



Joey D. Moya

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

NO. S-1-SC-\_\_\_\_\_

**S-1-SC-38510**

STATE OF NEW MEXICO,  
KATHYLEEN KUNKEL,  
in her official capacity as the  
Secretary of the Department of  
Health, and MICHELLE  
LUJAN GRISHAM, in her official  
Capacity as the Governor of New  
Mexico,

Petitioners;

v.

Hon. MATTHEW WILSON,  
First Judicial District Court Judge,

D-101-CV-2020-01832

Hon. ERIN B. O'CONNELL,  
Second Judicial District Court Judge,

D-202-CV-2020-04797

Hon. BEATRICE J. BRICKHOUSE,  
Second Judicial District Court Judge,

D-202-CV-2020-04803

Hon. MARCI BEYER,  
Third Judicial District Court Judge,

D-307-CV-2020-01528

Hon. JARED G. KALLUNKI,  
Fifth Judicial District Court Judge,

D-504-CV-2020-00514;  
D-504-CV-2020-00505;  
D-504-CV-2020-00523

Hon. THOMAS E. LILLEY,  
Fifth Judicial District Court Judge,

D-504-CV-2020-00538;  
D-504-CV-2020-00583

Hon. MATTHEW G. REYNOLDS, D-721-CV-2020-00104  
Seventh Judicial District Court Judge,

Hon. MATTHEW E. CHANDLER, D-905-CV-2020-00339  
Ninth Judicial District Court Judge,

Hon. DAVID P. REEB, D-911-CV-2020-00108  
Ninth Judicial District Court Judge,

Hon. CURTIS R. GURLEY, D-1116-CV-2020-00863  
Eleventh Judicial District Court Judge,

and

Hon. ELLEN R. JESSEN, D-1226-CV-2020-00164  
Twelfth Judicial District Court Judge,

Respondents,

and

PEREZ ENTERPRISES, LLC, ELITE FITNESS  
& TANNING, LLC, COWBOY CAFÉ, LLC,  
MAD MAC, LLC, HM PROPERTIES, LLC,  
CAMPE2, LLC, ELI'S BISTRO, INC,  
DAVID HETT, SPORTS ADVENTURE,  
KRK PROPERTIES, LLC, ALLSTAR AUCTION  
CO. LLC, OOPS A DAISY FLORAL LTD.,  
BEDONIE CASKET LTD. CO., LONE TREE, INC.,  
MAUGER ESTATES B&B, GRAND AVENUE  
ENTERPRISES, LLC, HINKLE FAMILY

FUN CENTER, LLC, SANTA FE OXYGEN  
& HEALING BAR, LLC, and APOTHECARY  
RESTAURANT, LLC,

Real Parties in Interest.

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**VERIFIED PETITION FOR WRIT OF SUPERINTENDING CONTROL  
AND EMERGENCY REQUEST FOR STAY**

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## INTRODUCTION

Petitioners the State of New Mexico, Governor Michelle Lujan Grisham, and Secretary of Health Kathyleen Kunkel (Petitioners) are Defendants in fourteen lawsuits (as of October 5, 2020) that are pending before eleven district court judges in eight judicial districts across New Mexico (collectively, the “Lawsuits”). The Lawsuits seek “just compensation” based on substantially identical allegations and claims challenging the Public Health Emergency Orders (PHEOs) issued in response to the COVID-19 pandemic. The Lawsuits allege that the PHEOs, meant to slow the spread of the novel coronavirus and its associated illness COVID-19, have effectuated a regulatory taking of the plaintiffs’ business interests, and seek compensation under Article II, Section 20 of the New Mexico Constitution and under the Public Health Emergency Response Act (PHERA), NMSA 1978, § 12-10A-15 (2003). The Lawsuits also seek costs and attorney fees under the Eminent Domain Code, NMSA 1978, § 42A-1-25(A)(3) (1981). Representative samples of the complaint filed in the Lawsuits are attached as **Exhibits 1 and 2**.

