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Friday, September 15, 2023  
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## House & Senate GOP, RPNM, and others file legal action against MLG

ALBUQUERQUE — Yesterday, legal action was taken against Governor Michelle Lujan Grisham's two unconstitutional executive orders in the State Supreme Court. The lawsuit, filed by the Senate and House Republican Legislative Caucuses, the Republican Party of New Mexico, and gun rights advocacy groups was filed in the New Mexico Supreme Court. In addition to citing the blatant violation of the 2nd Amendment of the U.S. Constitution, the suit challenges the Governor's misuse of statutory emergency powers through the public health emergency order.

*"We are thankful for the resounding support we have received throughout New Mexico as we are standing up and defending our American freedoms," said House Republican Leader Ryan Lane (Aztec). "We are filing in the New Mexico Supreme Court to continue the fight to defend our constitutional rights. We cannot allow one political stunt to undermine a document that guarantees our rights and has been a beacon of hope for so many globally. We are confident that our State Supreme Court will expedite this request and make certain our fundamental freedoms still hold strong and are upheld. From day one, we have made it clear that action on crime should be taken up with the Legislature and not played out on national media under a stunt that was destined to fail. We will continue to push the practical and commonsense crime reforms that we know will work in New Mexico to help save lives. We look forward to robust debate on our legislation, instead of the silencing of these topics, as now the world is watching how we solve the crime problems plaguing our communities."*

*"Our fight is not over," said Senate Republican Leader Greg Baca (Belen). "We intend to ensure that the temporary restraining order becomes permanent injunctive relief. We will not let up the pressure until we ensure no New Mexican is subjected to the removal of their rights through executive order ever again."*

*"The Republican Party of New Mexico and every Republican in our state legislature have united to fight against the tyrannical actions of Governor Michelle Lujan Grisham and NM Secretary of Health Patrick M. Allen," said RPNM Chairman Steve Pearce. "We are honored to have the largest gun rights group in the nation, the National Rifle Association(NRA), retired law enforcement, and a group of bipartisan New Mexican gun owners join us in this legal battle. If*

*we don't hold Gov. Lujan Grisham's unlawful actions accountable now, future politicians may exploit public health emergencies to implement any unconstitutional efforts they see fit. The governor's stunt is just the beginning. We are fighting to protect the constitutional rights of not just every New Mexican but every American."*

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

DAWN AMDOR, STEPHANIE SEDILLO,  
JEREE TOMASI, RETIRED LAW  
ENFORCEMENT OFFICERS GARY  
AINSWORTH, SHAWN BLAS, RUBEN  
CHAVEZ, CRAIG MARTIN, and JOE POLISAR,  
HOUSE MINORITY FLOOR LEADER T. RYAN  
LANE and REPRESENTATIVES GAIL  
ARMSTRONG, BRIAN BACA, JOHN BLOCK,  
CATHRYNN BROWN, JACK CHATFIELD,  
MARK DUNCAN, CANDY SPENCE EZZELL,  
JASON HARPER, JOSHUA HERNANDEZ,  
JENIFER JONES, STEPHANI LORD, ALAN  
MARTINEZ, JIMMY MASON, TANYA MOYA,  
ROD MONTOYA, GREG NIBERT, RANDALL  
PETTIGREW, ANDREA REEB, WILLIAM  
REHM, LARRY SCOTT, LUIS TERRAZAS, JIM  
TOWNSEND, HARLAN VINCENT, and  
MARTIN ZAMORA, SENATE MINORITY  
FLOOR LEADER GREGORY BACA and  
SENATORS CRAIG BRANDT, WILLIAM  
BURT, CRYSTAL DIAMOND BRANTLEY,  
DAVID GALLEGOS, RON GRIGGS, STUART  
INGLE, MARK MOORES, STEVEN NEVILLE,  
CLIFF PIRTLE, JOSHUA SANCHEZ, GREGG  
SCHEMEDES, WILLIAM SHARER, and PAT  
WOODS, THE REPUBLICAN PARTY OF NEW  
MEXICO, THE LIBERTARIAN PARTY OF  
NEW MEXICO, and THE NATIONAL RIFLE  
ASSOCIATION OF AMERICA,

Petitioners,

vs.

No. \_\_\_\_\_

MICHELLE LUJAN GRISHAM, in her official  
capacity as Governor of New Mexico, and  
PATRICK ALLEN, in his official capacity as  
Secretary of the Department of Health,

Respondents.

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**VERIFIED PETITION FOR EXTRAORDINARY WRIT  
AND REQUEST FOR STAY**

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**Oral Argument Is Requested**

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## BACKGROUND

This case involves two executive orders issued by the Governor under the Emergency Powers Code, NMSA 1978, § 12-9B-1, and the Public Health Emergency Order issued on September 8, 2023. *See* N.M. Dep’t of Health, Public Health Emergency Order at 1, 3 (issued Sept. 8, 2023) (Exhibit 1 to this Petition) (“PHEO”). One of the executive orders declares a public health emergency “due to gun violence,” *see* State of N.M., Executive Ord. 2023-130 (issued Sept. 8, 2023) (Exhibit 2 to this Petition) (“EO 130”); the other declares a public health emergency “due to drug abuse,” *see* State of N.M., Executive Ord. 2023-132 (issued Sept. 8, 2023) (Exhibit 3 to this Petition) (“EO 132”). The resultant PHEO imposes a stringent ban on carrying firearms, currently only applicable in Bernalillo County; requires monthly inspections of licensed firearms dealers; requires the compilation and issuance of “a comprehensive report on gunshot victims,” including their demographic data, their “healthcare outcomes,” and other information; mandates “wastewater testing for illicit substances, such as fentanyl, at all public schools”; “immediately suspend[s] the Juvenile Detention Alternative[s] Initiative”; dispatches officers from the Department of Public Safety to “work with” Bernalillo County law-enforcement agencies; and requires Department of Public Safety officers to “assist in [the] apprehension of individuals with outstanding arrest

warrants.” PHEO at 1-2. It states that “civil administrative penalties” may be imposed on violators. *See id.* at 2.

Both executive orders state that “emergency financial resources in an amount not to exceed seven hundred and fifty thousand dollars (\$750,000.00)” shall be made available “for the purpose of complying with [each] Order.” EO 130; EO 132. The two orders are to remain in effect until October 6, 2023, but both claim that “the foregoing situation constitutes a statewide public health emergency of unknown duration,” *id.*; the PHEO thus expressly contemplates “subsequent renewals of those public health emergency declarations,” into the indefinite future, *see* PHEO at 3.

