

**STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT COURT**

**FOOD NOT BOMBS ROSWELL,
JOCELYN SMITH,**

Plaintiffs,

v.

Case No. _____

CITY OF ROSWELL,

Defendant.

**PLAINTIFF'S COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiffs Food Not Bombs Roswell and Food Not Bombs Roswell founder Jocelyn Smith (hereafter collectively "FNBR"), by and through their counsel, the New Mexico Center on Law and Poverty ("NMCLP"), Smith and Marjanovic Law, LLC, and the American Civil Liberties Union of New Mexico ("ACLU-NM"), bring this action for damages, declaratory and injunctive relief for violations of their rights guaranteed by Article II, Sections 4, 17 and 18 of the New Mexico Constitution, actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3 (2021).

INTRODUCTION

FNBR is a grassroots community organization that seeks to build a more just society by addressing hunger, homelessness, and poverty and by promoting peace. FNBR's central message advocates that society can and should end hunger and poverty by redirecting its collective resources from the military and war to basic human needs. FNBR spreads its message by sharing

free food with community members, displaying a banner and political signs with its name, and producing t-shirts and printed materials with anti-war and human rights messages. Since June of 2024, FNBR has shared free food with anyone who wants to eat at 400 North Main Street, Pioneer Plaza, in Roswell, New Mexico. Food sharing is a peaceful, direct expression of FNBR's political message.

Since June 2025, the City of Roswell ("City") has imposed unlawful permitting and liability insurance requirements on FNBR and has taken retaliatory actions that prevented FNBR from using public spaces to promote its message through peaceful demonstrations. The City has applied an unconstitutionally vague ordinance—Roswell City Code § 10-99 ("Ordinance 10-99")—that prohibits any food sharing on public property without a permit. The City's threatened enforcement of Ordinance 10-99 prevents FNBR from sharing its message.

FNBR's speech and expressive food sharing are constitutionally protected. Federal courts have protected the rights of other Food Not Bombs organizations in other states, recognizing the inherently symbolic aspects of food sharing. As one court observed, "the significance of sharing meals with others dates back millennia"—from "Jesus shar[ing] meals with tax collectors and sinners to demonstrate that they were not outcasts in his eyes" to the U.S. Thanksgiving holiday. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale* ("*Fort Lauderdale Food Not Bombs I*"), 901 F.3d 1235, 1243 (11th Cir. 2018). FNBR members, who have adopted the unambiguous moniker of "Food Not Bombs," similarly engage in symbolic speech and expressive conduct through their peaceful food sharing, promoting their belief that access to food is a basic human right.

The rights to free speech, free expression, and free association are fundamental rights in

the state of New Mexico. N.M. Const. Art. II, § 17. The New Mexico Supreme Court has interpreted Section 17 of the New Mexico Bill of Rights—New Mexico’s First Amendment corollary—to afford broader protection than the First Amendment.¹ The New Mexico Constitution also guarantees due process to ensure that New Mexicans are not subject to the arbitrary application of vague laws. N.M. Const. Art. II, § 18. The City’s actions to prevent FNBR’s peaceful, expressive food sharing violate these rights guaranteed by the New Mexico Constitution.

JURISDICTION AND VENUE

1. All the material acts and omissions complained of occurred in Chaves County, New Mexico.
2. This Court has jurisdiction over Plaintiffs’ claims arising under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3(B) (2021) and the Declaratory Judgment Act, NMSA 1978 § 44-6-2 (1975).
3. This district is the proper venue for Plaintiffs’ claims. NMSA 1978, § 38-3-2.
4. Plaintiffs have given timely written notice of the New Mexico Civil Rights Act claims regarding law enforcement. NMSA 1978, § 41-4A-13.

PARTIES

5. Plaintiff Food Not Bombs Roswell (“FNBR”) is an unincorporated association in Chaves County.
6. Plaintiff Jocelyn Smith is a resident of Chaves County and is the founding member of FNBR.

