STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

THE ASSOCIATION OF COMMERCE AND INDUSTRY, NAIOP, AND THE NEW MEXICO RESTAURANT ASSOCIATION;

Plaintiffs,

v.

THE CITY OF ALBUQUERQUE; THE CITY COUNCIL OF THE CITY OF ALBUQUERQUE, NEW MEXICO; KEN SANCHEZ, ISAAC BENTON, KLARISSA PEÑA, BRAD WINTER, DAN LEWIS, PAT DAVIS, DIANE GIBSON, TRUDY JONES, AND DON HARRIS, in their capacities as Albuquerque City Councilors;

Case No. D-202-CV-2017-02314

Defendants, and

ORGANIZERS IN THE LAND OF ENCHANTMENT, EL CENTRO DE IGUALDAD Y DERECHOS, New Mexico membership-based organizations representing workers who lack earned sick leave; OLE EDUCATION FUND AND REBECCA GLENN, proponents of the Healthy Workforce Ordinance,

Intervenor-Defendants.

INTERVENOR-DEFENDANTS' MOTION TO DISMISS CLAIMS THAT SEEK TO KEEP THE HEALTHY WORKFORCE ORDINANCE OFF THE 2017 BALLOT (COUNTS I, III, IV, AND VI)

I. INTRODUCTION

Plaintiff's challenge to the legality of the Healthy Workforce Ordinance ballot initiative is an undemocratic effort by corporations to keep Albuquerque voters, as is their right, from deciding whether their fellow citizens should have the right to earn between five to seven days of sick leave annually to recover from illness or care for ill family members. Beyond that, these corporate Plaintiffs – not one of which is an Albuquerque voter – seek to take away the voters' democratic right, established in the Albuquerque City Charter, to propose and vote on any ballot

initiative ever again. The Court should dismiss all claims concerning the Healthy Workforce Ordinance pursuant to Rule 1-012(B)(6) because there is no set of facts under which Plaintiffs could recover. Count I fails because there is no law applying a single-subject rule to Albuquerque municipal ordinances, and even if there were, the Healthy Workforce Ordinance concerns a single subject. Count III fails because it seeks an advisory opinion on an unripe claim based on a hypothetical set of facts, Plaintiffs have not alleged any threat of injury, and the Healthy Workforce Ordinance does not conflict with any statute. Count IV fails because Albuquerque voters plainly have a legal right to propose and vote on direct voter legislation initiatives. Finally, Count VI fails because the Healthy Workforce Ordinance has no extraterritorial reach; it only applies to businesses or nonprofits with a physical premises in the City of Albuquerque, and Plaintiffs do not have standing to raise this hypothetical claim.

II. STATUTORY FRAMEWORK

1. Under the direct legislation by voter initiative provision of Article III, Section 3 of the Albuquerque City Charter ("the Charter"),[1] Albuquerque voters have the right to propose and vote annually on legislation that the City Council does not enact on its own. Charter, Art. III, Sec. 3.

2. There are several steps that proponents of direct voter legislation must follow to put a measure on the ballot. First, they must submit "a notice of intent to circulate a petition proposing any measure" to the City Clerk, signed by five Albuquerque voters, and also file the proposed measure with the City Clerk. Charter, Art. III, § 3(a)(1)-(2). Then, proponents must obtain a minimum number of signatures within a 60-day period. *Id.* § 3(a)(3)-(5). It is undisputed that these steps were timely completed by July 19, 2016.

[1] The Charter is available at http://www.amlegal.com/codes/client/albuquerque_nm/

3. After the City Clerk "files a certification with the Council that the petition has been signed by the required number of voters," the City Council must either: (1) approve the measure as proposed; (2) approve a modified version of the measure, in which case each version would be placed on the ballot, or (3) place the proposed measure on the ballot. *Id*. § 3(a)(6). The City Council exercised the third option by passing an election resolution to place the Healthy Workforce Ordinance on the November 2016 general election ballot.

4. In either scenario 2 or 3, an "election on the issues must be held at the next general election or regular municipal election." *Id*. The Charter further states: "At such election the ballot shall contain the proposed measure as originally submitted and the measure as amended, if amended by the governing body of the city." Charter, Art. III, Sec. 3(b).

III. STATEMENT OF FACTS

5. On May 11, 2016, pursuant to the procedures outlined in Article III, Section 3 of the Charter, Petitioners submitted a Notice of Intent to the City Clerk of the City of Albuquerque. Ex. A (Notice of Intent).[2] In the second paragraph of the Notice of Intent, Petitioners submitted the summary of the proposed measure to be placed on the petition and the ballot, which they asked the City Clerk to conform into a petition to gather signatures of Albuquerque voters:

> Proposing to enact the Albuquerque Healthy Workforce Ordinance such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member's illness, injury, or medical care or for absences related to domestic violence, sexual assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation.

[2] All exhibits marked with letters herein are attached to this Motion.

Id. Petitioners also attached a draft City Council Resolution to the Notice of Intent, which contained the entire the Healthy Workforce Ordinance. Ex. B (Attachment to Notice of Intent). The draft resolution provided that the full text of the Healthy Workforce Ordinance should be made available to voters on the website of the Office of the City Clerk, consistent with the Municipal Election Code's publication requirements. NMSA 1978 §§ 1-1-14; 3-8-30; 3-8-36.

6. On May 12, 2016, the City Clerk provided Petitioners with a signed petition containing the summary Petitioners had originally submitted. Ex. C (Petition). The petition specified that the full text was to be attached in a separate document. *Id.*

7. On three dates, the last of which was July 11, 2016, Petitioners submitted to the City Clerk petitions signed by more than the necessary 14,218 Albuquerque voters.

8. On July 21, 2016, the City Clerk sent the City Council a memorandum certifying that she had verified enough signatures to send the proposed measure to the City Council for an election resolution. Ex. D (Certification of Petition).

9. On August 1, 2016, the City Council passed a special election resolution to place the measure on the 2016 general election ballot, but instructed the City Clerk to place the summary and full text of the measure on the ballot. *See* Exhibit 1 to Plaintiffs' Complaint.

10. On September 8, 2016, the Bernalillo County Commission voted not to place the Healthy Workforce Ordinance on the 2016 general election ballot because there was only room for the summary, not the full text.

