

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

RESOLUTION NO. 2013-67

A RESOLUTION SUPPORTING SAME SEX MARRIAGE IN NEW MEXICO, URGING THE LEGISLATURE TO MAKE APPROPRIATE AMENDMENTS TO NMSA 1978, SECTION 40-1-18 AND OTHER SECTIONS OF THE DOMESTIC AFFAIRS LAWS, AND, BARRING THAT, URGING THE COURTS TO FIND THAT NMSA 1978, SECTION 40-1-18 AND OTHER SECTIONS OF THE DOMESTIC AFFAIRS LAW VIOLATE THE EQUAL PROTECTION CLAUSE OF THE NEW MEXICO CONSTITUTION; SUPPORTING THE SANTA FE COUNTY CLERK IN THE PERFORMANCE OF HER DUTIES; AND WAIVER OF THE REQUIREMENTS OF RESOLUTION 2013-026.

WHEREAS, the Board of County Commissioners of Santa Fe County (“the Board”) strives to support all citizens and constituencies of the County, and to treat all persons with respect, dignity, and equality;

WHEREAS, as a result, the Board is committed to equal rights for all persons notwithstanding any status or gender classifications which may apply, because in the eyes of the Board, everyone is equal and has the inherent right to be treated the same as everyone else;

WHEREAS, the Board recognizes that these rights are guaranteed to all persons living in this State by the New Mexico Constitution;

WHEREAS, consistent with these principles, the Board supports the right of same sex couples in this State to marry like opposite sex couples, consistent with existing New Mexico law, there being no rational or sensible difference between the class of same sex couples and opposite sex couples;

WHEREAS, the Board nevertheless recognizes that the domestic relations laws of this State, being antiquated, do not recognize same sex marriage;

WHEREAS, the domestic affairs laws of New Mexico are compiled in Chapter 40 of the 1978 Annotated Statutes, and Section 40-1-18 provides a blank marriage license application which, according to NMSA 1978, Section 40-1-17, is required to be used by persons desired to be married in New Mexico;

WHEREAS, the statutory application requires that information be entered separately by a “male applicant” and a “female applicant,” and must be verified by the “bride” and the “groom;”

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WHEREAS, numerous other provisions in the domestic affairs laws refer to married persons in this State by gender specific references such as “male,” “female,” “bride,” “groom,” “husband” and “wife;”

WHEREAS, these statements have long been interpreted by New Mexico courts and the Attorney General consistently with NMSA 1978, Sections 12-2A-18(A)(2) and (3)(the Uniform Statute and Rules Construction Act) as restricting the right to be married in New Mexico to persons of the same opposite sex from one another;

WHEREAS, many provisions of the domestic affairs laws referred to above have been in existence for over 50 years, and some provisions antedate statehood, and thus antedate the general acceptance of same sex marriage that has existed in recent years;

WHEREAS, recent national polling shows that acceptance of same sex marriage is now shared by the overwhelming majority of Americans;

WHEREAS, in response, the Legislature has entertained numerous bills seeking to make changes in the domestic affairs laws, but none have been successful (see e.g. HB 86, HB 445, SB 495, SB 576, SB 597 (2005); SB 51 (2006); HB 4 (2007); HB 9, HJR 3 (2008); HB 21, HB 118, SB 12 SB 439 (2009); HB 121, HJM 33, HJR 8, SB 146, SB 183, SJR 1 (2010); HB 474, HJR 7, HJR 8, SB 375, SJR 4 (2011); HJR 22 (2012); HJR 3, HJR 4 (2013);

WHEREAS, thirteen states and five Native American tribes explicitly permit same sex marriage, and the United States Supreme Court, in *United States v. Windsor*, decided just a few weeks ago, found that restrictions to heterosexual marriage in the Defense of Marriage Act to be an unconstitutional deprivation of rights under the equal protection clause of the Fifth Amendment;

WHEREAS, clearly the United States Supreme Court is poised to determine that restriction of same sex marriage is also unconstitutional as applied to the states under the Fourteenth Amendment, and that, either through this vehicle or by addressing the matter directly through the equal protection clause of the New Mexico Constitution, it is only a matter of time before same sex marriage will be lawful in most or all states and certainly in New Mexico;

WHEREAS, the Board of County Commissioners supports legislation to rid gender specific labels from the domestic affairs statutes of this State, and to broadly grant the rights, privileges and responsibilities of marriage to same sex New Mexico couples and, absent action by the Legislature, a declaration by the courts of New Mexico that such rights, privileges and responsibilities are guaranteed by the New Mexico Constitution or a declaration by the United States Supreme Court that the same rights, privileges and responsibilities exist under the Fourteenth Amendment;

WHEREAS, the County Clerk is burdened with a petition for writ of mandamus filed by same sex persons seeking a marriage license in her office, but it is clear that a

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County Clerk has no right or responsibility to void certain provisions of domestic affairs laws at her whim and that the proposed petition is groundless and represents a flawed approach to the problem at hand;

WHEREAS, the Board desires to go on record as supporting the County Clerk in bringing these arguments forward, and the Board recognizes that the County Clerk must make unpopular arguments in defense of her failure to issue a license under present law, and the Board of County Commissioners recognizes that a judgment obtained without jurisdiction or without grounds is a flawed decision that, on a topic as important as this, is ill advised; and

WHEREAS, the Board desires to make its position on these issues clearly and unambiguously to the general public.

IT IS THEREFORE RESOLVED AND ADOPTED, AS FOLLOWS:

1. The Board of County Commissioners supports same sex marriage in New Mexico.
2. The Board urges the State Legislature and the Governor of the State of New Mexico to rid the State of the antiquated statutes that restrict the rights of same sex couples to wed in our State.
3. The Board supports the efforts of the courts to parse through these difficult social and legal issues to determine a permanent resolution to the issues relating to same sex marriage and directing, as appropriate, enactment of statutes and rules as necessary to support any decisions made.
4. The Board further urges the courts to find that the antiquated domestic affairs statutes referred to previously be found unconstitutional to the extent that such statutes restrict the ability of New Mexicans to freely wed the person of their choice.
5. The Board urges the United States Supreme Court to accept an appropriate case and find that State laws that restrict the rights of persons to freely wed the person of their choice be found unconstitutional to the extent that State statutes restrict those rights.
6. The Board supports the efforts of the County Clerk to make it clear to the New Mexico Supreme Court that her failure to issue a marriage license resulted from the unambiguous and long-held interpretation of a statute that she is powerless to affect.
7. The Board directs that copies of this resolution be delivered to all New Mexico legislators and the Governor.
8. The requirements of Resolution 2013-026 as it pertains to this resolution are hereby waived.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: Kathy Holian
Kathy Holian, Chair

ATTEST:

Geraldine Salazar
Geraldine Salazar, County Clerk 7/31/2013



Approved as to form:

Stephen C. Ross
Stephen C. Ross, County Attorney

REC'D CLERK RECORDED 07/31/2013



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 31ST Day Of July, 2013 at 04:37:45 PM
And Was Duly Recorded as Instrument # 1713795
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Marcello Salazar County Clerk, Santa Fe, NM