

1 **PMAN**  
CHRISTOPHER M. PETERSON, ESQ. (13932)  
2 SADMIRA RAMIC, ESQ. (15984)  
**AMERICAN CIVIL LIBERTIES**  
3 **UNION OF NEVADA**  
4362 W. Cheyenne Ave.  
4 North Las Vegas, NV 89032  
Telephone: (702) 366-1226  
5 Facsimile: (702) 830-9205  
Emails: peterson@aclunv.org  
6 ramic@aclunv.org

CASE NO: A-23-876702-W  
Department 20

7 *Attorneys for Petitioner*

8 *Additional counsel on next page.*

10 **EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

12 SILVER STATE HOPE FUND, a domestic  
13 nonprofit corporation,

14 **Petitioner,**

15 vs.

16 STATE OF NEVADA ex rel. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, DIVISION  
17 OF HEALTH CARE FINANCING AND POLICY,  
a public entity of the State of Nevada,

18 **Respondent.**

Case No.:

Department:

**Petition for Writ of Mandamus**

**Hearing requested**

1 REBECCA CHAN\*  
2 CHELSEA TEJADA\*  
3 ZORAIMA PELAEZ\*  
4 BRIGITTE AMIRI\*  
5 MING-QI CHU\*  
6 American Civil Liberties Union  
7 125 Broad Street, 18th Floor  
8 New York, NY 10004  
9 Telephone: (212) 549-2633  
10 Emails: rebeccac@aclu.org  
11 ctejada@aclu.org  
12 zpelaez@aclu.org  
13 bamiri@aclu.org  
14 mchu@aclu.org

15 *Attorneys for Petitioner*

16 \*Application for *pro hac vice* forthcoming

1 Petitioner, Silver State Hope Fund (“Silver State”), hereby submits this Petition for Writ  
2 of Mandamus. This Petition seeks from this Court an order directing Respondent Nevada Division  
3 of Health Care Financing and Policy (“Division”) to remove the exclusion of abortion from  
4 Medicaid coverage (“coverage ban”) from the Medicaid Services Manual (“Manual”) and order  
5 that abortion care is eligible for reimbursement under the Nevada Medicaid program. Petitioner  
6 also seeks reasonable costs and attorneys’ fees pursuant to NRS 34.270. This Petition is supported  
7 by Petitioner’s Opening Brief in Support of Petition for Writ of Mandamus, any attached exhibits,  
8 and the pleadings and papers filed with this Court.

9 Petitioner hereby alleges:

### 10 **INTRODUCTION**

11 1. In 2022, just months after the U.S. Supreme Court overturned *Roe v. Wade*, a  
12 resounding majority of Nevadans voted to adopt the Equal Rights Amendment (“ERA”), a  
13 sweeping constitutional measure that provides: “Equality of rights under the law shall not be  
14 denied or abridged by this State or any of its political subdivisions on account of race, color, creed,  
15 sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.”  
16 Nev. Const. art. I § 24. In so doing, Nevadans reaffirmed their “enduring commitment to equality  
17 for everyone,” and sought to “advance equality for all by filling the gaps in existing protections”  
18 in state and federal law. Nev. Statewide Ballot Questions 2022, at 7.<sup>1</sup>

19 2. This action seeks to close one glaring gap in Nevada’s guarantee of equality: the  
20 prohibition on abortion coverage in the Nevada Medicaid program.

21 3. The Medicaid program is administered by the Division of Health Care Financing  
22 and Policy within the Nevada Department of Health and Human Services “to assist in providing

---

23 <sup>1</sup> Available at  
24 <https://www.nvsos.gov/sos/home/showpublisheddocument/10970/637992808153270000>.

1 quality medical care for eligible individuals and families with low incomes and limited  
2 resources.”<sup>2</sup> The Division’s stated mission is to, *inter alia*, “promote equal access to health care,”<sup>3</sup>  
3 yet Nevada’s Medicaid policy explicitly denies coverage for abortion for some of the most  
4 marginalized Nevadans—low-income by definition, and disproportionately people of color—who  
5 receive health care coverage through the Medicaid program.

6 4. The coverage ban violates the ERA’s clear mandate by denying coverage for  
7 abortion—sex-linked and pregnancy-related medical care—while imposing no such carve-outs on  
8 medical care specific to people who cannot become pregnant. In so doing, it creates and reinforces  
9 inequalities on account of capacity for pregnancy, further entrenching sex inequality. Moreover,  
10 by engaging in such discrimination through a public funding program, Nevada further  
11 disenfranchises its most marginalized residents. Striking the coverage ban is required under the  
12 ERA and would bring Nevada’s Medicaid program in line with the State’s commitments to  
13 reproductive freedom and equality.

14 5. Additionally, by striking the coverage ban, Nevada would join a growing number  
15 of states that provide equal access to medical care for their residents who are enrolled in Medicaid.  
16 Today, seventeen states, including two of Nevada’s neighbors,<sup>4</sup> cover abortion in their state  
17 Medicaid programs.<sup>5</sup>

---

18  
19  
20 <sup>2</sup> *About Us*, Nev. Dep’t of Health & Hum. Servs. Div. of Health Care Fin. & Pol’y,  
<https://dhcfp.nv.gov/About/Home/> (last visited Aug. 24, 2023).

