

 COPY

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JAN 23 2017

Handwritten signature

MELINDA L. WOLINSKY,

Plaintiff-Appellant,

Ct. App. No. 35,762

v.

Dist. Ct. No. D-0101-CV-2016-01005

NEW MEXICO CORRECTIONS
DEPARTMENT,

Defendant-Appellee.

Civil Appeal from the First Judicial District Court
Honorable Francis J. Mathew

APPELLANT'S BRIEF IN CHIEF

Daniel M. Faber
Attorney for Appellant
4620C Jefferson Lane NE
Albuquerque, NM 87109
(505) 830-0405

January 23, 2017

TABLE OF CONTENTS

Table of Authorities	ii
I. Question Presented	1
II. Jurisdictional Statement.....	2
III. Introduction	2
IV. Summary of Proceedings	3
V. Summary of Facts	3
VI. Summary of Arguments	5
VII. Arguments.....	6
A. Standards of review and preservation of issues	6
B. Sovereign immunity does not bar this suit	7
C. If the Tort Claims Act did apply, sovereign immunity would be waived	9
D. The Fair Pay for Women Act applies to state employers such as the Corrections Department.....	12
VIII. Conclusion.....	16

TABLE OF AUTHORITIES

New Mexico Cases

<i>Baker v. Hedstrom</i> , 2013-NMSC-043, 309 P.3d 1047	13
<i>Callahan v. New Mexico Fed'n of Teachers–TVI</i> , 2006-NMSC-010, 139 N.M. 201	4
<i>Cordova v. State of N.M. Taxation & Revenue, Prop. Tax Div.</i> , 2005-NMCA-009, 136 N.M. 713	2
<i>Delfino v. Griffo</i> , 2011-NMSC-015, 150 N.M. 97	3-4
<i>Donalson v. County of San Miguel</i> , 1859-NMSC-001, 1 N.M. 263	14
<i>Faber v. King</i> , 2015-NMSC-015, 348 P.3d 173	14
<i>Financial Indem. Co. v. Cordova</i> , 2012-NMCA-016, 271 P.3d 768	3-4
<i>Garcia-Montoya v. State Treasurer's Office</i> , 2001-NMSC-003, 130 N.M. 25	12
<i>Godwin v. Memorial Med. Ctr.</i> , 2001-NMCA-033, 130 N.M. 434	6
<i>Hicks v. State</i> , 1975-NMSC-056, 88 N.M. 588	7
<i>Lobato v. New Mexico Env't Dep't</i> , 2012-NMSC-002, 267 P.3d 65	12
<i>Medina v. Graham's Cowboys, Inc.</i> , 1992-NMCA-016, 113 N.M. 471	11

<i>Mendoza v. Tamaya Enters., Inc.</i> , 2011-NMSC-030, 150 N.M. 258	4
<i>Quintana v. New Mexico Dep't of Corr.</i> , 1983-NMSC-066, 100 N.M. 224.....	13
<i>Reule Sun Corp. v. Valles</i> , 2010-NMSC-004, 147 N.M. 512.....	14
<i>Rubio v. Carlsbad Mun. Sch. Dist.</i> , 1987-NMCA-127, 106 N.M. 446	10-11
<i>Rummel v. Edgemont Realty Partners, Ltd.</i> , 1993-NMCA-085, 116 N.M. 23	4
<i>Self v. United Parcel Serv., Inc.</i> , 1998-NMSC-046, 126 N.M. 396	6
<i>Skidgel v. Hatch</i> , 2013-NMSC-019, 301 P.3d 854	13
<i>Spencer v. Health Force, Inc.</i> , 2005-NMSC-002, 137 N.M. 64	11
<i>State v. Bowden</i> , 2010-NMCA-070, 148 N.M. 850.....	15
<i>State v. Hanosh</i> , 2009-NMSC-047, 147 N.M. 87	9
<i>State v. Jonathan M.</i> , 1990-NMSC-046, 109 N.M. 789	11
<i>State v. Rivera</i> , 2004-NMSC-001, 134 N.M. 768	6-7, 12
<i>Town of Mesilla v. City of Las Cruces</i> , 1995-NMCA-058, 120 N.M. 69	4
<i>Tri-State Generation & Transmission Ass'n v. New Mexico Pub. Regulation Comm'n</i> , 2015-	