11. On September 9, 2016, proponents of the Healthy Workforce Ordinance, including two Intervenors in this case, OLÉ Education Fund and Rebecca Glenn, filed a lawsuit against Albuquerque and Bernalillo County officials seeking a preliminary and permanent injunction or a writ of mandamus ordering the summary of the Healthy Workforce Ordinance to

appear on the 2016 general election ballot. *Healthy Workforce ABQ v. The City of Albuquerque*, No. CV 2016-05539 (2nd Jud. Dist. Sept. 13, 2016). After a preliminary injunction hearing, the district court, Judge Alan Malott presiding, denied the requested relief but ordered that "the City of Albuquerque, by applicable Charter provisions and the specific representations of counsel in open Court on September 12, 2016, [is] bound to place the proposed Ordinance on the next municipal election," which will take place on October 3, 2017. Ex. E (9-13-16 ORD).

12. On October 12, 2016, the plaintiffs in *Healthy Workforce ABQ v. City of Albuquerque* filed a motion for reconsideration of the district court's order that the full text of the Healthy Workforce Ordinance must appear on the ballot. On February 28, 2017, the district court denied the motion for reconsideration, and included the language required for an interlocutory appeal pursuant to NMSA § 39-3-4(A). Ex. F (2-28-17 ORD). The plaintiffs in *Healthy Workforce ABQ v. City of Albuquerque* filed an application for interlocutory appeal with the New Mexico Court of Appeals on March 15, 2017. The Court of Appeals has not yet taken any action on the application.

13. The next Albuquerque regular municipal election will take place on Tuesday, October 3, 2017. Charter, Art. II, Sec. 2 (regular municipal election must be held in-person on the first Tuesday after the first Monday in October of odd-numbered years). The City Council must publish an election resolution calling for the election and specifying the offices, issues, and questions to appear on the ballot 84 days prior to the election, which is Tuesday, July 11, 2017. *See* NMSA 1978 § 3-8-18. The contested question in this case – whether the Healthy Workforce Ordinance must appear on the 2017 municipal election ballot – must therefore be resolved prior to Friday, July 11, 2017.

IV. ARGUMENT

A. Plaintiffs' "logrolling" challenge (Count I) should be dismissed because the Supreme Court has held that no single subject rule applies to municipal ordinances, and the Healthy Workforce Ordinance concerns a single subject.

In Count I of their complaint, Plaintiffs incorrectly allege that the proposed ordinance should not appear on the ballot because it includes more than one subject and therefore constitutes ostensibly unlawful "logrolling." Compl. ¶¶ 24-25. Plaintiffs cannot "prevail under any state of facts provable under this claim," *New Mexico Life Ins. Guar. Ass'n v. Quinn & Co.*, 1991-NMSC-036, ¶ 9, 111 N.M. 750, because the New Mexico Supreme Court has held that the prohibition against logrolling in state legislative enactments at Article IV, Section 16 of the New Mexico Constitution does not apply to municipal ordinances. *State ex rel. Ackerman v. City of Carlsbad,* 1935-NMSC-053, ¶ 24, 39 N.M. 352 ("[i]t is not our understanding . . . that N.M. Const. art 4, § 16 is applicable to ordinances."); *see also City of Clovis v. North,* 1958-NMSC-077, ¶ 13, 64 N.M. 229 (relying on *Ackerman* to extend the inapplicability of the constitutional single-subject rule to whatever the form the city government might be). The single-subject rule also does not apply to Albuquerque's legislative enactments because Albuquerque is a home rule municipality that "may exercise all legislative powers . . . not expressly denied by general law or charter." N.M. Const. Art X, § 6(D). "Not expressly denied" means "some express statement of the authority or power . . . contained in such general law [.]" *Apodaca v. Wilson,* 1974-NMSC-071 ¶ 16, 86 N.M. 516. The purpose of home rule in New Mexico is "to provide for maximum local self-government," and the powers of municipalities under home rule must be given a "liberal construction." N.M. Const. Art X, § 6 (E). In the absence of an express denial of municipal authority in the state constitution or state statutes, the only source of law for any limitation on Albuquerque's authority is the Charter and Albuquerque's local ordinances. The

Charter imposes no logrolling or single-subject limitation on the process for enacting legislation, enacting ballot initiatives, or for amending the Charter itself. Given the broad powers granted to home rule municipalities, which are only limited by *express* provisions of state law, there can be no *implicit* single-subject rule applicable to local ordinances, as Plaintiffs allege. Furthermore, the Supreme Court has twice rejected Plaintiffs' argument. *Ackerman*, 1935-NMSC-053, ¶ 24; *City of Clovis*, 1958-NMSC-077, ¶ 13.

Even though there is no law prohibiting logrolling in the municipal context, the Healthy Workforce Ordinance easily conforms to any single-subject rule because it is "germane to one general object or purpose" of providing Albuquerque workers with a right to earn paid sick leave. *City of Raton v. Sproule*, 1967-NMSC-141 ¶ 19, 78 N.M. 138. The concept of a "single subject" must be "given broad and extended meaning so as to authorize the legislature to include in one act all matters having a logical or natural connection." *Silver City Consol. Sch. Dist. No. 1 v. Bd. Of Regents of N.M.W. College*, 1965-NMSC-035 ¶ 8, 75 N.M. 106. "The fact that two points of change are involved, the fact that either might have been presented to the electorate separately, and the fact that there may be reasons why an elector might have desired one change, and not the other, are not in themselves sufficient to hold the adoption of the amendment invalid" under the single subject rule. *Sproule*, 1967-NMSC-131, ¶ 21. There must only be a "rational linchpin joining the various elements of an amendment [which] serves to prevent the linking of independent propositions simply by the selection of a sufficiently broad overarching theme." *State Ex Rel. Clark v. State Canvassing Board*, 1995-NMSC-001, ¶ 14, 119 N.M. 12. An overarching theme can be a "rational linchpin" if the provisions joined by that theme are "interdependen[t]" or have a "necessary connection." *Id*. ¶ 16 (discussing *State ex rel Chavez v. Vigil-Giron*, 1988-NMSC-103, ¶ 14 108 N.M. 45 (rejecting a logrolling challenge to a single

amendment providing for "merit selection of judges, their numbers, their districting, and the selection of their chief administrative officers" because "the changes proposed are germane to an overarching theme of 'judicial reform.'")).

