

**STATE OF NEW MEXICO  
COUNTY OF CURRY  
NINTH JUDICIAL DISTRICT COURT**

FILED  
9th JUDICIAL DISTRICT COURT  
Curry County  
7/25/2019 12:09 PM  
CLERK OF THE COURT  
SHELLY BURGER

**NEW MEXICO PATRIOTS  
ADVOCACY COALITION,  
an issue advocacy group,**

**Plaintiff,**

**Case No.** D-905-CV-2019-00524

**v.**

JUDGE; DAVID P. REEB

**MAGGIE TOULOUSE OLIVER,  
New Mexico Secretary of State;  
HECTOR BALDERAS,  
New Mexico Attorney General,**

**Defendant.**

**COMPLAINT FOR DECLARATORY JUDGMENT AND PETITION FOR  
INJUNCTIVE RELIEF; AND IN THE ALTERNATIVE TO DECLARE CERTAIN  
LAWS ADOPTED BY THE 2019 LEGISLATURE AS UNCONSTITUTIONAL**

COMES NOW, Plaintiff New Mexico Patriots Advocacy Coalition, pursuant to NMSA §44-6-1 *et. seq.*, N.M. Const. Art. IV, § 1, U.S. Const. amend. II, the Due Process Clause of U.S. Const. amend. XIV, Const. Art. 2, § 18 and N.M. Const. Art. II, § 6; brings this action to challenge the actions of Secretary of State Maggie Toulouse Oliver and Attorney General Hector Balderas in denying New Mexico citizens their constitutional right to petition for referenda on legislation adopted by the New Mexico Legislature during the 2019 Legislative Session and in the alternative to challenge that Chapter 45 of New Mexico Laws of 2019 is unconstitutional under the United State Constitution and the New Mexico Constitution, and in the alternative to challenge that

Chapter 253 of New Mexico Laws of 2019 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

### **Parties and Venue**

1. Plaintiff New Mexico Patriot Advocacy Coalition (“NM Patriots”), is New Mexico political advocacy group, duly registered and operating in the State of New Mexico, whose members are New Mexico citizens that wish to exercise their constitutional right to petition for referenda regarding legislation enacted by the New Mexico Legislature and who have attempted to exercise that constitutional right recently.

2. Defendant Maggie Toulouse Oliver is the elected Secretary of State of the State of New Mexico.

3. Defendant Hector Balderas is the elected Attorney General of the State of New Mexico.

4. The Ninth Judicial District Court is the proper venue as some of Plaintiffs reside in Curry County.

### **Allegations Supporting Declaratory Judgment and Injunctive Relief**

5. Pursuant to N.M. Const. art. IV and NMSA 1978 § 1-17-8, following the 2019 Legislative Session, many New Mexicans sought to petition for referendum on 10 bills that had been passed by the Legislature and signed into law by Governor Michelle Lujan Grisham.

6. Each of the Petitions submitted by many citizen groups and citizens from around the State of New Mexico were rejected on the same ultimate legal basis by the Secretary of State in consultation with the Attorney General that the laws that the citizens sought to petition for referenda on were not available to be challenged as they relate to either public peace, safety or

health. Examples of the letters consistently rejecting the Petitions on the same grounds by the Secretary of State are attached to this Complaint as Exhibits 1 thru 10.

7. The politically motivated actions of the Secretary of State and the Attorney General incorrectly and impermissibly deny New Mexico citizens their right under the New Mexico Constitution “to disapprove, suspend and annul any law enacted by the legislature, except general appropriation laws; laws providing for the preservation of the public peace, health or safety.” N.M. Const. art. IV, § 1

8. Chapter 45 of New Mexico Laws of 2019, passed as Senate Bill 8, attached hereto in final form as Exhibit 11, in contravention of U.S. Const. amend. II, and N.M. Const. art. II, § 6 impermissibly infringes upon the fundamental liberty interests of New Mexicans to keep and bear arms by requiring law abiding citizens engaged in a private firearm transaction or otherwise voluntary exchange to submit to a federal background check or face being charged with a crime for their otherwise lawful activity.

9. Chapter 253 of New Mexico Laws of 2019, passed as Senate Bill 328, attached hereto in final form as Exhibit 12, in contravention of the Due Process Clause of U.S. Const. amend. XIV, U.S. Const. amend. II, Const. Art. 2, § 18 and N.M. Const. Art. II, § 6 impermissibly deprives New Mexicans of the fundamental liberty interest to keep and bear arms by requiring citizens convicted of a crime to surrender their firearms without providing them adequate due process before depriving them of that fundamental liberty.

### **COUNT 1**

#### **VIOLATION OF N.M. CONST. ART. IV, § 1**

10. Plaintiffs herein incorporate all of the foregoing paragraphs.

11. Pursuant to N.M. Const. art. IV, § 1 the people reserved the right to themselves to

petition for referendum to repeal laws of the New Mexico Legislature.

12. The laws challenged by the citizens of New Mexico, noted above and as described in the Exhibits attached hereto, do not bear a valid, reasonable relationship to the preservation of public peace, health or safety.

13. The actions of the Secretary of State and the Attorney General to withhold the power that people reserved to themselves by interpreting the New Mexico Constitution under the theory from *Otto v. Buck*, 1956-NMSC-040, 61 N.M. 123, 295 P.2d 1028 serves to render the reservation of the people's power as nullity which is improper and incorrect.

14. The Secretary of State and the Attorney General as public officers may not deprive New Mexico's citizens of their rights protected by the New Mexico Constitution.

15. The actions of the Secretary of State and the Attorney General denying the right to petition violates the New Mexico Constitution.

## COUNT 2

### **DECLARATORY JUDGEMENT THAT CHAPTER 45 OF NEW MEXICO LAW OF 2019 IS UNCONSTITUTIONAL (IN THE ALTERNATIVE)**

16. Plaintiffs herein incorporate all of the foregoing paragraphs.

17. Both the United States Constitution and the New Mexico Constitution protect the pre-existing fundamental liberty of the individual to keep and bear arms directing that the government shall not infringe upon that right.

18. It is understood that the right to keep and bear arms is not absolute but may only be limited by regulation that is narrowly tailored to serve a compelling government interest and that such infringement is subject to the strict scrutiny by judicial review.

19. Chapter 45 of the New Mexico Laws of 2019 is overbroad and does not serve a compelling government interest.

20. Chapter 45 of the New Mexico Law of 2019 violates the Second Amendment to the United State Constitution and Article II Section 6 of the New Mexico Bill of Rights in the New Mexico Constitution.

### COUNT 3

#### **DECLARATORY JUDGEMENT THAT CHAPTER 253 OF NEW MEXICO LAW OF 2019 IS UNCONSTITUTIONAL (*IN THE ALTERNATIVE*)**

21. Plaintiffs herein incorporate all of the foregoing paragraphs.

22. Both the United States Constitution and the New Mexico Constitution protect the pre-existing fundamental liberty of the individual to keep and bear arms directing that the government shall not infringe upon that right. Further, both Constitutions provide that no person may be deprived of their liberty without due process of law. *See* Const. amend. XIV, Const. Art. 2, § 18.

23. It is understood that a person that may be deprived of their liberties only by regulation that is narrowly tailored to serve a compelling government interest, that such infringement is subject to the strict scrutiny by judicial review and that before they are deprived of that liberty that they be given notice and *meaningful* opportunity to be heard.

24. Chapter 253 of the New Mexico Laws of 2019 is overbroad and is not narrowly tailored to serve a compelling government interest.

25. Chapter 253 of the New Mexico Laws of 2019 does provide for notice but establishes a system whereby a person may be deprived of their liberty without *meaningful* opportunity to be heard.

26. Chapter 253 of the New Mexico Law of 2019 violates the Due Process Clause to the Fourteenth Amendment to the United State Constitution and Article II Section 18 of the New Mexico Bill of Rights in the New Mexico Constitution.

**WHEREFORE**, Plaintiff respectfully prays that:

A. The Court enter an order declaring that actions of denying the petitions for referenda were unconstitutional and is therefore, void; and,

B. In the alternative, with regard to the Chapter 45 and Chapter 253 of New Mexico Laws of 2019, that the Court enter an order declaring that the laws complained of herein violate the United States Constitution and the New Mexico Constitution, and,

C. The Court enter an injunction requiring the Secretary of State to approve as timely and proper the petitions for referendum that are the subject of this complaint that the Court declares proper for the exercise of the people's power reserved in N.M. Const. Art. IV, § 1.

Respectfully Submitted,

WESTERN AGRICULTURE, RESOURCE  
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.  
400 Gold Ave SW, Suite 1000  
Albuquerque, NM 87102  
(505) 750-3060  
(505) 226-8500 (F)  
[ABDunn@ABlairDunn-Esq.com](mailto:ABDunn@ABlairDunn-Esq.com)



STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

April 22, 2019

Representative James G. Townsend  
House Republican Floor Leader  
State Capitol Building  
490 Old Santa Fe Trail  
Santa Fe, NM 87501  
[james.townsend@nmlegis.gov](mailto:james.townsend@nmlegis.gov)  
[townsend@pvtm.net](mailto:townsend@pvtm.net)

*Sent Via Electronic and First-Class Mail*

Re: Second Amended Submission of Draft Petition for Referendum for Chapter 45 of New Mexico Laws of 2019, an Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties

Dear House Republican Floor Leader Townsend:

On April 12, 2019, you submitted to my office a second amended draft referendum petition for Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties. This new draft followed my March 21, 2019 determination that your initial draft petition, submitted on March 11, 2019, did not satisfy each mandated legal element, and my April 11, 2019 determination that your first amended draft referendum petition, submitted April 02, 2019, also did not satisfy each mandated legal element.

