



1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 Opinion Number:

3 Filing Date: January 9, 2025

4 **NO. S-1-SC-39742**

5 **STATE OF NEW MEXICO,**
6 **ex rel. RAÚL TORREZ,**
7 **New Mexico Attorney General,**

8 Petitioner,

9 v.

10 **BOARD OF COUNTY**
11 **COMMISSIONERS FOR LEA**
12 **COUNTY, BOARD OF COUNTY**
13 **COMMISSIONERS FOR**
14 **ROOSEVELT COUNTY,**
15 **CITY OF CLOVIS, and CITY**
16 **OF HOBBS,**

17 Respondents.

18 **ORIGINAL PROCEEDING**

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I CERTIFY AND ATTEST:
A true copy was served on all parties
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1 **OPINION**

2 **BACON, Justice.**

3 **I. INTRODUCTION**

4 {1} This mandamus proceeding concerns the authority of county and municipal
5 officials to enact local ordinances regulating abortion, as well as clinics and
6 providers. Exercising our original jurisdiction, we consider whether officials in Lea
7 and Roosevelt counties and the cities of Clovis and Hobbs (Respondents) exceeded
8 their authority by enacting ordinances preempted by state law.

9 {2} The ordinances at issue (collectively, the Ordinances) create blanket
10 prohibitions on the mailing or receipt of any abortion-related instrumentality, which
11 purport to be in “compliance with federal law,” namely portions of the Comstock
12 Act, 18 U.S.C. §§ 1461-62. *See* Hobbs, N.M., Ordinance No. 1147, chs. 5.52.010-
13 .090 (2022) (Hobbs Ordinance) (amending Title 5 of the Hobbs Muncipal Code);
14 Clovis, N.M., Ordinance No. 2184-2022, chs. 9.90.010-.070 (2023) (Clovis
15 Ordinance) (amending Title 9 of the Clovis City Code); Roosevelt County, N.M.,
16 Ordinance No. 2023-01, §§ 1-10 (Jan. 10, 2023) (Roosevelt Cnty. Ordinance); Lea
17 County, N.M., Ordinance No. 99, §§ 1-8 (Dec. 8, 2022) (Lea Cnty. Ordinance).
18 Additionally, three of the Ordinances create licensing schemes (collectively,
19 licensing Ordinances) exclusive to abortion clinics and providers that mandate clinic

1 compliance with the Comstock Act and vest city commissioners and county
2 managers with sole discretion for licensure approval. *See* Hobbs Ordinance No.
3 1147, chs. 5.52.030-.060; Clovis Ordinance No. 2184-2022, chs. 9.90.020-.050;
4 Roosevelt Cnty. Ordinance No. 2023-01, §§ 5-8.

5 {3} The State of New Mexico (the State) seeks a writ of prohibitory mandamus to
6 restrain Respondents from enforcing the Ordinances and to invalidate the
7 Ordinances as preempted by state law. In the alternative, the State argues the
8 Ordinances violate the Equal Rights Amendment under Article II, Section 18 of the
9 New Mexico Constitution. The State contends that by “singl[ing] out abortion for
10 burdensome regulation and civil liability,” the Ordinances contain an impermissible
11 sex-based classification that presumptively violates our Equal Rights Amendment.
12 *See N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 2, 126 N.M. 788,
13 975 P.2d 841 (holding that a rule prohibiting state funding for medically necessary
14 abortions violated the Equal Rights Amendment). Relatedly, the State asserts that
15 the right to terminate a pregnancy is an inherent right embraced under the trifold
16 protections of due process, privacy, and the inherent rights clause. N.M. Const. art.
17 II, §§ 18, 10, 4.

18 {4} Because we conclude the Ordinances, in their entirety, plainly conflict with
19 provisions of the Reproductive and Gender-Affirming Health Care Freedom Act (the

1 Health Care Freedom Act or the Act), NMSA 1978, §§ 24-34-1 to -5 (2023), we
2 hold the Ordinances are preempted by state law. Additionally, because the licensing
3 Ordinances conflict with the Medical Practice Act (MPA), NMSA 1978, §§ 61-6-1
4 to -34 (1978, as amended through 2023); the Medical Malpractice Act (MMA),
5 NMSA 1978, §§ 41-5-1 to -29 (1978, as amended through 2023); the Health Care
6 Code (HCC), NMSA 1978, §§ 24A-1-1 to -20 (1978, as amended through 2024);
7 and the due process provisions of the Uniform Licensing Act (ULA), NMSA 1978,
8 §§ 61-1-1 to -37 (1957, as amended through 2024), we hold the licensing Ordinances
9 are also preempted by those state laws. We therefore decline to reach the State’s
10 additional arguments under the New Mexico Constitution. *See Allen v. LeMaster*,
11 2012-NMSC-001, ¶ 28, 267 P.3d 806 (“It is an enduring principle of constitutional
12 jurisprudence that courts will avoid deciding constitutional questions unless required
13 to do so.” (internal quotation marks and citation omitted)). Our forbearance of the
14 constitutional questions, however, should not be construed as commentary on their
15 merit. Rather, we heed the canon of constitutional avoidance and refrain from
16 deciding constitutional issues unnecessary to the disposition of this case. *Id.*; *see*
17 *also State v. Radosevich*, 2018-NMSC-028, ¶ 8, 419 P.3d 176 (“[W]e must be guided
18 by the well-established principle of statutory construction that statutes should be

1 construed, if possible, to avoid constitutional questions.” (internal quotation marks
2 and citation omitted)).

3 {5} We similarly decline to address Respondents’ arguments with respect to the
4 Comstock Act and federal preemption, which we deem unnecessary to the resolution
5 of the issues before this Court. We therefore emphasize that our decision to grant the
6 writ of prohibitory mandamus and invalidate the Ordinances on the basis of state law
7 preemption rests solely on state law grounds. *See Michigan v. Long*, 463 U.S. 1032,
8 1041 (1983) (“If the state court decision indicates clearly and expressly that it is
9 alternatively based on bona fide separate, adequate, and independent grounds, we,
10 of course, will not undertake to review the decision.”).

11 **II. BACKGROUND**

12 {6} We first review the factual and legal developments that led to the State’s
13 petition for a writ of prohibitory mandamus. The Ordinances did not arise in a
14 vacuum. Indeed, these local laws are precisely the result presaged by the dissent in
15 *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 360-61 (2022)

1 (Breyer, Sotomayor, and Kagan, JJ., dissenting).¹ By overturning *Roe v. Wade*, 410
2 U.S. 113 (1973), and declaring the authority to regulate abortions a state issue,
3 *Dobbs* invited the kind of intrastate conflicts created by the Ordinances, which must
4 be resolved under state law. *See Dobbs*, 597 U.S. at 302. Ultimately, the issues
5 before this Court reduce to whether mandamus lies in the action brought by the State
6 and whether state law preempts the Ordinances.