Like the judicial reforms at issue in *Vigil-Giron*, the policy of ensuring that Albuquerque workers can earn and take sick leave is "rational linchpin" joining the provisions of the Healthy Workforce Ordinance together. To accomplish this, the law sets forth (a) the minimum accrual rate for earned sick leave, (b) the minimum amount of earned sick leave employees may take annually, (c) the reasons for which employees must be permitted to take sick leave, and (d) notice and enforcement provisions to ensure compliance with the law.[3] Each provision is interdependent and necessary to ensure Albuquerque workers have an enforceable right to earn a minimum amount of sick leave. Had any of these provisions not been included, then the law would have contained loopholes undermining this policy purpose. For example, if notice and enforcement provisions had not been included – including the employer duty to notify employees of their rights, maintain records of accruals and time taken, and to pay liquidated damages for violations or retaliatory conduct –there would be no incentive for employers to comply with the law. Similarly, if the law did not enumerate accrual rates, the amount of leave employees can take annually, or the specific circumstances under which employees must be permitted to take leave, the law would be meaningless and impossible to implement.

B. Count IV should be dismissed because Albuquerque voters have the power to propose and enact direct voter legislation.

In Count IV Plaintiffs incorrectly allege that home rule municipalities do not have the power to enact voter initiated legislation. There is no legal basis for this claim. Albuquerque is a

[3] Although Plaintiffs do not mention this, the law also provides that employers who offer more generous policies, such as unrestricted paid time off policies, do not have to change those policies or separately track sick time. §13-16-3(D); §13-16-7(A).

home rule municipality whose citizens adopted a Charter in 1971 granting voters the right to propose and vote on direct voter legislation. "A municipality which adopts a charter may exercise all legislative powers and perform all functions not *expressly* denied by general law or charter." N.M. Const. Art. X § 6(D) (emphasis added). The purpose of home rule is "to enable municipalities to conduct their own business and control their own affairs, to the fullest possible extent, in their own way . . . upon the principle that the municipality itself knew better what it wanted and needed than did the state at large." *Apodaca*, 1974-NMSC-071, ¶ 10 (citation omitted). There is no prohibition whatsoever against the right to enact legislation by voter initiative in the mayor-council form of government in the New Mexico Constitution or any state statute, as Plaintiffs allege. In fact, the Municipal Charter Act expressly *allows* for direct voter legislation. NMSA 1978 § 3-15-7 ("The charter may provide for any system or form of government . . . including . . . the petition and referendum of any ordinance, resolution, or action of the municipality.") The "petition and referendum of any ordinance" is exactly what Article III, Section 3 direct voter legislation is. Even if this provision did not exist, the list of permissible charter provisions in the Municipal Charter Act is illustrative and not restrictive. *See Federal Bank of St. Paul v. Bismarck Lumber Co.* 314 U.S. 95, 100 (1941), ("[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.") Since Albuquerque voters plainly have the power to propose and vote on ballot initiatives, Plaintiffs' challenge to this basic democratic right must be dismissed.

C. Count III should be dismissed because it is unripe, courts should not issue advisory opinions on hypothetical issues, and the Healthy Workforce Ordinance does not infringe on any state statute.

In Count III, Plaintiffs incorrectly argue that the Healthy Workforce Ordinance's anti-retaliation provision conflicts with state statute. Plaintiffs' hypothetical argument has no basis in

the plain text of the ordinance, and Plaintiffs lack standing to challenge the ordinance on this basis because they have not alleged and cannot prove any injury to any Plaintiff or member of any Plaintiff organization.

Plaintiffs' challenge centers on the portion of the anti-retaliation provision at section 13-16-4 that prohibits employers from taking adverse action against employees who report violations of the ordinance, including firing them, reducing their pay or hours, or reporting "an employee or an employee's family member to any law enforcement agency." This last provision addresses one common way that employers retaliate against employees. *See, e.g.*, *Sure-Tan v. NLRB*, 467 U.S. 883 (1984) (employer reported immigrant employees to Immigration and Naturalization Services in retaliation for unionizing); *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996) (to retaliate against plaintiff employee for filing an EEOC action, the employer caused another employee to initiate a criminal complaint against the plaintiff based on a previously-resolved dispute); *Montano-Perez v. Durrett Cheese Sales, Inc.*, 666 F. Supp. 2d 894 (M.D. Tenn. 2009) (employer reported workers demanding unpaid wages to police to avoid paying wages due; police then turned workers over to Immigration and Customs Enforcement); *Beckham v. Grand Affair of N.C., Inc.*, 671 F. Supp. 415 (W.D.N.C. 1987) (Plaintiff bartender was fired after filing an EEOC sex discrimination complaint against her employer, who called the police to arrest her when she later attended a party at the bar). The Healthy Workforce Ordinance's prohibition against retaliatory reports to law enforcement simply codifies into local law the FLSA and EEOC case law holding that such conduct is illegal retaliation. *Id*. Anti-retaliation provisions like these are an integral part of any workplace rights enforcement scheme, and are common in both federal and New Mexico workplace rights laws, because such protections ensure that employees will not suffer adverse consequences for reporting violations

of law. *See, e.g.*, NMSA 1978 § 50-4-26.1 ("It is a violation of the Minimum Wage Act for an employer . . . to discharge, demote, deny promotion to or in any other way discriminate against a person . . . in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act), NMSA § 52-1-28.2 ("An employer shall not discharge, threaten to discharge or otherwise retaliate in the terms or conditions of employment against a worker who seeks workers' compensation benefits"); 29 U.S.C. § 215(a)(3) (prohibiting any person to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [the Fair Labor Standards Act], or has testified or is about to testify in any such proceeding"). Without meaningful anti-retaliation protections for those who report violations, unscrupulous employers can send a message to other workers about the negative consequences of speaking up. However, the Healthy Workforce Ordinance's anti-retaliation prohibition does not prohibit anyone from making good faith reports to law enforcement or from cooperating with criminal investigations, as Plaintiffs allege. Compl. ¶¶ 42-45. To show retaliation, an employee must prove that the employer took adverse action "because the employee has exercised rights protected under this Ordinance or has in good faith alleged violations of this Ordinance." Nothing in this provision prohibits an employer from reporting a crime.