The Court should strike down not just the PHEO, which as of yesterday has been temporarily and partially enjoined by a federal court<sup>1</sup> for being patently violative of the federal Second Amendment, but should issue a writ vacating or commanding withdrawal of the executive orders, and clarify for the Governor, the public, and posterity that gun violence and drug abuse are not “public health emergencies” allowing the arrogation of plenary emergency powers, and that the Legislature’s carefully-considered, comprehensive, and uniform statewide scheme for regulating the carrying of firearms cannot be blown up in an instant by executive

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<sup>1</sup> The temporary restraining order issued in the District of New Mexico enjoins the Governor from enforcing two of the eight directives in the PHEO (both related to firearms), until October 3, 2023. *See Nat’l Assoc. for Gun Rights, et al. v. Lujan Grisham, et al.*, 1:23-CV-00771-DHU-LF, 2023 WL 5951940, at \*4-5 (D.N.M. Sept. 13, 2023).

fiat. The Court should hear this Petition and decide these issues on the merits regardless of whether the current PHEO is put back into full effect, is voluntarily withdrawn, or is superseded by another order, as the deeper legal issues involved are of paramount importance and are “capable of repetition yet evading review.” *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶¶ 29-32, 140 N.M. 77, 140 P.3d 498; *see also In re Fin. Oversight & Mgmt. Bd.*, 16 F.4th 954, 961-62 (1st Cir. 2021) (describing “the ‘voluntary cessation’ exception to mootness, which provides that a defendant’s voluntary cessation of putatively illegal or unconstitutional conduct will not moot a case, unless the defendant ‘meets “the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur”” (citations omitted)).

### **JURISDICTION AND CIRCUMSTANCES NECESSITATING EXTRAORDINARY WRIT**

“Article VI, Section 3 of the New Mexico Constitution gives this Court original jurisdiction in mandamus against all state officers and the power to issue writs of mandamus and all other writs necessary or proper for the complete exercise of its jurisdiction.” *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 21, 487 P.3d 815 (alterations, quotations omitted). Mandamus is “the proper remedy to compel the performance of an official act by a public officer,” *State ex rel. Richardson v. Fifth Judicial Dist. Nominating Comm’n*, 2007-NMSC-023, ¶ 9, 141 N.M. 657, 160

P.3d 566 (quotations omitted), but “the writ may also be used in appropriate circumstances in a prohibitory manner to prohibit unconstitutional official action,” *State ex rel. Sugg v. Oliver*, 2020-NMSC-002, ¶ 7, 456 P.3d 1065 (quotations omitted). The Court has described these circumstances in *State ex rel. Sandel v. N.M. Pub. Util. Comm’n*, 1999-NMSC-019, 127 N.M. 272, 980 P.2d 55.

Under the *Sandel* test, mandamus “will lie when the petitioner presents a purely legal issue concerning the non-discretionary duty of a government official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.”

*Riddle*, 2021-NMSC-018, ¶ 24 (quoting *Sandel*, 1999-NMSC-019, ¶ 11).

First, the Governor’s exercise of emergency powers with respect to “gun violence” and “drug abuse” itself “implicates fundamental constitutional questions of great public importance.” *Id.* But these orders also involve questions of separation of powers and constitutional rights, which this Court has found sufficient to warrant the exercise of original jurisdiction. *See, e.g., In re Adjustments to Franchise Fees*, 2000-NMSC-035, ¶ 7, 129 N.M. 787, 14 P.3d 525 (“We deemed this issue to be a fundamental constitutional question of great public importance because it implicated the doctrine of separation of powers.” (citing *Sandel*, 1999-NMSC-019, ¶¶ 11, 30)).

Second, these issues “can be answered on the basis of virtually undisputed facts,” *Riddle*, 2021-NMSC-018, ¶ 24; they are, in broad strokes: (1) whether “gun

violence” and “drug abuse” constitute “public health emergencies” as defined in the Emergency Powers Code, *see* NMSA 1978, § 12-9B-1; **(2)** whether the Governor “infringe[d] on the legislative branch,” thereby violating the separation of powers, by implementing “substantive policy changes in an area of law reserved to the Legislature,” *Grisham v. Romero*, 2021-NMSC-009, ¶ 34, 483 P.3d 545; *see also* N.M. Const. art. III, § 1; and **(3)** whether the orders violate the civil rights and liberties safeguarded by the state and federal constitutions. All require “a legal and not a factual determination,” so the Court should “not hesitate to accept the responsibility of rendering a just and speedy disposition.” *State ex rel. Bird v. Apodaca*, 1977-NMSC-110, ¶ 5, 91 N.M. 279, 573 P.2d 213.

Finally, given the nature of the rights at issue and the time sensitivity of the requested relief—which includes a stay of the PHEO’s requirements, including those not addressed by the federal court—“an early resolution of this dispute is desirable.” *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 17, 120 N.M. 562, 904 P.2d 11. “[T]he possible inadequacy of other remedies and the necessity of an early decision on this question of great public importance” make this a case in which it is “necessary [and] proper to seek the writ in the supreme court.” *Id.* ¶ 16; *see also* Rule 12-504(B)(1)(b) NMRA.

## THE PARTIES

The Petitioners are a broad coalition of ordinary Bernalillo County residents who regularly exercise their constitutional and statutory right to carry a firearm, retired law enforcement officers, state legislators, two major political parties, and a prominent national advocacy group for the right to bear arms.

Petitioner Dawn Amdor is a Bernalillo County resident and former President of the Del Norte Gun Club; she is a licensed firearms instructor. Petitioner Stephanie Sedillo is a Bernalillo County resident and NRA firearms instructor. Petitioner Jeree Tomasi is a concealed-carry license holder and a resident of Bernalillo County. These three Petitioners regularly exercise their right to bear arms in ways that would now violate the PHEO.

Petitioner Joe Polisar is a Bernalillo County resident and former Chief of Police of the Albuquerque Police Department. Petitioner Gary Ainsworth is a Bernalillo County resident and retired Senior Special Agent with the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”). Petitioner Ruben Chavez is a retired law enforcement officer residing in Bernalillo County; he served with the Las Cruces Police Department from 1984-1988, and was an ATF agent from 1988 to 2014. Petitioner Shawn Blas is a resident of Bernalillo County, a former law enforcement officer, and an owner of Integrity Firearms, LLC, a firearms dealer located in Bernalillo County. As an owner and operator of Integrity Firearms,

Mr. Blas is also affected by the portions of the PHEO regarding firearms dealers. Petitioner Craig Martin is a retired law enforcement officer and has also been certified as a firearms instructor since 2004. While Mr. Martin is a resident of San Miguel County, he regularly travels to Bernalillo County for his work. Petitioners Polisar, Ainsworth, Chavez, and Martin are all certified to carry a firearm, whether openly or concealed, under state and federal law.<sup>2</sup> Mr. Blas has previously been licensed to carry a concealed firearm in New Mexico and is in the process of renewing that license.