The proliferation of the Lawsuits—and the potentially thousands of similar lawsuits that may follow—poses a significant risk of confusion, contradictory orders, and unwieldy burdens on the State and the courts. Due to the nature and similarity of the claims asserted, the Lawsuits share a threshold legal question that is of great public importance during this public health emergency: whether the

PHEOs may support a claim for just compensation under Article II, Section 20 and/or Section 12A-10-15. Petitioners assert that, irrespective of the particular facts or circumstances alleged by each plaintiff, their claims for just compensation fail as a matter of law. Put simply, Petitioners have not taken the plaintiffs' property or business interests for public use under Article II, § 20 or the PHERA.

Given the widespread applicability of the PHEOs, the number of cases already filed, and the potential flood of follow-on litigation, a swift, orderly process to decide this threshold legal question would significantly benefit the judiciary, the parties, and the public. Accordingly, Petitioners request that the Court order briefing, set oral argument, and decide the pure question of law presented by the Lawsuits. In the first alternative, Petitioners request a writ of superintending control to transfer the Lawsuits to a single judicial district and to consolidate them before a single judge. In the second alternative, Petitioners request a writ of superintending control to stay all but one of the Lawsuits until this threshold legal question can be decided and reviewed on an expedited appeal.<sup>1</sup>

Petitioners also request an emergency stay while this Petition is pending of all proceedings in the Lawsuits and in any other actions that seek compensation from

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<sup>1</sup> Under either alternative, Petitioners request that the writ apply to any future lawsuits that seek compensation under Article II, § 20, the Takings Clause of the Fifth Amendment to the United States Constitution, and/or Section 12-10A-15 as a result of the PHEOs issued to address the current COVID-19 pandemic.

the State as a result of the PHEOs. Motions to dismiss and a number of procedural motions have been filed in all fourteen Lawsuits, and hearings have been set before several Respondents, including one as early as Wednesday, October 7th, 2020.<sup>2</sup> An emergency stay is therefore necessary to ensure a uniform result on a question of great public importance, to avoid the unnecessary expenditure of duplicative resources to answer the identical legal question, and to prevent the flood of confusing, inconsistent decisions that may otherwise ensue.

## **I. Jurisdiction**

Petitioners invoke the jurisdiction of this Court under Article VI, Sections 3 and 15 of the New Mexico Constitution, Rules 1-088 and 1-042 NMRA, and Rule 12-504 NMRA.

## **II. Parties**

Petitioners are the State of New Mexico, Michelle Lujan Grisham in her official capacity as Governor of New Mexico, and Kathyleen Kunkel in her official capacity as New Mexico Secretary of the Department of Health.

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<sup>2</sup> See Notice of Hearing, *Lone Tree, Inc. v. State ex rel. Kunkel*, No. D-1226-CV-2020-00164 (12th Jud. Dist.) (setting hearing for thirty minutes on “All pending motions” on October 7, 2020); see also Notice of Hearing, *Perez Enterprises v. State ex rel. Kunkel*, No. D-307-CV-2020-01528 (3d Jud. Dist.) (setting hearing on October 28, 2020); Notice of Hearing, *Hett v. State ex rel. Kunkel*, No. D-504-CV-2020-00538 (5th Jud. Dist.) (setting hearing for October 19, 2020); Notice of Hearing, *Oops A Daisy Floral Ltd. Company et al. v. State ex rel. Kunkel*, No. D-1116-CV-2020-00863 (11th Jud. Dist.) (setting hearing on all pending motions on December 1, 2020).

Respondents are eleven district court judges from eight judicial districts who currently are presiding over one or more of the Lawsuits, which are as follows:

- *Santa Fe Oxygen & Healing Bar v. State ex rel. Kunkel*, No. D-101-CV-2020-01832 (1st Jud. Dist., filed Aug. 20, 2020);
- *Mauger Estates B&B v. State ex rel. Kunkel*, No. D-202-CV-2020-04803 (2d Jud. Dist., filed Aug. 21, 2020);
- *Hinkle Family Fun Center, LLC v. State ex rel. Kunkel*, No. D-202-CV-2020-04797 (2d Jud. Dist., filed Aug. 21, 2020);
- *Perez Enterprises v. State ex rel. Kunkel*, No. D-307-CV-2020-01528 (3d Jud. Dist., filed July 23, 2020);
- *Elite Fitness And Tanning, LLC v. State ex rel. Kunkel*, No. D-504-CV-2020-00505 (5th Jud. Dist., filed July 20, 2020);
- *Cowboy Café, LLC v. v. State ex rel. Kunkel*, No. D-504-CV-2020-00505 (5th Jud. Dist., filed July 20, 2020);
- *Eli's Bistro, Inc. v. v. State ex rel. Kunkel*, No. D-504-CV-2020-00523 (5th Jud. Dist., filed July 23, 2020);
- *Hett v. State ex rel. Kunkel*, No. D-504-CV-2020-00538 (5th Jud. Dist., filed Aug. 5, 2020);
- *Sports Adventure, Inc. v. State ex rel. Kunkel.*, No. D-721-CV-2020-00104 (7th Jud. Dist., filed Aug. 4, 2020);
- *Grand Avenue Enterprises, LLC v. State ex rel. Kunkel*, No. D-504-CV-2020-00583 (5th Jud. Dist., filed on Aug. 21, 2020);
- *KRK Properties, LLC v. State ex rel. Kunkel*, No. D-905-CV-2020-00339 (9th Jud. Dist., Filed July 24, 2020);
- *Allstar Auction Co. LLC v. State ex rel. Kunkel.*, No. D-911-CV-2020-00108 (9th Jud. Dist., filed July 20, 2020);

- *Oops A Daisy Floral Ltd. Company et al. v. State ex rel. Kunkel*, No. D-1116-CV-2020-00863 (11th Jud. Dist., filed July 23, 2020); and
- *Lone Tree, Inc. v. State ex rel. Kunkel*, No. D-1226-CV-2020-00164 (12th Jud. Dist., filed Aug. 4, 2020).

The Real Parties in Interest (RPIs), plaintiffs in the district courts, are as follows:

- Perez Enterprises, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Dona Ana County, New Mexico;
- Elite Fitness and Tanning, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- Cowboy Café, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- Mad Mac, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- HM Properties, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- CAMPE2, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- Eli's Bistro Inc, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM;
- David Hett is a musician and an individual doing business in the State of New Mexico;



- Sports Adventure, Inc., is a business registered with the New Mexico Secretary of State, in good standing, doing business in Sierra County, NM;
- KRK Properties, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Curry County, NM;
- Allstar Auction Company, LLC, is a business registered with the New Mexico Secretary of State, in good standing, doing business in Roosevelt County, NM;
- Oops A Daisy Floral Ltd. Company is a business registered with the New Mexico Secretary of State, in good standing, doing business in San Juan County, NM;
- Bedonie Casket Ltd. Co., is a business registered with the New Mexico Secretary of State, in good standing, doing business in San Juan County, NM;
- Lone Tree Inc. is a business registered with the New Mexico Secretary of State, in good standing, doing business in Lincoln County, NM;
- Hinkle Family Fun Center, LLC is a business registered with the New Mexico Secretary of State, in good standing, doing business in Bernalillo County, NM;
- Santa Fe Oxygen and Healing Bar, LLC is a business registered with the New Mexico Secretary of State, in good standing, doing business in Santa Fe County, NM;
- Apothecary Restaurant, LLC is a business registered with the New Mexico Secretary of State, in good standing, doing business in Santa Fe County, New Mexico;
- Mauger Estates B&B is a business registered with the New Mexico Secretary of State, in good standing, doing business in Bernalillo County, NM; and

- Grand Avenue Enterprises, LLC is a business registered with the New Mexico Secretary of State, in good standing, doing business in Chaves County, NM.

### **III. The Pending Lawsuits**

In each of the fourteen cases listed above, the RPIs are seeking identical relief. Each complaint seeks compensation under Article II, § 20 and Section 12-10A-15. Each RPI alleges that its business or economic interests were harmed after Secretary Kunkel and Governor Lujan Grisham issued the PHEOs, the effect of which was to prevent gatherings of groups of people and thus slow the spread of the novel coronavirus and COVID-19 in New Mexico. While the RPIs own or operate distinct businesses, they are seeking relief under the same constitutional and statutory provisions, alleging that each business, notwithstanding the type of business, is entitled to just compensation because the PHEOs allegedly have resulted in a regulatory taking. Petitioners anticipate that other cases may be filed that seek similar relief.<sup>3</sup>

### **IV. Necessity for a Writ of Superintending Control**

Notwithstanding the type of business operated by each RPI, the threshold question before each district court is the same: whether the PHEOs, issued under the

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<sup>3</sup> See Dan Boyd, *Compensation for pandemic losses sought*, Albuquerque Journal (Aug. 11, 2020), <https://www.abqjournal.com/1485078/compensation-for-pandemic-losses-sought.html> (stating that Plaintiff's counsel "has about 20 similar lawsuits ready to be filed").