¹ *City of Farmington v. Fawcett*, 1992-NMCA-075, 843 P.2d 839, 848. See also Linda Vanzi, *First Amendment - The Expansion of the Obscenity Doctrine in New Mexico; Is It Tolerable* - *City of Farmington v. Fawcett*, 24 N.M. L. Rev. 505, 505 (1994) (noting the New Mexico Court of Appeals “held that the New Mexico Constitution extends broader protection to freedom of expression than does the First Amendment of the United States Constitution.”)

7. Defendant City of Roswell (“City”) is a “public body” under the New Mexico Civil Rights Act. NMSA 1978, § 41-4A-2 (2021). The City is in Chaves County.

GENERAL ALLEGATIONS

8. FNBR promotes its political message that society can and should end hunger and poverty by redirecting resources from the military and war and recognizing food as a human right.

9. From June 19, 2024, to November 8, 2025, FNBR promoted this political message through public demonstrations at Pioneer Plaza in Roswell, New Mexico, including food sharing, displaying political banners, distributing printed materials, and engaging in direct conversations with people who attended their demonstrations.

10. Pioneer Plaza is the City’s public property, a centrally located town square.

11. Because Pioneer Plaza is a centrally located public space available to all, regardless of money or resources, FNBR shared food at Pioneer Plaza to communicate its message that food should be available to all people.

12. FNBR shares food with anyone who attends its demonstrations.

13. FNBR members distribute flyers and other printed materials promoting the message that war is wrong and food is a human right.

14. FNBR members speak with people who attend their demonstrations about the group’s political activism and social issues of public concern.

15. On June 6, 2025, City of Roswell Guest Services Supervisor Amanda Dickerson (“Ms. Dickerson”) approached FNBR to ask if it had a permit to serve food.

16. During that conversation, Ms. Dickerson also requested that FNBR relocate.

17. FNBR members said they had never been asked to seek a permit.

18. FNBR did not relocate and continued its demonstration.
19. After Ms. Dickerson left, a City of Roswell police officer approached FNBR during its regular food sharing demonstration.
20. The officer asked FNBR to move its food service table from one of the grassy areas on Pioneer Plaza to the sidewalk immediately abutting the grassy area.
21. FNBR complied with the officer's request and the officer left.
22. On or around June 10, 2025, City Employee Irma Perez ("Ms. Perez") phoned Plaintiff Smith and stated that the City would require FNBR to obtain a permit to continue its demonstrations on Pioneer Plaza.
23. FNBR did not apply for a permit and continued to demonstrate twice a week at Pioneer Plaza until November 8, 2025.
24. On October 26, 2025, the City's Special Event Supervisor, Tommi Conyers ("Ms. Conyers") emailed various City employees to ask if "the new ordinance" would enable the City to prevent FNBR from using Pioneer Plaza on October 30, 2025, when the City was planning an event of its own.
25. On October 27, 2025, City Community Development Director Jessica Vickers ("Ms. Vickers") responded to Ms. Conyers's email, stating, "As for the Food Not Bombs people, let me see what we can do. I think there is an ordinance on point to show them they cannot be on City property without following the proper process."
26. On October 29, 2025, then-Deputy City Attorney Josh Nairn-Mahan ("Mr. Nairn-Mahan") called Plaintiff Smith and explained that FNBR needed to obtain a permit and that the City would be closing the area of Pioneer Plaza that FNBR regularly used for its demonstrations.

27. Mr. Nairn-Mahan followed up with an email to Plaintiff Smith and Ms. Vickers, writing, “Please reach out to Ms. Jessica Vickers of the Community Development Department to figure out the best way to proceed forward.”

28. On October 30, 2025, Mr. Nairn-Mahan emailed Ms. Dickerson, Ms. Perez and Ms. Conyers, stating:

If either of you wish to reach out to Ms. Smith. I had an amicable conversation with her yesterday. Jessica doesn't especially want to handle this as she sees it as a special event, but given the ongoing nature of the event, perhaps there is a simpler permit process. Legal is mostly concerned about insurance. Jessica wants them to just do this on private property. Thoughts?