7 **A. The Repeal of New Mexico’s Abortion Ban and Enactment of Laws**
8 **Protecting Access to Abortion**

9 {7} For fifty-seven years, New Mexico classified abortion as a fourth-degree
10 felony offense. *See* NMSA 1953, §§ 40A-5-1 to -3 (1963) (repealed as amended and
11 renumbered 2021). Our criminal code during that period reflected a near-total
12 abortion ban which, while unenforceable under *Roe v. Wade*, imposed criminal
13 liability for providing abortions unless deemed necessary “to preserve the life of the
14 woman or to prevent serious and permanent bodily injury.” Sections 40A-5-1 to -3;

¹“And because, as the Court has often stated, protecting fetal life is rational, [s]tates will feel free to enact all manner of restrictions. The Mississippi law at issue here bars abortions after the 15th week of pregnancy. Under the majority’s ruling, though, another [s]tate’s law could do so after ten weeks, or five or three or one—or, again, from the moment of fertilization. States have already passed such laws, in anticipation of today’s ruling. More will follow. Some [s]tates have enacted laws extending to all forms of abortion procedure, including taking medication in one’s own home.” *Dobbs*, 597 U.S. at 360 (Breyer, Sotomayor, and Kagan, JJ., dissenting).

1 *see also Roe v. Wade*, 410 U.S. at 164-65. In 2021, our Legislature repealed the
2 state’s criminal abortion ban thereby removing significant barriers to abortion
3 access, including abolishing criminal penalties for abortion, eliminating consent
4 requirements for minors seeking an abortion, and abandoning prohibitions on the
5 prescription and dispensing of medication abortions by non-physician medical
6 professionals, such as nurses. *See* NMSA 1978, §§ 30-5-1, -3 (1969), (repealed
7 2021); *State v. Strance*, 1973-NMCA-024, ¶ 8, 84 N.M. 670, 506 P.2d 1217
8 (discussing a “justified medical termination”).

9 {8} The repeal of criminal abortion ushered in subsequent legislative and
10 executive actions that broadened access to abortion. *See, e.g.*, §§ 24-34-1 to -5; State
11 of N.M., Exec. Ord. 2022-107 (June 27, 2022) (clarifying executive policy
12 protecting access to reproductive health care services including abortion); State of
13 N.M., Exec. Ord. 2022-123 (Aug. 31, 2022) (providing funding for a comprehensive
14 reproductive health care clinic in Doña Ana County on the state’s southern border).
15 Of central importance to this proceeding, the Health Care Freedom Act, the first
16 substantive enactment affirmatively addressing the right to access reproductive
17 health care in New Mexico, went into effect June 16, 2023. *See* §§ 24-34-1 to -5.

1 The Act prohibits any public body,² entity, or individual from interfering with access
2 to reproductive or gender-affirming health care and imposes penalties for violations
3 of the Act’s provisions. Sections 24-34-3 to -4. As public bodies, all cities and
4 counties within the state—including Hobbs, Clovis, Lea County, and Roosevelt
5 County—are subject to the language of the Act. Further, the Act creates a private
6 right of action to bring suit against any public body or entity for violating the Act.³
7 Section 24-34-5. Notably, the Ordinances emerged amidst these significant
8 legislative and executive actions protecting access to abortion.⁴

²Under Section 24-34-2(B), a “public body” is defined as “a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education.”

³Pursuant to Section 24-34-5(A), “[a] person claiming to be aggrieved by a violation of the Reproductive and Gender-Affirming Health Care Freedom Act may maintain an action in district court for appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages or punitive damages, or the sum of five thousand dollars (\$5,000) for each violation of the Reproductive and Gender-Affirming Health Care Freedom Act, whichever is greater.”

⁴The Ordinances were adopted in late 2022 and early 2023: the city of Hobbs ordinance No. 1147 was adopted on November 7, 2022; Lea County ordinance No. 99 was adopted on December 8, 2022; the city of Clovis ordinance No. 2184-2022 was adopted on January 5, 2023; and Roosevelt County ordinance No. 2023-01 was adopted on January 10, 2023.

1 **B. The Ordinances Purport to Require Compliance with Federal Law and**
2 **to Impose Licensing Requirements on Abortion Clinics**

3 (9) From our reading of the Ordinances, we distill the following: the Ordinances
4 contain nearly identical language and seek to restrict local access to abortion services
5 by purportedly requiring compliance with the federal Comstock Act. *See* Hobbs
6 Ordinance No. 1147, ch. 5.52.070; Clovis Ordinance No. 2184-2022, ch. 9.90.060;
7 Roosevelt Cnty. Ordinance No. 2023-01, §§ 2, 9; Lea Cnty. Ordinance No. 99, § 6.
8 The Comstock Act, in part, imposes felony liability for the mailing of “[e]very article
9 or thing designed, adapted, or intended for producing abortion, or for any indecent
10 or immoral use; . . . Every article, instrument, substance, drug, medicine, or thing
11 which is advertised or described in a manner calculated to lead another to use or
12 apply it for producing abortion, or for any indecent or immoral purpose.”⁵ 18 U.S.C.
13 § 1461.

⁵In 2022, the Office of Legal Counsel for the United States Department of Justice issued commentary clarifying the application of the Comstock Act. *See Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*, 46 Op. O.L.C. ____ (2022), <https://www.justice.gov/olc/opinion/application-comstock-act-mailing-prescription-drugs-can-be-used-abortions> (last visited Dec. 20, 2024) (“Section 1461 of title 18 of the U.S. Code does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully. Because there are manifold ways in which recipients in every state may lawfully use such drugs, including to produce an

1 {10} The Hobbs, Clovis, and Roosevelt County Ordinances also create unique
2 licensing schemes for the operation of abortion clinics and for the provision of
3 abortions generally. *See* Hobbs Ordinance No. 1147, chs. 5.52.030-.060; Clovis
4 Ordinance No. 2184-2022, chs. 9.90.020-.050; Roosevelt Cnty. Ordinance No.
5 2023-01, §§ 5-8. Significantly, two of the ordinances broadly define abortion clinics
6 as “any building or facility, other than a hospital, where an abortion of any type is
7 performed, or where abortion-inducing drugs are dispensed, distributed, or
8 ingested.” Hobbs Ordinance No. 1147, ch. 5.52.020; Roosevelt Cnty. Ordinance No.
9 2023-01, § 1(B). Under these definitions, any location where an abortion is
10 performed—other than a hospital—is an abortion clinic subject to the Ordinances’
11 licensure requirements.

12 {11} Additionally, the two county ordinances authorize penalties and statutory
13 damages for violation of the ordinances. The Lea County ordinance provides for
14 penalties amounting to \$300 per violation of the Comstock Act, which includes
15 aiding and abetting a violation of the Comstock Act. Lea Cnty. Ordinance No. 99,
16 §§ 6-7. Similarly, Roosevelt County’s ordinance creates a private cause of action
17 providing that any person can “bring a civil action against any person or entity” that

abortion, the mere mailing of such drugs to a particular jurisdiction is an insufficient
basis for concluding that the sender intends them to be used unlawfully.”).

1 violates the Comstock Act and upon prevailing may claim statutory damages of “not
2 less than \$100,000 for each violation.” Roosevelt Cnty. Ordinance No. 2023-01, §
3 3(A), (B)(3).

4 {12} In response to the passage of the Ordinances, the State filed a petition for a
5 writ of mandamus and stay of Respondents’ enforcement of the Ordinances. The
6 Court granted the stay, ordered briefing, and held oral argument. For the reasons that
7 follow, we now grant the petition for a writ of mandamus.