State's police powers in response to the COVID-19 pandemic, have effectuated a regulatory taking. Petitioners have filed substantially identical motions to dismiss the Lawsuits arguing that Plaintiffs' claims fail as a matter of law. The outcome of the motions may impact thousands of businesses because the PHEOs affect all businesses in the state (with limited exceptions) and treat each category of business the same within the state. Because the threshold question does not turn on the locale or particular circumstances of each business, the Court should exercise its power of superintending control "to control the course of ordinary litigation in inferior courts" to ensure an orderly and efficient process to "settle the question involved at the earliest moment." *Griego v. Oliver*, 2014-NMSC-003, ¶ 11, 316 P.3d 865 (internal quotation marks and citation omitted); *see also State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, ¶¶ 7-8, 120 N.M. 619, 904 P.2d 1044.

The pendency of at least fourteen cases with identical claims and legal defenses in at least eight different judicial districts before eleven different district judges necessitates the extraordinary relief requested in this Petition. The most efficient, expeditious use of the Court's power of superintending control would be to order briefing, set oral argument, and issue a single ruling on the purely legal question of whether the PHEOs may support a claim for just compensation under Article II, § 20 or Section 12-10A-5. *Accord, e.g., State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶ 31, 410 P.3d 201 ("Because this case presents an issue of first

impression . . . without clear answers under New Mexico law, and because it involves new constitutional provisions with serious public safety implications, we agree that this is an appropriate case in which to exercise our superintending control authority.” (internal citation and quotation marks omitted)). Alternatively, the multiplicity of Lawsuits—and the potential for countless more—amply supports a writ to transfer and consolidate them before a single judge in a forum where venue lies and in a location that is reasonably convenient to the parties and their counsel. Transfer and consolidation would promote convenience and efficiency for the courts and the parties, and would prevent the confusion that may result from inconsistent answers to a controlling question of great public importance.

As such, Petitioners ask the Court to order briefing, set oral argument, and decide the issue presented. In the alternative, Petitioners request a writ of superintending control from this Court to transfer and consolidate the Lawsuits, along with any other lawsuits seeking compensation from the State as a result of the PHEOs that have been or may be filed in any New Mexico judicial district. Because New Mexico’s venue statute, NMSA 1978, § 38-3-1 (1988), provides that venue is appropriate in the First Judicial District for lawsuits brought against State officers, the First Judicial District is the single forum where all of the lawsuits could legally be transferred and consolidated.<sup>4</sup> The First Judicial District is also convenient

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<sup>4</sup> One of the Lawsuits, *Santa Fe Oxygen & Healing Bar, LLC*, No. D-CV-101-CV-

because it is located at the seat of State government and because all attorneys in all current pending cases are either from Santa Fe or Albuquerque.

## **V. Basis for the Writ**

The power of superintending control is meant to address issues of significant interest and importance to the public, to prevent costly delays in litigation, to manage, control, and guide the judicial process, and to protect parties from unusual burdens of expense and hardship. *See Dist. Ct. of the Second Jud. Dist. v. McKenna*, 118 N.M. 402, 406, 881 P.2d 1387, 1391 (1994) (granting writ on basis of Court’s power to control ongoing litigation and in light of the “matters of significant public interest” at stake); *State ex rel. Transcontinental Bus Serv., Inc. v. Carmody*, 53 N.M. 367, 378, 208 P.2d 1073, 1080 (1949) (exercising writ “to prevent irreparable mischief, great, extraordinary, or exceptional hardship, costly delays and unusual burdens of expense”). “When we deem it appropriate, we exercise our power of superintending control ‘to control the course of ordinary litigation in inferior courts . . . even when there is a remedy by appeal, where it is deemed to be in the public interest to settle the question involved at the earliest moment.’” *Griego*, 2014-NMSC-003, ¶ 11 (quoting *State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, ¶¶ 7-8, 120 N.M. 619, 904 P.2d 1044)). In the fourteen pending Lawsuits, a writ of

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2020-01832, is pending in the First Judicial District before Respondent the Honorable Matthew Wilson.

superintending control is the only plain, speedy, and adequate remedy available to Petitioners to accomplish the orderly and efficient judicial resolution of the important matters raised by the Real Parties in Interest.