21 <sup>3</sup> *Id.*

22 <sup>4</sup> California and Oregon each cover abortion under their state Medicaid programs. *See* Or. Rev.  
23 Stat. § 743A.067; *Comm. to Def. Reprod. Rts. v. Myers*, 625 P.2d 779 (Cal. 1981).

24 <sup>5</sup> *State Funding of Abortions Under Medicaid*, Kaiser Fam. Found. (June 1, 2023),  
<https://www.kff.org/medicaid/state-indicator/abortion-under->

1           6.       State courts in “the majority of jurisdictions that have considered” similar coverage  
2 bans “have concluded that, under their state constitutions, government health care programs that  
3 fund other medically necessary procedures may not deny assistance to eligible women” for  
4 abortion.<sup>6</sup> *Planned Parenthood of Alaska*, 28 P.3d at 905. Two states, New Mexico and  
5 Connecticut, have explicitly relied on their state ERAs in making this determination. *See N.M.*  
6 *Right to Choose*, 975 P.2d at 859; *Maher*, 515 A.2d at 160–62.

7           7.       This Petition for a Writ of Mandamus is the proper means to challenge the coverage  
8 ban under the Nevada ERA.

9           8.       Regulations passed by the Division regarding coverage of abortion services are  
10 plainly impermissible where they violate the Nevada Constitution.

11          9.       The conflict between Nevada’s explicit guarantee of sex equality, as enshrined in  
12 the Nevada ERA, and the coverage ban, presents an important legal question of first impression  
13 that arises with some frequency, and thus favors consideration of the petition.

14          10.      Here, there is no plain, speedy, and adequate remedy in the ordinary course of law  
15 to challenge the Division’s exclusion of abortion from Medicaid coverage.

16  
17  
18  
19 

---

[medicaid/?currentTimeframe=0&sortModel=%7B%22collId%22:%22Location%22,%22sort%22:%22asc%22%7D](https://www.nv.gov/medicaid/?currentTimeframe=0&sortModel=%7B%22collId%22:%22Location%22,%22sort%22:%22asc%22%7D)

20 <sup>6</sup> *See Dep’t of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904 (Alaska  
21 2001); *Simat Corp. v. Ariz. Health Care Cost Containment Sys.*, 56 P.3d 28 (Ariz. 2002); *Myers*,  
22 625 P.2d 779; *Doe v. Maher*, 515 A.2d 134 (Conn. Super. Ct. 1986); *Doe v. Wright*, No. 91 CH  
23 1958 (Ill. Cir. Ct. Dec. 2, 1994); *Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d 247 (Ind.  
24 2003); *Moe v. Sec’y of Admin. & Fin.*, 417 N.E.2d 387 (Mass. 1981); *Women of Minn. v. Gomez*,  
542 N.W.2d 17 (Minn. 1995); *Right to Choose v. Byrne*, 450 A.2d 925 (N.J. 1982); *N.M. Right  
to Choose/NARAL v. Johnson*, 975 P.2d 841 (N.M. 1998); *Doe v. Celani*, No. S81-84CnC (Vt.  
Super. Ct. May 26, 1986); *Women’s Health Ctr. of W. Va., Inc. v. Panepinto*, 446 S.E.2d 658,  
(W. Va. 1993).

1 **PARTIES**

2 11. Petitioner, Silver State Hope Fund, is, and was at all times relevant herein, a  
3 domestic nonprofit organization organized and existing under and by virtue of the laws of the State  
4 of Nevada. Silver State offers grants to people with the fewest resources to pay for their abortions,  
5 and to pay for their travel, lodging, and childcare to ensure that they can attend their abortion  
6 appointments. Silver State is dedicated to ensuring that every person has access to the future of  
7 their choice and strives to provide dignified access to abortion through equitable funding. To  
8 ensure that people are able to effectuate their abortion decision and are not forced to carry their  
9 pregnancies to term, Silver State strives to provide as much funding as possible to as many clients  
10 as possible. Silver State operates out of and has its P.O. Box in Las Vegas, Nevada. All Silver  
11 State board members are located in Clark County, Nevada, and the vast majority of Silver State's  
12 clients either live in or obtain abortion care in Clark County.

13 12. Respondent, the Division of Health Care Financing and Policy in the Department  
14 of Health and Human Services, administers the Nevada Medicaid program. The Division is a  
15 public entity of the State of Nevada with the power to sue and be sued, pursuant to NRS 12.105  
16 and 41.031, and which may be served process, pursuant to NRCP 4.2(d), by service upon the  
17 Attorney General, or his designee, at the office of the Attorney General in Las Vegas, located at  
18 100 North Carson Street, Carson City, Nevada 89701, and upon its administrative head, Stacie  
19 Weeks, at its Administration Office, located at 1100 East William Street, Suite 101, Carson City,  
20 Nevada 89701.

21 **JURISDICTION AND VENUE**

22 13. This Court has jurisdiction to issue writs of mandamus. *See* Nev. Const. art. VI §  
23 6; NRS 34.160; NRS 34.330.







**STATEMENT OF FACTS**

26. Nevada Medicaid is a public health insurance program designed to cover the health care needs of Nevadans with low incomes and limited resources.