8 **III. DISCUSSION**

9 **A. The Exercise of Mandamus Jurisdiction Is Appropriate and Expeditious** 10 **Resolution of This Issue Is Required**

11 {13} We first consider whether mandamus is the proper remedy for the State’s
12 action. We exercise original jurisdiction in mandamus under Article VI, Section 3
13 of the New Mexico Constitution. *See* N.M. Const. art. VI, § 3 (“The supreme court
14 shall have original jurisdiction in . . . mandamus against all state officers, boards and
15 commissions . . . ; it shall also have power to issue writs of mandamus . . . and to
16 hear and determine the same.”); *see also State ex rel. Sandel v. N.M. Pub. Util.*
17 *Comm’n*, 1999-NMSC-019, ¶ 11, 127 N.M. 272, 980 P.2d 55 (discussing the Court’s
18 original jurisdiction in mandamus). We reserve our exercise of mandamus for
19 extraordinary circumstances. *See State ex rel. Richardson v. Fifth Jud. Dist.*
20 *Nominating Comm’n*, 2007-NMSC-023, ¶ 9, 141 N.M. 657, 160 P.3d 566. When

1 appropriate, mandamus has both compulsory and prohibitory effects. *See State ex*
2 *rel. Sugg v. Oliver*, 2020-NMSC-002, ¶ 7, 456 P.3d 1065 (“[M]andamus is most
3 often applied to compel the performance of an affirmative act . . . [or] to prohibit
4 unconstitutional official action.” (internal quotation marks and citations omitted)).
5 Therefore, mandamus “will lie only to force a clear legal right against one having a
6 clear legal duty to perform an act” or “to prohibit unconstitutional official action.”
7 *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 23, 487 P.3d 815 (internal
8 quotation marks and citations omitted). “In considering whether to issue a
9 prohibitory mandamus, we do not assess the wisdom of the public official’s act; we
10 determine whether that act goes beyond the bounds established by the New Mexico
11 Constitution.” *Adobe Whitewater Club of N.M. v. State Game Comm’n*, 2022-
12 NMSC-020, ¶ 9, 519 P.3d 46 (quoting *Am. Fed’n of State, Cnty. & Mun. Emps. v.*
13 *Martinez*, 2011-NMSC-018, ¶ 4, 150 N.M. 132, 257 P.3d 952).

14 {14} Respondents dispute the propriety of mandamus in this case. We have
15 previously held that mandamus will lie when “a petitioner [seeks] to restrain one
16 branch of government from unduly encroaching or interfering with the authority of
17 another branch” and the question concerns “a purely legal issue concerning the non-
18 discretionary duty of a government official.” *Sandel*, 1999-NMSC-019, ¶ 11. Under

1 such circumstances, *Sandel* guides our inquiry through application of a three-part
2 test that queries whether the issue:

3 (1) implicates fundamental constitutional questions of great public
4 importance, (2) can be answered on the basis of virtually undisputed
5 facts, and (3) calls for an expeditious resolution that cannot be obtained
6 through other channels such as a direct appeal.

7 *Id.*

8 {15} Although this case does not implicate the separation of powers in a strict
9 sense, it is well established that “mandamus is a discretionary writ and flexible by
10 nature.” *Riddle*, 2021-NMSC-018, ¶ 25. Indeed, “[t]his Court has never insisted
11 upon a technical approach to the application of mandamus where there is involved a
12 question of great public import and where other remedies might be inadequate to
13 address that question.” *Id.* (internal quotation marks and citation omitted). The
14 question here readily meets that standard, where we are called upon to decide
15 whether multiple inferior political subdivisions have unduly encroached on or
16 interfered with the plenary authority of the Legislature. In addition, this question
17 presents a purely legal issue concerning whether Respondents exceeded their
18 authority by enacting the Ordinances in conflict with general laws of the state
19 thereby interfering with the Legislature’s plenary authority to make laws regulating
20 abortion clinics and providers. *See Sandel*, 1999-NMSC-019, ¶ 11 (discussing the
21 Court’s jurisdiction in mandamus where one branch of government has encroached

1 on another); N.M. Const. art. III, § 1 (establishing separation of powers); NMSA
2 1978, § 3-17-1 (1993) (establishing municipalities' power to adopt ordinances);
3 NMSA 1978, § 4-37-1 (1975) (establishing counties' power to adopt ordinances).

4 {16} Of the three *Sandel* factors, only the third requires consideration. We have
5 already determined that the issue implicates great public importance, and we are
6 persuaded that the validity of the Ordinances can be decided on the basis of virtually
7 undisputed facts. We therefore address the parties' arguments about whether the
8 issue "calls for an expeditious resolution that cannot be obtained through other
9 channels such as a direct appeal." *Sandel*, 1999-NMSC-019, ¶ 11.

10 {17} Expeditious resolution is required here, the State argues, because the
11 Ordinances "severely restrict access to reproductive health care in those cities and
12 counties." The State urges that if we decline to issue prohibitory mandamus, local
13 governments "will continue to pass laws that attempt to regulate and prohibit
14 abortion" and that such laws have a chilling effect on the exercise of New Mexicans'
15 constitutional rights, and on the provision of care by medical professionals.
16 Conceding this matter could have first been brought in district court, the State
17 nonetheless submits that mandamus provides an appropriate means of bringing about
18 definitive resolution.

1 {18} Quoting *State ex rel. Bird v. Apodaca*, Respondent Roosevelt County counters
2 that, in general, this Court “defer[s] to the district court so that we may have the
3 benefit of a complete record and so the issues may be more clearly defined.” 1977-
4 NMSC-110, ¶ 5, 91 N.M. 279, 573 P.2d 213. While that may be true in general, our
5 consideration of the purely legal question in this case does not suffer for lack of a
6 complete record or clarity. Irrespective of whether relief from the district court may
7 be available, mandamus may still be proper “when issues of sufficient public
8 importance are presented which involve a legal and not a factual determination.”
9 *State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 23, 149 N.M. 330, 248 P.3d 878
10 (internal quotation marks and citation omitted). This is particularly true when the
11 boundaries of legislative, judicial, or executive power are implicated.

12 {19} Alternatively, Respondents argue that an expeditious determination is
13 unnecessary because enforcement of the Ordinances is unlikely. They contend the
14 Ordinances do nothing to restrict access to abortion “because no abortion providers
15 are operating in any of those four jurisdictions.” In essence, Respondents claim that
16 the dearth of reproductive health care in their jurisdictions renders the law ineffective
17 to restrict access to abortion. In their view, “[t]here is no need for immediate relief

1 when there is no evidence or reason to believe that the ordinances are affecting
2 abortion access on the ground.”⁶

3 {20} The State argues that the Ordinances are having a chilling effect on abortion
4 access, contrary to the clearly articulated policy of favoring abortion access
5 established by the Executive and Legislative branches of government. We agree with
6 the State. We cannot countenance Respondents’ argument that, because the sought-
7 after care is available 200 miles away and the State has not identified an individual
8 who has been affected, the Ordinances impose no restrictions on access to abortion
9 and an expeditious resolution is unwarranted. To the contrary, we consider the fact
10 that no abortion clinics or providers currently operate in any of the four jurisdictions
11 lends support to the State’s claim of the Ordinances’ chilling effect and the need for
12 expeditious resolution.