After a careful and thorough review of your second amended draft petition, I have determined that it also does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

As I previously noted in my March 21, 2019, determination of your initial draft referendum petition, and in my April 11, 2019 determination of your first amended draft referendum petition, under Article IV, Section 1 of the New Mexico Constitution, Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

As the basis for my determination has not changed, I have included it herein for your reference. The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028. This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7.

Referring to Chapter 45 of New Mexico Laws of 2019, you acknowledge in your March 11, 2019 cover letter that it “may be argued that it serves the public peace, health, and safety.” Aside from this acknowledgement, I underwent the process of carefully examining the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Chapter 45 of New Mexico Laws of 2019, as required by law.



Senate Bill 8, which ultimately became Chapter 45 of New Mexico Laws of 2019, was pre-filed prior to the start of the 2019 Legislative Session. The bill provided for background checks on certain sales of firearms. On January 16, 2019, during her State of the State address to a joint session of the State House of Representatives and State Senate, Governor Lujan Grisham stated, “[a]nd I want our educators, our students and our parents to hear me again: We will do everything in our power to ensure safety in your classrooms, in your community libraries, in your homes and public spaces. We all have a Constitutional right to be safe in our communities. Four hundred New Mexicans lose their lives to gun violence every year... That means when this legislature adjourns, I expect to sign a bill that will ban those convicted of assault from purchasing or possessing a gun, I expect strengthened background checks, and I expect tighter restrictions on safekeeping to ensure children do not have access to guns in the home. With common-sense reforms, we can build a state where people who should not have firearms, don’t, simple as that.”

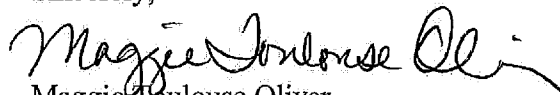
During the 2019 Legislative Session, there was also public testimony on Senate Bill 8 in legislative committee hearings. At a January 30, 2019 Senate Judiciary Committee hearing, Committee Chairman Senator Richard Martinez stated that “[t]his bill is about saving lives and keeping guns out of the hands of criminals.” At this same hearing and at other committee hearings there was testimony in support of Senate Bill 8 from multiple law enforcement officials, the Bernalillo County District Attorney, the Director of Moms Demand Action New Mexico and other groups and citizens, who discussed personal tragedies attributed to gun violence and statistics outlining how states who had implemented similar legislation have seen decreases in gun violence and deaths. The Director of Moms Demand Action noted the names of leaders and organizations who supported Senate Bill 8, including numerous heads of law enforcement agencies, Mayors, the New Mexico Chapter of American College of Physicians and the New Mexico Public Health Association. Also at the January 30, 2019 Senate Judiciary committee hearing, New Mexico Voices for Children Senior Policy Advisor Bill Jordan testified as to his belief that Senate Bill 8 would reduce child gun deaths in New Mexico.

On March 4, 2019, upon passage of Senate Bill 8 by both chambers, Governor Lujan Grisham issued a press release titled "Governor Lujan Grisham cheers House passage of legislation expanding background checks, boosting public safety." Upon signing Senate Bill 8 into law on March 8, 2019, Governor Lujan Grisham issued another press release titled "Gov. Lujan Grisham signs Senate Bill 8, enacting a meaningful, effective check on lethal violence in New Mexico communities". In that release the Governor provided that "[t]he new law improves public safety by expanding required background checks on firearm purchase to include private gun sales, closing loopholes for certain sales like those made online or at gun shows." The release further quoted Senate Bill 8 sponsor, Senator Richard Martinez as stating that "this legislation is about one thing: saving lives" and bill sponsor Representative Debbie Sariñana referred to the bill as "a common-sense measure that will keep New Mexicans safe and keep guns out of the hands of criminals."

As I have previously explained, this legislative history and contemporaneous public statements definitively establish that Chapter 45 of New Mexico Laws of 2019 bears a valid, reasonable relationship to the preservation of public peace, health or safety, and it was clearly enacted by the legislature for those purposes. Therefore this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution.

For the reasons outlined herein, I cannot legally approve and certify your amended draft referendum petition. I have consulted with the Office of the Attorney General on this determination.

Sincerely,

  
Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 114, of New Mexico," "An Act Relating to Labor; Raising the Minimum Wage; Providing a Separate Minimum Wage for Employed Secondary School Students"

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 114, of New Mexico," "An Act Relating to Labor; Raising the Minimum Wage; Providing a Separate Minimum Wage for Employed Secondary School Students[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. Although your draft petition correctly lists the official title for Laws 2019, Chapter 114, of New Mexico, the comma following the title must be within the quotation marks, as prescribed by Section 1-17-2;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature...” ; and
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws of 2019, Chapter 114, of New Mexico, An Act Relating to Labor; Raising the Minimum Wage; Providing a Separate Minimum Wage for Employed Secondary School Students is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 81 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters

of which we may properly take judicial notice..." *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 114, of New Mexico, as required by law.

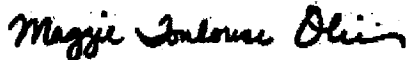
Senate Bill 437, which ultimately became Laws of 2019, Chapter 114, of New Mexico, was sponsored by Senator Clemente Sanchez during the 2019 Legislative Session. According to the Fiscal Impact Report (FIR), the bill proposed changes to New Mexico's Minimum Wage Act, NMSA 1978, §§ 50-4-19 through 50-4-31. With certain exceptions, the law gradually increases the minimum wage over a period of four years. Upon signing Senate Bill 437 into law, Governor Michelle Lujan Grisham stated, "This is going to give hope and improve the quality of life."

In examining the history of the Minimum Wage Act in New Mexico, the purpose of the Act is clear. Section 50-4-19 states "[i]t is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for all workers at levels consistent with their health, efficiency and general well-being, and (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hours standards which do not provide adequate standards of living." The connection between wages and the general welfare of workers is well established in American jurisprudence and is clearly within the police power of a state to regulate. *New Mexicans for Free Enter. v. City of Santa Fe*, 2006-NMCA-007 ¶ 30, 138 N.M. 785 (upholding minimum wage ordinance adopted by the City of Santa Fe as valid use of their power to enact); *citing Rui One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004) (stating that "the power to regulate wages and employment conditions lies clearly within a state's or a municipality's police power"); *citing West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 413-414 (1937), (upholding a state court decision that the police power of the state permitted setting a minimum wage).

The legislative history, contemporaneous declarations of the legislature and the conditions sought to be remedied by Senate Bill 437 clearly establish that Laws of 2019, Chapter 114, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety. See *Otto* ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. *Id.* ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); *Hughes v. Cleveland*, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 97 of New Mexico," "An Act Relating to Wildlife; Enacting the Wildlife Corridors Act; Identifying and Protecting Wildlife Corridors; Requiring a Wildlife Corridors Action Plan To Be Created That Provides Comprehensive Guidance To State Agencies For Identifying, Prioritizing And Maintaining Important Areas For Wildlife Movement; Providing Powers And Duties; Directing The Development Of A List Of Priority Projects Based On The Action Plan"

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 97 of New Mexico," "An Act Relating to Wildlife; Enacting the Wildlife Corridors Act; Identifying and Protecting Wildlife Corridors; Requiring a Wildlife Corridors Action Plan To Be Created That Provides Comprehensive Guidance To State Agencies For Identifying, Prioritizing And Maintaining Important Areas For Wildlife Movement; Providing Powers And Duties; Directing The Development Of A List Of Priority Projects Based On The Action Plan[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined

that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. You have failed to submit a referendum petition in the form prescribed by Section 1-17-2 as follows:
  - Your draft petition incorrectly lists the official chapter as “Laws 2019, Chapter 97 of New Mexico”. The correct form required by Section 1-17-2, is “Laws 2019, Chapter 97, of New Mexico”;
  - A comma must follow the official title of the Act within the quotation marks;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states, “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature...)”; and
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws of 2019, Chapter 97, of New Mexico, An Act Relating to Wildlife Corridors Action Plan to be Created that Provides Comprehensive Guidance to State Agencies for Identifying, Prioritizing And Maintaining Important Areas for Wildlife Movement; Providing Powers and Duties; Directing the



Development of a List of Priority Projects Based on the Action Plan is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 97, of New Mexico, as required by law.

Senate Bill 228, which ultimately became Laws of 2019, Chapter 97, of New Mexico, was sponsored by Senator Mimi Stewart during the 2019 Legislative Session. According to the Fiscal Impact Report (FIR), the bill “enacts the Wildlife Corridors Act, directing the departments of game and fish and transportation to prepare a wildlife corridors action plan. The plan will specify what is needed to identify and maintain seasonal dispersals, daily movements, and landscape scale migrations of wildlife through the state. Also, the departments are to specify location where actions are needed to preserve wildlife movements and protect human health and safety.”

Section 1, paragraph C of the bill provides a definition of “species of concern,” which is “a wildlife species identified by the department of game and fish as being adversely affected by habitat fragmentation exacerbated by human-caused barriers and the high potential of wildlife-vehicle collisions.” Section 3, paragraph 1 of the bill details what the wildlife

corridors action plan shall contain, to include, but not limited to: identification of existing highway crossings that pose a risk to successful wildlife migration or that pose a risk to the traveling public because large mammals use the crossing; information about the habitat and movement needs of species of concern with particular attention to large mammals or other species that pose a risk to the traveling public; and economic benefits anticipated from preserving wildlife movement patterns, including the potential impact of reduced wildlife-vehicle collisions.