27. Households with annual incomes of up to 138% of the federal poverty level (FPL) qualify for coverage.<sup>7</sup>

28. As of June 2023, approximately 21% of Nevadans are enrolled in the state’s program, covering 1 in 6 adults (ages 19–64), 3 in 8 children, and 3 in 10 people with disabilities in the state.<sup>8</sup> In addition, of non-elderly Medicaid enrollees, 66% are working adults and 71% are Nevadans of color.<sup>9</sup>

29. Nevada Medicaid provides a broad array of health care coverage, including “reasonable and medically necessary” medical services,<sup>10</sup> such as preventive health services, inpatient and outpatient care, emergency care, and family planning services.<sup>11</sup> The program also

---

<sup>7</sup> *Medicaid Information*, Nev. Health Link, <https://www.nevadahealthlink.com/medicaid-information/> (last visited Aug. 24, 2023).

<sup>8</sup> *Nevada Medicaid Fact Sheet*, Kaiser Fam. Found., at 1 (June 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-NV>.

<sup>9</sup> *Id.*

<sup>10</sup> Medicaid Servs. Manual 2023 (“Manual”) § 603.1A (“Nevada Medicaid reimburses for covered medical services that are reasonable and medically necessary, ordered or performed by a ... licensed health care provider ..., and that are within the scope of practice of their license as defined by state law.”), [https://dhcfp.nv.gov/uploadedFiles/dhcfpnavgov/content/Resources/AdminSupport/Manuals/MSM/Medicaid\\_Services\\_Manual\\_Complete.pdf](https://dhcfp.nv.gov/uploadedFiles/dhcfpnavgov/content/Resources/AdminSupport/Manuals/MSM/Medicaid_Services_Manual_Complete.pdf); *id.* § 103.1 (defining medical necessity).

<sup>11</sup> *See generally id.* Chapter 600.

1 covers a variety of mental health services, prescription drugs, and dental, vision, and hearing care,  
2 among other services.<sup>12</sup>

3 30. The plan’s reproductive health care coverage is wide-ranging: It covers family  
4 planning services for both men and women of childbearing age, including contraception, such as  
5 condoms and oral contraceptives, and sterilization, such as vasectomies and tubal ligations.<sup>13</sup> It  
6 also covers pregnancy-related care for patients carrying pregnancies to term, such as prenatal care,  
7 obstetrics, childbirth, and doula services, as well as neonatal care, post-partum care, and  
8 breastfeeding support.<sup>14</sup>

9 31. Despite this otherwise comprehensive coverage, including for services related to  
10 miscarriage, carrying a pregnancy to term, and giving birth, the plan explicitly excludes from  
11 coverage care for terminating a pregnancy.<sup>15</sup> Without any implementing statute authorizing—let  
12 alone requiring—such an exclusion, Nevada Medicaid regulations exclude abortion from  
13 Medicaid coverage except in extremely limited circumstances—namely, for abortion “to save the  
14 life of the mother” or for a pregnancy “resulting from a sexual assault (rape) or incest.”<sup>16</sup>

15 32. Nevada Medicaid’s lack of abortion coverage burdens the most marginalized  
16 Nevadans. There is significant overlap between the Medicaid-eligible population—living at or  
17 below 138% FPL—and those seeking abortions in Nevada.

---

18  
19 <sup>12</sup> *See generally id.*

20 <sup>13</sup> *Id.* § 603.3.

21 <sup>14</sup> *Id.* § 603.4A–E.

22 <sup>15</sup> *Id.* § 603.4F.

23 <sup>16</sup> *Id.* § 603.4F(1)–(2). Treatment for spontaneous abortion, also known as miscarriage, is  
24 covered. *Id.* § 603.4F(3).

1 33. Women living below the FPL experience rates of unintended pregnancies five times  
2 greater than do women with higher incomes.<sup>17</sup> Nationally, around 75% of abortion patients are  
3 poor or low income, with nearly half (49%) having family incomes below 100% FPL and another  
4 quarter (26%) having family incomes between 100–199% FPL.<sup>18</sup>

5 34. Nevada abortion seekers, like Nevada Medicaid recipients, are also  
6 disproportionately people of color: Over 65% of abortion seekers in Nevada who reported their  
7 race and ethnicity were Black, Hispanic/Latino, Asian, Pacific Islander, other races, or multiple  
8 races,<sup>19</sup> whereas approximately 28% of the Nevada population is comprised of people of color.<sup>20,21</sup>

9 35. Nevada Medicaid recipients—those with the fewest resources in the state—need  
10 abortions, but are denied coverage for this essential medical care by their state health insurance.

---

11  
12  
13 <sup>17</sup> Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States*  
14 *2008–2011*, 374 *New Eng. J. Med.* 843, 846 (2016),  
<https://www.nejm.org/doi/full/10.1056/nejmsa1506575>.

15 <sup>18</sup> Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since*  
16 *2008*, at 7 (May 2016), [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf)  
[us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf).

17 <sup>19</sup> Katherine Kortzmit et al., *Abortion Surveillance—United States, 2020*, *Ctrs. for Disease*  
18 *Control and Prevention: Morbidity and Mortality Wkly. Rep.*, at 18 (Nov. 25, 2022),  
<https://www.cdc.gov/mmwr/volumes/71/ss/ss7110a1.htm#suggestedcitation>.

19 <sup>20</sup> *QuickFacts: Nevada*, U.S. Census Bureau, <https://www.census.gov/quickfacts/NV> (last visited  
20 Aug. 24, 2023).