⁶Amicus, Eastern New Mexico Rising (ENMR), raises countervailing considerations in explaining why this is not so. Specifically, ENMR argues that the Ordinances’ adoption of the Comstock Act’s prohibition on the mailing or receipt of any “abortion pills or abortion-related paraphernalia” has a disproportionate impact on pregnant people living in rural communities for whom telemedicine abortion care is the preferred option. The alternative, ENMR points out, is a 200-mile trek to obtain care, a hardship disproportionately borne by low-income people, people of color, and undocumented people. *Accord Dobbs*, 597 U.S. at 361 (Breyer, Sotomayor, and Kagan, JJ., dissenting) (“Above all others, women lacking financial resources will suffer from today’s decision.”).

1 {21} Moreover, it does not follow that a lack of abortion providers and clinics in
2 these jurisdictions renders the Ordinances ineffective to restrict access to abortion.
3 Indeed, the proscribed conduct of “shipping or receiving abortion pills or abortion-
4 related paraphernalia” imbues the Ordinances with extraterritorial effect, thereby
5 erecting a dragnet of considerable reach that threatens to ensnare patient and
6 provider alike. Thus, the potential impacts of the Ordinances, including the
7 likelihood that they will have a chilling effect, convince us this issue warrants
8 expeditious resolution.

9 {22} Yet another factor favors our expeditious resolution of this issue. Additional
10 county and municipal ordinances—nearly identical to those at issue here—are in
11 effect across the state. Consequently, potential conflicts with legislative authority
12 continue unabated. Thus, our resolution of this issue will answer whether these
13 conflicts with state law may continue. Accordingly, because “[t]his Court on several
14 occasions has recognized that mandamus is an appropriate means to prohibit
15 unlawful or unconstitutional official action,” and this case implicates encroachment
16 on the Legislature’s authority, we determine this issue warrants expeditious
17 resolution. *Sandel*, 1999-NMSC-019, ¶ 11 (internal quotation marks and citation
18 omitted). We therefore turn to the merits of the State’s petition.

1 **B. County and Municipal Ordinances May Be Preempted by State Law**

2 {23} Having determined the exercise of our mandamus jurisdiction is proper, we
3 next examine state law preemption of the Ordinances. The State argues that
4 Respondents' enactment of the Ordinances constitutes an invasion of the
5 Legislature's authority by conflicting with four general state laws: the Health Care
6 Freedom Act, the MPA, the MMA, and the Public Health Act (PHA), NMSA 1978,
7 §§ 24-1-1 to -44 (1973, as amended through 2024). While the State cites Sections
8 24-1-3 and 24-1-5 of the PHA for purposes of licensure of all health facilities, we
9 note here and incorporate hereafter in its place the HCC, the enactment of which
10 during the pendency of this case transferred the "health facility licensing and
11 certification bureau" to the Health Care Authority (the Authority).⁷ See § 24A-1-5
12 annot. (July 1, 2024).

13 {24} While federal preemption is a constitutional doctrine "rooted in the
14 Supremacy Clause of the United States Constitution," no such analog to the
15 Supremacy Clause exists in the Constitution of New Mexico. *Schmidt v. Tavenner's*

⁷We note the PHA remains a general law despite the relevant role over licensure of health facilities being transferred to the Health Care Authority. See § 24-1-3(K) ("The department has authority to . . . ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable.").

1 *Towing & Recovery, LLC*, 2019-NMCA-050, ¶ 7, 448 P.3d 605; U.S. Const. art. VI.
2 Notwithstanding this federal distinction, state preemption analysis flows from our
3 interpretation of our state constitution as granting the Legislature “plenary . . .
4 authority limited only by the state and federal constitutions.” *Daniels v. Watson*,
5 1966-NMSC-011, ¶ 16, 75 N.M. 661, 410 P.2d 193 (internal quotation marks and
6 citation omitted). Thus, “[l]egislation may be validly enacted if not inhibited by one
7 or the other of these documents.” *Id.* Hence, because only the state and federal
8 constitutions abridge the legislative authority, no other branch or subsidiary of state
9 government, including political subdivisions, may curtail the Legislature’s plenary
10 authority to legislate. *See* N.M. Const. art. IV, § 1 (“The legislative power shall be
11 vested in a senate and house of representatives which shall be designated the
12 legislature of the state of New Mexico.”).

13 {25} Preemption doctrine protects the Legislature’s plenary authority. *See* N.M.
14 Const. art. X, §§ 5-6 (providing legislative requirements for incorporated counties
15 and home rule municipalities). Sections 3-17-1 (municipal ordinances) and 4-37-1
16 (county ordinances) govern municipal and county authority to enact laws and,
17 therefore, guide our analysis of preemption. *See Stennis v. City of Santa Fe*, 2008-
18 NMSC-008, ¶ 21, 143 N.M. 320, 176 P.3d 309 (“Under New Mexico law, ‘a

1 municipality may adopt ordinances or resolutions not inconsistent with' state law."
2 (quoting § 3-17-1)).

3 {26} Because Respondent cities of Hobbs and Clovis are home rule municipalities,
4 and Lea and Roosevelt are counties, our application of preemption doctrine requires
5 consideration of the distinct lawmaking authority possessed by both home rule
6 municipalities and counties.⁸ Therefore, we begin by delineating the scope of
7 municipal and county authority before analyzing the State's specific preemption
8 challenges. The interpretation of municipal and county ordinances is a question of
9 law reviewed de novo. *See Stennis*, 2008-NMSC-008, ¶ 13 ("Interpretation of
10 municipal ordinances and statutes is a question of law that we review de novo.").

11 {27} County and municipal power flows exclusively from the state. *See* N.M.
12 Const. art. X, §§ 5-6. Counties and municipalities are "instrumentalities acting under
13 the sovereignty of the state" to whom power has been granted to facilitate a more
14 convenient exercise of local governance. *State v. Rodriguez*, 2005-NMSC-019, ¶ 10,
15 138 N.M. 21, 116 P.3d 92; *see also* NMSA 1978, § 3-15-7 (1965) (authorizing

⁸Respondents Clovis and Hobbs chartered as home rule municipalities in 1971 and 2001, respectively. *See* NM Legislative Handbook, Home Rule Municipalities, https://www.nmlegis.gov/Publications/handbook/home_rule_municipalities_24.pdf (last visited Dec. 23, 2024).

1 municipal charters to “provide for any system or form of government that may be
2 deemed expedient and beneficial to the people of the municipality”).