Throughout the 2019 Legislative Session, the sponsor of Senate Bill 228 made statements at legislative hearings regarding the purpose of the bill and her motivations for sponsoring the bill. At a January 31, 2019, hearing before the Senate Conservation Committee, Senator Stewart referenced “saving people from dying.” During the February 25, 2019, Senate Floor debate on Senate Bill 228, Senator Stewart, in describing the intent of the bill, stated that “the bill is designed to minimize crashes on our highways, but also to maximize the availability of our big game to move easily through our state.”

. During the 2019 Legislative Session, numerous articles were written about Senate Bill 228. In a February 25, 2019 article published in the *Santa Fe New Mexican* entitled “Bill could reduce number of crashes involving wildlife”, Senator Jeff Steinborn is quoted as stating “[i]t’s a win-win situation for public safety because there are thousands of incidents of humans hitting wildlife and some people die from that.” In a February 07, 2019 article published by *New Mexico In Depth* entitled “Lawmakers seek safe passage on highways for wildlife, drivers”, the New Mexico Department of Transportation is cited as indicating that “vehicles collide with animals at least 1,600 times” each year.

The plain language in Senate Bill 228, the legislative history, statements of legislators regarding the purpose of the bill and the conditions sought to be remedied by the bill clearly establish that Laws of 2019, Chapter 97, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety. See *Otto* ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New

Mexico Constitution. *Id.* ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); *Hughes v. Cleveland*, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO**  
**SECRETARY OF STATE**

July 1, 2019

Bernalillo County Patriot Group  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 199, of New Mexico," "An Act Relating to Elections; Enacting the Agreement Among the States to Elect the President by National Popular Vote; Amending the Election Code to Conform with the Agreement"

Dear Ms. Lord,

On June 21, 2019, on behalf of the Bernalillo County Patriot Group, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 199, of New Mexico," "An Act Relating to Elections; Enacting the Agreement Among the States to Elect the President by National Popular Vote; Amending the Election Code to Conform with the Agreement[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Your draft petition contains numerous technical deficiencies preventing certification. Therefore, I am unable to approve and certify the petition for circulation. Should you decide to correct the technical deficiencies and re-submit, I will continue to evaluate whether or not Laws of 2019, Chapter 199

of New Mexico is excepted from referendum petitions under Article IV, Section 1 of the New Mexico Constitution.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. In the form prescribed by Section 1-17-2, the comma following the official title of the Act must be within the quotation marks;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say "it shall be a fourth degree felony for any person to sign any such petition with any name other than his own..." Article IV, Section 1 of the New Mexico Constitution actually states, "it shall be a felony for any person to sign any such petition with any name other than his own..." The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition; and
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between "Post" and "office", and Post-office is required to be in parentheses and aligned under "(Signature...".

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

July 1, 2019

Bernalillo County Patriot Group  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 67, of New Mexico," "An Act Allowing For Voter Registration During Early Voting in Statewide and Special Elections; Providing For Automatic Voter Registration and Updates to Voter Registration"

Dear Ms. Lord,

On June 21, 2019, on behalf of the Bernalillo County Patriot Group, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 67, of New Mexico," "An Act Allowing For Voter Registration During Early Voting in Statewide and Special Elections; Providing For Automatic Voter Registration and Updates to Voter Registration[.]". My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

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325 DON GASPAR, SUITE 300, SANTA FE, NEW MEXICO 87501 PHONE: (505)827-3800 FAX: (505)827-8081  
(800)477-3832 WWW.SOS.STATE.NM.US

1. You have failed to submit a referendum petition in the form prescribed by Section 1-17-2 as follows:

- Your draft petition incorrectly lists the official title as “An Act Allowing For Voter Registration During Early Voting in Statewide and Special Elections; Providing For Automatic Voter Registration and Updates to Voter Registration.” The correct official title for this law is “An Act Relating To The Public Peace, Health And Safety; Allowing For Voter Registration On Election Day And During Early Voting In Statewide And Special Elections; Providing For Automatic Voter Registration And Updates To Voter Registration” ;
- The comma following the title must be within the quotation marks;
- End quotation marks, which do not correspond with any beginning quotation marks, follow the prescribed form, whereas none are required by Section 1-17-2.

2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states, “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;

3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature...” ; and

4. Under Article IV, Section 1 of the New Mexico Constitution, Laws of 2019, Chapter 67, of New Mexico, An Act Relating To The Public Peace, Health And Safety; Allowing For Voter Registration On Election Day And During Early Voting In Statewide And Special Elections; Providing For Automatic Voter Registration And Updates To Voter Registration is a law

providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” *Otto v. Buck*, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was ~~excepted from referendum because it was~~ reasonably related to the preservation of public peace, health or safety). However, a broader interpretation of the exception is found in subsequent New Mexico appellate court decisions finding laws that are “reasonably necessary to preserve the public safety, or general welfare” is a proper exercise of the police power. *Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers*, 1998-NMSC-020, ¶ 51, 125 N.M. 401. A determination is made by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Otto v. Buck*, 1956-NMSC-040, ¶ 7, 61 N.M. 123. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 67, of New Mexico Laws, as required by law.

Senate Bill 672, which ultimately became Laws of 2019, Chapter 67, of New Mexico, was sponsored by Senators Daniel Ivey-Soto and Linda Lopez, as well as Representative Linda Trujillo during the 2019 Legislative Session. According to the Fiscal Impact Report (FIR), the bill adds new sections to the Election Code governing voter registration during the early voting period and requirements for registering to vote in connection with driver’s licenses and public benefit programs, setting forth procedures for allowing qualified electors to register to vote or update a registration during early voting periods at the county clerk’s office and alternative voting sites immediately before voting in the election. Further, the bill requires the New Mexico Human Services Department (HSD) to develop procedures to



ensure that qualified electors who receive benefits are offered the opportunity to register to vote. (FIR, March, 15, 2019).

At the time Senate Bill 672 was enacted, the Legislature intended for this law to fall within the referendum exceptions, as part of the title of the bill is for “Public Peace, Health and Safety”. While the legislature’s declaration that the act is to be for the preservation of these public goods is itself not sufficient to be a referendum exception, such a contemporaneous declaration, coupled with the condition sought to be remedied by the act, factors into a determination that Senate Bill 672 is aimed at the preservation of public safety and general welfare which falls within the referendum exception.

According to the National Conference of State Legislatures, as of January 2019, 17 states plus the District of Columbia offer same day registration, which allows any qualified resident of the state to go to register to vote and cast a ballot all in that day. As compared to most other states, where voters must register by a given deadline prior to Election Day. (“Same Day Voter Registration” National Conference of State Legislatures, April 17, 2019). In March, New Mexico became the 18th state to allow same-day voter registration. (Reichbach, Matthew. “Gov. signs same-day voter registration bill” March 27, 2019).

The core issue surrounding the enactment of same-day voter registration is the enabling of the fundamental rights of eligible voters. According to *The Hill*, an estimated 3.6 million voters did not cast a ballot in the 2018 midterm election because of a problem with their voter registration, a problem that “results in fully eligible voters [who] end up being unknowingly removed from the rolls by the thousands. Then they arrive at the polls only to be told they are ineligible to vote.”(Miller, Brian. “Same-day registration: A simple solution to protect voter rights” May 6, 2019). However, same-day registration “acts as a fail-safe — a way to ensure that those voters who were under the impression that they were registered can still vote...[and] they won’t lose their fundamental right to vote because of a mistake — or partisan shenanigans — made by someone else.”(Miller, Brian. “Same-day registration: A simple solution to protect voter rights” May 6, 2019). Ultimately, same-day registration

“allows eligible voters to register or fix a problem with their registration when they go to the polls to vote.”(Miller, Brian. “Same-day registration: A simple solution to protect voter rights” May 6, 2019).

This issue that the same-day voter registration seeks to safe guard was highlighted in a 2018 United States Supreme Court dissent stating that “[i]n the late 19th and early 20th centuries, a number of ‘[r]estrictive registration laws and administrative procedures’ came into use across the United States—from literacy tests to the poll tax and from strict residency requirements to ‘selective purges.’ Each was designed ‘to keep certain groups of citizens from voting’ and ‘discourage participation.’ By 1965, the Voting Rights Act abolished some of the ‘more obvious impediments to registration,’ [and] in 1993 [...] Congress enacted the National Voter Registration Act ‘to protect the integrity of the electoral process,’ ‘increase the number of eligible citizens who register to vote in elections for Federal office,’ and ‘ensure that accurate and current voter registration rolls are maintained.’” *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1850, 201 L.Ed.2d 141 (2018)(5-4 decision)(Breyer, Ginsburg, Sotomayor, & Kagan, JJ., dissenting).

Senate Bill 672 ensures that no restrictive registration laws and administrative procedures are in place to hinder or discourage eligible voters from participating in elections, the same purpose that was intended by the Voting Rights Act and National Voter Registration Act. After the bills enactment, Governor Michelle Lujan Grisham stated that the law will “increase voter participation [...] [t]he more eligible voters there are in New Mexico, the greater the capacity for the expression of the will of the people, and the greater the likelihood our government aligns with that will” (Reichbach, Matthew. “Gov. signs same-day voter registration bill” March 27, 2019). Ultimately, Senate Bill 672 ensures greater voter participation and that the New Mexico eligible voters will not lose their fundamental right to vote.