All Republican Members of the Legislature, including the minority floor leaders of the House and Senate (Representative T. Ryan Lane and Senator Greg Baca) and the complete rank and file of both chambers, and including those Members representing Bernalillo County (Senators Mark Moores and Gregg Schmedes and Representatives Bill Rehm and Stephani Lord), are Petitioners. As state legislators, they have a special interest both in protecting the individual rights of their constituents and in the separation-of-powers issues raised in this Petition.

The Republican and Libertarian Parties of New Mexico are two of the three existing “major parties” under New Mexico law, and are Petitioners here. NMSA

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<sup>2</sup> The Law Enforcement Officers Safety Act, Pub. L. No. 108-277 (2004), allows qualified retired law enforcement officers to concealed carry in any jurisdiction in the United States. Their omission from the (two-item) list of persons excluded from the PHEO’s gun ban is clearly preempted by federal law.



1978, § 1-7-7(A). These parties share a philosophical aversion to undue restrictions on individual liberties and have a strong interest in protecting the civil rights of their members and of the public at large, as well as in protecting the legislative process from executive interference and overreach. National Rifle Association of America is a 501(c) non-profit and Second Amendment and firearm-rights advocacy organization with over four-million members nationwide, and is likewise a Petitioner.

Respondent Michelle Lujan Grisham is the Governor of New Mexico, and she issued the two Executive Orders at issue here. Respondent Patrick Allen is the Secretary of the Department of Health, and he issued the PHEO.

## **THE GROUNDS FOR THE PETITION**

### **I. “Gun Violence” and “Drug Abuse” are not “Public Health Emergencies”.**

Two executive orders are at issue here: one declares “gun violence” a public health emergency, and the other does the same with “drug abuse.” *See* EO 130 (declaring a public health emergency “due to gun violence”); EO 132 (declaring a public health emergency “due to drug abuse”). Arising from these executive orders is the “Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring and Other Public Safety Measures,” signed by Department of Health Secretary Patrick Allen on the same day. *See* PHEO at 1, 3. With few exceptions, the PHEO bans possession of a firearm, “either openly or concealed,

within cities or counties” that have crime rates and numbers of “firearm-related emergency department visits” at certain levels. *Id.* at 1-2. It also requires the collection of gunshot victims’ demographic and medical information, *see id.* at 2, the testing of public schools’ sewage “for illicit substances,” *id.*, and the suspension of “the Juvenile Detention Alternative[s] Initiative,” *id.* (a program intended to “reduce juvenile out-of-home placement, especially for youth of color,” Bernalillo County Juvenile Justice Collaborative, 2021 Deep End Performance Measures; *see also* Bernalillo County, JDAI Pamphlet 2023<sup>3</sup>).

According to the PHEO, the legal authority for these measures stems from the Public Health Act, NMSA 1978, §§ 24-1-1 to -40 (“PHA”), the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 to -19 (“PHERA”), Department of Health Act, NMSA 1978, §§ 9-7-1 to -18 (“DOH Act”), and the “inherent constitutional police powers of the New Mexico state government.” These are exactly the same authorities upon which the Governor relied to issue orders related to the COVID-19 pandemic. *Cf. Romero*, 2021-NMSC-009, ¶ 4; *Grisham v. Reeb*, 2021-NMSC-006, ¶ 3, 480 P.3d 852. They require that the problems of “gun

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<sup>3</sup> Accessible at these links, respectively: <https://www.bernco.gov/health-and-public-safety/wp-content/uploads/sites/60/2021/12/2021-Deep-end-Performance-Measures-Power-Point-updatedfinal5-12-2021-today.cs.edits.11.19.21-002.pdf>; <https://www.bernco.gov/health-and-public-safety/wp-content/uploads/sites/60/2023/09/JDAI-Pamphlet-2023.pdf> (last visited Sept. 13, 2023).

violence” and “drug abuse” identified in the PHEO be “public health emergencies” within the meaning of PHERA. *See* PHEO at 1.

As defined in PHERA, a “‘public health emergency’ means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof[.]” NMSA 1978, § 12-10A-3(G).<sup>4</sup> In applying this definition to the COVID-19 pandemic, this Court took judicial notice of the fact that COVID-19 is “a ‘highly contagious and potentially fatal’ disease,” which had resulted in millions of cases and hundreds of thousands of deaths across the United States. *See Romero*, 2021-NMSC-009, ¶¶ 2-7; *Reeb*, 2021-NMSC-006, ¶¶ 22-23; *see also Legacy Church, Inc. v. Kunkel*, 472 F. Supp. 3d 926, 1066 (D.N.M. July 13, 2020), *aff’d sub nom. Legacy Church, Inc. v. Collins*, 853 F. App’x 316 (10th Cir. 2021) (noting the “scientific consensus regarding the coronavirus” that it “is highly contagious and potentially fatal”).<sup>5</sup> The Court described PHERA as “tailoring the DOH’s existing

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<sup>4</sup> Although the PHEO and executive orders describe this as a “public health emergency” under PHERA and not a “condition of public health importance” under the PHA, the Petitioners note that the latter “means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community,” NMSA 1978, § 24-1-2(A)—which definition is arguably even more explicitly aimed at medical conditions and contagions like COVID-19 than is the “dangerous condition” language in PHERA.

<sup>5</sup> The Court also cited *Jacobson v. Massachusetts*, 197 U.S. 11, 30-31 (1905), in which the United States Supreme Court upheld vaccination requirements intended “to meet and suppress the evils of a smallpox epidemic that imperiled an entire population.” As in *Reeb* and *Romero*, the

authority under the PHA to address the spread of an infectious disease through vaccination, isolation and quarantine of persons,” in addition to providing “due process protections for the public.” *Reeb*, 2021-NMSC-006, ¶ 26, 480 P.3d 852.

The construction of “public health emergency” proposed by these executive orders—*i.e.*, that the same definition applicable to COVID-19 also extends to “gun violence” and “drug abuse”—has no comparable “scientific consensus,” and none is proposed in either order. *See* NMSA 1978, § 12-10A-5(B)(1), (3) (requiring an executive order pursuant to PHERA to specify “the nature of the public health emergency” and “the conditions that caused the public health emergency”). The stated bases for EO 130 are five-year-old statistics about “the rate of gun deaths” from 2009 to 2018, and five instances of gun violence in 2023.<sup>6</sup> The basis for EO 132 is a “trend of drug abuse,” including an “increase in drug-related deaths,” as well as the “social and economic burdens of drug addiction.” Neither involves “address[ing] the spread of an infectious disease through vaccination, isolation and

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*Jacobson* Court looked to infection and mortality rates and the history of containment efforts, *see id.* at 33 n.1, against the backdrop that “[s]mallpox is known of all to be a dangerous and contagious disease,” *id.* at 34 (quotations omitted).