21 <sup>21</sup> Racial disparities in abortion rates are attributable in part to the fact that “overall, Black,  
22 Hispanic, American Indian and Alaska Native (AIAN), and Native Hawaiian and Other Pacific  
23 Islander (NHOPI) women have more limited access to health care, which affects women’s access  
24 to contraception and other sexual health services that are important for pregnancy planning.”  
Samantha Artiga et al., *What are the Implications of the Overturning of Roe v. Wade for Racial*  
*Disparities?*, Kaiser Fam. Found. (July 15, 2022), [https://www.kff.org/racial-equity-and-health-](https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/)  
[policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-](https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/)  
[disparities/](https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/).

1           36.       Funding for abortion is critical to accessing abortion itself. Many people with low  
2 incomes do not have enough money to cover the unexpected cost to terminate an unplanned  
3 pregnancy and are forced to find funding for their abortion from multiple sources. This can delay  
4 access to care, which can in turn increase health risks and the cost of that care. Moreover, if a  
5 person cannot raise enough money before the legal limit for abortion, they will likely be forced to  
6 carry their pregnancy to term.

7           37.       Nevada’s imposition of barriers to abortion for some of its most marginalized  
8 residents is wholly out of step with the State’s commitments to reproductive freedom and equality.

9           38.       For half a century, Nevada has repeatedly and emphatically protected access to  
10 abortion. Since 1973, abortion has been legal in Nevada up to 24 weeks gestation, and available  
11 after 24 weeks to protect the health or life of the pregnant person. NRS 442.250.

12           39.       In 2019, the Nevada Legislature passed the Trust Nevada Women Act, which  
13 decriminalized the provision of abortion and removed antiquated pre-abortion biased counseling  
14 requirements and other barriers to accessing this health care. S.B. 179, 80th Leg. Sess. (Nev. 2019).

15           40.       Following the gutting of the federal constitutional right to abortion in *Dobbs*, the  
16 state has moved to protect Nevada abortion providers and patients accessing care in the state from  
17 civil and criminal investigations by other states hostile to abortion. *See* S.B. 131, 82nd Leg. Sess.  
18 (Nev. 2023), to be codified in NRS Chapters 629, 179, and 232.

19           41.       In addition to these specific protections for abortion, Nevada also has strong  
20 protections against pregnancy discrimination more broadly. *See, e.g.*, NRS 613.4368; NRS  
21 613.4365; NRS 608.0193.

22           42.       The Equal Rights Amendment is Nevadans’ most recent direct affirmation of this  
23 state’s steadfast commitment to equality for all.

**EQUAL RIGHTS AMENDMENT**

1  
2       43.       The Nevada ERA provides: “Equality of rights under the law shall not be denied or  
3 abridged by this State or any of its political subdivisions on account of race, color, creed, sex,  
4 sexual orientation, gender identity or expression, age, disability, ancestry or national origin.” Nev.  
5 Const. art. I § 24.

6       44.       The framers of the ERA, and the Nevadans who adopted it, embraced an expansive  
7 conception of equality—above and beyond the Equal Protection Clause.

8       45.       Given the ERA’s “protective purpose,” it “should be liberally construed *in order to*  
9 *effectuate the benefits intended to be obtained.*” *Colello v. Adm’r of Real Est. Div. of Nev.*, 100  
10 Nev. 344, 347, 683 P.2d 15, 17 (1984) (emphasis added).

11       46.       The ERA’s explicit purpose is to remedy existing inequalities. Nev. Statewide  
12 Ballot Questions 2022, at 7 (noting that “not everyone enjoys full equality,” because  
13 “[h]istorically, certain groups have been discriminated against,” and that “[o]ne of the most  
14 effective ways to help ensure equality is to specifically include protections from discrimination in  
15 the Nevada Constitution, making them far more difficult to repeal, undermine, or overturn based  
16 on the political mood of the day”).

17       47.       In adopting the ERA, Nevadans embraced a substantive vision of “actual,” not  
18 simply “theoretical[,] equality of rights,” *Sw. Wash. Chapter, Nat’l Elec. Contractors Ass’n v.*  
19 *Pierce Cnty.*, 667 P.2d 1092, 1102 (Wash. 1983) (citation omitted), and thus actions or policies  
20 that operate to further entrench inequality on account of a protected characteristic are  
21 unconstitutional.

**CLAIM FOR RELIEF**  
**Writ of Mandamus: Violation of the Nevada Equal Rights Amendment,**  
**Nev. Const. art. I § 24**

48. Petitioner re-alleges and incorporates by reference each and every allegation contained in the paragraphs above as if fully set forth herein.

49. There is no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Division's exclusion of abortion from Medicaid coverage.

50. A challenged enactment violates the ERA if it (1) discriminates on the basis of a protected characteristic, and (2) entrenches inequality on account of a protected characteristic.

51. The abortion coverage ban discriminates on the basis of sex in four distinct ways.

52. First, the coverage ban is facially discriminatory because it provides less comprehensive coverage on the basis of the insured individual's capacity for pregnancy, a sex-linked characteristic. By its own terms, the coverage ban singles out people who are or can become pregnant for exclusion from coverage for medically necessary care. By restricting treatment options for pregnancy, a sex-linked medical condition, from otherwise comprehensive reproductive health coverage, it impermissibly confers different benefits and burdens on the basis of sex.

