

CITY of ALBUQUERQUE

TWENTIETH COUNCIL

COUNCIL BILL NO. R-13-243 ENACTMENT NO. _____

SPONSORED BY: Dan Lewis

1 SPECIAL ELECTION RESOLUTION

2 TO SUBMIT TO THE VOTERS OF THE CITY OF ALBUQUERQUE AN
3 ORDINANCE PROPOSED PURSUANT TO ARTICLE III, SECTION 3, THE
4 DIRECT LEGISLATION PROVISION OF THE CITY CHARTER, AT A SPECIAL
5 MUNICIPAL ELECTION TO BE HELD IN THE CITY OF ALBUQUERQUE ON
6 NOVEMBER 19, 2013 TO APPROVE OR DISAPPROVE THE PROPOSED
7 ORDINANCE AS SET FORTH HEREIN; PRESCRIBING OTHER DETAILS IN
8 CONNECTION WITH THE SPECIAL MUNICIPAL ELECTION.

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

13 WHEREAS, on August 28, 2013 the City Clerk filed a certification with the
14 City Council certifying that the requisite number of signatures were obtained
15 and verified as required by the Charter to submit the proposed ordinance set
16 forth below (the "Proposed Ordinance") to the voters of the City of
17 Albuquerque; and

18 WHEREAS, as set forth in the City Charter, when an election is required
19 pursuant to the "direct legislation by voter initiative" process, such an
20 election must be held within ninety (90) days of the filing of the petition; and

21 WHEREAS, Section 3-8-35 NMSA 1978, a portion of the Municipal Election
22 Code, states that when a special election is required by law, an election
23 resolution shall be adopted by the governing body calling for the election and
24 shall state, in part, the purpose for calling the election, the date of the election,
25 the questions to be submitted to the voters, and whether paper ballots or
26 voting machines will be used in the election; and

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1 WHEREAS, the Charter requires that this special election be held, and this
2 resolution shall serve as the election resolution required by Section 3-8-35
3 NMSA 1978.

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

6 SECTION 1. On November 19, 2013, a special municipal election ("Special
7 Election") shall be held in Albuquerque, New Mexico. The City Clerk is
8 instructed to place the following Proposed Ordinance on the ballot, and the
9 qualified voters of the City of Albuquerque shall be permitted to vote "for" or
10 "against" the Proposed Ordinance:

11 PROPOSED ORDINANCE

12 "Section 1. SHORT TITLE

13 This ordinance may be cited as the "Pain Capable Unborn Child Protection
14 Ordinance."

15 Section 2. FINDINGS AND AUTHORITIES IN SUPPORT

16 The Citizens of Albuquerque declare the following:

17 (1) Pain receptors are present throughout the unborn child's entire body
18 and nerves link these receptors to the brain's thalamus and subcortical plate
19 by no later than 20 weeks after fertilization.

20 (2) By 8 weeks after fertilization, the unborn child reacts to touch. After 20
21 weeks, the unborn child reacts to stimuli that would be recognized as painful if
22 applied to an adult human.

23 (3) In the unborn child, application of such painful stimuli is associated
24 with significant increases in stress hormones known as the stress response.

25 (4) For the purposes of surgery on unborn children, fetal anesthesia is
26 routinely administered and is associated with a decrease in stress hormones
27 compared to their level when painful stimuli are applied without such
28 anesthesia. In the United States, surgery of this type is being performed by 20
29 weeks after fertilization and earlier in specialized units affiliated with children's
30 hospitals.

31 (5) Recent medical research and analysis, especially since 2007, provides
32 strong evidence for the conclusion that a functioning cortex is not necessary
33 to experience pain.

1 (6) Substantial evidence indicates that children born missing the bulk of
2 the cerebral cortex, those with hydranencephaly, nevertheless experience
3 pain.

4 (7) In adult humans and in animals, stimulation or ablation of the cerebral
5 cortex does not alter pain perception, while stimulation or ablation of the
6 thalamus does.

7 (8) The position, asserted by some commentators, that the unborn child
8 remains in a coma-like sleep state that precludes the unborn child
9 experiencing pain is inconsistent with the documented reaction of unborn
10 children to painful stimuli and with the experience of fetal surgeons who had
11 found it necessary to sedate the unborn child with anesthesia to prevent the
12 unborn child from engaging in vigorous movement in reaction to invasive
13 surgery.

14 (9) Consequently, there is substantial medical evidence that an unborn
15 child is capable of experiencing pain at least by 20 weeks after fertilization, if
16 not earlier.