<sup>6</sup> EO 130 also indicates that “guns are the leading cause of death among children and teens in New Mexico,” but that assertion does not appear in the most recent *Child Fatality Review*. *See* N.M. Dep’t of Health, *New Mexico Child Fatality Review 2022 Report* (Jan. 31, 2023), <https://www.nmhealth.org/publication/view/report/8272> (last visited Sept. 13, 2023). According to the most recent report by the Office of the Medical Investigator, “[t]he most common manner of death among children was natural, contributing 21.95% of the total.” Off. of Med. Investigator, *Annual Report* (2021), [https://hsc.unm.edu/omi/\\_docs/pdfs/ar2021.pdf](https://hsc.unm.edu/omi/_docs/pdfs/ar2021.pdf) (last visited Sept. 13, 2023); *see also* Off. of Med. Investigator, *Annual Reports Page*, <https://hsc.unm.edu/omi/reports> (last visited Sept. 13, 2023) (showing 2021’s as the most recent available report).

quarantine of persons.” *Reeb*, 2021-NMSC-006, ¶ 26. Even assuming *arguendo* that the dual “public health emergencies” identified in the executive orders are “generally known” or can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” Rule 11-201(B) NMRA, they are easily distinguishable from the growing infection and mortality figures of the “highly contagious and potentially fatal” COVID-19 pandemic that triggered the emergency powers under PHERA, *cf. Romero*, 2021-NMSC-009, ¶¶ 2-7; *Reeb*, 2021-NMSC-006, ¶¶ 22-23. It is perhaps illustrative of the difference that the United States Supreme Court has described “firearm violence” as “a perceived societal problem,” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2131 (2022) (citing *D.C. v. Heller*, 554 U.S. 570, 634 (2008)), where it has described COVID-19 as “a highly contagious, dangerous, and . . . deadly disease,” *Biden v. Missouri*, 142 S. Ct. 647, 652 (2022), and a “public health crisis,” *Republican Nat’l Cmte. v. Democratic Nat’l Cmte.*, 140 S. Ct. 1205, 1208 (2020) (Ginsburg, J., dissenting).

Lest the Petitioners come across as fearmongering or histrionic for pointing out the dangers inherent in allowing the Governor to predicate the arrogation of emergency powers on such an open-ended conception of “public health,” they will simply recite the Governor’s own words, which adequately convey the consequences of this extreme expansion of executive discretion:

*Everything* is a public-health issue. Gun violence is a public-health issue. Poverty is a public-health issue. Environmental consequences

from energy is a public-health issue. All of these disenfranchised populations, all of the equity barriers, are all public-health issues.

Embedded Video at 10:39-56, Amy Lunday, *Michelle Lujan Grisham Champions Power of Policy During Johns Hopkins Talk*, Johns Hopkins Univ. (May, 9, 2023), <https://hub.jhu.edu/2023/05/09/lujan-grisham-health-policy-forum/> (last visited Sept. 13, 2023).<sup>7</sup> This Court has stated, in the specific context of interpreting PHERA, that “[i]n construing the language of a statute, our goal and guiding principle is to give effect to the intent of the Legislature.” *Reeb*, 2021-NMSC-006, ¶ 12, 480 P.3d 852. Even “judicial directives to read [statutory] provisions broadly cannot be understood to authorize or require an interpretation that exceeds the boundaries of legislative intent.” *Kreutzer v. Aldo Leopold High Sch.*, 2018-NMCA-005, ¶ 51, 409 P.3d 930. The principles of statutory construction cannot support reading “public health emergency” to include “[e]verything.”

To the extent these orders rely not on the above statutory authority but solely on the “constitutional police powers of the New Mexico state government,” PHEO at 1, “judicial inquiry into whether an exercise of the police power to protect the

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<sup>7</sup> At a press conference announcing the PHEO, in answering the question “isn’t it unconstitutional to say you cannot exercise your carry license,” the Governor recently responded: “With one exception, and that is if there’s an emergency, and I’ve declared an emergency for a temporary amount of time, I can invoke additional powers. No constitutional right, in my view, including my oath, is intended to be absolute.” *New Mexico Gov. Lujan Grisham Holds News Conference on Gun Violence* at 31:51-32:19, KOB 4 (Sept. 8, 2023), <https://www.youtube.com/watch?v=S9oLoubipXc> (last visited Sept. 13, 2023).

public health has no real or substantial relation to its stated objects is never foreclosed,” *State v. Wilson*, 2021-NMSC-022, ¶ 42, 489 P.3d 925 (alterations, quotations omitted). Such orders “must have some fair tendency to accomplish, or aid in the accomplishment of,” a permissible purpose. *Welch v. Swasey*, 214 U.S. 91, 105 (1909). Here, the executive orders and the PHEO fail to explain how a sweeping ban on lawful gun possession reasonably relates to reducing “gun violence”—nor how testing public-school sewage or suspending alternatives to locked detention for children relates *either* to reducing gun violence *or* drug abuse. EO 132’s only statement on children is that they “are particularly vulnerable to the negative impacts of drug abuse, as evidenced by the rising number of cases involving *parental* substance abuse and its subsequent effect on child welfare” (emphasis added), which parental conduct is not addressed by the measures proposed. “Regulation under the police power that does not bear a reasonable relationship to the object for which it was enacted will be deemed invalid.” *Wilson*, 2021-NMSC-022, ¶ 35 (alterations, quotations omitted); *see also Welch*, 214 U.S. at 105 (“If the means employed, pursuant to the statute, have no real, substantial relation to a public object which government can accomplish, if the statutes are arbitrary and unreasonable, and beyond the necessities of the case, the courts will declare their invalidity.”). Unlike during the COVID-19 pandemic, “a reasonably intelligent person desirous of being informed” would not be on notice that the Governor could

use PHERA to address an issue like gun possession *and* immediately impose civil penalties of up to \$5,000 for conduct that had been protected as a fundamental right hours before. *Cf. Reeb*, 2021-NMSC-006, ¶ 40. The Court should find these orders invalid on their faces.

## **II. The Governor has violated the separation of powers.**

“As a threshold matter, the New Mexico *Legislature* possesses the police power, the broadest power possessed by governments, to protect public health and welfare.” *Reeb*, 2021-NMSC-006, ¶ 14, 480 P.3d 852 (emphasis added, quotations omitted). These powers may only “be delegated or enforced consistent with other constitutional requirements.” *Id.*; *see also* N.M. Const. art. III, § 1. The Legislature therefore could not “vest unbridled or arbitrary power” in the Executive, even if it wished to do so. *City of Santa Fe v. Gamble-Skogmo, Inc.*, 1964-NMSC-016, ¶ 19, 73 N.M. 410, 389 P.2d 13; *see also Unite New Mexico v. Oliver*, 2019-NMSC-009, ¶ 8, 438 P.3d 343 (“Legislative power cannot be delegated, and the Legislature cannot confer upon any person, officer, or tribunal the right to determine what the law shall be. This is a function which the Legislature alone is authorized under the Constitution to exercise.” (alteration, quotations omitted)). As in *Romero*, then, “[t]he operative question is whether the [PHEO] disrupts the proper balance between the executive and legislative branches and infringes on the legislative branch by, for



instance, imposing through executive order substantive policy changes in an area of law reserved to the Legislature.” 2021-NMSC-009, ¶ 34.