NMSC-013, 347 P.3d 274	15
<i>Ulibarri v. State of N.M. Corr. Acad.</i> , 2006- NMSC-009, 139 N.M. 193	12
<i>Valdez v. State</i> , 2002-NMSC-028, 132 N.M. 667	4
<i>Village of Logan v. Eastern N.M. Util. Auth.</i> , 2015-NMCA-103, 857 P.3d 433	4
<i>Zuni Pub. Sch. Dist. #89 v. State Pub. Educ. Dep't</i> , 2012-NMCA-048, 277 P.3d 1252	8-9

Federal Cases

<i>Garcia v. Purcell</i> , No. 94-220-M Civil, 1995 U.S. Dist. LEXIS 21999 (D.N.M. Sept. 7, 1995)	10-12
<i>Gutierrez v. Quinn & Co.</i> , 55 F.R.D. 395 (D.N.M.)	15

New Mexico Administrative Regulations

Pay, 1.7.4.1 through 19 NMAC	15
------------------------------------	----

New Mexico Rules of Procedure

Rule 1-012(B) NMRA	3
Rule 12-201(D) NMRA	2

New Mexico Statutes

Fair Pay for Women Act, NMSA 1978, §§ 28-23- 1 through 6 (2013)	<i>passim</i>
Human Rights Act, NMSA 1978, §§ 28-1-1 through 15 (2007)	6, 9, 12-14

Tort Claims Act, NMSA 1978, §§ 41-4-1 through
27 5-12

Uniform Statute and Rule Construction Act,
NMSA 1978, §§ 12-2A-1 through 20 (1997) 14

Miscellaneous

John F. Kennedy, *Remarks Upon Signing the
Equal Pay Act, June 10, 1963*, online by Gerhard
Peters & John T. Woolley, THE AMERICAN
PRESIDENCY PROJECT (June 9, 2016, 10:30 AM),
<http://www.presidency.ucsb.edu/ws/?pid=9267> 16

I. QUESTION PRESENTED

The New Mexico legislature enacted the Fair Pay for Women Act to correct pay inequality between the sexes. The Fair Pay for Women Act contains no language excluding state employees from its benefits. Did the legislature intend for state employees to have the same rights as private sector employees under the Fair Pay for Women Act?

II. JURISDICTIONAL STATEMENT

Plaintiff-Appellant Melinda L. Wolinsky submits the following statement of the grounds on which she invokes the jurisdiction of the Court of Appeals: On July 22, 2016, the Order Granting Defendant New Mexico Corrections Department's Motion to Dismiss was filed in the district court. Ms. Wolinsky filed her Notice of Appeal on the same day, so this appeal is timely under Rule 12-201(D) NMRA. The Order Granting Defendant New Mexico Corrections Department's Motion to Dismiss is a final order from which an appeal may be taken. *See generally Cordova v. State of N.M., Taxation & Revenue, Prop. Tax Div.*, 2005-NMCA-009, 136 N.M. 713 (district court's dismissal with prejudice is appealable final order). On September 27, 2016, the Court placed this case on its general calendar.

III. INTRODUCTION

This is an appeal of the district court's dismissal of Ms. Wolinsky's case on July 22, 2016, denying Ms. Wolinsky's prayer for damages for violation of the Fair Pay for Women Act.

Ms. Wolinsky brought this action for violation of the Fair Pay for Women Act against her former employer, Defendant New Mexico Corrections Department ("Corrections Department"). Although the district court ruled that the Fair Pay for

Women Act does not apply to the state and granted the Corrections Department's motion to dismiss under Rule 1-012(B) NMRA, another division of the same district court had ruled that the Fair Pay for Women Act does apply to the Corrections Department. That case, *Lucero v. New Mexico Corr. Dep't*, No. 35,438, is also pending in this Court.

Ms. Wolinsky maintains that the district court was right in *Lucero*, that the Fair Pay for Women Act does apply to the Corrections Department. This Court should reverse the district court's ruling in this case and remand it for a trial on the merits.

IV. SUMMARY OF PROCEEDINGS

Ms. Wolinsky filed her complaint on April 14, 2016. Without filing an answer, the Corrections Department timely filed a motion to dismiss. On July 12, 2016, the district court held oral argument. On July 22, 2016, the district court entered its order granting the motion to dismiss. Also on July 22, 2016, Ms. Wolinsky filed her notice of appeal.