17 (10) The Citizens of Albuquerque assert a compelling governmental interest
18 in protecting the lives of unborn children from the stage at which substantial
19 medical evidence indicates that they are capable of feeling pain.

20 (11) The compelling governmental interest in protecting the lives of unborn
21 children from the stage at which substantial medical evidence indicates that
22 they are capable of feeling pain is asserted *in addition* to the compelling
23 interest in protecting the lives of unborn children from the stage of viability.
24 Neither governmental interest is intended to replace the other.

25 (12) The Citizens of Albuquerque are empowered by Chapter Three of New
26 Mexico Statutes Annotated and Article Three of the Charter of the City of
27 Albuquerque to affirmatively act to secure health and safety within its
28 geographical borders.

29 Section 3. PAIN-CAPABLE UNBORN CHILD PROTECTION.

30 (a) IN GENERAL. - Chapter 12, Article 2, Albuquerque Code of Ordinances,
31 is amended by inserting after section twenty-eight the following:

32 “§12-2-29. PAIN-CAPABLE UNBORN CHILD PROTECTION.

1 (a) UNLAWFUL CONDUCT. - Notwithstanding any other provision of law, it
2 shall be unlawful for any person to perform an abortion or attempt to do so,
3 unless in conformity with the requirements set forth in subsection (b).

4 (b) REQUIREMENTS FOR ABORTIONS. -

5 (1) The physician performing or attempting the abortion shall first
6 make a determination of the probable post-fertilization age of the unborn child
7 or reasonably rely upon such a determination made by another physician. In
8 making such a determination, the physician shall make such inquiries of the
9 pregnant woman and perform or cause to be performed such medical
10 examinations and tests as a reasonably prudent physician, knowledgeable
11 about the case and the medical conditions involved, would consider
12 necessary to make an accurate determination of post-fertilization age.

13 (2) (A) Except as provided in subparagraph (B), the abortion shall not
14 be performed or attempted, if the probable post-fertilization age, as
15 determined under paragraph (1), of the unborn child is 20 weeks or greater.

16 (B) Subject to subparagraph (C), subparagraph (A) does not apply if
17 -

18 (i) in reasonable medical judgment, the abortion is necessary
19 to save the life of a pregnant woman whose life is endangered by a physical
20 disorder, physical illness, or physical injury, including a life-endangering
21 physical condition caused by or arising from the pregnancy itself, but not
22 including psychological or emotional conditions.

23 (C) Notwithstanding the definitions of 'abortion' and 'attempt an
24 abortion' in this section, a physician terminating or attempting to terminate a
25 pregnancy under an exception provided by subparagraph (B) may do so only
26 in the manner which, in reasonable medical judgment, provides the best
27 opportunity for the unborn child to survive, unless, in reasonable medical
28 judgment, termination of the pregnancy in that manner would pose a greater
29 risk of -

30 (i) the death of the pregnant woman; or

31 (ii) the substantial and irreversible physical impairment of a
32 major bodily function, not including psychological or emotional conditions, of
33 the pregnant woman;

1 than would other available methods.

2 (c) **BAR TO PROSECUTION.** - A woman upon whom an abortion in violation
3 of subsection (a) is performed or attempted may not be prosecuted under, or
4 for a conspiracy to violate, subsection (a), or for an offense under section 2, 3,
5 or 4 of this title based on such a violation.

6 (d) **DEFINITIONS.** - In this section the following definitions apply:

7 1. **ABORTION.** - The term 'abortion' means the use or prescription of
8 any instrument, medicine, drug, or any other substance or device -

9 (A) to intentionally kill the unborn child of a woman known to
10 be pregnant; or

11 (B) to intentionally terminate the pregnancy of a woman known
12 to be pregnant, with an intention other than -

13 (i) after viability to produce a live birth and preserve the
14 life and health of the child born alive; or

15 (ii) to remove a dead unborn child.

16 2. **ATTEMPT AN ABORTION** – The term 'attempt', with respect to an
17 abortion, means conduct that, under the circumstances as the actor believes
18 them to be, constitutes a substantial step in a course of conduct planned to
19 culminate in performing an abortion.

20 (2) **FERTILIZATION.** - The term 'fertilization' means the fusion of
21 human spermatozoon with a human ovum.

22 (3) **PERFORM.** - The term 'perform', with respect to an abortion,
23 includes induction of an abortion through a medical or chemical intervention
24 including writing a prescription for a drug or device intended to result in an
25 abortion.