53. Second, the coverage ban discriminates on the basis of sex because it disproportionately burdens women. The overwhelming majority of abortion seekers are women, who primarily have the capacity for pregnancy, and thus women disproportionately bear the brunt of the coverage ban.

54. Third, the coverage ban discriminates on the basis of sex because it singles out people who are or can become pregnant for coercive regulation. By fully covering the costs of medical care for those who choose to continue their pregnancy but denying coverage in all but the most extreme circumstances for those who decide to terminate their pregnancy, the coverage ban

1 effectively coerces those with the capacity for pregnancy to carry to term, interfering with their  
2 reproductive autonomy. In so doing, the abortion coverage ban denies only those capable of  
3 pregnancy, a sex-linked characteristic, the ability to control their reproductive futures.

4 55. Fourth, the coverage ban discriminates on the basis of sex because it is based on,  
5 and perpetuates, invidious sex-based stereotypes. This includes the stereotype that women are, by  
6 nature, destined to become mothers.

7 56. The coverage ban further entrenches inequality on the basis of capacity for  
8 pregnancy, a sex-linked characteristic.

9 57. The ability to choose one’s reproductive future “is central to a woman’s control not  
10 only of her own body, but also to the control of her social role and personal destiny.” *Myers*, 625  
11 P.2d at 792.

12 58. A state funding scheme that excludes coverage for Nevadans on the basis of their  
13 capacity for pregnancy, historically “a basis for discrimination against” women, denies only those  
14 capable of pregnancy the ability to control their reproductive future and exacerbates women’s  
15 inequality. *Maher*, 515 A.2d at 159; *see also id.* (noting the “devastating effect” “discrimination”  
16 in the form of sex stereotyping laws “has had . . . upon women”); *N.M. Right to Choose*, 975 P.2d  
17 at 852–56.

18 59. Thus the coverage ban “disadvantage[s] women because of their sex[,] including  
19 their reproductive capabilities,” *Maher*, 515 A.2d at 160, and, as a result, it violates the ERA.

20 60. In the alternative, the coverage ban cannot withstand strict scrutiny because it is not  
21 narrowly tailored to advance a compelling state interest.

**REQUEST FOR RELIEF**

Wherefore, Petitioner requests relief in the following forms:

61. A writ of mandamus directing the Division to remove the abortion coverage ban from the Medicaid Services Manual and order that abortion care is eligible for reimbursement under the Nevada Medicaid program;

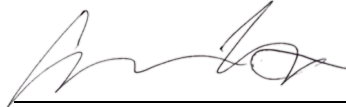
62. Reasonable costs and attorneys' fees pursuant to NRS 34.270; and

63. Any further relief the Court deems appropriate.



1 Dated this 28 day of August, 2023.

2 **AMERICAN CIVIL LIBERTIES**  
3 **UNION OF NEVADA**

4 

5 CHRISTOPHER M. PETERSON, ESQ. (13932)  
6 SADMIRA RAMIC, ESQ. (15984)  
7 4362 W. Cheyenne Ave.  
8 North Las Vegas, NV 89032  
9 Telephone: (702) 366-1226  
10 Facsimile: (702) 366-1331  
11 Emails: peterson@aclunv.org  
12 ramic@aclunv.org

13 REBECCA CHAN\*  
14 CHELSEA TEJADA\*  
15 ZORAIMA PELAEZ\*  
16 BRIGITTE AMIRI\*  
17 MING-QI CHU\*  
18 American Civil Liberties Union  
19 125 Broad Street, 18th Floor  
20 New York, NY 10004  
21 Telephone: (212) 549-2633  
22 Emails: rebeccac@aclu.org  
23 ctejada@aclu.org  
24 zpelaez@aclu.org  
bamiri@aclu.org  
mchu@aclu.org

*Attorneys for Petitioner*

\*Application for *pro hac vice* forthcoming

# **EXHIBIT 1**

## Nevada Medicaid Abortion and Miscarriage Claims by Procedure Code, Calendar Years 2018-2022 with Paid or Denied Status

Abortion services are covered by Nevada Medicaid only for pregnancy resulting from rape or incest or if the procedure is necessary to save the life of the mother. This includes treatment of incomplete, missed, or septic abortions under the criteria of medical necessity. This may include instances of miscarriage where a procedure is necessary to remove a naturally occurring death.

[https://www.medicaid.nv.gov/Downloads/provider/NV\\_Billing\\_Sterilization.pdf](https://www.medicaid.nv.gov/Downloads/provider/NV_Billing_Sterilization.pdf)

### Report and Location

---

DW \Jeremy Hays\2023.06\Data Request for Abortion Claims

A:\DHCFP Analytics Unit\OTRS Ad Hoc\Ticket#2023060800001234 — Data Request for Abortion Claims

### Timeframe

---

Claims data are from January 1, 2018 to December 31, 2022.

### Date that Data was Captured

---

June 28, 2023

### Disclaimer and Confidentiality Notice

---

This report is provided for the use of the intended audience only. If you are not an intended recipient, please notify sender immediately by e-mail and delete the report.