Plaintiffs are also wrong that the Healthy Workforce Ordinance creates criminal penalties greater than those permitted by the New Mexico Constitution, because the Healthy Workforce Ordinance does not create any penalties whatsoever. Rather, the Ordinance provides a remedy to workers "calculated at three times the value of the unpaid sick time accrued." Sec. 13-16-6. The New Mexico Supreme Court has made clear that statutory remedial provisions providing for liquidated damages to injured parties, like those in the Healthy Workforce Ordinance, are not

statutory penalties because the damages go to the worker, not the state. *See* Ex. B (Sec. 13-16-6); *Denison v. Tocker*, 1951-NMSC-022, ¶ 13, 55 N.M. 184 ("A civil action is for damages if it is brought for the compensation of the injured individual. It is for a penalty if it seeks to obtain a sum of money for the state[.]").

Furthermore, Count III must be dismissed because Plaintiffs do not have standing to raise it, and there is no case or controversy to resolve. To show standing, Plaintiffs must "allege three elements: (1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision." *ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 144 N.M. 471 ("a hypothetical possibility of injury will not suffice to establish the threat of direct injury required for standing") (quotation omitted). Count III includes no allegations of injury to any of the organizational Plaintiffs or their members, and the scenarios presented are obviously hypothetical. *See* Compl. ¶ 43; ("an employer may be a person with information about an offense"); *id*. ¶ 44 (employee asserting rights "may be, by taking such action, intimidating an employer…"); *id*. ¶ 45 ("Another conflict will occur when…"). Plaintiffs do not allege a "high probability" of any of these scenarios occurring, nor could they plausibly do so. *ACLU of New Mexico*, 2008-NMSC-045, ¶¶ 25-29 (to show injury-in-fact, "at the very least a plaintiff must be able to demonstrate a high probability of" enforcement action against him for his actions). Instead, Plaintiffs seek an advisory opinion based on hypothetical facts. This is improper. *Santa Fe S. Ry., Inc. v. Baucis Ltd. Liab. Co.*, 1998-NMCA-002, ¶ 24, 124 N.M. 430 ("Our concern with issuing advisory opinions stems from the waste of judicial resources used to resolve hypothetical situations which may or may not arise.") (citing *New Mexico Indus. Energy Consumers v. New Mexico Pub. Serv. Comm'n*, 111 N.M. 622 ("The basic purpose of ripeness

law is and always has been to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.") (quotation omitted)). Even if Plaintiffs' Count III had merit – and it does not – Plaintiffs have failed to plead a controversy ripe for adjudication that they have standing to raise.

D. The Healthy Workforce Ordinance is narrowly tailored to apply only to employers with a physical premises in Albuquerque.

Plaintiffs' argument in Count VI that the Healthy Workforce Ordinance has an impermissible extraterritorial reach must be dismissed because the Healthy Workforce Ordinance is narrowly tailored to apply only to employers with a physical premises in the City of Albuquerque. The Healthy Workforce Ordinance defines "employer" as an individual and/or corporate entity "who is required to have a business license or business registration from the City of Albuquerque" or nonprofits, partnerships, associations, corporations or charitable trusts with physical presence in ABQ. *See* Ex. B (Healthy Workforce Ordinance) § 13-16-2 (incorporating the definition of "employer" codified at ROA § 13-12-2.) The Minimum Wage Ordinance defines an "employer" as an individual and/or corporate entity "who is required to have a business license or business registration from the City of Albuquerque." ROA § 13-12-2. The Albuquerque Business Registration Ordinance only covers businesses that have a physical place of business in the City of Albuquerque. ROA § 13-1-2, 13-1-3. The Business Registration Ordinance defines "place of business" as "[t]he premises, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting of business." ROA § 13-1-2. Companies that do not have such a premises meet the "place of business" requirement only if "business is transacted at the location of the buyer" in Albuquerque and if the company has a "general sales area" in Albuquerque (the "salesperson provision") or, in the case

of construction companies, if the company has a construction site in Albuquerque. *Id*. Other types of businesses without a physical premises within Albuquerque city limits are not covered by the requirements of the Business Registration Ordinance. *Id*. They are therefore not covered by the requirements of the Healthy Workforce Ordinance, either. ROA § 13-12-2.

Plaintiffs ask the Court to find that the salesperson provision in the Business Registration Ordinance swallows the general rule that a company must have a business premises within the City of Albuquerque. Compl. ¶¶ 63-67. This interpretation is backwards and renders superfluous the physical premises requirement in the definition of "place of business." *Whitely v. N.M. State Personnel Bd.*, 1993-NMSC-019, ¶ 5, 115 N.M. 308 ("No part of a statute should be construed so that it is rendered surplusage"); *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413 ("where several sections of a statute are involved, they must be read together so that all parts are given effect"); *State v. Ordunez*, 2012-NMSC-024, 283 P.3d 282, 286 ("courts must try to adopt an interpretation that upholds the constitutionality of the statute"). No employer in the hypothetical scenarios Plaintiffs imagine would be covered by the business registration requirement unless the employer (a) has a general sales area in Albuquerque and (b) makes in-person sales at the "location of the buyer" in Albuquerque. ROA § 13-1-2. The Healthy Workforce Ordinance therefore does not apply to "every business transaction" with an Albuquerque buyer, as Plaintiffs claim, nor to "an employer shipping a product into the City" that has no Albuquerque premises, nor to employees "providing services in, attending business meetings in, delivering to, or telecommuting from within the City" if their employers have no Albuquerque premises. Compl. ¶ 67. The City Council would not have specified that only physical business premises are subject to the Business Registration Ordinance if it had intended to enact such a broad business registration requirement. Instead, the Council wrote in an express

and narrow exception to the business premises requirement only for salespeople and for construction companies.