29. On November 6, 2025, Mr. Nairn-Mahan emailed Plaintiff Smith, stating:

This communication shall serve as official notice that the City of Roswell will be utilizing Pioneer Plaza Park and environs for various City purposes beginning on November 15, 2025 and will extend indefinitely into the new year. The City's use of its property will be exclusive of all other not previously scheduled uses by outside parties.

30. On November 7, 2025, at 7:07 AM, Roswell City Counselor Juliana Halvorson emailed Ms. Vickers, writing “Do you know what this is about? Can they get one of our annual vendor permits? I know where they do this isn't ideal. I don't know why they don't work with the Honeless [sic] Coalition.”

31. On November 7, 2025, at 11:16 AM, Ms. Vickers emailed Mr. Nairn-Mahan saying, “I know the title seems misleading but the highlighted portion in my opinion applies to Food not Bombs.” The email then included the text of Roswell City Ordinance 10-99 with the phrase “dispense or purvey refreshments” highlighted.

32. Roswell City Ordinance 10-99 states:

It shall be unlawful for any person to sell, offer for sale, dispense or purvey refreshments, food, beverages or goods, wares and merchandise of whatever description in and upon premises owned, leased, or used by the city, either in its

governmental or private proprietary capacity, except under and by virtue of a duly granted franchise or concession agreement therefor first had and obtained from the governing body, approving and permitting the provisions hereof shall not be and become applicable to streets, alleys or thoroughfares for public use, insofar as such streets, alleys and public thoroughfares are hereby declared to be within the purview of regulation under other city ordinances.” Roswell City Code § 10-99.

33. On November 7, 2025, at 11:33 AM, Mr. Nairn-Mahan replied to Ms. Vickers with an email that read, in total, “Good enough. Thank you.”

34. On November 7, 2025, at 11:50 AM, Mr. Nairn-Mahan emailed Jeneva Martinez, a local community advocate who works with FNBR, and Plaintiff Smith, stating, “the relevant code section is below” and cited Roswell City Ordinance 10-99.

35. Mr. Nairn-Mahan then wrote, “I have attached the appropriate forms for obtaining a permit to operate on city property. Here is a link to the city’s website that describes the process,” linking to the City’s Special Event Permit application.²

36. The City’s webpage for Special Event Permits³ states:

“If you are an organizer looking to host an event within the city of Roswell, you will be required to submit a Special Events Permit Application to obtain a permit. This includes, but is not limited to, festivals, food distribution, concerts, car shows, sporting events, block parties, road closures, etc.”

37. The Special Events Permit Application is specifically for one-time events, requires that the applicant be bound to event requirements determined by the City Special Event Team (“SET”) that approves the applications, and gives the SET authority to revoke a permit at its discretion.

38. According to the City’s Special Events Permit Application form, applications for Special

² City of Roswell, Special Event Permit Application, <https://www.roswell-nm.gov/DocumentCenter/View/7725/Special-Events-Forms-Permit-Application?bidId=>

³ City of Roswell, Special Events Permits and Street Closure Information, <https://www.roswell-nm.gov/1397/Special-Event-Permits-and-Street-Closure>.

Event Permits must be submitted 120 days prior to an event.

39. The City's Special Events Policy, which is posted on the City's website, requires applicants to indemnify and defend the City for liability arising from activities connected to a permitted event (Part 10.0) and to purchase liability insurance naming the City as an insured party (Part 11.0).⁴

40. The City's Special Events Policy also states that City authorized events will be subject to "[a]ppropriate fees."

41. The City's Special Events Policy does not define an appropriate fee.

42. Because of the City's demand that it obtain a permit and insurance, FNBR stopped demonstrating at Pioneer Plaza after November 8, 2025.