The Court’s power of superintending control is especially appropriate here because the Lawsuits turn on common legal defenses that are uniform and that will resolve all of the cases. Petitioners have invoked their police powers via the PHEOs to protect the public from an unprecedented threat to health and safety. Such an exercise of governmental authority to protect the health and safety of the public cannot amount to a taking. *See, e.g., Temple Baptist Church, Inc. v. City of Albuquerque*, 1982-NMSC-055, ¶ 27, 98 N.M. 138, 646 P.2d 565 (“The general rule is that a regulation which imposes a reasonable restriction on the use of private property will not constitute a ‘taking’ of that property if the regulation is (1) reasonably related to a proper purpose and (2) does not unreasonably deprive the property owner of all, or substantially all, of the beneficial use of his property. Thus, if a regulation simply prohibits the use of property for purposes declared to be injurious to the health, morals or safety of the community, the prohibition cannot be deemed a ‘taking’ of property for the public benefit.” (internal citation and quotation marks omitted)); *State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, ¶ 9, 83 N.M. 755, 497 P.2d 966 (“Article II, § 20 deals with takings ‘for public use’— which is to say—by eminent domain. The New Mexico Food Act and similar statutes of like

import, on the other hand, have for their objective the protection of public health. The right to seize and destroy unfit or impure foods is a reasonable exercise of the right and duty of the State to protect the public health and is predicated upon the police power. Injury which results from the proper exercise of the police power is not compensable.” (internal citations and quotation marks omitted)). A writ to decide this question at the earliest possible moment, or to transfer and consolidate the Lawsuits to one judicial district before one district judge, is both an appropriate and necessary use of the Court’s power of superintending control.

## **VI. Grounds for Extraordinary Relief**

Petitioners respectfully request that the Court exercise its extraordinary powers and decide this issue at the earliest moment. The paramount reason for such relief is to avoid inconsistent results and to ensure the orderly management of litigation that could affect huge swaths of New Mexico’s economic fabric while swamping the courts if left to proliferate across the state.

In the alternative, Petitioners request the Court to transfer and consolidate all cases seeking just compensation as a result of the PHEOs before one judge in the only appropriate forum, the First Judicial District, in Santa Fe, New Mexico. Practical considerations favor transfer and consolidation, including location, convenience, judicial economy, and the avoidance of costly delays and hardship to all parties. There is no plain, speedy, and adequate remedy available to Petitioners

because there are now fourteen substantively identical complaints filed in eight different districts before eleven different district court judges. The rule governing consolidation, Rule 1-042, permits consolidation of cases filed in the same judicial district, but is silent on, and therefore does not directly provide for, consolidating cases that are filed in different judicial districts. The Rule, however, is instructive insofar as it provides that in actions involving a common question of law or fact, a court may order a joint hearing or trial on any or all of the matters at issue in the actions, and may order all the actions consolidated, and may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay. *See* Rule 1-042(A); *see also Roark v. Farmers Group, Inc.*, 2007-NMCA-074 ¶ 53, 142 N.M. 59, 162 P.3d 896 (“The purpose of Rule 1-042(A) is to avoid unnecessary costs or delay and to expedite litigation and decrease the expense thereof.” (internal quotation marks and citation omitted)).

Because the threshold legal issue in each of these cases pertains to the same defendants, regards the same subject matter and legal issues, and is capable of resolution based on a pure question of law, it is in the best interest of all litigants, the public, and the judiciary for the Court to exercise its powers of superintending control to decide the issue or transfer and consolidate the Lawsuits in one judicial district. The attached complaints are representative of the commonality of the claims, relief, and defenses at issue. *See* Rule 1-042(A) (requiring a “common



question of law or fact); Exs. 1, 2.