V. STATEMENT OF FACTS

According to the New Mexico Supreme Court, "Dismissal on 12(B)(6) grounds is appropriate only if [the plaintiff is] not entitled to recover under any theory of the facts alleged in their complaint." *Financial Indem. Co. v. Cordova*,

2012-NMCA-016, ¶ 11, 271 P.3d 768, (quoting *Delfino v. Griffo*, 2011-NMSC-015, ¶ 12, 150 N.M. 97). A motion to dismiss is only proper when it appears that the plaintiff can neither recover, nor obtain, relief under any state of facts provable under the claim. *Village of Logan v. Eastern N.M. Util. Auth.*, 2015-NMCA-103, ¶ 8, 357 P.3d 433; *Valdez v. State*, 2002-NMSC-028, ¶ 4, 132 N.M. 667. The facts alleged in the complaint are the only facts to be considered by this Court.

The Court is to review the sufficiency of the complaint and not decide whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support her claims. *Mendoza v. Tamaya Enters., Inc.*, 2011-NMSC-030, ¶ 11, 150 N.M. 258; *Callahan v. New Mexico Fed'n of Teachers-TVI*, 2006-NMSC-010, ¶ 4, 139 N.M. 201. “[G]ranted a motion to dismiss is an extreme remedy that is infrequently used.” *Town of Mesilla v. City of Las Cruces*, 1995-NMCA-058, ¶ 4, 120 N.M. 69; *Rummel v. Edgemont Realty Partners, Ltd.*, 1993-NMCA-085, ¶ 9, 116 N.M. 23.

These are the facts for the Court to consider:

On May 13, 2013, Ms. Wolinsky began work for the Corrections Department as a Lawyer-A in the Office of General Counsel. [R.P. 2 ¶ 10] The Corrections Department paid her a salary of \$59,820.80 per year. [R.P. 2 ¶ 11] Ms. Wolinsky had worked for the Corrections Department for five years

previously, from 1992 to 1997, and was always a reliable employee. [R.P. 2 ¶ 12]

On June 10, 2013, Brian E. Fitzgerald began work for the Corrections Department as a Lawyer-A in the Office of General Counsel. [R.P. 2 ¶ 13] The Corrections Department paid Ms. Wolinsky over \$8,000 per year less than Mr. Fitzgerald, although they performed similar work. [R.P. 2 ¶ 14-15]

The Corrections Department cannot articulate any legitimate reason to pay Mr. Fitzgerald more than Ms. Wolinsky for equal work on jobs the performance of which require equal skill, effort, and responsibility and that are performed under similar working conditions. [R.P. 2 ¶ 16] Despite receiving notice of the need for change, the Corrections Department has not implemented a pay system to stop the gender disparity. [R.P. 2 ¶ 17]

VI. SUMMARY OF ARGUMENTS

The legislature intended for state employees to enjoy the same rights as private sector employees under the Fair Pay for Women Act. This is evident after considering the following:

- Claims under the Fair Pay for Women Act are not barred by sovereign immunity because the New Mexico Supreme Court abrogated it. Neither the Tort Claims Act nor the Fair Pay for Women Act restore such immunity under the circumstances of this case.

- Even if the Tort Claims Act did restore sovereign immunity under the circumstances of this case, the Tort Claims Act contains a waiver of that immunity: “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.”
- State employers are within the Fair Pay for Women Act’s definition of “employer” when read together with the Human Rights Act. The Human Rights Act applies to the state and the legislature wanted the Fair Pay for Women Act to also apply to the state, so it adopted nearly identical language.

VII. ARGUMENTS

A. Standards of review and preservation of issues.

Generally, when the facts of a case are not in dispute, motions to dismiss are reviewed de novo. *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, 126 N.M. 396.

Whether a governmental entity has immunity is reviewed de novo. *Godwin v. Memorial Med. Ctr.*, 2001-NMCA-033, 130 N.M. 434.

Questions of interpretations of statutes are reviewed de novo. *State v.*

Rivera, 2004-NMSC-001, 134 N.M. 768.