Plaintiffs are also wrong that the Healthy Workforce Ordinance "impose[s] its requirements on employers whose employees work in the City for about 65 minutes per week (56 hours in a year)." Compl. 67. Both the definition of "employer" and "employee" must be met for coverage under the Minimum Wage Ordinance because the two provisions reference each other. ROA § 13-1-2 (employee is "[a]ny person who performs work for an employer…"). Even if an employee works within Albuquerque for 56 hours in a year, she is not covered unless her employer has a physical premises within the City of Albuquerque. *Id.*[4]

Finally, Plaintiffs' Count VI must be dismissed because Plaintiffs do not have standing to raise it. To have standing, Plaintiffs must allege the three elements discussed in Section C above: (1) direct injury, (2) causation, and (3) redressability. *ACLU of New Mexico*, 2008-NMSC-045, ¶ 1. Plaintiffs' allegation that "many employers, including members of the Plaintiffs New Mexico Restaurant Association, NAIOP and Association of Commerce and Industry are located outside the City and employ those who work within the City as few as 56 hours in a year" does not meet any element of this test because Plaintiffs do not allege any injury. Compl. ¶ 67. Plaintiffs do not allege a "high probability" of enforcement action against members with no business premises in Albuquerque. *See ACLU of New Mexico*, 2008-NMSC-045, ¶¶ 25-29. In fact it is very unlikely that the City of Albuquerque or any worker would bring enforcement action against an employer with no premises in Albuquerque because the ordinance would not permit recovery in that

[4] Even if, as Plaintiffs allege, the Healthy Workforce Ordinance applied to employees working at least 56 hours within Albuquerque, regardless of whether their employers had a physical premises in Albuquerque – and Healthy Workforce Ordinance is narrower than this – the Healthy Workforce Ordinance's reach would still be lawful because Albuquerque has general welfare and police powers as to employees working within its own borders. *New Mexicans for Free Enter. v. The City of Santa Fe*, 2006-NMCA-007, ¶¶ 29-30, 138 N.M. 785.

situation. Absent any allegations sufficient to show injury in fact, Plaintiffs' hypothetical claims simply cannot confer standing to challenge the Healthy Workforce Ordinance.

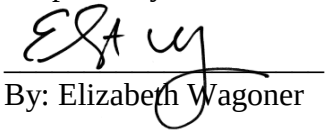
E. A preliminary injunction should not issue.

Plaintiffs' application for preliminary injunction should be denied because they cannot meet any of the four factors for issuance of an injunction. *See LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314. First, Plaintiffs will not suffer irreparable harm if the Healthy Workforce Ordinance appears on the ballot. The voters will give the law an up or down vote, and Plaintiffs should not be permitted to shut down the democratic process. Second, Plaintiffs' alleged injury is not outweighed by the damage injunctive relief would cause Intervenors, because (a) Intervenors will lose their investments of time and money to gather signatures and advocate to place the measure on the ballot; (b) Intervenors' members who do not currently earn sick leave will lose the opportunity to gain this important workplace right; and (c) Intervenors' members who are Albuquerque voters will lose their democratic right under the Charter to propose and vote on the Healthy Workforce Ordinance. For the same reasons, enjoining the Healthy Workforce Ordinance from appearing on the 2017 ballot will be adverse to the public's interest. Finally, an injunction should not issue because Plaintiffs will not prevail on the merits.

V. CONCLUSION

WHEREFORE, because Plaintiffs have failed to state a claim upon which relief can be granted in Counts I, III, IV, and VI, Intervenors respectfully request that this Court dismiss these Counts from Plaintiffs' Complaint.

Respectfully submitted,



By: Elizabeth Wagoner

Gail Evans

gail@nmpovertylaw.org
Elizabeth Wagoner
elizabeth@nmpovertylaw.org
Tim Davis
tim@nmpovertylaw.org
NEW MEXICO CENTER ON LAW AND POVERTY
924 Park Avenue, SW, Suite C
Albuquerque, NM 87106
(505) 255-2840

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this this 4th day of May, 2017 the foregoing pleading was e-filed and served on counsel for all parties through the Court's electronic filing system, and I further certify that on that date I served a copy on Christopher Tebo and Hessel E. Yntema IV, counsel for Defendants, ctebo@cabq.gov and hyntema@cabq.gov and on Patrick Rogers, counsel for Plaintiffs, at patrogers@patrogerslaw.com.

Elizabeth Wagoner

May 11, 2016

Natalie Howard
City Clerk
Office of the City Clerk
600 2nd St. NW, Room 720
Albuquerque, NM 87102

Dear Ms. Howard,

This letter serves as notice of intent to circulate a petition to place a summary of a proposed measure on the next general election ballot to require Albuquerque employers to provide earned sick leave to employees, which employees may use for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking.

The summary of the proposed measure is as follows:

Proposing to enact the Albuquerque Healthy Workforce Ordinance such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation.

Please accept this letter and the attached draft City Council Election Resolution, which includes the above summary as well as the full text of the proposed measure, to be conformed into a petition to gather signatures of voters within the City of Albuquerque.

Thank you for your attention to this matter.

By: Rebecca G Date: 5/11/16
Print name: Rebecca Glenn
Address: 306 Arno ST. NE

By: [signature] Date: 5/11/16
Print name: Kristen Gamboa
Address: 604 Saddle Blanket Tr. SW

EXHIBIT A

By: _____ Date: 5/11/16

Print name: Brenda Morales

Address: 1128 Yerba Rd. SW

By: _____ Date: 5/11/16

Print name: Thomas Martin

Address: 812 City View Dr. SW

By: Delivia Jaramillo Date: 5/11/16

Print name: Delivia Jaramillo

Address: 520 Jane ST. NE

By: _____ Date: 5-11-2016

Print name: Marissa S. Jake

Address: 11516 Appian Way NE

By: _____ Date: _____

Print name: _____

Address: _____

By: _____ Date: _____

Print name: _____

Address: _____

CITY of ALBUQUERQUE
TWENTY-SECOND COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

PROPOSED MEASURE AND ELECTION RESOLUTION

ADOPTING A PROPOSED MEASURE TO BE SUBMITTED TO THE VOTERS AT THE NEXT REGULAR OR SPECIAL MUNICIPAL ELECTION OR THE NOVEMBER 8, 2016 GENERAL ELECTION, CONCERNING AN ORDINANCE TO ALLOW EMPLOYEES TO ACCRUE AND USE SICK LEAVE AND ESTABLISHING PROCEDURES FOR NOTICE, RECORDKEEPING, AND ENFORCEMENT.