3 {28} Municipal power is granted by and derives from the Legislature through “the
4 process of incorporation under the Municipal [Charter] Act.” *New Mexicans for Free*
5 *Enter. v. City of Santa Fe*, 2006-NMCA-007, ¶¶ 13-14, 138 N.M. 785, 126 P.3d
6 1149; NMSA 1978, §§ 3-15-1 to -16 (1965, as amended through 2018). As such,
7 municipalities are “an auxiliary of the state government” and subordinate to the state.
8 *City of Albuquerque v. N.M. Pub. Regul. Comm’n*, 2003-NMSC-028, ¶ 3, 134 N.M.
9 472, 79 P.3d 297 (internal quotation marks and citation omitted); *Temple Baptist*
10 *Church, Inc. v. City of Albuquerque*, 1982-NMSC-055, ¶ 10, 98 N.M. 138, 646 P.2d
11 565 (“It is well settled that municipalities have no inherent right to exercise police
12 power; their right must derive from authority granted by the [s]tate.”).

13 {29} Home rule municipalities are distinct in one significant regard in that they
14 enjoy “a limited form of autonomy from state interference in matters of local
15 concern.” *New Mexicans for Free Enter.*, 2006-NMCA-007, ¶ 14; *see also* N.M.
16 Const. art. X, § 6(D). Therefore, municipalities chartered as home rule have greater
17 latitude to “exercise all legislative powers and perform all functions *not expressly*
18 *denied* by general law or charter.” N.M. Const. art. X, § 6(D) (emphasis added).

1 {30} We have “construed the meaning of ‘not expressly denied’ . . . to mean that
2 some express statement of the power denied must be contained in the general law in
3 order to effectively limit a municipality’s home-rule power.” *Casuse v. City of*
4 *Gallup*, 1987-NMSC-112, ¶ 5, 106 N.M. 571, 746 P.2d 1103 (citation omitted).
5 Therefore, home rule municipalities need not “look to the [L]egislature for a grant
6 of power to act, but only look[] to legislative enactments to see if any express
7 limitations have been placed on their power to act.” *New Mexicans for Free Enter.*,
8 2006-NMCA-007, ¶ 15 (internal quotation marks and citation omitted).

9 {31} By contrast, “[a] county is but a political subdivision of the [s]tate, and it
10 possesses only such powers as are expressly granted to it by the Legislature, together
11 with those necessarily implied to implement those express powers.” *El Dorado at*
12 *Santa Fe, Inc. v. Bd. of Cnty. Comm’rs*, 1976-NMSC-029, ¶ 6, 89 N.M. 313, 551
13 P.2d 1360. Thus, home rule municipalities’ authority is positive in nature and
14 retained unless the Legislature has expressly abrogated it, while counties, like non-
15 home rule municipalities, must look to the Legislature for express grants of authority
16 to act. *See* N.M. Const. art. X, § 5(C) (“An incorporated county may exercise all
17 powers and shall be subject to all limitations granted to municipalities by Article 9,
18 Section 12 of the constitution of New Mexico and all powers granted to
19 municipalities by statute.”); *see also* § 4-37-1 (“All counties are granted the same

1 powers that are granted municipalities except for those powers that are inconsistent
2 with statutory or constitutional limitations placed on counties.”); *State ex rel. Haynes*
3 *v. Bonem*, 1992-NMSC-062, ¶ 10, 114 N.M. 627, 845 P.2d 150 (noting that non-
4 home rule municipalities incorporated before 1970 “looked to state statutes for
5 express or implied grants of authority, and if they did not find such authority, they
6 could not act”).

7 {32} As these authorities demonstrate, the power of home rule municipalities and
8 counties is subject to the supremacy of state law. *See* §§ 3-17-1 (“The governing
9 body of a municipality may adopt ordinances or resolutions not inconsistent with the
10 laws of New Mexico.”), 4-37-1 (“The board of county commissioners may make
11 and publish any ordinance to discharge these powers not inconsistent with statutory
12 or constitutional limitations placed on counties.”). Therefore, when a conflict arises
13 between state and local law, local authority must yield.

14 {33} Whether a local law is inconsistent with state law and is therefore preempted
15 requires analysis under our governing test for preemption. We examine whether “the
16 ordinance permits an act the general law prohibits, or vice versa.” *Stennis*, 2008-
17 NMSC-008, ¶ 21 (internal quotation marks and citation omitted). We also inquire
18 whether the regulated activity “is of such a character that local prohibitions on those
19 activities would be inconsistent with or antagonistic to that state law or policy.” *New*

1 *Mexicans for Free Enter.*, 2006-NMCA-007, ¶ 43. Additionally, a municipality's
2 "ability to regulate in an area may be preempted either expressly, by the language of
3 a statute, or impliedly, due to a conflict between the local body's ordinances and the
4 contents, purposes, or pervasive scheme of the statute." *San Pedro Mining Corp. v.*
5 *Bd. of Cnty. Comm'rs*, 1996-NMCA-002, ¶ 9, 121 N.M. 194, 909 P.2d 754. Because
6 municipalities are "presumed to retain the power to exercise [their] normal authority
7 over an activity," express preemption is found where the Legislature has clearly
8 stated its intent to preempt local control. *Id.* Alternatively, implied preemption is
9 found where the ordinance presents a "conflict[]" with a state statute or regulation, or
10 if the statute demonstrates an intent to occupy the entire field." *Id.* ¶ 11.

11 {34} Therefore, our analysis of preemption encompasses three questions: 1)
12 whether there is a general law at issue, 2) whether the exercise of municipal or
13 county power is expressly denied by general law, and 3) whether the municipal or
14 county power is implicitly denied by general law.

15 **C. The Ordinances Are Expressly and Implicitly Preempted by State Law**

16 **1. The Health Care Freedom Act, MPA, MMA, ULA and HCC are general** 17 **laws**

18 {35} A general law is one which "applies generally throughout the state." *Haynes*,
19 1992-NMSC-062, ¶ 15 (internal quotation marks and citation omitted). In
20 determining whether a law is general, we focus "on the impact of the law and

1 whether it implicates matters of statewide concern, as opposed to matters of purely
2 local concern.” *Id.* ¶ 18.

3 {36} “[F]or a general law to supersede a home rule municipality’s charter or
4 ordinance, the subject matter of the general legislative enactment must pertain to
5 those things of general concern to the people of the state.” *Id.* (internal quotation
6 marks and citation omitted). Accordingly, the test is “whether it affects all, most, or
7 many of the inhabitants of the state . . . or whether it affects only the inhabitants of
8 the municipality and is therefore of only local concern.” *Id.* ¶ 19.

9 {37} The statutes invoked by the State—the Health Care Freedom Act, MPA,
10 MMA, and HCC—as well as the ULA, implicate “matters of statewide concern, as
11 opposed to matters of purely local concern,” and are therefore general laws. *Id.* ¶ 18.

12 {38} We begin with the Health Care Freedom Act, which comprehensively
13 addresses access to reproductive and gender-affirming health care in the state. *See*
14 §§ 24-34-1 to -5. The Act’s general applicability arises from its purpose to protect
15 access to reproductive and gender-affirming health care. *See id.* These are issues “of
16 general concern to the people of the state” that, by virtue of their relationship to

1 constitutional rights,⁹ necessarily “implicate[] matters of statewide concern.”
2 *Haynes*, 1992-NMSC-062, ¶ 18; *see also* N.M. Const. art. II, § 18. Thus,
3 Respondents’ view that reproductive and gender-affirming health care “affects only
4 the inhabitants of [a] municipality” does not abide with the Act’s purpose. *Haynes*,
5 1992-NMSC-062, ¶ 19.