The issues that are the subject of this appeal were preserved in Ms. Wolinsky's Complaint for Violation of the Fair Pay for Women Act [R.P. 1] and Response to Defendant New Mexico Corrections Department's Motion to Dismiss. [R.P. 22]

B. Sovereign immunity does not bar this suit.

Sovereign immunity is of no use to the Corrections Department because in 1975, the New Mexico Supreme Court found that "the ancient doctrine of sovereign immunity has lost its underpinnings" and abrogated it. *Hicks v. State*, 1975-NMSC-056, ¶ 13, 88 N.M. 588. One year later New Mexico's legislature restored sovereign immunity, under certain circumstances, with the Tort Claims Act, NMSA 1978, §§ 41-4-1 through 27. Yet state agencies, such as the Corrections Department, cannot assert sovereign immunity in lawsuits arising under the Fair Pay for Women Act because "[t]he 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." NMSA 1978, § 41-4-21. As the Fair Pay for Women Act is a personnel act and a provision of law governing the employer-employee relationship, the Tort Claims Act's restoration of sovereign immunity does not

apply here.

Nowhere in the Tort Claims Act does the legislature even hint that the state is immune from a law that requires equal pay for similar work, as does the Fair Pay for Women Act. *See* NMSA 1978, § 28-23-3 (2013). In fact, the legislature clearly directs that “[l]iability for acts or omissions under the Tort Claims Act shall be based upon the traditional tort concepts of duty and the reasonably prudent person’s standard of care in the performance of that duty.” NMSA 1978, § 41-4-2(B). The Fair Pay for Women Act has no relation to traditional tort concepts—it deals with contract rights borne from the employer-employee relationship. *See* NMSA 1978, § 28-23-3 (2013) (Fair Pay for Women Act prohibits certain employment discrimination). Moreover, the Tort Claims Act was enacted in 1976, so the legislature could not have intended for the Fair Pay for Women Act to be within the contemplated “traditional tort concepts” as the Fair Pay for Women Act was not enacted until thirty-seven years later. Sovereign immunity, as abrogated by the New Mexico Supreme Court, does not allow the Corrections Department to continue to discriminate against women such as Ms. Wolinsky, and the Tort Claims Act does not restore such immunity.

Nothing in the Fair Pay for Women Act provides the Corrections Department immunity from its prescripts. In the absence of such a provision, the

state is subject to suit. *See State v. Hanosh*, 2009-NMSC-047, ¶ 10, 147 N.M. 87, (government agencies do not enjoy immunity absent statutory authorization); *Zuni Pub. Sch. Dist. #89 v. State Pub. Educ. Dep't*, 2012-NMCA-048, ¶ 20, 277 P.3d 1252 (sovereign immunity is abrogated unless the legislature explicitly asserts or waives it). The Fair Pay for Women Act's incorporation of the Human Rights Act's relief process demonstrates the legislature's intent to deem the state to be an employer and subject to the Fair Pay for Women Act. NMSA 1978, § 28-23-4(A)(2) (2013) ("A person claiming to be aggrieved by an unlawful discriminatory practice in violation of the Fair Pay for Women Act may seek relief under the Human Rights Act").

C. If the Tort Claims Act did apply, sovereign immunity would be waived.

If the Tort Claims Act did provide the Corrections Department with sovereign immunity, that immunity would be waived under these circumstances because "[t]he 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." NMSA 1978, § 41-4-21. Examination of the Tort Claims Act reveals that because the Fair Pay for Women Act is a provision of law governing the employer-employee relationship,

the legislature intends for § 41-4-21 to render a waiver of immunity.

The legislature intended to treat employment matters differently from the torts for which it waives sovereign immunity, enumerated in NMSA 1978, §§ 41-4-5 through 12. Sections 41-4-5 through 11 all deal with negligence, while § 12 deals with liability for intentional torts committed by law enforcement personnel. The legislature intended to treat the employment torts differently, so it covers them separately and collectively in NMSA 1978, § 41-4-21.

Judge Mechem discerned the legislative intent of NMSA 1978, § 41-4-21 in *Garcia v. Purcell*, No. 94-220-M Civil, 1995 U.S. Dist. LEXIS 21999, at *28 (D.N.M. Sept. 7, 1995). He found that under the Tort Claims Act, “sovereign immunity has been waived to the extent that suits for retaliatory discharge may be brought against a public employer while acting within the scope of his duty.” *Id.* It follows that violation of the Fair Pay for Women Act by an employer acting within the scope of his duty would be treated similarly. There are no reported cases that are contrary to Judge Mechem’s holding in *Garcia*.