WHEREAS, the City of Albuquerque City Charter (the "Charter") authorizes direct legislation by voter initiative provided that certain minimum requirements are satisfied, including that a minimum number of registered City voters have signed the petition; and

WHEREAS, on July __, 2016, the City Clerk filed a certification with the City Council certifying that the requisite number of signatures were obtained and verified as required by the Charter to submit the proposed measure set forth below to the voters of the City of Albuquerque; and

WHEREAS, as set forth in the City Charter, when an election is required pursuant to the "direct legislation by voter initiative" process, such an election must be held at the next general election or regular municipal election.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

EXHIBIT B

Section 1: The City Clerk shall place the following summary of the proposed measure on the ballot at the sooner of the next regular or special municipal election or the November 8, 2016 general election, and the City of Albuquerque qualified voters shall be permitted to vote "for" or "against":

SUMMARY OF PROPOSED MEASURE

Proposing to enact the Albuquerque Healthy Workforce Ordinance such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation.

Section 2: The City Clerk shall publish the following title and proposed ordinance in English and in Spanish on the website of the Office of the City Clerk within twenty-four hours from the date of adoption of this resolution until the date of the election.

TITLE AND PROPOSED ORDINANCE

An Initiative Ordinance of the City of Albuquerque Amending Title 13 of the Albuquerque Municipal Code to Allow Employees to Accrue and Use Sick Leave; Establishing Procedures for Notice, Recordkeeping, and Enforcement.

WHEREAS, approximately 49% of private sector workers and 77% of part-time workers in Albuquerque lack paid sick time, which compels them to work when they should be recuperating from illness or injury and increases the risk of passing illnesses to others.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF ALBUQUERQUE:

§ 13-16-1 SHORT TITLE. This article may be cited as "the Albuquerque Healthy Workforce Ordinance."

§ 13-16-2 DEFINITIONS.

CITY. The City of Albuquerque.

DEPARTMENT. The office of the City Attorney, unless the mayor designates a different city agency.

DOMESTIC PARTNER. A person with whom another person maintains a household and a mutual committed relationship, without a legally recognized marriage.

EMPLOYEE. Any person an employer suffers or permits to perform work, or hires with the expectation of performing work, for monetary compensation for at least 56 hours in a year within the municipal limits of the city, including on a part-time, seasonal or temporary basis.

EMPLOYER. An EMPLOYER is as defined in Section 13-12-2 of this Code or any nonprofit organization, partnership, association, corporation, or charitable trust with a physical premises within the City of Albuquerque. EMPLOYER shall not include the State of New Mexico or any employee thereof.

FAMILY MEMBER. A spouse or domestic partner; a child, sibling, parent, grandparent, grandchild, or legal ward or guardian of the employee or of the employee's spouse or domestic partner (whether of a biological, foster, adoptive or step relationship), and the spouses or domestic partners of these individuals; a person to whom the employee stands or stood in loco parentis; or any other individual related by blood or affinity whose close association with the employee or employee's spouse or domestic partner is the equivalent of a family relationship.

LARGE EMPLOYER. An employer that is not a small employer as defined herein.

PAID SICK TIME. Time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 13-16-3 of this article, but in no case shall the hourly wage be less than that provided in Chapter 13, Article 12 of the Albuquerque Code of Ordinances.

SMALL EMPLOYER. An employer of fewer than forty (40) individual employees. In determining the number of employees, all employees shall be counted whether they are full-time, part-time or temporary employees and whether or not they perform work within the City. When the number of employees fluctuates in any year, the number of employees shall be determined by the number of individuals employed in the previous year.

§ 13-16-3 PAID SICK TIME.

(A) An employer shall provide employees accrued paid sick time for: An employee or employee's family member's mental or physical illness, injury or health condition; including medical diagnosis, care, treatment, or recovery; for preventive medical care; for closure of the employee's place of business or family member's school or place of care for public health reasons; or for absence necessary due to domestic violence, sexual assault or stalking suffered by the employee or employee's family member, provided the leave is to obtain medical or psychological treatment, relocate, prepare for or participate in legal proceedings, or obtain related services.

(B) Employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees of large employers cannot use more than 56 hours of paid sick time in a year, and employees of small employers cannot use more than 40 hours of paid sick time in a year, unless the employer's policy provides for a higher limit. Paid sick time shall begin to accrue on the

first day of employment. Employees shall be entitled to use accrued paid sick time beginning on the 90th calendar day following the first day of employment or the effective date of this law, whichever is later, unless the employer's policy provides that employees may use accrued time earlier. Employees exempt from overtime requirements under federal and state law will be assumed to work no more than 40 hours in each work week for purposes of paid sick time accrual.

(C) Paid sick time shall be carried over to the following year. If an employee is transferred but remains employed by the same employer, or if a successor employer replaces the original employer, or if an employee separates from employment but is rehired by the same employer within 12 months, the employee is entitled to all previously accrued paid sick time, unless it was paid out. An employer may, but is not obligated to, loan paid sick time to an employee in advance of accrual by such employee or pay out unused accrued paid sick time when an employee separates from employment.

(D) An employer with a paid leave policy that meets or exceeds the requirements of this Ordinance is not required to provide additional paid sick time or in any way reduce the benefits provided to employees.

(E) An employer may require reasonable documentation that paid sick time has been used for a covered purpose only if the employee uses 3 or more consecutive paid sick days. An employer may not require that the documentation explain the nature of any medical condition or the details of the domestic violence, sexual assault, or stalking. All information an employer obtains related to the employee's reasons for taking paid sick time shall be treated as confidential and not disclosed except with the permission of the affected employee. If an employer chooses to require documentation for paid sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation.

§ 13-16-4 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED. An employer shall not intimidate, retaliate, discipline, discharge, suspend, assign to less favorable duties, refuse to hire, reduce pay or hours, refuse to assign additional hours, report an employee or an employee's family member to any law enforcement agency, or take or threaten any adverse action whatsoever against an employee because the employee has exercised rights protected under this Ordinance or has in good faith alleged violations of this Ordinance, whether mistakenly or not. There shall be a rebuttable presumption of a violation of this section whenever an employer takes any adverse action against a person who, within 90 days, exercised rights protected under this Ordinance or has in good faith alleged violations of this Ordinance, whether mistakenly or not. An employer shall not require an employee to find a replacement worker as a condition of using paid sick time or count use of paid sick time in a way that will lead to any adverse employment action.