### Medicaid Data

---

*The Division of Health Care Financing and Policy (DHCFP) data warehouse is comprised of claims data submitted by over 35,000 Medicaid providers from within Nevada and across the country. While DHCFP staff conscientiously make every effort to validate these data through continuous provider education and the use of highly experienced audit staff, the Division relies heavily on providers to submit accurate and complete information on Medicaid patients. It should therefore be understood by the users of DHCFP reports on disease morbidity and patient health that the data source for these reports are based solely on patient claims data and may not be a complete and comprehensive health record.*

### Parameters

---

CPT Codes included: 01964, 59850, 59852, 59812, 59820, 59821, 59830, 59840, 59841, 59851, 59855, 59856, 59857

**Nevada Medicaid Abortion and Miscarriage Claims by Procedure Code, Calendar Years 2018-2022 with Paid or Denied Status**

	2018		2019		2020		2021		2022		Grand Total
	Denied	Paid	Denied	Paid	Denied	Paid	Denied	Paid	Denied	Paid	
<b>ABORTION</b>											
59840	2	1	6	3	6	1	4	1	3	1	28
59841	1	0	9	4	9	7	9	2	11	8	60
59850	0	0	1	0	0	0	0	0	0	0	1
59851	0	0	0	0	0	0	0	0	3	1	4
59855	2	0	4	0	4	4	14	4	8	1	41
59856	4	1	4	1	2	2	1	0	2	1	18
59857	0	0	0	0	0	0	0	0	0	1	1
<b>CARE OF MISCARRIAGE</b>											
59820	67	338	181	629	155	570	167	610	109	547	3,373
<b>TREAT UTERUS INFECTION</b>											
59830	0	0	0	2	0	0	0	1	2	2	7
<b>TREATMENT OF MISCARRIAGE</b>											
59812	30	124	85	233	101	300	119	322	82	357	1,753
59821	22	15	23	51	16	40	7	35	10	26	245
<b>Grand Total</b>	<b>128</b>	<b>479</b>	<b>313</b>	<b>923</b>	<b>293</b>	<b>924</b>	<b>321</b>	<b>975</b>	<b>230</b>	<b>945</b>	<b>5,531</b>

**Procedure codes and descriptions:**

Code	Description
59840	Induced abortion, by dilation of curettage
59841	Induced abortion, by dilation and evacuation
59850	Induced abortion, by one or more intra-amniotic injections (amniocentesis-injections), including hospital admission and visits, delivery of fetus and secundines
59851	Induced abortion, by one or more intra-amniotic injections (amniocentesis-injections), including hospital admission and visits, delivery of fetus and secundines; with dilation and curettage and/or evacuation
59855	Induced abortion, by one or more vaginal suppositories (e.g. prostaglandin) with or without cervical dilation (e.g. laminaria), including hospital admission visits, delivery of fetus and secundines
59856	Induced abortion, by one or more vaginal suppositories (e.g. prostaglandin) with or without cervical dilation (e.g. laminaria), including hospital admission visits, delivery of fetus and secundines; with dilation and curettage and/or evacuation
59857	Induced abortion, by one or more vaginal suppositories (e.g. prostaglandin) with or without cervical dilation (e.g. laminaria), including hospital admission visits, delivery of fetus and secundines; with hysterectomy (failed medical evacuation)
59820	Treatment of missed abortion, completed surgically, first trimester
59830	Treatment of septic abortion completed surgically
59812	Treatment of incomplete abortion, any trimester, completed surgically
59821	Treatment of missed abortion, completed surgically, second trimester

[https://www.medicaid.nv.gov/Downloads/provider/NV\\_Billing\\_Sterilization.pdf](https://www.medicaid.nv.gov/Downloads/provider/NV_Billing_Sterilization.pdf)

# **EXHIBIT 2**

1 **DECL**  
CHRISTOPHER M. PETERSON, ESQ. (13932)  
2 SADMIRA RAMIC, ESQ. (15984)  
**AMERICAN CIVIL LIBERTIES**  
3 **UNION OF NEVADA**  
4362 W. Cheyenne Ave.  
4 North Las Vegas, NV 89032  
Telephone: (702) 366-1226  
5 Facsimile: (702) 830-9205  
Emails: peterson@aclunv.org  
6 ramic@aclunv.org

7 *Attorneys for Petitioner*

8 *Additional counsel on next page.*

9  
10 **EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11  
12 SILVER STATE HOPE FUND, a domestic  
13 nonprofit,

14 Petitioner,

15 vs.

16 STATE OF NEVADA ex rel. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, DIVISION  
17 OF HEALTH CARE FINANCING AND POLICY,  
a public entity of the State of Nevada,

18 Respondent.

Case No.:

Department:

1 REBECCA CHAN\*  
2 CHELSEA TEJADA\*  
3 ZORAIMA PELAEZ\*  
4 BRIGITTE AMIRI\*  
5 MING-QI CHU\*  
6 American Civil Liberties Union  
7 125 Broad Street, 18th Floor  
8 New York, NY 10004  
9 Telephone: (212) 549-2633  
10 Emails: rebeccac@aclu.org  
11 ctejada@aclu.org  
12 zpelaez@aclu.org  
13 bamiri@aclu.org  
14 mchu@aclu.org

15 *Attorneys for Petitioner*

16 \*Application for *pro hac vice* forthcoming

1 **DECLARATION OF ERIN BILBRAY-KOHN, ON BEHALF OF SILVER STATE HOPE**  
2 **FUND, IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

3 I, Erin Bilbray-Kohn, under penalty of perjury declare:

- 4 1. I am over the age of 18 and I am competent to testify.  
5 2. I have personal knowledge of the facts set forth in this declaration.  
6 3. I submit this declaration in support of the Petition for Writ of Mandamus.  
7 4. From my work with Silver State Hope Fund, I am generally aware that Nevada Medicaid  
8 bans abortion care from coverage, with only a few limited exceptions.