43. On November 11, 2025, Roswell City Counselor Christina Arnold emailed City employees Tommi Conyers, Chad Cole, and Mike Mathews, stating:

Food Not Bombs is a political resistance group that is making some kind of statement about capitalism and war. They do not work with organizations that conform to the system, i.e., churches or soup kitchens and believe that they should just be able to give out food in public spaces with no issue. Which is why they have not requested a permit even though they know it's free. They are also only Vegan or Vegetarian food to eliminate sickness possible from dairy or meat. While I appreciate them filling a food gap and do not want to stifle their free speech, my stance is rules are rules that apply to everyone and I will insist on maintaining that publicly and in person. I don't really appreciate their method of attacking the City staff without telling the full story. Also, while there is a group of them that feel this way, there is also a group of my constituents who have reached out to me to say they don't want them on the streets attracting more homeless people. Always a toss up that requires balance.

44. On or about November 21, 2025, the City of Roswell put up holiday decorations in Pioneer Plaza, including a perimeter of electric lights that cut off access to the grassy area regularly used by FNBR for their demonstrations.

⁴ City of Roswell, Policy PA0001 (effective Nov. 6, 2017), <https://www.roswell-nm.gov/DocumentCenter/View/3118/PA0001-Special-Events?bidId=>.

45. Upon information and belief, the holiday decoration display was the only use of Pioneer Plaza from November 2025 to mid-January 2026 by the City of Roswell.

46. While FNBR has not shared food or demonstrated on Pioneer Plaza since November 8, 2025, other groups have occupied the grassy areas at Pioneer Plaza or distributed food at or near Pioneer Plaza without a permit.

47. Upon information and belief, during the winter of 2025-2026, Roswell Community Disaster Relief Services (“RCDRS”), another organization that supplies food and assistance to Roswell’s unhoused population, operated a mobile warming center at or near Pioneer Plaza and distributed free food.

48. Upon information and belief, Enrique Moreno operates RCDRS as unincorporated organization which engages in food distribution and volunteer disaster response.⁵

49. In a January 25, 2026, RCDRS Facebook post, RCDRS stated “DISASTER RESPONSE BUSES AVAILABLE TODAY PIONEER PLAZA Corner of N Main & W 4th” and further wrote that it would be offering “free food and [h]ot drinks, no questions asked.”⁶

50. In various Facebook posts Mr. Moreno expressed support for the Chaves County Sheriff’s Department, promoted military appreciation day, and admonished followers that “[a]ny comments regarding state or federal political views or opinions will be deleted.”⁷

⁵ Roswell Community Disaster Relief, March 14, 2025, <https://web.archive.org/web/20250314193112/https://rcdrservices.com/>

⁶ Roswell Community Disaster Relief Services Post, January 25, 2025, <https://www.facebook.com/RCDRSservices/posts/pfbid0cC1aYvY6G3zPYHnTzabrGbnAuMLm841oT2ojcQFWXBdeiV3ACyR4Bs83Vm4HAKz2l>

⁷ Roswell Community Disaster Relief Services Post, September 11, 2025, <https://www.facebook.com/RCDRSservices/posts/pfbid05gGK7opAb2xuDFGPUNzWARx4XcVqznpUKTbcknq7Uxi9Ye1KmspKm3ke5vozSN4Ll>; Roswell Community Disaster Relief Services Post, September 29, 2025, <https://www.facebook.com/RCDRSservices/posts/pfbid0o6EQXHtk9eq5voNZyAdTWhB2KNyAanKbPTu7i8fL.BmiBBwri9waDP5W5ydQNOFQ8l>; Roswell Community Disaster Relief Services Post, October 29, 2025, <https://www.facebook.com/RCDRSservices/posts/pfbid09yvEmsVrzzkTtRBBNLQN9Xvvh3ZBunreSTmdR5GEVHXTL1UjSU2BiwYQ6ELnCER7l>

51. Upon information and belief, the City does not require Mr. Moreno or RCDRS to obtain a permit for RCDRS's use of Pioneer Plaza.