The plain language in Senate Bill 672, the legislative history, statements of legislators regarding the purpose of the bill and the conditions sought to be remedied by the bill

establish that Laws of 2019, Chapter 67, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety. See Otto ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. Id. ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); *Hughes v. Cleveland*, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

The New Mexico Supreme Court has held that the referendum exception identifies laws exercised under the state’s inherent police powers. In *Cleveland*, the Court noted that the permissible objects for the exercise of police powers had evolved since the adoption of Article IV, Section 1. Although not decided in *Cleveland*, the opinion suggests that the exception for laws “providing for the preservation of the public peace, health or safety” might be properly interpreted to include the expanded operation of the police power identified by the Supreme Court.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 81, of New Mexico," "An Act Relating to State Authority Under the National Labor Relations Act; Allowing Union Membership to be Required as a Condition of Employment; Establishing that the State has Exclusive Jurisdiction to Prohibit Union Security Agreements"

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 81, of New Mexico," "An Act Relating to State Authority Under the National Labor Relations Act; Allowing Union Membership to be required as a Condition of Employment; Establishing that the State has Exclusive Jurisdiction to Prohibit Union Security Agreements []." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

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As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. You have failed to submit a referendum petition in the form prescribed by Section 1-17-2 as follows:
  - Although your draft petition correctly lists the official title for Laws 2019, Chapter 81, of New Mexico, the comma following the title must be within the quotation marks;
  - End quotation marks follow the prescribed form, whereas none is required by Section 1-17-2. Further, these end quotation marks do not correspond to any beginning quotation marks within your draft petition;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature...” ; and
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws 2019, Chapter 81, of New Mexico, An Act Relating to State Authority Under the National Labor Relations Act; Allowing Union Membership to be Required as a Condition of Employment; Establishing that the State has Exclusive Jurisdiction to Prohibit Union Security Agreements, is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” *Otto v. Buck*, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 81, of New Mexico Laws, as required by law.

House Bill 85, which ultimately became Laws of 2019, Chapter 81, of New Mexico, was co-sponsored by Representative Damon Ely and Representative Andrea Romero during the 2019 Legislative Session. The plain language of the bill allows employers and labor organizations to “execute and apply an agreement requiring membership in a labor organization as condition of employment to the full extent allowed by federal law.” [It] prohibits cities, counties, home rule municipalities, and other political subdivisions from adopting or continuing in effect “any ordinances, rule, resolution or statute that prohibits the negotiation, execution or application of agreements requiring membership in a labor organization as a condition of employment.”

Throughout the 2019 Legislative Session, the co-sponsors of House Bill 85 made statements regarding the purpose of the bill and their motivations for sponsoring. In describing the bill, Representative Ely repeatedly stated that it was “about the State having exclusive jurisdiction to decide whether to allow union security agreements” and that the bill was “a pre-emption of right-to-work.” At multiple committee hearings and during the February 22, 2019, debate on

the House Floor, he expressed his concerns that individual counties and cities were enacting right-to-work ordinances in violation of federal law, which were designed to “bust” and “destroy” unions by forcing them to provide benefits to non-union members for free. At a February 13, 2019, House Judiciary Committee Hearing, Rep. Romero stated “[t]his bill is also about protecting higher wages, greater worker safety, saving lives and making sure that workers have a voice in their workplace.”

The United States Supreme Court has long held that state legislatures have the authority to enact laws for the health, safety and welfare of its inhabitants in the context of labor relations and employment matters. See Day-Brite Lighting Inc. v. State of Mo., 342 U.S. 421, 423 (1952) (“But the state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field.”); W. Coast Hotel Co. v. Parrish, 300 U.S. 379, 393 (1937) (“In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression.”).

Laws of 2019, Chapter 81, of New Mexico, which permits employers and labor organizations to enter into union security agreements requiring union membership as condition of employment, and which preempt local governments adopting laws to the contrary, was enacted for the preservation of public peace, health and safety. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. See Otto, ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State





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SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 65, of New Mexico," "An Act Relating to Public Utilities; Enacting the Energy Transition Act; Authorizing Certain Utilities that Abandon Certain Generating Facilities to Issue Bonds Pursuant to a Financing Order Issued by the Public Regulation Commission; Providing Procurement of Replacement Resources, Including Location of the Replacement Resources; Authorizing the Commission to Impose a Fee on the Qualifying Utility to Pay Commission Expenses for Contracts for Services for Legal Counsel and Financial Advisors to Provide Advice and Assistance for Purposes Related to the Act; Providing Procedures for Rehearing and Judicial Review; Providing for the Treatment of Energy Transition Bonds by the Commission; Creating Security Interests in Certain Property; Providing for the Perfection of Interests in Certain Property; Exempting Energy Transition Charges From Certain Government Fees; Creating the Energy Transition Indian Affairs Fund, the Energy Transition Economic Development Assistance Fund and the Energy Transition Displaced Worker Assistance Fund; Providing for Nonimpairment of Energy Transition Charges and Bonds; Providing for Conflicts in Law; Providing that Actions Taken Pursuant to the Energy Transition Act Shall Not be Invalidated if the Act is Held Invalid; Requiring the Public Regulation Commission to Approve Procurement of Energy Storage Systems; Providing New Requirements and Targets for the Renewable Portfolio Standard for Rural Electric Cooperatives and Public Utilities; Amending Certain Definitions in the Renewable Energy Act and Rural Electric Cooperative Act; Requiring the Hiring of Apprentices for the Construction of Facilities That Produce or Provide Electricity; Allowing Cost Recovery for Emissions Reduction; Providing Powers and Duties for the Public Regulation Commission Over Voluntary Programs for Public Utilities and Rural Electric Cooperatives; Requiring the Promulgation of Rules to Implement the Renewable Energy Act; Requiring the Environmental Improvement Board to Promulgate Rules to Limit Carbon Dioxide Emissions of Certain Electric Generating Facilities"

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(800)477-3632 WWW.SOS.STATE.NM.US

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 65, of New Mexico," "An Act Relating to Public Utilities; Enacting the Energy Transition Act; Authorizing Certain Utilities that Abandon Certain Generating Facilities to Issue Bonds Pursuant to a Financing Order Issued by the Public Regulation Commission; Providing Procurement of Replacement Resources, Including Location of the Replacement Resources; Authorizing the Commission to Impose a Fee on the Qualifying Utility to Pay Commission Expenses for Contracts for Services for Legal Counsel and Financial Advisors to Provide Advice and Assistance for Purposes Related to the Act; Providing Procedures for Rehearing and Judicial Review; Providing for the Treatment of Energy Transition Bonds by the Commission; Creating Security Interests in Certain Property; Providing for the Perfection of Interests in Certain Property; Exempting Energy Transition Charges From Certain Government Fees; Creating the Energy Transition Indian Affairs Fund, the Energy Transition Economic Development Assistance Fund and the Energy Transition Displaced Worker Assistance Fund; Providing for Nonimpairment of Energy Transition Charges and Bonds; Providing for Conflicts in Law; Providing that Actions Taken Pursuant to the Energy Transition Act Shall Not be Invalidated if the Act is Held Invalid; Requiring the Public Regulation Commission to Approve Procurement of Energy Storage Systems; Providing New Requirements and Targets for the Renewable Portfolio Standard for Rural Electric Cooperatives and Public Utilities; Amending Certain Definitions in the Renewable Energy Act and Rural Electric Cooperative Act; Requiring the Hiring of Apprentices for the Construction of Facilities That Produce or Provide Electricity; Allowing Cost Recovery for Emissions Reduction; Providing Powers and Duties for the Public Regulation Commission Over Voluntary Programs for Public Utilities and Rural Electric Cooperatives; Requiring the Promulgation of Rules to Implement the Renewable Energy Act; Requiring the Environmental Improvement Board to Promulgate Rules to Limit Carbon Dioxide Emissions of Certain Electric Generating Facilities[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statues, and current New Mexico case law. After a careful and thorough

review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say "it shall be a fourth degree felony for any person to sign any such petition with any name other than his own..." Article IV, Section 1 of the New Mexico Constitution actually states, "it shall be a felony for any person to sign any such petition with any name other than his own..." The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
2. Although you have included the certificate required by Section 1-17-6, a hyphen is required between "Post" and "office", and Post-office is required to be in parentheses and aligned under "(Signature..."; and
3. Under Article IV, Section 1 of the New Mexico Constitution, Laws 2019, Chapter 65, of New Mexico, An Act Relating to Public Utilities; Enacting the Energy Transition Act; Authorizing Certain Utilities that Abandon Certain Generating Facilities to Issue Bonds Pursuant to a Financing Order Issued by the Public Regulation Commission; Providing Procurement of Replacement Resources, Including Location of the Replacement Resources; Authorizing the Commission to Impose a Fee on the Qualifying Utility to Pay Commission Expenses for Contracts for Services for Legal Counsel and Financial Advisors to Provide Advice and Assistance for Purposes Related to the Act; Providing Procedures for Rehearing and Judicial Review; Providing for the Treatment of Energy Transition Bonds by the Commission; Creating Security Interests in Certain Property; Providing for the Perfection of Interests in Certain Property; Exempting Energy Transition Charges From Certain

Government Fees; Creating the Energy Transition Indian Affairs Fund, the Energy Transition Economic Development Assistance Fund and the Energy Transition Displaced Worker Assistance Fund; Providing for Nonimpairment of Energy Transition Charges and Bonds; Providing for Conflicts in Law; Providing that Actions Taken Pursuant to the Energy Transition Act Shall Not be Invalidated if the Act is Held Invalid; Requiring the Public Regulation Commission to Approve Procurement of Energy Storage Systems; Providing New Requirements and Targets for the Renewable Portfolio Standard for Rural Electric Cooperatives and Public Utilities; Amending Certain Definitions in the Renewable Energy Act and Rural Electric Cooperative Act; Requiring the Hiring of Apprentices for the Construction of Facilities That Produce or Provide Electricity; Allowing Cost Recovery for Emissions Reduction; Providing Powers and Duties for the Public Regulation Commission Over Voluntary Programs for Public Utilities and Rural Electric Cooperatives; Requiring the Promulgation of Rules to Implement the Renewable Energy Act; Requiring the Environmental Improvement Board to Promulgate Rules to Limit Carbon Dioxide Emissions of Certain Electric Generating Facilities is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” *Otto v. Buck*, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 65, of New Mexico, as required by law.