26 (4) **PHYSICIAN.** - The term 'physician' means a person licensed to
27 practice medicine and surgery or osteopathic medicine and surgery, or
28 otherwise legally authorized to perform an abortion.

29 (5) **POST-FERTILIZATION AGE.** - The term 'post-fertilization age'
30 means the age of the unborn child as calculated from the fusion of a human
31 spermatozoon with a human ovum.

32 (6) **PROBABLE POST-FERTILIZATION AGE OF THE UNBORN CHILD.**
33 - The term 'probable post-fertilization age of the unborn child' means what, in

1 reasonable medical judgment, will with reasonable probability be the post-
2 fertilization age of the unborn child at the time the abortion is planned to be
3 performed or induced.

4 (7) REASONABLE MEDICAL JUDGMENT. - The term 'reasonable
5 medical judgment' means a medical judgment that would be made by a
6 reasonably prudent physician, knowledgeable about the case and the
7 treatment possibilities with respect to the medical conditions involved.

8 (8) UNBORN CHILD. - The term 'unborn child' means an individual
9 organism of the species homo sapiens, beginning at fertilization, until the
10 point of being born alive.

11 (9) WOMAN. - The term 'woman' means a female human being
12 whether she has reached the age of majority.

13 (e) SEVERABILITY. - If any part or application of the Pain-Capable Unborn
14 Protection Ordinance is held invalid, the remainder or application to other
15 situations or persons shall not be affected.”

16
17 FOR _____ AGAINST _____

18
19 SECTION 2. SPECIAL ELECTION PROCESS. As set forth herein, and
20 dependent upon the results of the October 8, 2013 Regular Municipal Election,
21 the City Clerk shall conduct the Special Election on November 19, 2013
22 pursuant to *either*:

23 (A) the Mail Ballot Election Act, §1-23-1, et seq. NMSA 1978 (“all-
24 mailed” election); *or*

25 (B) the provisions for a Special Election in the Municipal Election
26 Code (Chapter 3, Articles 8 and 9, NMSA 1978) (“in-person election”) for
27 which a list of the locations of Early Voting locations, Voting Centers and the
28 consolidation of precincts is attached to this Resolution as Exhibit A.

29 SECTION 3. The type of election will be determined by the results of the
30 Regular Municipal Election to be held on October 8, 2013.

31 SECTION 4. If the Regular Municipal Election on October 8, 2013 results in
32 a requirement for a runoff election for any candidate position, the Special
33 Election called for in this Resolution shall be conducted as an in-person

1 election pursuant to the Municipal Election Code at the locations set forth in
2 Exhibit A attached hereto and the following shall apply:

3 (A) The polls for this election shall open at 7:00 a.m. and shall
4 close at 7:00 p.m. on November 19, 2013.

5 (B) Absentee voting shall take place as authorized by law. Eligible
6 voters may request applications for absentee ballots from the Office of the
7 City Clerk, 600 2nd Street NW. Plaza del Sol Building, 7th Floor, Albuquerque,
8 New Mexico. Eligible voters may also request an application for an absentee
9 ballot in person, via email to absenteeapplication@cabq.gov, or by calling 311.
10 Completed applications shall be returned to the City Clerk prior to 5:00 p.m. on
11 November 15, 2013. The City Clerk may issue absentee ballots to approved
12 applicants no earlier than 35 days prior to the election and until 5:00 p.m. on
13 November 15, 2013. Absentee ballots must be received by the City Clerk
14 through the mail or by hand delivery no later than 7:00 p.m. November 19,
15 2013, the day of the election.

16 (C) Absentee ballots may be marked in person at the Office of the
17 City Clerk and at the City Records Center, 604 Menaul NW, Albuquerque, New
18 Mexico, beginning no earlier than 35 days prior to the election and not later
19 than 5:00 p.m. November 15, 2013.

20 (D) Early Voting shall begin on Wednesday, October 30, 2013 and
21 end on Friday, November 15, 2013 at the Office of the City Clerk and the other
22 designated Early Voting Locations on Exhibit A attached hereto. Early Voting
23 shall take place during the hours of 9:00 a.m. and 6:00 p.m. Monday through
24 Friday.

25 (E) In accordance with Section 1-3-4 NMSA 1978, the City Clerk
26 shall consolidate precincts, allowing voters to cast their ballot at any
27 Municipal Voting Center open for Early Voting, or on Election Day, regardless
28 of the precinct in which the voter is registered. Municipal Voting Centers shall
29 be placed throughout the City.

30 (F) There will be Twelve (12) Early Voting Locations and Fifty (50)
31 Voting Centers open on Election Day throughout the City.