While courts are asked to weigh “the interest of judicial economy against the potential for delay, confusion, and prejudice that may result from consolidation,” here, the only potential for delay, confusion, or prejudice will be if the actions are *not* consolidated. *Cienega Gardens v. United States*, 62 Fed. Cl. 28, 31 (2004). The difficulty for the Defendants who would have to defend themselves in fourteen separate proceedings spread across the State, and the potential for inconsistent outcomes on a question of great public importance would create confusion, delay, and uncertainty in the outcomes regardless of which outcome occurs.

This Court previously has transferred and consolidated similar cases filed in different judicial districts under its power of superintending control. *See, e.g., Egolf v. Duran*, No. 33,239 (N.M. Sup. Ct. Oct. 12, 2011) (consolidating seven redistricting cases “and any other similar pending case in other New Mexico District Courts or similar cases that may be filed arising out of the redistricting issues from the 2011 Special Legislative Session” in the First Judicial District Court in Santa Fe before the Hon. James Hall); *In re N.M. Indirect Purchases Microsoft Corp.*, 2007-NMCA-007 ¶ 3, 140 N.M. 879, 149 P.3d 976 (stating the three class action cases at issue were consolidated by a writ of superintending control issued by the New Mexico Supreme Court); *see also State ex rel. Foy v. Austin Capital Mgmt.*, 2015-NMSC-025, ¶ 23, 355 P.3d 1 (issuing writ of superintending control to consolidate

two actions in the First Judicial District before a single pro-tem judge). The Lawsuits, now spread throughout the state, are of significant public interest and warrant expeditious review, if not by this Court, then by a single district judge, subject to an expedited appeal.

### **VIII. Emergency Request for Stay**

Petitioners respectfully request that the Court issue an order staying all proceedings in the lawsuits referenced in this Petition and any other current or future lawsuits seeking just compensation as a result of the PHEOs during the pendency of this proceeding. Petitioners request the Court to order the proceedings stayed at the earliest possible moment so that the relief requested in this Petition can be considered before additional resources are expended to litigate the identical legal question in duplicative proceedings across the state.

### **IX. Prayer for Relief**

Petitioners pray this Court:

- a. Order briefing, set oral argument, and decide via a writ of superintending control whether the PHEOs may support a claim for just compensation under Article II, § 20 or the PHERA;
- b. In the first alternative, issue a writ of superintending control to transfer and consolidate the Lawsuits in the First Judicial District, in Santa Fe, New Mexico, appoint one judge to preside over the Lawsuits, and direct

that the judge appointed proceed with the trials of these matters if necessary;

- c. In the second alternative, issue a writ staying all but one of the Lawsuits until the outcome of the remaining lawsuit becomes final and no longer subject to appeal.
- d. For either alternative, order that the writ shall apply to all current and future complaints raising claims for just compensation as a result of the PHEOs under Article II, § 20 of the New Mexico Constitution, the Takings Clause of the Fifth Amendment to the United States Constitution, or Section 12-10A-15 of the PHERA;
- e. Enter an order immediately staying further proceedings in the Lawsuits and in any current or future cases for just compensation as a result of the PHEOs until this Court has rendered its decision as to this Writ; and
- f. Order such further relief as this Court deems necessary and appropriate.

Respectfully Submitted,

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**STATEMENT OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS**

I certify that this Petition complies with the type-volume, font size, and word limitations set forth in Rule 12-504(G)(3) NMRA. The body of this Petition is in 14-point, Times New Roman font and contains 3,809 words, according to a count by Microsoft Word 2016.

/s/ Neil Bell  
Neil Bell

**VERIFICATION**

I, Neil Bell, counsel for Petitioner the State of New Mexico, being duly sworn upon my oath, state that I have read this Verified Petition for Writ of Superintending Control and Emergency Request for Stay, and that the factual statements it contains are true and correct to the best of my knowledge, information, and belief.

Date: October 5, 2020

Respectfully submitted,

/s/ Neil Bell  
Neil Bell

## CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020, I caused a true and correct copy of the foregoing *Verified Petition for Writ of Superintending Control and Emergency Request for Stay* to be served by email upon Respondents and Real Parties in Interest through their counsel of record using the email addresses below. A true and correct copy of the foregoing also was efiled via Odyssey in each of the lawsuits identified in the caption of this *Verified Petition*.

Respondents:

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