Senate Bill 489, which ultimately became Laws of 2019, Chapter 65, of New Mexico, was sponsored by Senator Mimi Stewart and Representatives Nathan P. Small, Patricia Roybal Caballero and Speaker of the House of Representatives Brian Egolf during the 2019 Legislative Session. According to the Fiscal Impact Report (FIR), the bill creates the Energy Transition Act (ETA) which:

Establishes new renewable and zero carbon emission portfolio standards for both utilities and rural electric cooperatives and authorizes an alternative mechanism for financing the retirement of coal-fired power plants. The mechanism (referred to as “energy transition bonds” in the bill, commonly known as “securitization”) provides investor-owned utilities with 100 percent recovery of stranded costs at potentially lower cost to customers as compared to conventional financing mechanisms. It has been designed to accommodate the retirement in 2022 of units 1 and 4 of the San Juan Generation Station (SJGS) and to anticipate the closure of the Four Corners Power Plant in 2031. The bill also amends the duties and powers of the Environmental Improvement Board (EIB), requiring the EIB to promulgate a rule limiting carbon dioxide emissions from coal fired generating plants to an emissions standard of 1,100 lbs-CO<sub>2</sub>/MWh on or after January 1, 2023.

The ETA is also designed to mitigate some of the adverse economic effects on local communities. It allows for abandonment costs of a coal-fired plant to include mine reclamation costs and severance and job training costs for displaced workers. It requires the location of replacement power resources in the school district where the abandoned facilities are located, taking into consideration system reliability. The bill creates three new funds – managed by the Indian Affairs Department (IAD), Economic Development Department (EDD) and the Department of Workforce Solutions (DWS) and – to be used to assist communities affected by abandoned coal plants and displaced workers. If a utility issues energy transition bonds, the bill requires some of the bond proceeds to be transferred to these funds. The ETA also establishes the Apprenticeship Assistance Act to be administered by the

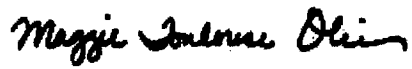
Workforce Solutions Department requiring the employment of apprentices during the construction of electric facilities in increasing percentages over time.

Throughout the 2019 Legislative Session, sponsors of the bill, experts and members of Governor Michelle Lujan Grisham's staff all spoke about the environmental and health benefits that would result from passage of Senate Bill 489. One such statement was made by Secretary of the New Mexico Environment Department James Kenney at a February 23, 2019, Senate Conservation Committee hearing. Related to the bill, he stated, "[a]s we transition to a more renewable energy economy we will reduce greenhouse gas emissions for the state of New Mexico, but we'll have the collateral benefit of reducing those localized air pollution contaminants in the San Juan area as well, increasing the public health and the quality of life for the folks who live in that area."

Further, Public Utilities are highly regulated by the State of New Mexico. See NMSA 1978, Electric, Gas and Water Utilities (Arts. 1 — 17). The "regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." See *Arkansas Elec. Coop. Corp. V. Arkansas Public Service Commission*, 461 U.S. 375, 377, 76 L. Ed. 2d 1, 103 S. Ct. 1905 (1983). This legislative history and statement regarding Senate Bill 489 and the conditions sought to be remedied by the bill clearly establish that Laws of 2019, Chapter 65, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety. See *Otto* ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. *Id.* ¶ 16 ("if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety."); *Hughes v. Cleveland*, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 262, of New Mexico," "An Act Relating to Campaign Finance; Requiring Reporting of Independent Expenditures; Redefining 'Political Committee'; Defining 'Advertisement', 'Ballot Question', 'Campaign Expenditure', 'Coordinated Expenditure', 'Independent Expenditure', 'Legislative Caucus Committee' and Other Terms; Adjusting Contribution and Expenditure Reporting Requirements, Limits and Thresholds; Changing Penalties; Providing Penalties; Amending, Repealing and Enacting Sections of the NMSA 1978"

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 262, of New Mexico," " An Act Relating to Campaign Finance; Requiring Reporting of Independent Expenditures; Redefining 'Political Committee'; Defining 'Advertisement', 'Ballot Question', 'Campaign Expenditure', 'Coordinated Expenditure', 'Independent Expenditure', 'Legislative Caucus Committee' and Other Terms; Adjusting Contribution and Expenditure Reporting Requirements, Limits and Thresholds; Changing Penalties; Providing Penalties; Amending, Repealing and Enacting Sections of the NMSA 1978[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum



petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. Although your draft petition correctly lists the official title for Laws 2019, Chapter 262, of New Mexico, the comma following the title must be within the quotation marks, as prescribed by Section 1-17-2;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say "it shall be a fourth degree felony for any person to sign any such petition with any name other than his own..." Article IV, Section 1 of the New Mexico Constitution actually states "it shall be a felony for any person to sign any such petition with any name other than his own..." The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between "Post" and "office", and Post-office is required to be in parentheses and aligned under "(Signature..."; and
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws 2019, Chapter 262, of New Mexico, An Act Relating to Campaign Finance; Requiring Reporting of Independent Expenditures; Redefining "Political Committee"; Defining "Advertisement", "Ballot Question", "Campaign Expenditure", "Coordinated Expenditure", "Independent Expenditure", "Legislative Caucus Committee" and Other Terms; Adjusting Contribution and Expenditure Reporting Requirements, Limits and Thresholds; Changing Penalties;

Providing Penalties; Amending, repealing and Enacting Sections of the NMSA 1978 is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” *Otto v. Buck*, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). However, New Mexico case law supports a broader interpretation of the exception addressing the scope of the legislature’s police power. For example, in *Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers*, a law “reasonably necessary to prevent manifest evil or reasonably necessary to preserve the public safety, or general welfare” is a proper exercise of the police power. 1998-NMSC-020, ¶ 51, 125 N.M. 40. The exception for laws stemming from the exercise of the legislature’s police powers carves “a massive field of legislative power ... out of the reserved referendum rights.” *Otto*, ¶ 18.

Thus, a law referable under Article IV, Section 1 for public peace, health or safety used in the exception refers to the general welfare and well-being of the public. This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 262, of New Mexico, as required by law.

Senate Bill 3, which ultimately became Laws of 2019, Chapter 262, of New Mexico, was sponsored by the Senate Majority Leader Peter Wirth. The bill amends the Campaign

Reporting Act, NMSA 1978, §§ 1-19-25 to -36 (1979, as amended through 2019), which requires reporting of campaign expenditures by candidates and campaign committees. Further, Senate Bill 3 requires disclosure of expenditures made by political action committees and other non-candidate campaign participants in connection with political advertisements and require disclaimer statements in political advertisements that identify the name of the candidate, committee or other person who authorized and paid for the advertisements. 2019 N.M. Laws, ch. 262, §§ 1, 2.

The U.S. Supreme Court has identified three important governmental interests served by laws similar to the Campaign Reporting Act and 2019 N.M. Laws, ch. 262. First, disclosure provides voters with information about the sources of campaign money, which allows them to evaluate those seeking elective office. Second, “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.” Third, reporting and disclosure requirements gather data necessary to detect violations of permissible limits on campaign contributions. *Buckley v. Valeo*, 424 U.S. 1, 66-68.

Governor Michelle Lujan Grisham identified similar interests served by Senate Bill 3 in her executive message, stating that Senate Bill 3’s disclosure requirements are “aimed at ‘dark money’ coming from non-profit organizations that ... spend millions of dollars in negative ads on TV, the internet and in the dozens of mailers we get each election cycle” and give “the public and voters the information they need to determine who is trying to influence their vote.” Senate Executive Message No. 36 (Apr. 4, 2019).

Therefore, this legislative history and contemporaneous public statements about the bill and the conditions sought to be remedied by the bill establish that Laws of 2019, Chapter 262, of New Mexico, which is intended to preserve the integrity of the state’s elections and deter corruption by providing the public with information about the sources and amounts of money spent on campaigns and political advertisements bears a valid, reasonable relationship to the broader interpretation of the legislative police power of preservation of the public safety, or

general welfare. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. Id. ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

July 1, 2019

Bernalillo County Patriot Group  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

**Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 253, of New Mexico," "An Act Relating To Domestic Violence; Expanding The Categories of Persons Who Cannot Receive, Transport or Possess a Firearm; Providing That a Person Subject to an Order of Protection Shall Not Possess, Care For or Have Custody or Control of a Firearm; Providing Penalties"**

Dear Ms. Lord,

On June 21, 2019 on behalf of the Bernalillo County Patriot Group, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 253, of New Mexico," "An Act Relating To Domestic Violence; Expanding The Categories of Persons Who Cannot Receive, Transport or Possess a Firearm; Providing That a Person Subject to an Order of Protection Shall Not Possess, Care For or Have Custody or Control of a Firearm; Providing Penalties[]". My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statues, and current New Mexico case law. After a careful and thorough

review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. You have failed to submit a referendum petition in the form prescribed by Section 1-17-2 as follows:
  - o Although your draft petition correctly lists the official title for Laws 2019, Chapter 253, of New Mexico, the comma following the title must be within the quotation marks;
2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states, “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature”;
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws of 2019, Chapter 253, of New Mexico, An Act Relating To Domestic Violence; Expanding The Categories of Persons Who Cannot Receive, Transport or Possess a Firearm; Providing That a Person Subject to an Order of Protection Shall Not Possess, Care For or Have Custody or Control of a Firearm; Providing Penalties is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws of 2019, Chapter 253, of New Mexico, as required by law.