32 (G) A list of the locations of the Early Voting Locations, Municipal
33 Voting Centers and the consolidation of precincts is attached to this

1 Resolution as Exhibit A. The consolidation of precincts and the locations of
2 the Municipal Voting Centers are approved by the Council.

3 (H) Voters shall mark paper ballots. Ballots cast during Early
4 Voting and Election Day shall be electronically tabulated after the polls close
5 on Election Day. Absentee ballots shall be electronically tabulated pursuant
6 to Section 2-4-18 ROA 1994.

7 SECTION 5. If the results of the Regular Municipal Election on October 8,
8 2013 do not necessitate a runoff election for any candidate position, the
9 Special Election called for in this Resolution shall be conducted as an “all-
10 mailed” election in accordance with the Mail Ballot Election Act, §1-23-1 et
11 seq. NMSA 1978 and the following shall apply:

12 (A) The City Clerk shall cause an absentee ballot to be mailed to
13 each qualified registered elector of the City of Albuquerque along with a
14 statement that there will be no polling place for the election. Voters shall not
15 be required to apply for an absentee ballot.

16 (B) The City Clerk shall not mail the absentee ballots earlier than
17 thirty-five days prior to the election and shall complete mailing by the fifth day
18 before the election.

19 (C) The Proposed Ordinance shall be submitted on paper
20 absentee ballots. The votes cast for and against the Proposed Ordinance shall
21 be tabulated on the election tabulation system counters. The ballots shall be
22 printed in English and Spanish with plain clear type in black ink on white
23 material of such size as will fit the voting machines. The complete Proposed
24 Ordinance, in English and Spanish, shall be placed on the absentee ballot so
25 that the complete question may be examined by the qualified voters before
26 they vote.

27 (D) Absentee ballots are due to the Office of the City Clerk on or
28 before 7:00 p.m. on Election Day. Voters may return their ballot to the Office
29 of the City Clerk by mail or in person by hand delivering the ballot to the Office
30 of the City Clerk, 600 2nd Street NW, Albuquerque, New Mexico 87103. Only the
31 voter, caregiver to that voter or a member of that voter’s immediate family may
32 deliver that voter’s absentee ballot to the City Clerk in person.

1 (E) The election on the Proposed Ordinance shall be held and
2 conducted in accordance with the Mail Ballot Election Act, the Municipal
3 Election Code and the Election Code of the City Charter.

4 SECTION 6. The following shall apply in both an “all mail” election and
5 an “in person” election:

6 (A) The City’s qualified, registered electors are eligible to vote on
7 the election question. No judge or clerk of the Special Election shall allow a
8 person to vote unless he or she is duly registered as a voter with the Bernalillo
9 County Clerk and unless he or she meets the qualifications of a resident
10 elector.

11 (B) Any person who is otherwise qualified to vote and who is not
12 currently registered to vote may register at the office of the Clerk of the
13 County of Bernalillo, 6th Floor, One Civic Plaza, Albuquerque, New Mexico, or
14 at the office of any duly appointed deputy registration officer on or before 5:00
15 p.m., on October 22, 2013.

16 (C) The vote on the Proposed Ordinance shall be canvassed as
17 nearly as is possible in accordance with the Municipal Election Code, and the
18 Election Code of the City Charter, and the City Clerk shall certify the results of
19 the election and shall enter them in the official minute book of the City.

20 (D) For further information concerning this Special Election,
21 consult the Office of the City Clerk, 600 2nd Street NW, Plaza del Sol Building,
22 7th Floor, Albuquerque, New Mexico, 87103 or visit www.cabq.gov/clerk.

23 (E) The officers of the City are hereby authorized and directed to
24 take all action necessary and appropriate to effectuate the provisions of this
25 Resolution.

26 SECTION 7. The City Clerk shall cause the full text of the Proposed
27 Ordinance set forth above to be published for four consecutive weeks in
28 English and Spanish, the last publication to be not more than two weeks prior
29 to the election at which time the Proposed Ordinance shall be submitted to the
30 electors of the City for their approval or rejection, and shall further provide
31 notice of the content and purpose of the Proposed Ordinance in both English
32 and Spanish to inform electors about the Proposed Ordinance in the time and
33 manner provided by law. This resolution for Special Election shall be

published once a week for four consecutive weeks with the first publication between fifty and sixty days before the election.

SECTION 8. SEVERABILITY CLAUSE. If any section, paragraph, sentence, word, or phrase of this Resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution. The Council hereby declares that it would have passed this Resolution and each section, paragraph, sentence, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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