9 **Silver State Hope Fund**

- 10 5. I am the Vice President and acting Executive Director of Silver State Hope Fund (“Silver  
11 State”).  
12 6. Silver State is a nonprofit organization that offers grants to people who do not have the  
13 resources to pay for their abortion care.  
14 7. Silver State believes that every person should have access to the future of their choice  
15 and strives to provide dignified access to abortion care through equitable funding.  
16 8. Silver State not only assists clients in paying for the cost of abortion care, but we also  
17 coordinate and fund practical support related to abortion care, such as travel, childcare,  
18 and lodging. We meet clients where they are and try to be as flexible as possible in the  
19 assistance we provide.  
20 9. Silver State prioritizes helping as many people as our resources permit. We also serve as  
21 a resource for people who need help navigating the system of abortion care in Nevada or  
22 just need someone to talk to.  
23 10. Silver State was established in 2014 after one of our founders learned that her private  
24 insurance would not cover the cost of her abortion. Fortunately, she was able to pull



1 together funds to pay for her care, but she knew that not all Nevadans have that ability.  
2 So, she started Silver State.

3 11. Since our founding, we have grown a great deal. Over the years, Silver State has  
4 established itself as a reliable resource for people seeking abortion care in Nevada. We  
5 get more calls and requests for funding now than ever before.

## 6 **Organizational Structure and Operations**

7 12. Silver State operates out of and has its P.O. Box in Las Vegas, Nevada. All Silver State  
8 board members, including myself, are located in Clark County, Nevada.

9 13. While the vast majority of our clients either live in or obtain abortion care in Clark  
10 County, Silver State serves clients from all corners of the state. Silver State also serves  
11 out-of-state clients who travel to Nevada for abortion care.

12 14. Silver State is primarily run by its board of directors. We currently have five board  
13 members, including myself, whose roles and responsibilities vary. Some board members  
14 are in charge of bookkeeping, some assist with operations, and others work on client  
15 intake and support clients in getting the assistance they need. Our board is representative  
16 of our community and we are all very involved in both the organization and our  
17 community.

18 15. Silver State also has about 50-60 volunteers. Volunteers usually give clients rides to their  
19 appointments or to and from their hotel rooms or the airport. At times or when requested,  
20 volunteers also sit with or accompany clients to their appointments. We try to pair clients  
21 with volunteers who can meet their particular needs. For example, if we have a client  
22 who needs a ride to an appointment and only speaks Spanish, we do our best to find a  
23 Spanish-speaking volunteer who can help that client.

1 16. As Vice President and acting Executive Director, I am responsible for running the day-to-  
2 day operations, fundraising, and working with our bookkeeper and accountant to make  
3 sure our invoices and bills are paid. I am also responsible for drafting and presenting the  
4 budget to the board.

5 17. Other board members and volunteers are primarily responsible for interacting with  
6 clients, but when no one else is available, I step in and respond to intake requests or take  
7 clients to their appointments.

8 18. Recently, we have had more people calling Silver State who need funding than we have  
9 funds: Since the Supreme Court's decision in *Dobbs*, Silver State has seen a significant  
10 increase in the number of clients seeking assistance. Given this demand, we are typically  
11 only able to fund part of our clients' care. It's a very stressful and painful situation for our  
12 board because we don't want to turn anyone away or say no to someone in need, but our  
13 resources are stretched thin.

#### 14 **Silver State's Clients**

15 19. Clients contact Silver State through a form on our website. We respond to most requests  
16 within 24 hours through the client's preferred contact method (i.e., phone, email, text).

17 20. When we first speak to clients, we try to gauge their comfort level by asking whether  
18 they are safe and can talk privately. We then try to determine what their needs are and the  
19 level of assistance we can offer. We ask questions like, "Do you have an appointment at a  
20 clinic?" or "How far along are you?"

21 21. If the client is seeking abortion care at a Nevada clinic, they will schedule their  
22 appointment first, and after that, we send a pledge to the clinic to pay a certain amount  
23 for the client's care. Within 30 days of the procedure, the clinic sends us an invoice and  
24 we send payment directly to the clinic.

1 22. The amount we pledge per client varies depending on our resources at the time and the  
2 cost of care. The further along a pregnancy is, the more expensive the abortion can be.  
3 The average cost of a procedural abortion in Las Vegas for an in-state client is \$600, with  
4 later procedures costing up to \$2,500.

5 23. If the client needs help with something other than the cost of abortion care, such as help  
6 paying for a hotel room or airline ticket, someone at Silver State will take care of booking  
7 the flight or hotel room and pay for it with Silver State's company credit card.

8 24. Since November 2022, Silver State has received 752 requests for assistance and has  
9 pledged over \$88,000 to cover the cost of abortion care. This amount does not include  
10 practical support, such as travel or lodging funds, that people need to get to their  
11 appointment, which we also provide. During this time, we have provided financial  
12 assistance for abortion care to approximately 274 people.