Senate Bill 328, which ultimately became Laws of 2019, Chapter 253, of New Mexico, was sponsored by Senators Joseph Cervantes, Deborah A. Armstrong, and Antoinette Sedillo Lopez during the 2019 Legislative Session. According to the Fiscal Impact Report (FIR), the bill “amends the Family Violence Protection Act by authorizing a judge to order a restrained party that is subject to an order of protection to surrender firearms if the court makes a finding that the restrained party is a ‘credible threat to the physical safety of the household member’ requiring a restrained party to ‘deliver any firearm in the restrained party’s possession, care, custody or control . . . .’ to a third party, including an exception for a restrained party whose employment requires the possession of a firearm.” (Fiscal Impact Report, February 5, 2019).

Sponsor of Senate Bill 328, Senator Antoinette Sedillo Lopez, stated “This bill will take guns away from a domestic abuser at the most critical time [...] I really believe that this is going to save lives.” Nott, Robert. “New law targets guns in cases of domestic violence” Santa Fe New Mexican (April 4, 2019).

Further, according to the Fiscal Impact Report (FIR), CYFD recommended legislation such as Senate Bill 328 after analyzing state domestic violence deaths and determining that “57.8% of decedents deaths in 2018 were the result of gunshot wounds [...] identifying nine individuals who were prohibited by federal law from owning a firearm.” (Fiscal Impact Report, Updated March 3, 2019).

In the same Fiscal Impact Report (FIR), the Department of Health stated, “an abusive partner’s access to a firearm increases the risk of homicide eight-fold for women in physically abusive relationships.” The Department of Health went on to say that in 2016, “New Mexico [ranked] 22nd in the nation for females murdered by males.” The Department of Health pointed to a federal study of homicide among intimate partners, showing that “female intimate partners were more likely to be murdered with a firearm than all other means.” This same report indicated that nationally, in 2016, for victims who knew their offenders, “63 percent of women killed were wives or intimate acquaintances of their killers, and 292 women were shot and killed by either their husband or intimate acquaintance during the course of an argument, [in which] firearms were the weapon most commonly used in domestic violence homicides.” (Fiscal Impact Report, Updated March 3, 2019).

The Department of Health also pointed to 13 other states that have passed similar legislation, in which the impact of risk-based firearm seizure laws in the years after the laws passed found a decrease in suicide rates, particularly 13.7% in Connecticut and 7.5% in Indiana. (Fiscal Impact Report, Updated March 3, 2019).

Further, the New Mexico Attorney General explained that “while federal law already restricts those either convicted of misdemeanor crimes of domestic abuse or subject to a domestic order of protection from owning or possessing firearms or ammunition pursuant to 18 USC § 922(d)(8)-(9), there is not a mechanism or identifiable process providing for the transfer of these firearms from a restrained party, as is proposed in Senate Bill 328.” The Attorney General also stated that Senate Bill 328 appears to satisfy the standard established in the U.S.



Supreme Court decision, *District of Columbia v. Heller*, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), which states the “right to possess firearms is not beyond the reach of all government regulations so long as the individual is afforded sufficient due process.” Here, Senate Bill 328 allows a restrained party to have an opportunity to be heard prior to the issuance of an order of protection. (Fiscal Impact Report, Updated March 3, 2019).

The plain language in Senate Bill 328, the legislative history, statements of legislators regarding the purpose of the bill and the conditions sought to be remedied by the bill clearly establish that Laws of 2019, Chapter 253, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety. See *Otto* ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. *Id.* ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the preservation of public peace, health or safety.”); *Hughes v. Cleveland*, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State



**STATE OF NEW MEXICO  
SECRETARY OF STATE**

June 27, 2019

Bernalillo County Patriots  
c/o Stefani Lord  
P.O. Box 131  
Sandia Park, NM 87047

*Sent Via First-Class Mail*

Re: Submission of Draft Petition for Referendum for "Laws 2019, Chapter 151, of New Mexico," an "Act Relating to Animals; Prohibiting Coyote-Killing Contests; Defining 'Coyote-Killing Contest', Providing Penalties"

Dear Ms. Lord,

On June 17, 2019, on behalf of the Bernalillo County Patriots, you submitted to my office a draft referendum petition for "Laws 2019, Chapter 151, of New Mexico," an "Act Relating to Animals; Prohibiting Coyote-Killing Contests; Defining 'Coyote-Killing Contest', Providing Penalties[]." My duty as New Mexico Secretary of State is to review every draft petition and make a determination based on the strict legal requirements for referendum petitions as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law. After a careful and thorough review of your draft petition, I have determined that it does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. Your draft petition incorrectly lists the official title for Laws 2019, Chapter 151, of New Mexico as 'Act Relating to Animals; Prohibiting Coyote-Killing Contests; Defining "Coyote-

Killing Contest”, Providing Penalties’. The correct title for this law, in the form required by Section 1-17-2, is ‘An Act Relating to Animals; Prohibiting Coyote-Killing Contests; Defining “Coyote-Killing Contest”; Providing Penalties,’ ;

2. Section 1-17-5(E) requires instruction to the person who solicits signatures, for the petition and to the signer of the petition, informing them of the privileges granted by the constitution and penalties imposed for violation of the law pertaining to referendum petitions. Article IV, Section 1 of the New Mexico Constitution is incorrectly quoted in your draft petition to say “it shall be a fourth degree felony for any person to sign any such petition with any name other than his own...” Article IV, Section 1 of the New Mexico Constitution actually states “it shall be a felony for any person to sign any such petition with any name other than his own...” The degree of penalty associated with violations of the law pertaining to referendum petitions is addressed in NMSA 1978, Section 1-17-4, which must also be included in the instruction section of the petition;
3. Although you have included the certificate required by Section 1-17-6, a hyphen is required between “Post” and “office”, and Post-office is required to be in parentheses and aligned under “(Signature...” ; and
4. Under Article IV, Section 1 of the New Mexico Constitution, Laws of 2019, Chapter 151 of New Mexico, An Act Relating to Animals; Prohibiting Coyote-Killing Contests; Defining ‘Coyote-Killing Contest’; Providing Penalties is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from referendum because it was reasonably related to the preservation of public peace, health or safety). This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters

of which we may properly take judicial notice..." *Id.* ¶ 7. In evaluating your draft petition, I carefully examined the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Laws 2019, Chapter 151, of New Mexico, as required by law.

Senate Bill 76, which ultimately became Laws of 2019, Chapter 151, of New Mexico, was pre-filed prior to the start of the 2019 Legislative Session and sponsored by Senator Jeff Steinborn and Senator Mark Moores. According to the Fiscal Impact Report (FIR), the bill "prohibited organized or sponsored competition with the objective of killing coyotes for prizes or entertainment and established penalties." Highlights of the FIR included: firearms are used in these contests; other animals including bobcats, foxes, raccoons, crows, rodents and wolves are also targeted in these contests; an acknowledgment that all species play a role in healthy ecosystems; and that on January 10, 2019, State Land Commissioner Stephanie Garcia Richard signed an Executive Order (2019 – 001) banning killing contests on State Trust Lands.

Throughout the 2019 Legislative Session, at legislative hearings, the co-sponsors of Senate Bill 76 made numerous statements regarding the purpose of the bill and their motivations for sponsoring the bill. Senator Jeff Steinborn, repeatedly stated that coyote killing was not a "legitimate management tool," but rather was an "inhumane activity that is beneath us." Regarding the bill, Senator Moores commented, "[n]o one is trying to restrict landowners' ability to kill offending coyotes, but celebrating mass killing is just not good wildlife management." At a February 12, 2019, hearing before the Senate Conservation Committee, Committee Chair Joseph Cervantes explained that Senate Bill 76 was "about human beings and humanity." During the February 27, 2019, Senate floor debate on Senate Bill 76, Senator Steinborn elaborated on a rodent problem occurring in Doña Ana County, which he asserted was caused by "the high coyote hunts occurring." He expressed concern over the "diseases [rodents] carry" and he relayed that these contests were "disrupting the natural order" and that "overkilling creates another over population."

That over population was a result of overkilling the coyote population was supported by David Parsons, a professor and wildlife biologist, who testified on behalf of Senate Bill 76 throughout the 2019 Legislative Session. At a March 17, 2019, hearing before the House Consumer and Public Affairs Committee on Senate Bill 76, Mr. Parsons testified that “[c]oyote populations do not have to be culled. They self-regulate their own numbers.” He explained when humans kill coyotes “indiscriminately” in these killing contests that “established packs breakup causing more females to breed at a younger age, there’s an increase in the number of pups that survive, and dispersal of breeding has a colonizing effect of the population trying to re-stabilize.” He indicated that “[t]hese exploited coyote populations are characterized by younger, less experienced coyotes that are thought to be more prone to be preying on domestic animals.” According to Mr. Parsons, “the ecosystem that we derive from coyotes-the benefits to humans-include their control of rodents and rabbits, which can carry diseases and compete with domestic livestock for forage.”

Regulation of organized sport killing contests is consistent with the Legislature's police power to govern for the health, safety, and welfare of the State and consistent with its regulation of cruelty toward animals and licensure of hunting and fishing within the State. *See* NMSA § 30-18-1(D) (2007) (“Whoever commits cruelty to animals is guilty of a misdemeanor”); NMSA 1978, § 17-3-6(D) (2005) (“It is a misdemeanor to hunt game or fish in New Mexico without a license lawfully procured.”).

