

FOR IMMEDIATE RELEASE

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## **Republican Leaders ask AG for opinion on MLG billion-dollar money-grab**

Santa Fe, NM – As of 4:00 pm this afternoon, the effort to convene the New Mexico State Legislature in an Extraordinary Special Session has drawn bipartisan support, including unanimous support from both the House and Senate Republican Caucuses. However, we are disappointed that a vast majority of Democrats in the House and Senate, who control both chambers of the Legislature, have chosen to silently stand by and let the Governor usurp the legislative branch’s “power of the purse.” This inaction by majority Democrats will set precedence to transfer the Legislature’s constitutional authority to spend unallocated federal dollars to current and future governors, of any political party, and negates past efforts by bipartisan lawmakers who have fought to preserve this fundamental responsibility of the Legislature.

Last week, Legislative Council Service provided each lawmaker with a copy of a petition to convene an Extraordinary Special Session, and has been collecting the signed copies for the past several days.

In response to this troubling decision by majority Democrats to acquiesce to the Governor’s dubious claim she has sole authority to spend federal dollars, Republican Leadership from both the House and Senate have requested the New Mexico Attorney General to provide a legal opinion regarding the constitutionality of the Governor spending federal dollars in the state treasury without a legislative appropriation. In the letter, Republican Leaders appeal to the Attorney General stating, “We strongly believe legislators have a sworn duty to uphold the Legislature’s inherent constitutional powers, and every action possible should be taken to preserve or exert the institution’s authority to appropriate public money.”

There are 24 House Republican members and 15 Republican Senators and in order to convene an extraordinary special session the petition needs three-fifths support from each chamber or 42 House members and 25 Senators. A copy of the joint Republican Leadership letter to the Attorney General is attached.

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# New Mexico State Legislature

STATE CAPITOL  
Santa Fe

July 8, 2021

The Honorable Hector Balderas  
New Mexico Attorney General  
408 Galisteo Street  
Villagra Building  
Santa Fe, New Mexico 87501

Dear Attorney General Balderas:

Due to the ongoing controversy and public debate regarding the Governor's claim she has sole authority to spend \$1.75 billion in unallocated federal COVID relief funds received by the State of New Mexico pursuant to the American Rescue Plan Act (ARPA), we are writing to request an Attorney General's opinion regarding whether these federal dollars can be expended without the Legislature's enactment of an appropriation. We further request that your office provide such a legal opinion promptly as this is an important constitutional question which demands immediate clarification.

We strongly believe legislators have a sworn duty to uphold the Legislature's inherent constitutional powers, and every action possible should be taken to preserve or exert the institution's authority to appropriate public money. In fact, we recently tried to have the Legislature submit the necessary number of signatures to the Governor to call an extraordinary legislative session to either override the Governor's line-item vetoes in HB 2 or give approval to a negotiated agreement between the executive and legislative branches on how this money should be spent. Unfortunately, nearly all of our Democratic colleagues in both the House and Senate refused to sign the extraordinary session petition and the effort failed.

While we find it troubling and inexcusable that so many of our Democratic colleagues are willing to acquiesce to the Governor's effort to usurp the Legislature's "power of the purse," there is hope a favorable Attorney General's opinion saying the Governor does not have sole authority to spend these federal dollars might spur these reluctant legislators to change their position. We realize the legislative Democratic Leadership may feel political pressure in allowing the Governor to unilaterally spend \$1.75 billion, but there are important constitutional separation of power issues that should never be abrogated because of political expediency.

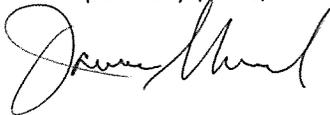
It is also difficult to believe the New Mexico Supreme Court ever envisioned granting the executive branch such dictatorial power to spend \$1.75 billion in federal dollars under the guise of it being simply a "function of administration." Further, the process undertaken to decide how these unallocated

federal dollars are utilized is not an executive branch function; rather it is the Legislature which holds the constitutional authority to make policy in regards to the appropriation of public money. Granting such unilateral decision making to the governor in spending such a large sum of money without legislative approval is certainly not transparent and is contrary to our constitutional system of “checks and balances.” It also begs the question that no government official’s power is absolute or can be exercised without any restraint or limitation. Every elected official in this state took a solemn oath to defend the state constitution and the people of New Mexico have a right to expect us to defend the entire document, not just those parts that are politically popular.

Therefore, we are requesting your help in ensuring the New Mexico Supreme Court decision in *State ex rel. Segó v. Kirkpatrick* does not become the improper justification for allowing any governor, regardless of political party, to exercise unilateral authority to allocate billions of dollars in federal COVID relief without the Legislature’s input and approval. Nor should any effort to question or challenge any governor who claims such broad authority be viewed through a partisan lens. This effort is simply to preserve the Legislature’s constitutional authority and stop any current or future governor from undermining a fundamental responsibility of the legislative branch of government.

Thank you for your consideration of our request and we look forward to reviewing your legal analysis of this important issue very soon.

Respectfully yours,



James G. Townsend  
House Republican Leader



Rod Montoya  
Republican Whip



Rebecca Dow  
Caucus Chair



Gregory A. Baca  
Senate Republican Leader



Craig W. Brandt  
Republican Whip



Mark Moores  
Caucus Chair