6 {39} The Act’s general applicability is further demonstrated by its broad
7 proscription of any actions by public bodies and entities that discriminate, restrict,
8 or interfere with “a person’s ability to access or provide reproductive health care or
9 gender-affirming health care within the medical standard of care.” Section 24-34-
10 3(A)-(B). That proscription would be wholly undermined if it could be evaded or
11 ignored by a local government or other public body. Accordingly, the Health Care
12 Freedom Act is a general law.

13 {40} The MPA’s applicability is similarly comprehensive, as demonstrated by its
14 pervasive regulatory scheme governing physician licensure and practice in the state.
15 Sections 61-6-1 to -34. The MPA’s plain language makes its general applicability

⁹In *N.M. Right to Choose/NARAL*, this Court held the Equal Rights Amendment precluded the Human Services Department from restricting funding for medically necessary abortions under the state’s Medicaid program. Pursuant to the Equal Rights Amendment, we determined that there was “no compelling justification for treating men and women differently with respect to their medical needs.” 1999-NMSC-005, ¶¶ 1-2.

1 abundantly clear. Enacted “to protect the public from the improper, unprofessional,
2 incompetent and unlawful practice of medicine,” the MPA vests the medical board
3 with exclusive licensing and disciplinary authority for a physician’s practice of
4 medicine. Section 61-6-1(B)-(C). Creating the medical board and vesting it with
5 exclusive authority to license and discipline physicians shows a clear legislative
6 intent for the MPA to apply equally to all practitioners within the state. *See* §§ 6-6-
7 2, -5. Indeed, the medical board’s authority under the MPA is subject only to the
8 broader scheme under the ULA. As the name implies, the ULA imposes uniformity
9 in the licensure of professionals in the state of New Mexico and “promote[s]
10 uniformity with respect to the conduct of board hearings and judicial review.”
11 Section 61-1-28.

12 {41} The ULA outlines the procedural due process afforded its licensees—such as
13 an opportunity for a hearing, notice, and method of service—and imposes
14 consistency on professional licensure and disciplinary actions regardless of the
15 requirements unique to each professional licensing board. *See* §§ 61-1-3, -4, -8, -28.
16 Thus, “because the people of the state have an interest in maintaining a uniform
17 system of conditions,” the MPA and ULA apply generally throughout the state.
18 *Haynes*, 1992-NMSC-062, ¶ 18 (internal quotation marks and citation omitted).

1 {42} The MMA is a similarly comprehensive statute, setting malpractice insurance
2 requirements and limitations on liability for all health care providers in the state. *See*
3 §§ 41-5-5 to -6. Through the MMA, we have recognized that “[t]he Legislature has
4 clearly demonstrated a concern for the health of the citizens of New Mexico as it is
5 affected by the availability of practicing physicians and assured by the availability
6 of malpractice insurance.” *Lester v. Hall*, 1998-NMSC-047, ¶ 11, 126 N.M. 404,
7 970 P.2d 590.

8 {43} The fourth and final statute at issue, the HCC, encompasses broad public
9 health laws for New Mexico and delineates the powers of the Authority to oversee,
10 in pertinent part, licensure of health facilities throughout the state. Sections 24A-1-
11 3, -5. Indeed, the express statutory purpose of the Health Care Authority Act is “to
12 establish a single, unified department to administer laws and exercise functions
13 relating to health facility licensure.” NMSA 1978, § 9-8-3 (2023, as amended
14 through 2024). Further, the HCC directs the Authority to

- 15 (1) promulgate and enforce rules for the licensure of health facilities
16 under its jurisdiction;
- 17 (2) license and inspect health facility premises to ensure compliance
18 with laws, rules and public safety; and
- 19 (3) carry out such other duties as provided by law.

20 Section 24A-1-3(B). Like the MPA, the HCC imposes uniformity in access and
21 quality of health care throughout the state. *See* § 24A-1-3. Thus, because the HCC

1 affects all inhabitants of the state, we conclude it is a general law. *See Haynes*, 1992-
2 NMSC-062, ¶ 19.

3 {44} Having concluded that the Health Care Freedom Act, the MPA, the MMA,
4 the ULA, and the HCC are general laws, we turn to whether the Ordinances are
5 expressly or implicitly preempted by these state laws.

6 **2. The Health Care Freedom Act expressly preempts the Ordinances**

7 {45} Under our analysis for express preemption, we must determine whether a
8 general law permits acts prohibited by a local ordinance. *See Stennis*, 2008-NMSC-
9 008, ¶ 21. Under the Health Care Freedom Act, the Legislature explicitly preempted
10 conflicting laws or policies implemented by other public bodies: “[a] public body
11 shall not impose or continue in effect any law, ordinance, policy or regulation that
12 violates or conflicts with the provisions of [the Health Care Freedom Act].” Section
13 24-34-3(D). The Ordinances are antagonistic to this legislative statement of express
14 preemption. *Cf. New Mexicans for Free Enter.*, 2006-NMCA-007, ¶ 43 (“[A]n
15 ordinance will conflict with state law when state law specifically allows certain
16 activities or is of such a character that local prohibitions on those activities would be
17 inconsistent with or antagonistic to that state law or policy.”). Therefore, even under
18 the broad grant of authority to home rule municipalities, the Ordinances fail because

1 the Legislature expressly revoked the authority to enact local laws in conflict with
2 the Act.

3 {46} Further, the Ordinances plainly prohibit what the Health Care Freedom Act
4 permits. Specifically, the Ordinances interfere with access to reproductive health
5 care, in direct contravention of the Act. Section 24-34-3(A)-(D). The non-exhaustive
6 list of reproductive and gender-affirming services protected by the Act includes
7 abortion.¹⁰ Therefore, the Ordinances' prohibitions on mailing abortion medication
8 and the licensing Ordinances' requirements for abortion providers and expansive
9 definitions of "abortion clinic," Hobbs Ordinance No. 1147, ch. 5.52.020; Roosevelt
10 Cnty. Ordinance No. 2023-01, § 1(B), work in tandem to deny, restrict, and interfere
11 "with a person's ability to access or provide reproductive health care." Section 24-
12 34-3(B).

13 {47} Respondents dispute preemption by the Act, arguing the Ordinances merely
14 enforce compliance with, and are duplicative of, federal law. We disagree. While the
15 Ordinances restate the Comstock Act's prohibitions, they do not, as Respondents

¹⁰Section 24-34-2(C) lists the following services: "(1) preventing a pregnancy; (2) abortion; (3) managing a pregnancy loss; (4) prenatal, birth, perinatal and postpartum health; (5) managing perimenopause and menopause; (6) managing fertility; (7) treating cancers of the reproductive system; or (8) preventing or treating sexually transmitted infections."

1 claim, “simply parrot” federal law. The Ordinances go significantly beyond federal
2 requirements by, among other things, purporting to regulate access to and licensure
3 of so-called abortion clinics and physicians in a manner that prohibits or interferes
4 with access to reproductive health care. Our Legislature’s adoption of the Health
5 Care Freedom Act is an express rebuke of Respondents’ actions. Indeed, the
6 Legislature seemingly contemplated local dissent and ensured that any conflicting
7 law would be expressly preempted by the Act. *See* § 24-34-3(D). By invalidating
8 any existing law and prohibiting any prospective law in conflict, the Act supplied
9 the “express limitations . . . on [Respondents’] power to act.” *New Mexicans for Free*
10 *Enter.*, 2006-NMCA-007, ¶ 15; *see* § 24-34-3(D).

