



State of New Mexico  
**House of Representatives**  
STATE CAPITOL  
Santa Fe

April 28, 2020

The Honorable Michelle Lujan Grisham  
Governor, State of New Mexico  
State Capitol Building  
490 Old Santa Fe Trail, Room 400  
Santa Fe, NM 87501

Dear Governor:

The words “justice,” “fairness,” and “equity” get tossed about a lot these days. We are writing to you today about a situation that is increasingly unjust, unfair, and inequitable—the trampling of New Mexicans’ civil rights and economic livelihoods. Our people are suffering.

As Governor, your first priority is to uphold the law. Rather than operating within the limits of your legal authority and partnering with the public, you have chosen to frighten the populace into compliance. Instead of recognizing New Mexicans’ civil rights and their legitimate concerns about their financial well-being, you have resorted to edict and intimidation.

Where is your respect for the people who elected you when you threaten them with \$5,000 fines, jail time of up to 6 months and revocation of their state-issued licenses, simply for wishing to exercise their God-given rights? Where is your regard for the legal limitations on your authority as Governor? The citizens of New Mexico are not criminals. They are your constituents.

The purpose of the Public Health Emergency Response Act is to “provide the state of New Mexico with the ability to manage public health emergencies **in a manner that protects civil rights and the liberties of individual persons.**” All case law related to police powers and civil rights indicates that such authority must be restricted to the least intrusive impact on civil liberties possible. Having been advised by attorneys from across the state, we are compelled to explain the legal limitations of your administration in the enforcement of public health orders.

It is true that businesses can be issued a citation related to a public health order under the Public Health Act (Section 24-1-21 NMSA) with a potential fine of up to \$100 a day and/or up to 6 months in the county jail. But this citation is a petty misdemeanor, meaning it may be challenged in local magistrate or metro court and the defendant has the right to demand a jury trial. Local district attorneys who are already struggling with heavy caseloads due to our state’s out-of-control crime problem would have their hands full pursuing these charges.

Further, you have threatened fines of up to \$5,000 per day for multiple violations of the Public Health Act. The \$5,000 fines only apply to violations of the Public Health Emergency Response Act. This act has nothing to do with business closures or mass gatherings, and the penalties in one act cannot be applied to a violation of the other. And there is no provision in either act which allows the Governor to strip a business license.

After a month of forced closures throughout the state, we are hearing from a growing number of small business owners who are at their financial breaking point. New Mexico companies are going out of business at a rapid clip. As of April 22<sup>nd</sup>, almost 80,000 New Mexicans were receiving unemployment, with thousands more unable to file because of inadequate processing capability at the Department of Workforce Solutions. Domestic violence is on the rise. Snowballing suicide, drug abuse, and alcohol abuse will increasingly manifest themselves. The unseen victims of the coronavirus outbreak are suffering more with each passing day. And with oil industry tax revenues drying up, the state is now experiencing a fiscal crisis from which it may never fully recover. Whatever federal funds we can land will not be enough to overcome this economic tidal wave.

New Mexico-owned businesses and the people they employ have a constitutional right to equal protection under the law. Given this discriminatory situation and the recent extension of your Public Health lockdown until May 15, there is growing restlessness in communities throughout New Mexico and ever louder demands that we come to a commonsense balance between protecting people's health and preserving their civil and economic rights.

Is it *fair* that big box retailers and national chain grocers are able to remain open while New Mexico's small businesses are forcibly shut down?

Is it *just* to deny patients preventive screenings and postpone short-stay surgeries in order to leave unfilled beds far in excess of anticipated immediate demand, to the point where our hospitals are now laying off critical medical staff?

Is it *equitable* that government, university and other higher-income salaried professionals continue to receive their paychecks and benefits while the poorest among us are unable to earn a living?

Across the state, local elected leaders have expressed their frustration with your "one size fits all" approach of ever stricter prohibitions on small businesses, particularly in counties with limited COVID-19 cases. More and more New Mexicans are getting increasingly restless and are going to begin taking matters into their own hands, which could cause the virus to get out of control despite all of our best intentions.

Everyone agrees that efforts to reopen our state's economy must be undertaken with the greatest of care and full observance of all CDC guidelines. Saving the lives of the elderly and others who have pre-existing medical conditions is still paramount in the minds of every New Mexican. But many county and city commissions are adopting resolutions and proclamations calling on local small businesses to consider opening up as soon as May 1. This date is in line with neighboring states, such as Texas and Colorado, which have already announced plans to begin reopening within the next week or so.

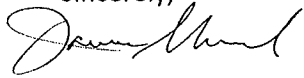
New Mexico is a large and diverse state and efforts to protect public health while allowing small businesses to begin reopening should be based on what makes sense in each community. Some communities may determine to remain closed for a while longer. Others, meanwhile, are ready to reopen in a measured and safe manner. All can claw back increasing openness if circumstances require them to.

Governor, we believe there is very little time remaining for you to work with local community leaders to keep the situation from devolving into social chaos. Local officials were elected by the people just as you were, and they have a front-row seat to the carnage this is causing, not only to their economies but to

the health of their people. We are already witnessing increasing civil disobedience and we fear that given the number of people who have seen their livelihoods stripped away, that disobedience may become increasingly uncivil. As elected officials in New Mexico, we simply cannot allow that to happen.

We can and want to work together with you in bipartisan fashion on this, but time is running out. We respectfully request a meeting of the minds, using all appropriate social distancing protocols, as soon as possible.

Sincerely,



Jim Townsend  
Republican Floor Leader- HD 54



Rod Montoya  
Republican Whip- HD 1




Candy Spence Ezzell  
Republican Caucus Chair- HD 58



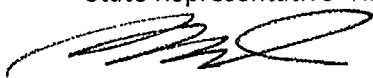
David Gallegos  
State Representative- HD 61



Cathrynn Brown  
State Representative- HD 55



Randy Crowder  
State Representative- HD 64



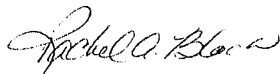
Rebecca Dow  
State Representative- HD 38



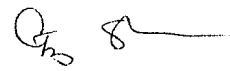
James Strickler  
State Representative- HD 2



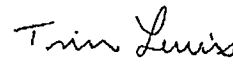
Martin Zamora  
State Representative- HD 63



Rachel Black  
State Representative- HD 51



Gregg Schmedes  
State Representative- HD 22



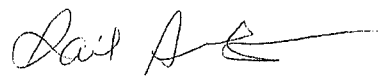
Tim Lewis  
State Representative- HD 60



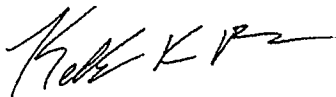
Jason Harper  
State Representative- HD 57



Alonzo Baldonado  
State Representative- HD 8



Gail Armstrong  
State Representative- HD 49



Kelly Fajardo  
State Representative- HD 7



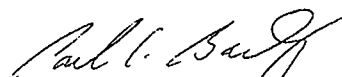
Bill Rehm  
State Representative- HD 31



Jane Powdrell-Culbert  
State Representative- HD 44



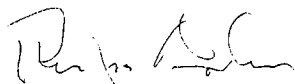
Greg Nibert  
State Representative- HD 59



Paul Bandy  
State Representative- HD 3



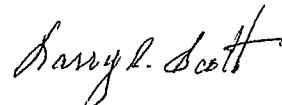
Jack Chatfield  
State Representative- HD 67



Phelps Anderson  
State Representative- HD 66



Zach Cook  
State Representative- HD 56



Larry Scott  
State Representative- HD 62