§ 13-16-5 NOTICE AND RECORDS. On or before the effective date of this Ordinance, the Department shall make available on its website a summary notice to employees in English and Spanish of each provision of this Ordinance. Employers shall provide this notice to each employee on the first day of employment, and shall post it in a conspicuous place in each establishment where employees are employed. Employers shall maintain payroll records for each employee showing the weekly hours worked, wages paid, and amount of paid sick time accrued or used each pay period, and shall print this information in the written receipt required by NMSA § 50-4-2. All records shall be retained for four years and made available for inspection and copying upon request by the Department or the employee. Failure to maintain records shall give rise to a rebuttable presumption that the employer has violated this Ordinance, and the fact finder may rely on employee's reasonable estimates in calculating damages.

§ 13-16-6 ENFORCEMENT. The Department shall implement and enforce this article, shall have investigation and inspection authority as provided in 29

U.S.C. section 211(a), shall enforce this article on behalf of an aggrieved worker upon receipt of an individual worker complaint and/or on a workplace-wide basis when the investigation reveals a general policy or practice of noncompliance, and shall promulgate appropriate guidelines or rules for such purposes. The Department shall have the power to impose penalties payable to the city for violations of this article and to grant an employee(s) or former employee(s) all appropriate relief. The Department shall maintain confidential the identity of any complainant provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Ordinance or for other appropriate purposes. The Department or any person or any entity a member of which is aggrieved by a violation of this article may bring a civil action individually or as a class action under state law in a court of competent jurisdiction within four years from the date the alleged violation occurred. Upon prevailing, the plaintiff or plaintiffs shall recover all appropriate legal or equitable relief, the costs and expenses of suit and reasonable attorney's fees, and liquidated damages calculated at three times the value of the unpaid sick time accrued; and in the case of retaliation, the plaintiff shall recover actual damages, including but not limited to back pay, and shall have a right to reinstatement or other appropriate relief. Any employer found to be in violation of this article shall also be liable for a civil penalty of fifty dollars per week for each separate violation, not to exceed five hundred dollars per employee.

§ 13-16-7 RELATIONSHIP TO OTHER REQUIREMENTS.

(A) This article shall not be construed as creating or imposing any requirement in conflict with, nor to preempt or otherwise limit or affect the applicability of, any other law, regulation, requirement, policy, or standard that provides for more generous compensation, rights, benefits, or protections. Nothing contained in this article prohibits an employer from establishing more generous policies than those established under this Ordinance.

(B) This article shall not be construed to diminish or impair the rights or obligations of an employee or employer under any valid contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Employers subject to this Ordinance may by collective bargaining agreement provide that this Ordinance shall not apply to employees covered by that collective bargaining agreement.

§ 13-16-8 SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this Chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction or if application thereof to any person or circumstance is judged invalid, such decision shall not affect the validity of the remaining provisions of this Chapter.

§ 13-16-9 COMPILATION. This Chapter shall, amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

§ 13-16-10 EFFECTIVE DATE. This Ordinance takes effect 90 days following the date of enactment or on the date of termination of any collective bargaining agreement.

§ 13-16-11 AMENDMENT BY CITY COUNCIL. This Chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purposes of this Chapter, but not in a manner that alters the effective date or lessens the substantive requirements of this Chapter or its scope of coverage.

_____PAID CIRCULATOR ____UNPAID VOLUNTEER

PETITION FOR DIRECT LEGISLATION BY VOTER INITIATIVE

ADOPTING THE ALBUQUERQUE HEALTHY WORKFORCE ORDINANCE

Pursuant to the Albuquerque City Charter Article III, Section 3, the undersigned support the proposed measure to enact the Albuquerque Healthy Workforce Ordinance Chapter 13, Article 16 of the Albuquerque Code of Ordinances such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation. The full text of the proposed Ordinance is attached to this Petition.

ANY PERSON KNOWINGLY PROVIDING OR CAUSING TO BE PROVIDED ANY FALSE INFORMATION ON A PETITION, FORGING A SIGNATURE, OR SIGNING A PETITION WHEN THAT PERSON KNOWS HE OR SHE IS NOT A QUALIFIED ELECTOR OF THE CITY OF ALBUQUERQUE MAY BE CONVICTED OF A FOURTH DEGREE FELONY.

USUAL SIGNATURE	PRINTED NAME AS REGISTERED	ADDRESS AS REGISTERED INCLUDING QUADRANT	DATE

Natalie Y. Howard, City Clerk Natalie Y. Howard Date of Issuance: 5/12/16 Date of Notice of Intent: 5/11/16

EXHIBIT C

City of Albuquerque

Office of the City Clerk

Richard J. Berry, Mayor **Natalie Y. Howard, City Clerk**

Interoffice Memorandum

July 21, 2016

To: **Dan Lewis, Council President**

From: **Natalie Y. Howard, City Clerk**

Subject: **Certification of Petitions for Direct Legislation (amended)**

Pursuant to the provisions of Article III, Section 3 (Direct Legislation by Voter Initiative) of the City Charter, I, Natalie Y. Howard, the City Clerk of the City of Albuquerque hereby certify that my office has verified the required number of signatures to allow the proposed legislation entitled, "Healthy Workforce Ordinance,"3 to move forward to the City Council.

On May 11, 2016, I accepted the Notice of Intent to Circulate the Petition. The group initiating the direct legislation had until July 11, 2016 to circulate the petition and gather signatures. Under the provisions of §2-4-13 ROA 1994, the group delivered petitions to my office in stages and my office initiated the process of verifying signatures. (§2-4-13 (F) ROA 1994).

Under the provisions of §3-1-5 NMSA 1978, my office had ten days from the legal deadline to file the petition to verify the signatures, which we were able to accomplish well within that legal timeframe. On July 19, 2016 we completed the verification process with the following statistics:

Signatures reviewed:	18,204	
Signatures approved:	14,477	
Signatures rejected:	3,626	
Signatures pending:	101	(pending signatures are neither approved nor rejected, indicating that the person reviewing the signatures cannot make a determination. Pending signatures are reviewed at the end of the process, if needed)

Pursuant to Article III, Section 3 (a)(6) "If the Council fails to act upon a measure so proposed within fourteen days after the City Clerk files a certification with the Council that the petition has been signed by the required number of voters, or the Council acts adversely thereon or amends it an election on the issues must be held at the next general election or regular municipal election."

cc: Richard J. Berry, Mayor
Robert J. Perry, Chief Administrative Officer
Jessica Hernandez, City Attorney
City Councilors
Jon Zaman, Director of Council Services

EXHIBIT D

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NO: D 202 CV 2016 5539

HEALTHY WORKFORCE ABQ et al

Plaintiff(s),

-vs-

CITY OF ALBUQUERQUE,
et.al,

Defendant(s).