13 25. Silver State never asks why a client is seeking abortion care, but clients often share  
14 details about their backgrounds and reasons for seeking assistance.

15 26. Because Silver State's board works closely with our clients to help them secure funding  
16 for the care and resources they need, we regularly hear about the challenges they are  
17 facing.

18 27. From conversations with clients and board members, I have learned that barriers to  
19 seeking and financing abortion care are particularly high for clients that identify as  
20 people of color, poor and low-income people, young people, people with disabilities, and  
21 LGBTQ people.

22 28. Our clients are already facing a number of challenges like unemployment, housing and  
23 food insecurity, domestic abuse, and a lack of health care generally. Many of them are  
24

1 also already parents who are struggling to make ends meet and are not in a position either  
2 physically, emotionally, financially, or mentally to continue their pregnancies.

3 29. Almost everyone who calls Silver State is low-income. Nearly half of our clients make  
4 less than \$10,000 a year, and another 20% make under \$25,000. For these clients, a  
5 pledge from Silver State can be the decisive factor in getting the care they need.

6 30. From conversations with clients and board members, I am aware of many Silver State  
7 clients who were on Medicaid or eligible for Medicaid when they were seeking our  
8 assistance. Indeed, the majority of people who contact us for assistance would meet the  
9 income criteria to be eligible for Nevada Medicaid, even if they are ineligible for other  
10 reasons.

11 31. Some Silver State clients are not eligible for Medicaid because they make more money  
12 than the threshold amount, but nevertheless also struggle to pay for abortion care because  
13 of private insurance restrictions or high deductibles that push care out of reach. There are  
14 also confidentiality concerns for those who are insured under another person's plan (like  
15 a parent or spouse). Clients also struggle to pay for abortion care because of intimate  
16 partner violence; abusive partners frequently try to control their partner's finances and  
17 reproductive decisions. In addition, we serve many immigrant and undocumented clients  
18 who are ineligible for Medicaid.

### 19 **Impact of the Medicaid Coverage Ban**

20 32. Because of the Medicaid coverage ban, Silver State has had to cover the cost of abortion  
21 care for otherwise Medicaid-eligible Nevadans. This has strained our resources and our  
22 ability to provide financial support to abortion seekers in Nevada.

23 33. If not for the Medicaid coverage ban, Silver State would use its resources to cover the  
24 cost of care for low-income Nevadans without Medicaid coverage and for people

1 traveling to Nevada for abortion care. Silver State would also use its funds to pay for  
2 needs that are related to obtaining abortion care, such as travel or lodging expenses.

3 34. Nearly everyone who reaches out to Silver State for financial assistance needs more  
4 support than we are currently able to provide. Many of our clients are forced to delay  
5 their procedures in order to raise funds to cover the cost of care. On top of that, they may  
6 also have to arrange child care, find a ride to their appointment, or secure lodging, which  
7 can push clients further into their pregnancies and increase the cost of care they were  
8 already struggling to afford.

9 35. People traveling to Nevada for abortion care also need financial assistance for the cost of  
10 care and travel expenses. Since *Dobbs*, we have seen an increase in requests for  
11 assistance from people in states like Texas and Arizona.

12 36. We are committed to helping all these clients get the care they need. But with limited  
13 resources, we are forced to make hard decisions that we know can have life-changing  
14 consequences. For many of our clients, we know that denial of funding may as well be  
15 denial of the procedure itself.

16 37. I have heard from clients who do everything in their power to cover the cost of their care,  
17 including picking up extra shifts at work, approaching extended family members for  
18 funds, and even incurring credit card debt they cannot afford. Even then, many people  
19 come up short and rely on Silver State for assistance.

20 38. We hear from clients daily who have no one in their lives they can turn to for financial or  
21 emotional support and who are struggling to make ends meet as it is. When we are able to  
22 help, clients go out of their way to express how appreciative they are and how critical our  
23 support is to their ability to have an abortion.

24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

39. Every human deserves dignified access to health care, including abortion care. Nevadans who qualify for or are on Medicaid shouldn't be forced to scrape together funds or resort to extreme efforts to pay for essential healthcare to which they are already entitled.
40. Likewise, Silver State should not be put in the position of turning away clients or funding only part of their care because our resources are strained by the Medicaid coverage ban.

1  
2 I declare under the penalty of perjury that the foregoing is true and correct.

3  
4 Executed on August 25, 2023

5 X Erin Bilbray-Kohn

6  
7  
8 Erin Bilbray-Kohn  
9 Vice President and acting Executive  
10 Director, Silver State Hope Fund  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# **EXHIBIT 3**



**DECLARATION OF PETITIONER’S COUNSEL IN SUPPORT OF PETITION FOR  
WRIT OF MANDAMUS**

CHRISTOPHER PETERSON makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada;
2. I am familiar with the facts and circumstances of this case;
3. I am an attorney of record for Petitioner SILVER STATE HOPE FUND in the above matter;
4. I have read SILVER STATE HOPE FUND’s Petition for Writ of Mandamus.
5. I know the contents of those filings referenced in Paragraph 4 of this affidavit and their attached exhibits, and that the same are true of either my own knowledge, through information provided by client, or through publicly available sources whose veracity cannot be reasonably be case into doubt.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 28th day of August, 2023.

/s/ Christopher Peterson

Christopher Peterson

Legal Director

ACLU of Nevada