. Introducing a gender perspective can help companies to: recruit and retain the best employees; create a positive work environment and gain the confidence of their employees; make the best use of human resources and improve productivity and competitiveness; have a better public image and higher shareholder value and a wider more satisfied customer base.

European Commission, *Why is it important to tackle the gender pay gap?*, http://ec.europa.eu/justice/gender-equality/gender-pay-gap/index_en.htm (last modified

February 8, 2016). The European Commission explained that:

the under-use of skilled women is a lost resource for companies and therefore for the economy at large. A salary which does not properly reflect their skills and experience discourages women from entering or staying in the labour market. In economically difficult times, we need to make full use of all our human resources. Longer term demographic trends in Europe make this an imperative.

European Commission, *Equality Pays Off Update*, 1 (August 2012), available at http://ec.europa.eu/justice/gender-equality/eu_funded-projects/equality-pays-off/downloads/index_en.htm.

This message is as true for New Mexico and the United States as for the European Union. It has not fallen on deaf ears. A poll conducted in February of 2014 for EMILY's List and AmericanWomen.org found nationally that 64 percent of men agree that women should be paid the same as men for equal work. James, *The Politics of Equal Pay It's More Than a Women's Issue, supra*.

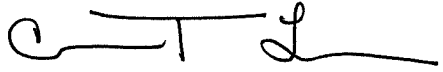
By its example, the State can help fulfill the goal of pay equity, the mandate of the Equal Rights Amendment, in both the public and private sectors. The State has, by and large, been leading the way towards pay equity. But there is still a long way to go. The State will be unable to serve as a model or meet its obligations to the women in its workforce to eliminate gender based disparity in pay if it permits a department, such as Corrections, to assert immunity.

No public policy or legal or equitable principle supports this or any other governmental entity's attempt to immunize itself from responsibility for a failure to adhere to the FPWA. Enforcement of the FPWA does not force any changes that Corrections should not already be prepared to make. Instead, compelling adherence to its requirements will do nothing more than keep Corrections on the right path, while protecting the rights of its workforce.

III. CONCLUSION

For the reasons set forth herein, the decision of the district court should be affirmed.

Respectfully submitted,



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