52. On February 14, 2026, a local chapter of the Boy Scouts of America gathered in Pioneer Plaza in observance of President's Day and placed American flags on the grassy areas formerly used by FNBR.⁸

53. Upon information and belief, the City did not require the Boy Scouts of America to obtain a permit for their demonstration at Pioneer Plaza.

54. Since November 8, 2025, FNBR has not been able to demonstrate at Pioneer Plaza and has operated at other locations with lower participation and less visibility to community members.

55. FNBR had to refuse offers of food donations because they cannot share food at Pioneer Plaza.

CAUSES OF ACTION

COUNT I: Violation of Article II, Sections 4 and 17 (Speech) of the New Mexico Constitution, Actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3 (2021) Facial Challenge to Roswell City Ordinance 10-99 and As Applied As Invalid Prior Restraint

56. Plaintiffs incorporate the allegations in the foregoing paragraphs of this Complaint here.

57. Plaintiffs have not shared food, displayed political banners, distributed printed materials, or engaged in direct conversations with members of the public at Pioneer Plaza since November 8, 2025, because the City's enforcement of Roswell City Ordinance 10-99 has chilled their protected speech and political expression.

⁸ City of Roswell, NM Government's Post, February 14, 2026, <https://www.facebook.com/RoswellNMGovernment/posts/pfbid0tpiLYcNpxn8kQtnR5XYRzMjVhWzK8vc2WhrqAc8V5gLBajapHNaz1ypXFa3tZncfl>

58. The New Mexico Civil Rights Act waives a public body's sovereign immunity for civil rights claims. When a "public body or person acting on behalf of, under color of or within the course and scope of authority of the public body" deprives a person of their "rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico," the public body is liable. NMSA 1978, §§ 41-4A-3, 41-4A-9.

59. Article II, Section 17 provides that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." N.M. Const. Art. II, § 17.

60. Article II, Section 4 provides that "[a]ll persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness."

61. Article II, Sections 4 and 17 protect FNBR's right to engage in expressive conduct regarding matters of public concern in public fora.

62. Roswell City Ordinance 10-99 has infringed, and threatens to continue infringing on, Plaintiffs' rights to fully exercise their rights under Article II, Section 17, including their rights to the freedoms of speech and expression.

63. Section 17's free speech protections in the New Mexico Bill of Rights extend beyond those afforded by the First Amendment and beyond those protected in the federal case law cited herein. *City of Farmington v. Fawcett*, 1992-NMCA-075, 18, 843 P.2d 839.

64. Roswell City Ordinance 10-99 is overbroad for many reasons—any one of which renders it unconstitutional.

65. Roswell City Ordinance 10-99 prohibits any expressive food sharing at any time and in any public place.

66. A content-neutral ordinance is overbroad and facially unconstitutional when it regulates a substantial amount of protected speech or expression and is not narrowly tailored to serve a significant or substantial governmental interest *Village of Ruidoso v. Warner*, 2012-NMCA-035, 6, 274 P.3d 791 (“The concept of overbreadth is applicable to individual ordinances that fail to serve legitimate interests [through] narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms” (internal quotation marks omitted)).

67. Time, place, and manner restrictions are unconstitutionally overbroad if they vest excessive discretion in government officials. *Warner*, 2012-NMCA-035, ¶¶ 5, 22, 274 P.3d 791 (holding that a city ordinance prohibiting solicitation on public property to be overly broad where it provided unrestricted discretion for enforcement).

68. Article II, Sections 4 and 17 protect expression against unconstitutional prior restraints. The New Mexico Supreme Court has long recognized that “any prior restraint on expression comes to [the] Court with a heavy presumption against its constitutional validity.” *Twohig v. Blackmer*, 1996-NMSC-023, 13, 918 P.2d 332 (internal citation omitted).

69. A prior restraints on expression or speech is unconstitutional when it has “built in no protection of protected speech against the uncontrolled will of an official—as by requiring a permit ... which may be granted or withheld at the discretion of such official.” *Warner*, 2012-NMCA-035, 21 (internal citation and punctuation omitted).