11 {48} Therefore, because the Legislature stated its intent to abrogate any current or
12 prospective law in conflict with its provisions, we hold the Ordinances are expressly
13 preempted by the Act. Section 24-34-3(D).

14 **3. The MPA, the MMA, and the ULA implicitly preempt the licensing**
15 **Ordinances**

16 {49} While the foregoing analysis is sufficient to grant the relief sought by the
17 State, we also hold that the licensing Ordinances are implicitly preempted by the
18 MPA and ULA because of the Legislature’s “intent to occupy the entire field” of
19 licensure for medical professionals. *San Pedro Mining Corp.*, 1996-NMCA-002, ¶
20 11. The purpose of the MPA is to “provide laws and rules controlling the granting

1 and use of the privilege to practice medicine and to establish a medical board to
2 implement and enforce the laws and rules.” Section 61-6-1(B). The pervasive
3 regulatory scheme under both the MPA and ULA demonstrates the Legislature’s
4 intent to occupy the field of medical licensure specifically, and state professional
5 licensure generally. *See Casuse*, 1987-NMSC-112, ¶ 6 (“[A]ny New Mexico law
6 that clearly intends to preempt a governmental area should be sufficient without
7 necessarily stating that affected municipalities must comply and cannot operate to
8 the contrary.” (citation omitted)). The MMA affects the same pervasive regulatory
9 scheme by effecting “adequate access to health care services” and a process for
10 recovery “for any malpractice claims.” *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 20,
11 309 P.3d 1047.

12 {50} The Ordinances prohibit any person from violating the Comstock Act’s
13 provisions under 18 U.S.C. § 1462(c) (mailing or receipt of any abortion pills or
14 abortion-related paraphernalia). *See* Hobbs Ordinance No. 1147, ch. 5.52.070;
15 Clovis Ordinance No. 2184-2022, ch. 9.90.060; Roosevelt Cnty. Ordinance No.
16 2023-01, §§ 2, 9; Lea Cnty. Ordinance No. 99, § 6. As previously noted, the Hobbs
17 and Roosevelt ordinances define abortion clinics in exceedingly broad terms, the
18 effect of which potentially subjects any provider operating outside a hospital to the
19 Ordinances’ licensing schemes. *See* Hobbs Ordinance No. 1147, ch. 5.52.020;

1 Roosevelt Cnty. Ordinance No. 2023-01, § 1(B). This is because a provider who
2 performs an abortion in “any building or facility, other than a hospital” must first
3 apply for what the Ordinances term an “abortion license.” *See* Hobbs Ordinance No.
4 1147, chs. 5.52.020-.030; Roosevelt Cnty. Ordinance No. 2023-01, §§ 1(B), 5; *see*
5 *also* Clovis Ordinance No. 2184-2022, ch. 9.90.020 (creating a licensure
6 requirement for abortion clinics). Failure to secure an abortion license and any
7 activity that purportedly violates the Comstock Act results in a violation of the
8 ordinance. *See* Hobbs Ordinance No. 1147, chs. 5.52.030-.070; Roosevelt Cnty.
9 Ordinance No. 2023-01, §§ 5-9; Clovis Ordinance No. 2184-2022, chs. 9.90.020-
10 .060.

11 {51} The Ordinances’ requirements for a separate license to perform an individual
12 medical procedure is incongruous with the purpose of uniformity in licensing under
13 the ULA. *See* § 61-1-28. Further, the manner of piecemeal licensure imposed by the
14 licensing Ordinances and potential liability for practitioners who provide abortion-
15 related care would defeat the MPA’s purpose to ensure the practice of medicine
16 within the standard of care that applies equally to all procedures, as well as the
17 legislative intent of the MMA to ensure availability of health care. *See* § 61-6-1;
18 *Baker*, 2013-NMSC-043, ¶¶ 16-17.

1 {52} Moreover, by placing the authority to issue and revoke licenses with county
2 managers and city commissioners, the licensing Ordinances disregard the due
3 process protections enshrined in the ULA to ensure professionals seeking a license
4 have adequate notice and opportunity to respond to violations. *See* §§ 61-1-3, -4, -8,
5 -28; Hobbs Ordinance No. 1147, ch. 5.52.060; Clovis Ordinance No. 2184-2022, ch.
6 9.90.050; Roosevelt Cnty. Ordinance No. 2023-01, § 8. More directly, the licensing
7 Ordinances conflict with the ULA’s express prohibition of actions by boards against
8 licensees or license applicants related to protected health care activity as defined in
9 the Health Care Freedom Act. *See* § 61-1-10.1. Again, it would be incongruous to
10 allow Respondents to discipline licensed professionals for activities that are exempt
11 from discipline by their own licensing boards. Therefore, we are unpersuaded by
12 Respondents’ claims that the ordinances are “not a ‘medical licensing regime’” and
13 that the ordinances “do nothing to restrict physicians or anyone else from performing
14 abortions in New Mexico.”

15 {53} If permitted to stand, the licensing Ordinances would subvert the state’s
16 regulatory regime for the practice of medicine. The purpose of the MPA is to
17 “provide laws and rules controlling the granting and use of the privilege to practice
18 medicine.” Section 61-6-1(B). The Ordinances disrupt this purpose by creating a
19 parallel system under which pregnant people would be disproportionately exposed

1 to the very risks the MPA seeks to eliminate—“the improper, unprofessional,
2 incompetent and unlawful practice of medicine.” *Id.* Additionally, the Ordinances’
3 requirements implicate the availability of health care services and providers in the
4 state, thus conflicting with the legislative goals of the MMA. *See Baker*, 2013-
5 NMSC-043, ¶ 16 (noting the MMA “provid[ed] incentives to persons to furnish
6 health care services” to ensure their availability (citation omitted)). Our test is
7 unequivocal: “when two statutes that are governmental or regulatory in nature
8 conflict, the law of the sovereign controls.” *Casuse*, 1987-NMSC-112, ¶ 6.
9 Accordingly, we hold the licensing Ordinances are implicitly preempted by the
10 MPA, MMA, and ULA.

11 **4. The HCC implicitly preempts the licensing Ordinances**

12 {54} Lastly, we conclude the licensing Ordinances are implicitly preempted by the
13 HCC for two reasons. First, the Legislature has demonstrated an intent to preempt
14 under the HCC by creating a comprehensive licensing scheme addressing the
15 requirements for operating a health facility. *See* § 24A-1-5; 8.370.18.2 NMAC.
16 Pertinent here, the Authority’s power pursuant to the HCC extends to definition and
17 licensure of health facilities throughout the state, the scope of which encompasses
18 “abortion clinics” as defined in the Hobbs and Roosevelt ordinances and discussed

1 above.¹¹ See § 24A-1-5; Hobbs Ordinance No. 1147, ch. 5.52.020; Roosevelt Cnty.
2 Ordinance No. 2023-01, § 1(B). Additionally, to ensure uniformity across the state,
3 health facility regulations governing licensure requirements for all manner of health
4 facilities have been promulgated under the Authority's purview. See 8.370.18
5 NMAC. Specifically, the HCC mandates that "a health facility shall not be operated
6 without a license *issued by the authority*," and the regulations identify the Authority
7 as the exclusive licensing entity for health facilities. Section 24A-1-5(A) (emphasis
8 added); 8.370.18.7(J) NMAC.