These areas of the law have indeed been “reserved to the Legislature,” and already have extensive statutory schemes implemented to address the issues of both “gun violence” and “drug abuse.” Firearms, for example, have prohibitions on their unlawful use set forth in the Criminal Code, *see* NMSA 1978, § 30-7-1 to -16; but the Legislature also created affirmative safeguards for individuals’ rights to carry firearms, including when concealed, *see, e.g.*, NMSA 1978, § 29-19-4(A). Under the Concealed Handgun Carry Act, NMSA 1978, § 29-19-1 to -15, the Department of Public Safety “*shall* issue a concealed handgun license to an applicant who” meets ten specified criteria. NMSA 1978, § 29-19-4(A) (emphasis added); *id.* § 12-2A-4(A) (“‘Shall’ and ‘must’ express a duty, obligation, requirement or condition precedent.”). Provisions for suspension or revocation of such a license are also laid out in the Act; these hinge on violative or disqualifying conduct by the individual. *See* NMSA 1978, § 29-19-6(I). They are not general rules of prohibition based on geography or crime rates. *Cf.* PHEO at 1.

New Mexico has dedicated over a century to refining its firearm regulations. *See State ex rel. N.M. Voices for Children, Inc. v. Denko*, 2004-NMSC-011, ¶ 10, 135 N.M. 439, 90 P.3d 458 (summarizing this history back to the territorial period, and noting that “the territorial law of New Mexico had for many years . . . allow[ed]

concealed weapons to be carried outside of settlements, at one’s residence, in the lawful defense of person or property, for protection while traveling, and by law enforcement officers.”). Now, however, the PHEO effectively rewrites NMSA 1978, § 30-7-2 and removes some of its most established protections—*e.g.*, a New Mexico citizen’s ability to carry a lawful firearm for protection while traveling. *Compare* NMSA 1978, § 30-7-2(A)(2) (permitting the carrying of a loaded firearm in a car “for lawful protection of the person’s or another’s person or property”), *and Lopez v. Chewiwie*, 1947-NMSC-061, ¶ 6, 51 N.M. 421, 186 P.2d 512 (describing the then-applicable statute: “Section 41-1708, 1941 N.M.S.A., allows travelers to carry arms for their protection.”), *with* PHEO at 2 (allowing a person to carry a firearm while traveling only if moving between the listed locations *and* only “provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable”). These decisions must be the Legislature’s to make, not the Governor’s.<sup>8</sup>

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<sup>8</sup> It should be noted that the Legislature in fact did grant the Governor some authority to “prohibit . . . the possession of firearms or any other deadly weapon by a person in any place other than his place of residence or business, except for peace officers,” NMSA 1978, § 12-10-18(A)(5), but it expressly predicated this authority on “the existence of a state of emergency” under the Riot Control Act, NMSA 1978, §§ 12-10-16 to -21. As a procedural matter, that Act requires that the mayor, sheriff, or a majority of the governing body of the local municipality or county in question *request* that the Governor proclaim the emergency, and as a substantive matter, such a proclamation may be made only upon a “finding that a public disorder, disaster or emergency which affects life or property exists.” NMSA 1978, § 12-10-17. Finally, “[a]ny state of emergency proclaimed under the Riot Control Act, along with any restrictions imposed for control of that emergency, terminates automatically at noon on the third day after it becomes effective unless sooner terminated by proclamation of the governor.” *Id.* § 12-10-19.

The same is true of the other legislative schemes that the PHEO contradicts. The Legislature created the “juvenile continuum grant fund” for the purpose of funding “temporary, nonsecure alternatives to detention for juveniles arrested or referred to juvenile probation and parole,” NMSA 1978, § 9-2A-14.1—which alternatives the Governor has now “suspend[ed],” PHEO at 2. Victims (including victims of “negligent use of a deadly weapon,” N.M. Const. art. II, § 24) have a statutory right to privacy under the Victims of Crime Act, to which the PHEO makes no reference. *Cf.* NMSA 1978, § 31-26-4(A). The PHEO includes drug testing of “wastewater” in public schools, although the Legislature rejected a proposed bill regarding drug testing in public schools in 2009, after the Legislative Education Study Committee reported: “The federal constitutional right to privacy is implicated by any policy calling for the drug testing of students.” Leg. Ed. Study Cmte., Bill Analysis (H.B. 874).<sup>9</sup> Controlled substances are heavily regulated under state law—including a delegation of specific, narrow authority “to allow the Board of Pharmacy to schedule drugs,” which this Court approved as sufficiently “strict” in *Montoya v. O’Toole*, 1980-NMSC-045, ¶¶ 4-5, 94 N.M. 303, 610 P.2d 190—but the PHEO’s

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<sup>9</sup> Accessible at [www.nmlegis.gov/sessions/09%20Regular/LESCAnalysis/HB0874.pdf](http://www.nmlegis.gov/sessions/09%20Regular/LESCAnalysis/HB0874.pdf) (last visited Sept. 13, 2023). The PHEO is not clear whether the method by which the DOH intends to test sewage would allow for identification of specific students, or just broadly identify that “illicit substances, such as fentanyl” may have been used by someone in or near a building—and, if the latter, what reasonable benefit such results would have in addressing the alleged “public health emergency,” particularly given that fentanyl can be validly prescribed.

proposed “drug monitoring” does not address the complexities or protections of the Controlled Substances Act, like its confidentiality provisions or its bar on certain prosecutions, *see* NMSA 1978, § 30-31-40; NMSA 1978, § 30-31-27. And if EO 132 intends to extend the Governor’s authority to “*prescription* opioids” as well as illegal drugs (as it appears to do), any enforcement would run afoul of both this statutory scheme and the rights of New Mexicans to receive adequate medical care—including pain management under the care of a doctor. *See, e.g.*, NMSA 1978, § 30-31-23(A). There is, in short, no indication whatsoever that the Governor’s orders are “in compliance with the legislative will.” *Cobb*, 2006-NMSC-034, ¶ 41.

“[T]he constitutionality of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise. When the scope increases to immense proportions the standards must be correspondingly more precise.” *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, ¶ 16, 120 N.M. 820, 907 P.2d 1001 (alterations, quotations omitted). That is, even if the Legislature *did* intend to delegate to the Governor the power to resolve all serious social issues as “public health emergencies”—and the power to immediately and unilaterally acquire “emergency financial resources” of \$1.5 million to do so, *see* EO 130 at 2; EO 132 at 2—it would violate the constitution. *Cf. id.* at ¶ 14 (“*The legislature* must exercise its ‘exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government.’”