Rubio v. Carlsbad Mun. Sch. Dist., 1987-NMCA-127, 106 N.M. 446, which deals with negligent retention and supervision, may appear to be contrary to *Garcia*. A deeper examination, however, reveals the holding in *Rubio* to be harmonious with *Garcia*. *Rubio* is about how the Tort Claims Act affects a

negligent hiring and retention claim by a third party, not an employee. The claim at issue in *Rubio*, therefore, does not deal with an employment tort. In *Rubio*, the duty is not owed to an employee who has been fired, but to a third party who is a member of the public. See *Spencer v. Health Force, Inc.*, 2005-NMSC-002, ¶ 10, 137 N.M. 64 (“[l]iability for negligent hiring ‘flows from a direct duty running from the employer to those members of the public whom the employer might reasonably anticipate would be placed in a position of risk of injury as a result of the hiring’” (quoting *Medina v. Graham’s Cowboys, Inc.*, 1992-NMCA-016, ¶ 7, 113 N.M. 471)). In *Rubio*, the plaintiffs asserted that a duty was owed to students who were allegedly harmed by teachers. *Rubio*, 1987-NMCA-127, ¶ 1, 106 N.M. at 447. The *Rubio* court concluded there was no waiver of sovereign immunity for negligent hiring and retention, which is the correct conclusion because, in *Rubio*, those causes of action were asserted against third parties and were not provisions of law governing the employer-employee relationship.

Although *Garcia* was decided eight years after *Rubio*, there was no reason for Judge Mechem to mention *Rubio* in the *Garcia* opinion because *Garcia* relates to a provision of law governing the employer-employee relationship for which NMSA 1978, § 41-4-21 provides a waiver of immunity. As Judge Mechem put it, “The language of [§ 41-4-21] of the Tort Claims Act is clear.” *Garcia*, 1995 U.S.

Dist. LEXIS 21999, at *28. “Under the plain meaning rule of statutory construction, ‘when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.’” *Rivera*, 2004-NMSC-001, ¶ 10 (quoting *State v. Jonathan M.*, 1990-NMSC-046, ¶ 4, 109 N.M. 789). If the Court finds that the Tort Claims Act applies in this case, it should find a waiver of immunity as did Judge Mechem in *Garcia*.

D. The Fair Pay for Women Act applies to state employers such as the Corrections Department.

The Corrections Department challenges Ms. Wolinsky’s claim under the Fair Pay for Women Act as not applicable to a state employer because it does not specifically mention the state in its definition of “employer.” [R.P. 10 ¶ 2] The failure of this argument is apparent when the definition of “employer” in the Fair Pay for Women Act is compared to the definition of “employer” in the Human Rights Act, NMSA 1978, § 28-1-2(B) (2007). The Human Rights Act unquestionably applies to the state. *See, e.g., Lobato v. New Mexico Env’t Dep’t*, 2012-NMSC-002, 267 P.3d 65; *Ulibarri v. State of N.M. Corr. Acad.*, 2006-NMSC-009, 139 N.M. 193; *Garcia-Montoya v. State Treasurer’s Office*, 2001-NMSC-003, 130 N.M. 25.

Under the Human Rights Act, “‘employer’ means any person employing four or more persons and any person acting for an employer.” NMSA 1978, § 28-1-2(B) (2007). The Fair Pay for Women Act defines “employer” as “a person employing four or more employees and any person acting for an employer.” NMSA 1978, § 28-23-2(E) (2013). The definitions are nearly identical and their meanings are indistinguishable. The legislature plainly modeled the Fair Pay for Women Act’s definition of “employer” on the Human Rights Act’s definition. The logical reason the legislature would do such a thing would be for both statutes to cause the same effect. In other words, the Human Rights Act applies to the state and the legislature wanted the Fair Pay for Women Act to also apply to the state, so it adopted nearly identical language. Why would the legislature use such language if it intended two different effects? The legislature does not intend to enact law that is inconsistent with existing law. *Quintana v. New Mexico Dep’t of Corr.*, 1983-NMSC-066, ¶ 11, 100 N.M. 224, *overruled on other grounds by Skidgel v. Hatch*, 2013-NMSC-019, ¶ 16, 301 P.3d 854.