9 {55} The Authority's rules also include licensure procedures to which various
10 kinds of health facilities are subject. 8.370.18.9-.18 NMAC. Under these rules, "[a]
11 one-year nontransferable license shall be issued to any health facility complying
12 with all rules of the authority." Section 24A-1-5(E). Thus, the license is conditioned
13 solely on compliance with the rules of the Authority.

¹¹The HCC defines a "health facility" as "a public hospital; profit or nonprofit private hospital; general or special hospital; outpatient facility; crisis triage center; freestanding birth center; adult daycare facility; nursing home; intermediate care facility; assisted living facility; boarding home not under the control of an institution of higher learning; shelter care home; diagnostic and treatment center; rehabilitation center; infirmary; community mental health center that serves both children and adults or adults only; or a health service organization operating as a freestanding hospice or a home health agency." Section 24A-1-2(D).

1 {56} The licensing Ordinances usurp the Authority’s licensing authority,
2 principally by imposing separate licensing requirements for the operation of a health
3 facility and secondarily by creating new requirements beyond that which is
4 mandated by state law. For example, under the licensing Ordinances, an abortion
5 clinic or health facility providing abortions must provide a statement of compliance
6 with the Comstock Act. *See* Hobbs Ordinance No. 1147, ch. 5.52.040(F); Clovis
7 Ordinance No. 2184-2022, ch. 9.90.030(F); Roosevelt Cnty. Ordinance No. 2023-
8 01, § 6(F). The licensing Ordinances thus eschew the Authority’s facility licensing
9 requirements in favor of their own and contravene the HCC by attempting to “control
10 the manner” in which licenses are issued. *See ACLU v. City of Albuquerque*, 1999-
11 NMSC-044, ¶¶ 11, 17, 128 N.M. 315, 992 P.2d 866 (holding an Albuquerque curfew
12 ordinance was implicitly preempted by state law).

13 {57} Second, the Legislature has implicitly preempted the licensing Ordinances by
14 virtue of the HCC’s “statutory grant of authority to another governmental body”—
15 the Authority—and piecemeal local action would be inconsistent with the
16 Authority’s delegated role. *New Mexicans for Free Enter.*, 2006-NMCA-007, ¶ 20.
17 In *New Mexicans for Free Enterprise*, the Court of Appeals held the Minimum Wage
18 Act did not preempt a municipal wage ordinance, in part, because the act did “not
19 grant comprehensive authority to set minimum wages to the state.” *Id.* Conversely,

1 here, the HCC grants comprehensive authority as the sole licensing entity for health
2 facilities to the Authority. *See* § 24A-1-5(A) (“A health facility shall not be operated
3 without a license issued by the authority.”); 8.370.18.7(J) NMAC.

4 {58} By placing the power to approve or deny licenses with city commissions and
5 county managers, the Ordinances impermissibly intrude upon the Authority’s
6 exclusive licensing purview. *See* Hobbs Ordinance No. 1147, ch. 5.52.050 and
7 Clovis Ordinance No. 2184-2022, ch. 9.90.040 (placing authority to issue a license
8 with the city commissions); Roosevelt Cnty. Ordinance No. 2023-01, § 7 (placing
9 authority to issue a license with the County Manager). In short, because the HCC
10 creates a comprehensive licensing scheme for operating a health facility throughout
11 the state and specifically governs health facility licensure, we conclude the licensing
12 Ordinances are preempted. *See* § 24A-1-5; 8.370.18.2 NMAC.

13 **D. Respondents Exceeded Their Constitutional and Statutory Authority**

14 {59} In addition to being explicitly and implicitly preempted by multiple state laws,
15 the Ordinances purportedly create individual rights that affect matters beyond
16 Respondents’ authority under the New Mexico Constitution and statutes. Local
17 governments may not enact “private or civil laws governing civil relationships
18 except as incident to the exercise of an independent municipal power.” N.M. Const.
19 art. X, § 6(D). Roosevelt County’s ordinance authorizes a private right of action

1 providing that any person other than a government employee may bring civil action
2 and seek statutory damages of “not less than \$100,000 for each violation” of the
3 section of the ordinance requiring individuals to comply with the Comstock Act.
4 Roosevelt Cnty. Ordinance No. 2023-01, §§ 3, 2(A)-(C). The Lea County ordinance
5 imposes a \$300 fine for violations, including for “conduct that aids or abets . . .
6 violations” of the Comstock Act. Lea Cnty. Ordinance No. 99, §§ 6.3, 7.

7 {60} Respondents argue the Ordinances constitute a lawful exercise of their police
8 powers to license business and legislate for the health and safety of county and
9 municipal inhabitants. However, “[a] municipality has no inherent right to exercise
10 police power. Its powers are derived solely from the state.” *City of Santa Fe v.*
11 *Gamble-Skogmo, Inc.*, 1964-NMSC-016, ¶ 7, 73 N.M. 410, 389 P.2d 13. Because
12 Respondents’ authority to regulate health care access and physician licensure is
13 entirely preempted, Respondents’ police powers in these areas are extremely limited.
14 To the extent Respondents have any residual authority, they certainly have no power
15 to supplant the will of the statewide electorate in favor of their own. While we decide
16 this case under the preemption doctrine, we strongly admonish Respondents for
17 exceeding their authority under Article X, Section 6(D) of the New Mexico
18 Constitution. Creating a private right of action and damages award that is clearly

1 intended to punish protected conduct far exceeds any interest that is “incident[al] to
2 the exercise of an independent municipal power.” N.M. Const. art. X, § 6(D).

3 **IV. CONCLUSION**

4 {61} Our Legislature granted to counties and municipalities all powers and duties
5 not inconsistent with the laws of New Mexico. The Ordinances violate this core
6 precept and invade the Legislature’s authority to regulate access to and provision of
7 reproductive health care. Therefore, based on the independent and adequate state law
8 grounds provided in the Reproductive and Gender-Affirming Health Care Freedom
9 Act, the Medical Practice Act, the Medical Malpractice Act, and the Health Care
10 Code, as well as the Uniform Licensing Act, we hold the Ordinances are preempted
11 in their entirety. Accordingly, we grant the writ of mandamus prohibiting
12 Respondents from enforcing the Ordinances.

13 {62} **IT IS SO ORDERED.**

14 

15 C. SHANNON BACON, Justice

1 WE CONCUR:

2 

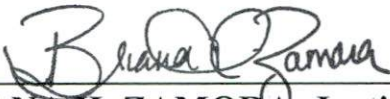
3 **DAVID K. THOMSON, Chief Justice**

4 

5 **MICHAEL E. VIGIL, Justice**

6 

7 **JULIE J. VARGAS, Justice**

8 

9 **BRIANA H. ZAMORA, Justice**