(emphasis added) (quoting *State ex rel. Holmes v. State Bd. of Fin.*, 1961-NMSC-172, ¶ 33, 69 N.M. 430, 367 P.2d 925)). But the circumstances here are instead as the Court described in *State ex rel. Taylor v. Johnson*: an “infringement upon legislative power [occurs] where the executive does not execute existing New Mexico statutory or case law and rather attempts to create new law.” 1998-NMSC-015, ¶ 24, 125 N.M. 343, 961 P.2d 768 (alterations, quotations omitted).

Unlike the COVID-19 pandemic, which was “an unprecedented public health crisis of an extraordinary magnitude,” *Martinez v. N.M. Taxation & Revenue Dep’t, Motor Vehicle Div.*, 2023-NMCA-049, ¶ 35 (publication in P.3d forthcoming), the public’s interest in regulating firearms and drug use is of long standing. Our Legislature—like virtually all other states’—has dedicated years of effort to adopting and adapting statutory schemes that will balance individual rights with public safety in these areas. By overriding these complex efforts with a three-page PHEO, the Governor has imposed “substantive policy changes” that conflict with those chosen by the Legislature and amount to a usurpation of legislative powers in violation of Article III, § 1. *See Romero*, 2021-NMSC-009, ¶ 34.

### **III. The Orders cause a “Plain, Palpable Invasion of Rights.”**

A “state action for the protection of public health”—whatever its legitimacy and reasonable relation to the health concern—cannot stand if it amounts to “a plain, palpable invasion of rights secured by the fundamental law.” *Jacobson*, 197 U.S. at

31. The Governor’s actions here meet that standard. This is most conspicuous in the open infringement of both state and federal rights to bear arms—though the PHEO also implicates, *e.g.*, the rights of children to be free of excessive punishment or of having their bodily fluids tested for “illicit substances” without consent. *See, e.g., State v. Gage R.*, 2010-NMCA-104, ¶ 12, 149 N.M. 14, 243 P.3d 453 (describing that “suspicionless drug tests” of students violate the Fourth Amendment unless the school has both consent and “a safety concern that is substantial enough”).

“[T]he Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Bruen*, 142 S. Ct. at 2122. In *Bruen*, the Supreme Court concluded that requiring citizens to “demonstrate[] a special need” before permitting them to carry firearms in public “violates the Constitution.” *Id.* The federal constitutional right to bear arms is not and cannot be subject to the weighing of government interests; “[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634 (emphasis in original). Banning the possession of firearms “either openly or concealed,” as the PHEO does, is a total ban on all legal possession in public, *see* PHEO at 1-2, which cannot be reconciled with the Second Amendment. *Bruen*, 142 S. Ct. at 2118.

“[I]t is well established that while state courts generally may find greater degrees of protection under their state constitutions where state and federal constitutional provisions overlap, we may not restrict the protection afforded by the federal Constitution, as interpreted by the United States Supreme Court.” *Young v. Wilham*, 2017-NMCA-087, ¶ 43, 406 P.3d 988 (quotations omitted). Here, though, any difference is immaterial because the PHEO violates both constitutions. The New Mexico Constitution provides:

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

N.M. Const. art. II, § 6. “Article II, Section 6 is designed to establish the right of individual citizens ‘to keep and bear arms,’ and to limit interference with that right.” *Denko*, 2004-NMSC-011, ¶ 7; *see also Griego v. Oliver*, 2014-NMSC-003, ¶ 1, 316 P.3d 865 (including “the right to bear arms” among the “inherent rights enjoyed by all New Mexicans”); *City of Las Vegas v. Moberg*, 1971-NMCA-074, ¶ 8, 82 N.M. 626, 485 P.2d 737 (“It is our opinion that an ordinance may not deny the people the constitutionally guaranteed right to bear arms, and to that extent the ordinance under consideration is void.”).

The PHEO bans New Mexico citizens from openly and lawfully bearing arms in public, despite that right being enshrined in Article II, § 6. It prevents anyone

from lawfully possessing a loaded and “operable” firearm while traveling, although “[s]imply possessing a firearm within a vehicle has always been a right guaranteed by our state’s constitution.” *State v. Candelaria*, 2011-NMCA-001, ¶ 20, 149 N.M. 125, 245 P.3d 69; *see also State v. Garcia*, 2005-NMSC-017, ¶ 31, 138 N.M. 1, 116 P.3d 72 (“In New Mexico it is lawful for a non-felon to carry a loaded handgun in a private automobile or other private means of conveyance.” (quotations omitted)). It also undercuts the reasoning in *Baca v. N.M. Dep’t of Pub. Safety*, 2002-NMSC-017, ¶ 6, 132 N.M. 282, 47 P.3d 441, in which the Court held that Article II, § 6 “indicates an intent to preclude piecemeal administration at a local level and to ensure uniformity in the regulation of firearms throughout the State of New Mexico.” The PHEO makes no attempt at uniformity, instead imposing regulations piecemeal only within certain “cities or counties.” *See* PHEO at 1.

A government’s response to health emergencies must be “in harmony with its own and the Federal Constitution[.]” *German All. Ins. Co. v. Hale*, 219 U.S. 307, 317 (1911). PHERA itself echoes this by stating that its purpose 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*,” NMSA 1978, § 12-10A-2(A) (emphasis added); by its text, the statute suggests no conflict between its provisions and the rights secured by the state or federal constitutions, or any legislative intent to override those rights—even if it had the power to do so, *cf.*




*State v. Lynch*, 2003-NMSC-020, ¶ 21, 134 N.M. 139, 74 P.3d 73 (“As a general proposition, statutes may provide greater, but not less, protection to individual rights than the constitution.”).

### **THE RELIEF SOUGHT**

The Court should issue an extraordinary writ invalidating the PHEO and both of the executive orders at issue in this case, as well as any citations or other punitive measures issued pursuant thereto. Assuming final relief cannot be promptly granted, the Court should immediately stay enforcement of the orders.

Respectfully submitted,

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**Exhibits**

- Ex. 1: Public Health Order (3 pages)
- Ex. 2: Executive Order on Gun Violence (3 pages)
- Ex. 3: Executive Order on Drug Abuse (3 pages)

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with the type-volume, font size, and word limitations of the New Mexico Rules of Appellate Procedure, specifically Rule 12-504(G)(3) NMRA, which limits these petitions to no more than 6,000 words. The body of this brief employs 14-point Times New Roman font and contains 5,986 words, counted using the ‘Word Count’ feature of Microsoft Office’s Word (Microsoft 365 version).