70. The City’s permit and insurance requirements for food sharing operates as a prior

restraint by prohibiting Plaintiffs' expressive food sharing.

71. The City's permit process gives unlimited discretion to the City's officials in deciding what speech and expression are permitted.

72. The permitting requirements in the City's Special Event Policy lack any standards to guide decisions about whether the City will grant or deny a permit and instead states that the City official "may issue the permit if he believes that the use or occupation of the public property will not unreasonably interfere with the intended or customary use of public property by the general public and that the use will not damage or destroy the public property."

73. The City's permitting process is entirely discretionary and lacks governing criteria, thus subjecting Plaintiffs to further discretionary decision-making prior to being able to engage in protected expression.

74. The City's ordinance also fails to allow for spontaneous protected expression by FNBR in response to rapidly developing local and world events involving the U.S. government's military intervention abroad, homelessness, and other social issues of public concern to FNBR.

75. The City's permitting process also imposes a discretionary fee, in addition to requiring insurance and indemnification.

76. While FNBR's claims arise exclusively from state law and the New Mexico Bill of Rights, the U.S. Supreme Court has found that fees imposed on the exercise of First Amendment rights in a traditional public forum must be nominal and governed by objective standards. *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 110-112, (1943).

77. Defendant City's insurance and indemnification requirements impose substantial financial burdens on Plaintiffs' political expression and are not narrowly tailored to serve a significant government interest. Defendant City's insurance requirements improperly impose

liability on permit-holders for third party conduct and improperly require a policy holder to cover claims against the City that exceed what is permissible under sovereign immunity, traditional agency and tort liability principles. While FNBR's claims arise exclusively from state law and the NM Constitution, the 10th Circuit has invalidated similar requirements where they burden protected speech without proper tailoring. *iMatter Utah v. Njord*, 774 F.3d 1258, 1271 (10th Cir. 2014); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 931 (1982).

78. The prohibition of all food sharing on public property and imposition of impermissibly burdensome and discretionary permitting requirements makes it effectively impossible for Plaintiffs to ever comply, making it so that there is no place in the City where Plaintiffs are permitted to share food in traditional public forums as expression of their political message.

79. As such, the Roswell City Ordinance 10-99 prohibiting all food sharing is unconstitutionally overbroad on its face and as applied to Plaintiffs as an invalid prior restraint on constitutionally protected expression.

80. Defendant City's permitting processes, application fees, insurance and indemnity requirements improperly burden Plaintiffs' rights under Section 17 of the New Mexico Constitution.

81. The City's enforcement of Roswell City Ordinance 10-99 deprives Plaintiffs of their rights to speech and expression in quintessential public fora.

82. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged because of the City's conduct.

COUNT II: Violation of Article II, Sections 4 and 17 (Free Expression and Association) of the New Mexico Constitution, Actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3

83. Plaintiffs incorporate the allegations in the foregoing paragraphs of this Complaint here.

84. Article II, Sections 4 and 17 protect FNBR's right to engage in expressive conduct regarding matters of public concern in public fora and to freely associate together to advance beliefs and ideas.

85. Roswell City Ordinance 10-99 puts people at risk of citation or arrest if they engage in demonstrations that include food sharing at Pioneer Plaza.

86. FNBR assembles and holds regular demonstrations by sharing food as a form of symbolic expression of social unity and solidarity in the human condition of hunger and to communicate its political beliefs that food is a human right. As such Plaintiffs are engaged in expressive conduct protected by Section 17 of the NM Constitution.

87. While Plaintiffs' claims arise exclusively from state law and the New Mexico Bill of Rights, federal courts have held that regulations that infringe on the right to expressive association must be justified by regulations that serve compelling interests, unrelated to expression of ideas, that cannot be achieved through means significantly less restrictive on associational freedoms.