This legislative history and contemporaneous public statements about the bill and the conditions sought to be remedied by the bill establish that Laws of 2019, Chapter 151, of New Mexico bears a valid, reasonable relationship to the preservation of public peace, health or safety Otto ¶ 20. Therefore, this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution. *Id.* ¶ 16 (“if the constitutional validity of legislation be sustained as a reasonable exercise of police power involved in the referendum clause of the Constitution, its nonreferable character is automatically established under the provision exempting from popular referendum measures providing for the

preservation of public peace, health or safety.”); Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192.

For the reasons outlined here, I cannot legally approve and certify your draft referendum petition. As the draft petition requires the signature of the Attorney General, I have consulted with the Office of the Attorney General on my determination.

Sincerely,



Maggie Toulouse Oliver  
New Mexico Secretary of State

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AN ACT

RELATING TO CRIME; REQUIRING A BACKGROUND CHECK WHEN  
CONDUCTING SALES OF A FIREARM; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 30, Article 7  
NMSA 1978 is enacted to read:

"UNLAWFUL SALE OF A FIREARM WITHOUT A BACKGROUND  
CHECK.--

A. Unlawful sale of a firearm without a background  
check consists of the sale of a firearm without conducting a  
federal instant background check, subject to the following:

(1) if the buyer of a firearm is not a  
natural person, then each natural person who is authorized by  
the buyer to possess the firearm after the sale shall undergo  
a federal instant background check before taking possession  
of the firearm;

(2) a prospective firearm seller who does  
not hold a current and valid federal firearms license issued  
pursuant to 18 U.S.C. Section 923(a) shall arrange for a  
person who does hold that license to conduct the federal  
instant background check. A federal firearms licensee shall  
not unreasonably refuse to perform a background check  
pursuant to this paragraph; and

(3) a person who holds a current and valid

1 federal firearms license issued pursuant to 18 U.S.C. Section  
2 923(a) may charge a fee not to exceed thirty-five dollars  
3 (\$35.00) for conducting a background check pursuant to this  
4 section.

5 B. The provisions of Subsection A of this section  
6 do not apply to the sale of a firearm:

7 (1) by or to a person who holds a current  
8 and valid federal firearms license issued pursuant to  
9 18 U.S.C. Section 923(a);

10 (2) to a law enforcement agency;

11 (3) between two law enforcement officers  
12 authorized to carry a firearm and certified pursuant to  
13 federal law or the Law Enforcement Training Act; or

14 (4) between immediate family members.

15 C. As used in this section:

16 (1) "consideration" means anything of value  
17 exchanged between the parties to a sale;

18 (2) "federal instant background check" means  
19 a background check that meets the requirements of 18 U.S.C.  
20 Section 922(t) and that does not indicate that a sale to the  
21 person receiving the firearm would violate 18 U.S.C. Section  
22 922(g) or 18 U.S.C. Section 922(n) or state law;

23 (3) "firearm" means any weapon that will or  
24 is designed to or may readily be converted to expel a  
25 projectile by the action of an explosion; the frame or



1 receiver of any such weapon; or any firearm muffler or  
2 firearm silencer; and includes any handgun, rifle or shotgun;  
3 but shall not include an antique firearm as defined in  
4 18 U.S.C. Section 921(16), a powder-actuated tool or other  
5 device designed to be used for construction purposes, an  
6 emergency flare or a firearm in permanently inoperable  
7 condition;

8 (4) "immediate family member" means a  
9 spouse, parent, child, sibling, grandparent, grandchild,  
10 great-grandchild, niece, nephew, first cousin, aunt or uncle;  
11 and

12 (5) "sale" means the delivery or passing of  
13 ownership, possession or control of a firearm for a fee or  
14 other consideration, but does not include temporary  
15 possession or control of a firearm provided to a customer by  
16 the proprietor of a licensed business in the conduct of that  
17 business.

18 D. Each party to an unlawful sale in violation of  
19 this section may be separately charged for the same sale.

20 E. Each firearm sold contrary to the provisions of  
21 this section constitutes a separate offense under Subsection  
22 A of this section.

23 F. Two or more offenses may be charged in the same  
24 complaint, information or indictment and shall be punished as  
25 separate offenses.

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G. Whoever violates the provisions of this section is guilty of a misdemeanor."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019. \_\_\_\_\_

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AN ACT

RELATING TO DOMESTIC VIOLENCE; EXPANDING THE CATEGORIES OF PERSONS WHO CANNOT RECEIVE, TRANSPORT OR POSSESS A FIREARM; PROVIDING THAT A PERSON SUBJECT TO AN ORDER OF PROTECTION SHALL NOT POSSESS, CARE FOR OR HAVE CUSTODY OR CONTROL OF A FIREARM; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981, Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT, TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

A. It is unlawful for the following persons to receive, transport or possess a firearm or destructive device in this state:

- (1) a felon;
- (2) a person subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or
- (3) a person convicted of any of the following crimes:
  - (a) battery against a household member pursuant to Section 30-3-15 NMSA 1978;
  - (b) criminal damage to property of a household member pursuant to Section 30-3-18 NMSA 1978;

1 (c) a first offense of stalking  
2 pursuant to Section 30-3A-3 NMSA 1978; or

3 (d) a crime listed in 18 U.S.C. 921.

4 B. A felon found in possession of a firearm shall  
5 be guilty of a fourth degree felony and shall be sentenced in  
6 accordance with the provisions of the Criminal Sentencing  
7 Act; provided that the violation of and the sentence imposed  
8 pursuant to this subsection shall be increased to a violation  
9 of and the sentence for a third degree felony if the person  
10 has previously been convicted of a capital felony or a  
11 serious violent offense provided in Paragraph (4) of  
12 Subsection L of Section 33-2-34 NMSA 1978.

13 C. Any person subject to an order of protection  
14 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or  
15 convicted of a crime listed in Paragraph (3) of Subsection A  
16 of this section who receives, transports or possesses a  
17 firearm or destructive device is guilty of a misdemeanor.

18 D. As used in this section:

19 (1) except as provided in Paragraph (2) of  
20 this subsection, "destructive device" means:

21 (a) any explosive, incendiary or poison  
22 gas: 1) bomb; 2) grenade; 3) rocket having a propellant  
23 charge of more than four ounces; 4) missile having an  
24 explosive or incendiary charge of more than one-fourth ounce;  
25 5) mine; or 6) similar device;

1 (b) any type of weapon by whatever name  
2 known that will, or that may be readily converted to, expel a  
3 projectile by the action of an explosive or other propellant,  
4 the barrel or barrels of which have a bore of more than one-  
5 half inch in diameter, except a shotgun or shotgun shell that  
6 is generally recognized as particularly suitable for sporting  
7 purposes; or

8 (c) any combination of parts either  
9 designed or intended for use in converting any device into a  
10 destructive device as defined in this paragraph and from  
11 which a destructive device may be readily assembled;

12 (2) the term "destructive device" does not  
13 include any device that is neither designed nor redesigned  
14 for use as a weapon or any device, although originally  
15 designed for use as a weapon, that is redesigned for use as a  
16 signaling, pyrotechnic, line throwing, safety or similar  
17 device;

18 (3) "felon" means a person convicted of a  
19 felony offense by a court of the United States or of any  
20 state or political subdivision thereof and:

21 (a) less than ten years have passed  
22 since the person completed serving a sentence or period of  
23 probation for the felony conviction, whichever is later;

24 (b) the person has not been pardoned  
25 for the felony conviction by the proper authority; and

1 (c) the person has not received a  
2 deferred sentence; and

3 (4) "firearm" means any weapon that will or  
4 is designed to or may readily be converted to expel a  
5 projectile by the action of an explosion or the frame or  
6 receiver of any such weapon."

7 SECTION 2. Section 40-13-2 NMSA 1978 (being Laws 1987,  
8 Chapter 286, Section 2, as amended) is amended to read:

9 "40-13-2. DEFINITIONS.--As used in the Family Violence  
10 Protection Act:

11 A. "continuing personal relationship" means a  
12 dating or intimate relationship;

13 B. "co-parents" means persons who have a child in  
14 common, regardless of whether they have been married or have  
15 lived together at any time;

16 C. "court" means the district court of the  
17 judicial district where an alleged victim of domestic abuse  
18 resides or is found;

19 D. "domestic abuse":

20 (1) means an incident of stalking or sexual  
21 assault whether committed by a household member or not;

22 (2) means an incident by a household member  
23 against another household member consisting of or resulting  
24 in:

25 (a) physical harm;

1 (b) severe emotional distress;  
2 (c) bodily injury or assault;  
3 (d) a threat causing imminent fear of  
4 bodily injury by any household member;  
5 (e) criminal trespass;  
6 (f) criminal damage to property;  
7 (g) repeatedly driving by a residence  
8 or work place;  
9 (h) telephone harassment;  
10 (i) harassment;  
11 (j) strangulation;  
12 (k) suffocation; or  
13 (l) harm or threatened harm to children  
14 as set forth in this paragraph; and

15 (3) does not mean the use of force in  
16 self-defense or the defense of another;

17 E. "firearm" means any weapon that will or is  
18 designed to or may readily be converted to expel a projectile  
19 by the action of an explosion or the frame or receiver of any  
20 such weapon;

21 F. "household member" means a spouse, former  
22 spouse, parent, present or former stepparent, present or  
23 former parent-in-law, grandparent, grandparent-in-law, child,  
24 stepchild, grandchild, co-parent of a child or a person with  
25 whom the petitioner has had a continuing personal

1 relationship. Cohabitation is not necessary to be deemed a  
2 household member for purposes of this section;

3 G. "law enforcement officer" means a public  
4 official or public officer vested by law with a duty to  
5 maintain public order or to make arrests for crime, whether  
6 that duty extends to all crimes or is limited to specific  
7 crimes;