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV  
Carter B. Harrison IV

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September 2023, a true and correct copy of the foregoing Petition was served by email upon Respondents by way of emails to their respective general counsels, Holly Agajanian (holly.agajanian@state.nm.us), Jason R. Greenlee (jason.greenlee@state.nm.us), and Paul R. Ritzma (paul.ritzma@hsd.nm.gov). I also sent a copy to all three offices by First-Class U.S. Mail.

HARRISON & HART, LLC

By: /s/ Carter B. Harrison IV  
Carter B. Harrison IV



MICHELLE LUJAN GRISHAM  
Governor

PATRICK M. ALLEN  
Cabinet Secretary

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT OF HEALTH  
SECRETARY PATRICK M. ALLEN**

**September 8, 2023**

**Public Health Emergency Order Imposing Temporary Firearm  
Restrictions, Drug Monitoring and Other Public Safety Measures**

**WHEREAS**, for the reasons stated in Governor Michelle Lujan Grisham’s Executive Orders 2023-130 and 2023-132, gun violence and drug abuse currently constitute statewide public health emergencies, as defined in the Public Health Emergency Response Act;

**WHEREAS**, pursuant to those Executive Orders, I have begun collaborating with the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Department of Public Safety, and the Governor’s Office to provide an effective and coordinated response to these public health emergencies;

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance; and

**WHEREAS**, temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies.

**NOW, THEREFORE, I**, Patrick M. Allen, Secretary of the New Mexico Department of Health, in accordance with authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby **DECLARE** that gun violence and drug use constitute conditions of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

(1) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm, as defined in NMSA 1978, Section 30-7-4.1, either openly or concealed, within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to Federal Bureau of Investigation’s Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health, except:

A. On private property owned or immediately controlled by the person;



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B. On private property that is not open to the public with the express permission of the person who owns or immediately controls such property;

C. While on the premises of a licensed firearms dealer or gunsmith for the purpose of lawful transfer or repair of a firearm;

D. While engaged in the legal use of a firearm at a properly licensed firing range or sport shooting competition venue; or

E. While traveling to or from a location listed in Paragraphs (1) through (4) of this section; provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable, such as a trigger lock.

(2) The New Mexico Regulation and Licensing Department shall conduct monthly inspections of licensed firearms dealers in the State to ensure compliance with all sales and storage laws.

(3) The Department of Health shall, within 20 days, compile and issue a comprehensive report on gunshot victims presenting at hospitals in New Mexico, which shall include (if available): demographic data of gunshot victims, including age, gender, race, and ethnicity; data on gunshot victim's healthcare outcomes; the brand and caliber of the firearm used; the general circumstances leading to the injury; the impact of gunshot victims on New Mexico's healthcare system; and any other pertinent information.

(4) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm on state property, public schools, and public parks.

(5) The New Mexico Department of Health and the New Mexico Environmental Department shall develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools.

(6) The Children, Youth and Families Department shall immediately suspend the Juvenile Detention Alternative Initiative and evaluate juvenile probation protocols.

(7) The Department of Public Safety shall dispatch additional officers and resources to Bernalillo County and work with the Albuquerque Police Department and Bernalillo County Sheriff to determine the best use of those resources.

(8) The Department of Public Safety shall coordinate with local law enforcement agencies and the district attorneys' offices and assist in apprehension of individuals with outstanding arrest warrants.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish, and other appropriate languages to the citizens of the State of New Mexico.

(2) Trigger locks shall be made available free of charge to all firearm owners; provided that each firearm owner shall only be entitled to one free trigger lock. Firearm owners wishing to obtain a free trigger lock should call 505-984-3085 or email [info@newmexicanstoppreventgunviolence.org](mailto:info@newmexicanstoppreventgunviolence.org).

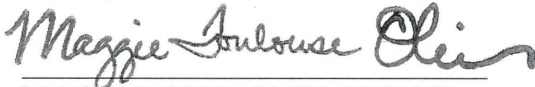
(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person or entity who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on September 8, 2023, and remain in effect for the duration of the public health emergencies declared in Executive Orders 2023-130 and 2023-132 and any subsequent renewals of those public health emergency declarations, unless otherwise rescinded.

(6) Should any provision of this Order or its application to any person or circumstances be held invalid by a court of law, the remainder of this Order or the application of its provisions to other persons or circumstances shall remain in full force and effect.

ATTEST:



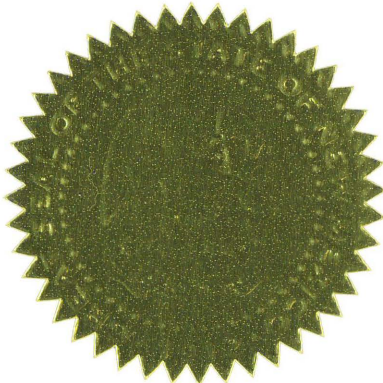
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 8TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO



PATRICK M. ALLEN  
SECRETARY OF THE  
NEW MEXICO DEPARTMENT OF HEALTH





# State of New Mexico

Michelle Lujan Grisham  
*Governor*

## **EXECUTIVE ORDER 2023-130**

### **DECLARING STATE OF PUBLIC HEALTH EMERGENCY DUE TO GUN VIOLENCE**

**WHEREAS**, New Mexico consistently has some of the highest rates of gun violence in the nation;

**WHEREAS**, the rate of gun deaths in New Mexico increased 43% from 2009 to 2018, compared to an 18% increase over this same time period nationwide;

**WHEREAS**, guns are the leading cause of death among children and teens in New Mexico, and have led to the deaths of a thirteen-year-old girl on July 28, a five-year-old girl on August 14, and an eleven-year-old boy on September 6;

**WHEREAS**, New Mexico has recently experienced an increasing amount of mass shootings, including mass shootings in Farmington and Red River this year;

**WHEREAS**, these gun-related deaths and injuries have resulted in devastating physical and emotional consequences for individuals, families, and communities throughout the State;

**WHEREAS**, the impact of gun violence extends beyond physical injuries and fatalities—causing emotional trauma, economic burdens, and long-lasting consequences for those affected individuals and their families;

**WHEREAS**, the increasing number of gunshot victims strains our already over-burdened healthcare system and places undue pressure on medical professionals and resources;

**EXHIBIT**

**2**



**WHEREAS**, after consulting with the Secretary of the Department of Health, I have determined that the foregoing situation constitutes a statewide public health emergency of unknown duration, as defined by the Public Health Emergency Response Act; and

**WHEREAS**, the foregoing situation also constitutes a man-made disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the State pursuant to the All Hazard Emergency Management Act.

**NOW, THEREFORE, I**, Michelle Lujan Grisham, Governor of the State of New Mexico, by the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby **DECLARE** that a state of public emergency exists throughout the State due to gun violence and **ORDER** and **DIRECT** as follows:

1. The Department of Public Health, Department of Homeland Security and Emergency Management, and Department of Public Safety shall immediately begin collaborating with my Office to provide an effective and coordinated response to this public health emergency.