ENDORSED
FILED IN MY OFFICE THIS
SEP 19 2016
CLERK DISTRICT COURT
PATRICIA SERNA

ORDER ON MOTION FOR PRELIMINARY INJUNCTION AND/OR WRIT OF MANDAMUS

THIS MATTER having come before the Court upon Plaintiffs' Motion; the Court having reviewed the Motion and the briefing of the parties; the Court having reviewed the file; and having conducted an evidentiary hearing on September 12, 2016;

THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter.

2. The subject City Charter provisions require the proposed Healthy Workforce Ordinance to appear in full text, as originally proposed and/or amended, on any election ballot;

3. Bernalillo County is not the " governing body " pursuant to Section 1-24-2, NMSA, for purposes of the proposed Healthy Workforce Ordinance.

4. Bernalillo County, by and through Defendant Commissioners, had discretion in whether or not to include the City of Albuquerque's proposed Healthy Workforce Ordinance on the upcoming General Election Ballot for November 8, 2016.

5. The City of Albuquerque, by applicable Charter provisions and the specific

EXHIBIT E

representations of counsel in open Court on September 12, 2016, bound to place the proposed Ordinance on the next municipal election.

6. The Motion for Preliminary Injunction and/or Mandamus is not well taken and should be denied.

7. The TRO entered herein on September 9, 2016, is dissolved.

THEREFORE, it is so Ordered.

ALAN M. MALOTT

Dated: 9-13-16
9:15 AM

Copies of the foregoing were emailed to counsel of record to the following on the date of filing/e-filing:

Susan L. Gibson, TCAA
Division XV

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NO: D-202-CV-2016-05539

HEALTHY WORKFORCE ABQ., et al.,
Plaintiffs,

-vs-

THE CITY OF ALBUQUERQUE, et al.,
Defendants/Respondents,

AND

ROXANNA MEYERS, et al.,
Intervenors.

ORDER ON PLAINTIFFS' RULE 1-059 NMRA MOTION

THIS MATTER having come before the Court upon Plaintiffs' Motion for New Trial and Rehearing; the Court having reviewed the parties' briefing, the Court having reviewed the file; and being sufficiently advised;

THE COURT FINDS:

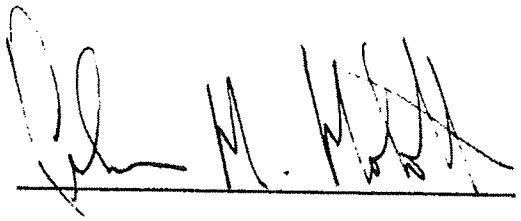
1. There is jurisdiction over the parties and the subject matter.
2. Further hearing on this matter is not necessary for an appropriate determination of the issues presented. *Nat'l Excess Ins. Co. v. Bingham*, 1987-NMCA-109, ¶ 9, 742 P.2d 537; *State Trans. Dep't. v. Yazzie*, 1991-NMCA-098, ¶ 12, 817 P.2d 1257; *Flagstar Bank v. Licha,* 2015-NMCA-086, ¶ 28, 356 P.3d 1102.
3. Plaintiffs urge the Court to reverse its September 13, 2016, decision that the full text of the proposed Healthy Workforce Ordinance must appear on the 2017 local election ballot as opposed to a summary of that Ordinance.

EXHIBIT F

4. Plaintiffs' arguments fall into two (2) categories. First, they argue the Court has misapprehended the applicable law in requiring the full text of the Ordinance appear on the ballot; and 2) requiring the full text will necessitate a two (2) page ballot which Defendants will use to excuse presenting the proposed Ordinance in October.
5. First, Plaintiffs present no new or different facts or applicable law than was initially presented in support of their position that the Court has erred and misapprehended the law as to whether or not the full text of the proposed Ordinance must appear on the ballot. This Court certainly apprehends that this particular case is likely to further develop and supplement the scant appellate authority available on this issue. Under present authority, however, the Court finds no basis to alter or reverse its decision.
6. Second, the City of Albuquerque Defendants, represented by City Attorney Jessica Hernandez, has firmly committed itself to presenting the proposed Ordinance on the October 2017 ballot. At the hearing on September 12, 2016, the Court specifically invoked the Doctrine of Judicial Estoppel and questioned Ms. Hernandez whether there were any further requirements for the Healthy Workforce proponents to meet, or whether placement on the October 2017 ballot was assured. The response was unqualified that no further requirements existed and the proposed Ordinance would appear on the October 2017 ballot. Plaintiffs' arguments that requiring the full text will somehow lead to loss of the ballot position is not supported by substantial evidence.
7. Plaintiffs' Motion is not well taken and should be denied.
8. This is not a Final Order. This Order does not practically dispose of the merits of the case. This Order involves a controlling question of law as to which there are

substantial grounds for differences of opinion and an immediate appeal from this Order may materially advance the ultimate determination of this case and provide significant guidance on the recurring issues of ballot content and related voter rights. Section 39-3-4(A) NMSA; Rule 12-203 NMRA.

WHEREFORE, IT IS SO ORDERED.



Alan Malott
District Court Judge

2-28-17

Copies of the foregoing were e-mailed, mailed, or delivered
to the following on the date of filing/e-filing:

Elizabeth Wagoner
Gail Evans
Tim Davis
New Mexico Center on Law and Poverty
924 Park Ave, SW, Ste C
Albuquerque, NM 87106

Jessica Hernandez
Office of the City Attorney
P.O. Box 2488
Albuquerque, NM 87103

Patrick Rogers
Patrick J. Rogers, LLC
20 Frist Plaza Center NW, Ste 725
Albuquerque, NM 87102

Susan L. Gibson, TCAA
Division XV