88. Federal courts have found that similar ordinances that require written permission to share food in city parks fail intermediate scrutiny because they "amount to an outright ban on public food sharing . . . subject only to the standardless whims of City permitting officials." *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1295 (11th Cir. 2021).

89. The City's ordinance fails to meet this standard because the City is prohibiting Plaintiffs from associating with members of the public to share food as symbolic expression of their political message that food is a human right.

90. The City's interests in restricting this expressive activity are not compelling and can be

achieved through significantly less restrictive means.

91. As a direct and proximate result of the deficiencies in Roswell City Ordinance 10-99, Plaintiffs are deprived of their right to free expression and association in quintessential public fora.

92. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged because of the City's conduct.

COUNT III: Violation of Article II, Sections 4 and 17 (Viewpoint Discrimination) of the New Mexico Constitution, Actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3

93. Plaintiffs incorporate the allegations in the foregoing paragraphs of this Complaint here.

94. Article II, Sections 4 and 17 of the New Mexico Constitution protects FNBR's right to engage in expressive conduct free from government viewpoint discrimination.

95. While FNBR's claims arise exclusively from state law and the New Mexico Constitution, the U.S. Supreme Court has held that governments may not restrict access to a forum based on viewpoint. *Shurtleff v. City of Boston, Massachusetts*, 596 U.S. 243 (2022).

96. Plaintiffs have attempted to exercise their right to speak freely about issues of public concern in public forums through food sharing demonstrations.

97. FNBR has an anti-establishment political ideology that disavows militarism and promotes the view that food is a human right.

98. The City has impermissibly applied Roswell City Ordinance 10-99 to exclude FNBR from sharing their message on public property and in Pioneer Plaza, a traditional public forum, because of the viewpoint FNBR expresses.

99. The City has allowed other groups to demonstrate and use Pioneer Plaza to express their

views and engage in food distribution without a permit.

100. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged because of the City's conduct.

COUNT IV: Violation of Article II, Sections 4 and 18 (Due Process, Void for Vagueness) of the New Mexico Constitution, Actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3

101. Plaintiffs incorporate the allegations in the foregoing paragraphs of this Complaint here.

102. Article II, Sections 4 and 18 protect FNBR's right to due process.

103. Article II, Section 18 provides that "[n]o person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. N.M. Const. Art. II, § 18.

104. In analyzing the federal Constitution, the New Mexico Court of Appeals found that a law denies due process because is unconstitutionally vague when it "(1) fails to provide persons of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their conduct is prohibited, or (2) fails to create minimum guidelines for enforcement and thus encourages subjective and ad hoc application of the law." *State v. Julg*, 2021-NMCA-058, 24, 497 P.3d 678.

105. Roswell City Ordinance 10-99 makes it illegal for anyone to "dispense or purvey refreshments, food, beverages or goods, wares and merchandise of whatever description" on City property. The Ordinance prohibits sharing food or goods of any description—which would include the print materials that FNBR offer as part of their demonstrations—with as few as two people. By its very terms, having a picnic in Pioneer Plaza with a coworker or providing a gift would be illegal.

106. The ordinance is unconstitutionally vague on its face for failure to provide clear and definite standards to guide the City and the public in determining what conduct is prohibited.

107. As a direct and proximate consequence of the deficiencies in Roswell City Ordinance 10-99, Plaintiffs are deprived of due process.

108. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged because of the City's conduct.

PRAYER FOR RELIEF

- A. Issue a declaration that Roswell City Ordinance 10-99 violates Article II, Sections 4, 17, and 18 of the New Mexico Constitution facially and as applied to Plaintiffs;
- B. Issue an injunction prohibiting the Defendants from enforcing Roswell City Ordinance 10-99;
- C. Award compensatory damages for the loss of rights protected by Article II, Sections 4, 17, and 18 of the New Mexico Constitution;
- D. Award Plaintiffs' attorneys' fees and costs; and
- E. Provide any other relief that is just and proper.

DATE: April 27, 2026

Respectfully submitted,

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