2. The Department of Finance and Administration shall make available emergency financial resources in an amount not to exceed seven hundred fifty thousand dollars (\$750,000.00) to the to the Department of Health, Department of Homeland Security and Emergency Management, and/or Department of Public Safety, in accordance with NMSA 1978, Sections 12-11-23 to -25. Funds shall be expended for the purpose of complying with this Order and shall be expended specifically to avoid and minimize economic or physical harm and to protect the public health, safety, and welfare. Funds shall be paid out upon warrants drawn by the Secretary of Finance and Administration upon vouchers approved by the Governor or an agent or agency designated by her for that purpose.

3. All mayors, sheriffs, and members of governing bodies of municipalities or counties are encouraged to request, if necessary, an emergency proclamation and implementation of temporary additional restrictions to address this public health emergency pursuant to the Riot Control Act.

4. All political subdivisions of the State shall comply with and enforce all directives issued pursuant to this Order.

**I FURTHER ORDER and DIRECT** as follows:

1. This Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict.

2. This Order shall take effect immediately and shall remain in effect until October 6, 2023.

ATTEST:



MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 7TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO



MICHELLE LUJAN GRISHAM  
GOVERNOR





# State of New Mexico

Michelle Lujan Grisham  
*Governor*

## **EXECUTIVE ORDER 2023-132**

### **DECLARING STATE OF PUBLIC HEALTH EMERGENCY DUE TO DRUG ABUSE**

**WHEREAS**, the State of New Mexico has witnessed a growing and alarming trend of drug abuse, including the misuse of prescription opioids, fentanyl, heroin, and other illicit substances;

**WHEREAS**, the devastating consequences of drug abuse have resulted in a significant increase in drug-related deaths, with 1,501 fatal overdoses reported in the state in 2021—the fifth highest overdose rate in the nation according to the Centers for Disease Control and Prevention;

**WHEREAS**, communities across New Mexico are grappling with the social and economic burdens of drug addiction, including the strain on healthcare resources, increased crime rates, homelessness, and disrupted family structures;

**WHEREAS**, the accessibility and prevalence of potent synthetic opioids, such as fentanyl, have escalated the risks associated with drug abuse, contributing to a surge in overdose incidents;

**WHEREAS**, the healthcare system in New Mexico is facing unprecedented challenges due to the demands placed on emergency rooms, treatment facilities, and first responders as a result of the drug abuse crisis;

**WHEREAS**, the children and youth of New Mexico are particularly vulnerable to the negative impacts of drug abuse, as evidenced by the rising number of cases involving parental substance abuse and its subsequent effect on child welfare;

**WHEREAS**, the State's existing efforts to combat drug abuse, including prevention, treatment, and law enforcement initiatives, require immediate reinforcement and coordination to effectively address this public health crisis;

**WHEREAS**, after consulting with the Secretary of the Department of Health, I have determined that the foregoing situation constitutes a statewide public health emergency of unknown duration, as defined by the Public Health Emergency Response Act;

**WHEREAS**, the foregoing situation also constitutes a man-made disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the State pursuant to the All Hazard Emergency Management Act; and

**WHEREAS**, it is essential to marshal all available resources to mitigate the harms caused by drug abuse and to provide support and treatment options for individuals and families affected by this epidemic.

**NOW, THEREFORE, I**, Michelle Lujan Grisham, Governor of the State of New Mexico, by the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby **DECLARE** that a state of public emergency exists throughout the State due to drug abuse and **ORDER** and **DIRECT** as follows:

1. The Department of Public Health, Department of Homeland Security and Emergency Management, and Department of Public Safety shall immediately begin collaborating with my Office to provide an effective and coordinated response to this public health emergency.

2. The Department of Finance and Administration shall make available emergency financial resources in an amount not to exceed seven hundred fifty thousand dollars (\$750,000.00) to the to the Department of Health, Department of Homeland Security and Emergency Management, and/or Department of Public Safety, in accordance with NMSA 1978, Sections 12-

11-23 to -25. Funds shall be expended for the purpose of complying with this Order and shall be expended specifically to avoid and minimize economic or physical harm and to protect the public health, safety, and welfare. Funds shall be paid out upon warrants drawn by the Secretary of Finance and Administration upon vouchers approved by the Governor or an agent or agency designated by her for that purpose.

3. All mayors, sheriffs, and members of governing bodies of municipalities or counties are encouraged to request, if necessary, an emergency proclamation and implementation of temporary additional restrictions to address this public health emergency.

4. All political subdivisions of the State shall comply with and enforce all directives issued pursuant to this Order.

**I FURTHER ORDER and DIRECT** as follows:

1. This Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict.

2. This Order shall take effect immediately and shall remain in effect until October 6, 2023.

ATTEST:



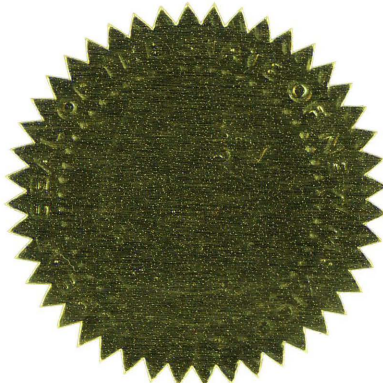
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 8TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO



MICHELLE LUJAN GRISHAM  
GOVERNOR



**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I, Dawn Amdor, hereby certify that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Date: September 14, 2023

  
*Signature*

**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I hereby certify that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Date: September 14, 2023

  
\_\_\_\_\_  
*Signature*

T. Ryan Lane  
\_\_\_\_\_  
*Printed Name of Signatory*

**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I hereby certify that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.



Date: September 14, 2023

\_\_\_\_\_  
*Signature*

Gregory A. Baca  
*Printed Name of Signatory*



**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I, Steve Pearce, the Chairman of the Republican Party of New Mexico (“RPNM”), hereby certify on the RPNM’s behalf that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

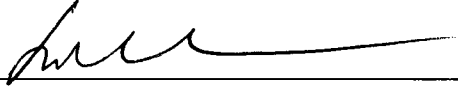
Date: September 14, 2023

/s/ Stevan Pearce  
*Signature*

**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I, Sophie Cooper, a registered Libertarian in New Mexico and member of the N.M. Bar, certify that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Date: September 14, 2023

  
\_\_\_\_\_  
*Signature*

**VERIFICATION**

Pursuant to Rule 12-504(B)(1) NMRA, I, Michael Jean, the Director of the Office of Litigation Counsel for the National Rifle Association of America (“NRA”), hereby certify on the NRA’s behalf that I have read the Petition and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Date: September 14, 2023

  
*Signature*