In *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 26, 309 P.3d 1047, the New Mexico Supreme Court explains that “all provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent.” As the Fair Pay for Women Act shows, it is in pari materia with the

Human Rights Act. NMSA 1978, § 28-23-4(A)(2) (2013). Like the Human Rights Act, the Fair Pay for Women Act applies to the state.

The Corrections Department misreads the Uniform Statute and Rule Construction Act (“USRCA”) as excluding state agencies, such as the Corrections Department, from the definition of “person.” [R.P. 12 ¶ 2] The Corrections Department overlooks the inclusion of legal entities within the definition of person in the USRCA. *See* NMSA 1978, § 12-2A-3(E) (1997) (definition of “person” includes any legal entity). As the New Mexico Supreme Court found long ago, bodies politic, such as the Corrections Department, are legal entities capable of suing and being sued. *See Donalson v. County of San Miguel*, 1859-NMSC-001, ¶ 4, 1 N.M. 263 (“a county is fairly included as a body politic and corporate, to which the word ‘person’ is extended, and is liable to be a party in suits at law, of suing and being sued”).

The New Mexico Supreme Court directs: “Under the plain meaning rule, when a statute’s language is clear and unambiguous, we will give effect to the language and refrain from further statutory interpretation. We will not read into a statute language which is not there, especially when it makes sense as it is written.” *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, *quoted in Faber v. King*, 2015-NMSC-015, ¶ 15, 348 P.3d 173. The Fair Pay for Women

Act defines “employer” as “a person employing four or more employees and any person acting for an employer.” NMSA 1978, §28-23-2(e) (2013). It does not say “except the state,” despite the Corrections Department’s insistence that the Court read that into it. The Corrections Department does not dispute that the Fair Pay for Women Act makes sense as it is written.

Any conflict between the Fair Pay for Women Act and New Mexico Personnel Act regulations is inconsequential. A conflict between a statute and a regulation would be resolved by giving the statute precedence. *Tri-State Generation & Transmission Ass’n, Inc., v. New Mexico Pub. Regulation Comm’n*, 2015-NMSC-013, ¶ 24, 347 P.3d 274; *State v. Bowden*, 2010-NMCA-070, ¶ 10, 148 N.M. 850. If the legislature were to enact a statute that conflicts with a regulation, the agency that promulgated the regulation would have to rework it to eliminate the conflict. The Fair Pay for Women Act does not conflict with New Mexico Personnel Act regulations—the Fair Pay for Women Act takes precedence.

Statutes prohibiting employment discrimination, such as the Fair Pay for Women Act, should be liberally construed. *See Gutierrez v. Quinn & Co.*, 55 F.R.D. 395 (D.N.M. 1972). The district court’s dismissal of this case should be reversed.

VIII. CONCLUSION

The legislature intended for the Fair Pay for Women Act to provide state employees the same rights as private sector employees. The legislature recognizes that we would all be better off paying men and women the same for the same work. As President Kennedy pointed out long ago, “Our economy today depends upon women in the labor force . . . [and it] is extremely important that adequate provision be made for reasonable levels of income to them. . . .” John F. Kennedy, *Remarks Upon Signing the Equal Pay Act, June 10, 1963*, online by Gerhard Peters & John T. Woolley, THE AMERICAN PRESIDENCY PROJECT (June 9, 2016, 10:30 AM), <http://www.presidency.ucsb.edu/ws/?pid=9267>.

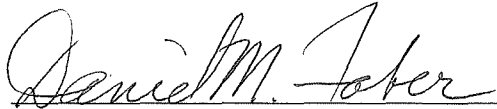
Based on the foregoing, Ms. Wolinsky respectfully requests that the Court reverse the district court’s dismissal and remand this case for further proceedings.

Respectfully submitted,



Daniel M. Faber
Attorney for Appellee
4620C Jefferson Lane NE
Albuquerque, NM 87109
(505) 830-0405

I hereby certify that a true copy of this pleading was mailed to Zachary R. Cormier and Sean Olivas, Attorneys for Defendant New Mexico Corrections Department, P.O. Box AA, Albuquerque, NM 87103, this 23d day of January, 2017.



Daniel M. Faber