8 H. "mutual order of protection" means an order of  
9 protection that includes provisions that protect both  
10 parties;

11 I. "order of protection" means an injunction or a  
12 restraining or other court order granted for the protection  
13 of a victim of domestic abuse;

14 J. "protected party" means a person protected by  
15 an order of protection;

16 K. "restrained party" means a person who is  
17 restrained by an order of protection;

18 L. "strangulation" has the same meaning as set  
19 forth in Section 30-3-11 NMSA 1978; and

20 M. "suffocation" has the same meaning as set forth  
21 in Section 30-3-11 NMSA 1978."

22 SECTION 3. Section 40-13-5 NMSA 1978 (being Laws 1987,  
23 Chapter 286, Section 5, as amended) is amended to read:

24 "40-13-5. ORDER OF PROTECTION--CONTENTS--  
25 REMEDIES--TITLE TO PROPERTY NOT AFFECTED--MUTUAL ORDER



1 OF PROTECTION.--

2 A. Upon finding that domestic abuse has occurred  
3 or upon stipulation of the parties, the court shall enter an  
4 order of protection ordering the restrained party to:

5 (1) refrain from abusing the protected party  
6 or any other household member; and

7 (2) if the order is issued pursuant to this  
8 section and if the court also determines that the restrained  
9 party presents a credible threat to the physical safety of  
10 the household member after the restrained party has received  
11 notice and had an opportunity to be heard or by stipulation  
12 of the parties, to:

13 (a) deliver any firearm in the  
14 restrained party's possession, care, custody or control to a  
15 law enforcement agency, law enforcement officer or federal  
16 firearms licensee while the order of protection is in effect;  
17 and

18 (b) refrain from purchasing, receiving,  
19 or possessing or attempting to purchase, receive or possess  
20 any firearm while the order of protection is in effect.

21 B. In an order of protection entered pursuant to  
22 Subsection A of this section, the court shall specifically  
23 describe the acts the court has ordered the restrained party  
24 to do or refrain from doing. As a part of any order of  
25 protection, the court may:

1                   (1) grant sole possession of the residence  
2 or household to the protected party during the period the  
3 order of protection is effective or order the restrained  
4 party to provide temporary suitable alternative housing for  
5 the protected party and any children to whom the restrained  
6 party owes a legal obligation of support;

7                   (2) award temporary custody of any children  
8 involved when appropriate and provide for visitation rights,  
9 child support and temporary support for the protected party  
10 on a basis that gives primary consideration to the safety of  
11 the protected party and the children;

12                   (3) order that the restrained party shall  
13 not initiate contact with the protected party;

14                   (4) restrain a party from transferring,  
15 concealing, encumbering or otherwise disposing of the other  
16 party's property or the joint property of the parties except  
17 in the usual course of business or for the necessities of  
18 life and require the parties to account to the court for all  
19 such transferences, encumbrances and expenditures made after  
20 the order is served or communicated to the restrained party;

21                   (5) order the restrained party to reimburse  
22 the protected party or any other household member for  
23 expenses reasonably related to the occurrence of domestic  
24 abuse, including medical expenses, counseling expenses, the  
25 expense of seeking temporary shelter, expenses for the

1 replacement or repair of damaged property or the expense of  
2 lost wages;

3 (6) order the restrained party to  
4 participate in, at the restrained party's expense,  
5 professional counseling programs deemed appropriate by the  
6 court, including counseling programs for perpetrators of  
7 domestic abuse, alcohol abuse or abuse of controlled  
8 substances; and

9 (7) order other injunctive relief as the  
10 court deems necessary for the protection of a party,  
11 including orders to law enforcement agencies as provided by  
12 this section.

13 C. The order of protection shall contain notice  
14 that violation of any provision of the order of protection is  
15 a violation of state law and that federal law, 18 U.S.C. 922,  
16 et seq., prohibits possession of firearms by certain persons.

17 D. If the order of protection supersedes or alters  
18 prior orders of the court pertaining to domestic matters  
19 between the parties, the order shall say so on its face. If  
20 an action relating to child custody or child support is  
21 pending or has concluded with entry of an order at the time  
22 the petition for an order of protection was filed, the court  
23 may enter an initial order of protection, but the portion of  
24 the order dealing with child custody or child support will  
25 then be transferred to the court that has or continues to

1 have jurisdiction over the pending or prior custody or  
2 support action.

3 E. A mutual order of protection shall be issued  
4 only in cases where both parties have petitioned the court  
5 and the court makes detailed findings of fact indicating that  
6 both parties acted primarily as aggressors and that neither  
7 party acted primarily in self-defense.

8 F. No order issued under the Family Violence  
9 Protection Act shall affect title to any property or allow a  
10 party to transfer, conceal, encumber or otherwise dispose of  
11 another party's property or the joint or community property  
12 of the parties.

13 G. Either party may request a review hearing to  
14 amend an order of protection. An order of protection  
15 involving child custody or support may be modified without  
16 proof of a substantial or material change of circumstances.

17 H. An order of protection shall not be issued  
18 unless a petition or a counter petition has been filed."

19 SECTION 4. A new section of the Family Violence  
20 Protection Act is enacted to read:

21 "RELINQUISHMENT OF FIREARMS--PENALTY.--

22 A. After the court has issued notice that the  
23 restrained party is subject to the provisions of  
24 Paragraph (2) of Subsection A of Section 40-13-5 NMSA 1978,  
25 the restrained party shall relinquish all firearms in the

1 restrained party's immediate possession or control or subject  
2 to the restrained party's possession or control in a safe  
3 manner to a law enforcement officer, a law enforcement agency  
4 or federal firearms licensee within forty-eight hours of  
5 service of the order.

6 B. A law enforcement officer or law enforcement  
7 agency shall take possession of all firearms subject to the  
8 order of protection that are relinquished by the restrained  
9 party or are in plain sight or are discovered pursuant to a  
10 lawful search.

11 C. A law enforcement officer or law enforcement  
12 agency that takes temporary possession of a firearm pursuant  
13 to this section shall:

14 (1) prepare a receipt identifying all  
15 firearms that have been relinquished or taken;

16 (2) provide a copy of the receipt to the  
17 restrained party;

18 (3) provide a copy of the receipt to the  
19 petitioner within seventy-two hours of taking possession of  
20 the firearm;

21 (4) file the original receipt with the court  
22 that issued the order of protection within seventy-two hours  
23 of taking possession of the firearm; and

24 (5) ensure that the law enforcement agency  
25 retains a copy of the receipt.

1           D. An order of protection issued pursuant to  
2 Section 40-13-5 NMSA 1978 shall include:

3           (1) a statement that the restrained party  
4 shall not purchase, receive, transport, possess or have  
5 custody or control of a firearm while the order of protection  
6 is in effect;

7           (2) a description of the requirements for  
8 the relinquishment of firearms as provided in this section;

9           (3) a statement that within seventy-two  
10 hours of the issuance of the order of protection the  
11 restrained party must file with the court issuing the order:

12           (a) a receipt identifying all firearms  
13 that have been relinquished or taken by a law enforcement  
14 officer or law enforcement agency; or

15           (b) a declaration of  
16 non-relinquishment;

17           (4) the expiration date of relinquishment;

18           (5) the address of the court that issued the  
19 order of protection; and

20           (6) a statement that violation of any  
21 provision of the order of protection is a violation of state  
22 law and that federal law, 18 U.S.C. 922, et seq., prohibits  
23 possession of firearms by certain persons.

24           E. If the respondent is present at the hearing on  
25 the order of protection, the court shall provide the

1 respondent with a receipt form to identify all firearms to be  
2 surrendered or, if the respondent has no firearms to  
3 relinquish, a declaration of non-relinquishment. The court  
4 shall accept the completed form from the respondent for  
5 immediate filing.

6 F. Evidence establishing ownership or possession  
7 of a firearm pursuant to this section shall not be admissible  
8 as evidence in any criminal proceeding.

9 G. The law enforcement agency or federal firearms  
10 licensee with custody of a surrendered or seized firearm  
11 shall make the firearm available to a formerly restrained  
12 party within three business days of receipt of a request from  
13 a formerly restrained party who is then currently eligible to  
14 own and possess a firearm.

15 H. A formerly restrained party who has surrendered  
16 or had firearms taken by a law enforcement officer or law  
17 enforcement agency pursuant to this section who does not wish  
18 the firearm returned or who is no longer eligible to possess  
19 a firearm may sell or transfer the firearm to a federal  
20 firearms licensee. The law enforcement agency shall not  
21 release the firearm to a federal firearms licensee until:

22 (1) the federal firearms licensee has  
23 displayed proof that the formerly restrained party has  
24 transferred the firearm to the licensee; and

25 (2) the law enforcement agency has verified

1 the transfer with the formerly restrained party.

2 I. A law enforcement agency holding a firearm  
3 relinquished pursuant to this section may dispose of the  
4 firearm twelve months from the date of proper notice to the  
5 formerly restrained party of the intent to dispose of the  
6 firearm, unless another person claiming to be the lawful  
7 owner presents written proof of ownership. If the firearm  
8 remains unclaimed after twelve months from the date of  
9 notice, no party shall assert ownership and the law  
10 enforcement agency may dispose of the firearm. For the  
11 purposes of this subsection, "dispose" means to destroy a  
12 firearm or sell or transfer the firearm to a federal firearms  
13 licensee.

14 J. The provisions of this section shall not be  
15 interpreted to require a federal firearms licensee to  
16 purchase or accept possession of a firearm from a restrained  
17 party.

18 K. The administrative office of the courts  
19 shall develop a standard receipt form and declaration of  
20 non-relinquishment form for use under this section."

21 SECTION 5. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2019. \_\_\_\_\_