

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

STATE OF NEW MEXICO ex. rel.
THE NEW MEXICO LEGISLATIVE
COUNCIL,

Petitioner,

vs.

No. S-1-SC-36422

HONARABLE SUSANA MARTINEZ,
Governor of the State of New Mexico, and
DOROTHY “DUFFY” RODRIGUEZ,
Secretary of the New Mexico Department
of Finance and Administration,

Respondents.

**INDIVIDUAL MEMBERS OF THE MINORITY CAUCUSES’ MOTION
FOR LEAVE TO FILE AN AMICUS BRIEF**

Individual members of the minority caucuses (hereinafter “Proposed Amici”), by and through their undersigned attorneys, SaucedoChavez, P.C. (Christopher T. Saucedo and Daniel C. Apodaca), respectfully request that this Court deem the attached Amicus Brief filed pursuant to NMRA Rule 12-320. Proposed Amici filed this Motion within two working days of Respondents Response to Verified Emergency Petition for Original Writ of Mandamus in

compliance with the spirit of Rule 12-320(D)(2)(a). In support of this Motion, Proposed Amici state the following:

Factual Background

1. Proposed Amici are Senators¹ and members of the House of Representatives² that are in the minority caucus of the New Mexico Legislature.
2. Proposed Amici who are members of the Senate voted to pass both a tax reform and a budget.
3. The budget was passed through the Legislature but the tax reform portion failed.

¹ Amici from the New Mexico Senate are Senator Mark Moores (R-Albuquerque), Senator William E. Sharer (R-Farmington), Senator Greg Baca (R-Belen), Senator Cliff R. Prittle (R-Roswell), Senator Pat Woods (R-Broadview), Senator Craig W. Brandt (R-Rio Rancho), Senator Candace Gould (R-Rio Rancho/Corrales), and Senator Ron Griggs (R-Alamogordo).

² Amici from the New Mexico House Representatives are Rep. Rod Montoya (R-Farmington), Rep. David E. Adkins (R-Albuquerque), Rep. Monica Youngblood (R-Albuquerque), Rep. Sharon Clahchischilliage (R-Kirtland), Rep. Paul C. Bandy (R-Aztec), Rep. Greg Nibert (R-Roswell), Rep. Gail Armstrong (R-Magdalena), Rep. James E. Smith (R-Sandia Park), Rep. Randal S. Crowder (R-Clovis), Rep. David M. Gallegos (R-Eunice), Rep. James G. Townsend (R-Artesia), Rep. Larry R. Scott (R-Hobbs), Rep. Cathrynn N. Brown (R-Carlsbad), Rep. Zachary J. Cook (R-Ruidoso), Rep. Jimmie C. Hall (R-Albuquerque), Rep. Candy Spence Ezzell (R-Roswell), Rep. Rebecca Dow (R-Truth or Consequences), Rep. Rick Little (R-Chaparral), Rep. Jason C. Harper (R-Rio Rancho), Rep. Alonzo Baldonado (R-Los Lunas), Rep. Dennis J. Roch (R-Logan), Rep. Bob Wooley (R-Roswell), and Rep. James R.J. Strickler (R-Farmington).

4. Petitioners, the New Mexico Legislative Council is made up of sixteen members- eight State Senators and eight members of the New Mexico House of Representatives. Petitioners act on behalf of the Legislative Branch as a whole.

5. Petitioners request that this Court issue a Writ of Mandamus that would direct the reinstatement of items vetoed by the Governor, and thus override the Governor's veto power.

6. On May 5, 2017, Governor Martinez called for a special session of the Legislature to address the exact issues raised in Petitioners' Petition for Original Writ of Mandamus.

Statement in Support of Allowing Amicus Curiae Brief

Though Petitioners act on behalf of the Legislative Branch as a whole, their interest does not align with those of Proposed Amici. Proposed Amici's goals differ from that of Petitioners in that Proposed Amici wish for the political process to allow for proper checks and balances, and allow the minority caucus to be heard in attempts to pass an appropriate balanced budget. Petitioners seek to disenfranchise the minority caucus and push a political issue through the judicial system. Proposed Amici seek the ability to participate in the "give and take" process of negotiating an appropriations bill that is satisfactory to all New Mexicans. Proposed Amici's Curiae brief and position differs from that of the Governor in that their brief would assist the Court by highlighting the position of

the minority caucus, a key member of the legislative process outlined by our state Constitution that may otherwise be silenced through the Petitioners' attempts to unilaterally pass an appropriations bill.

WHEREFORE, Proposed Amici pray that this honorable Court deem filed the attached conditionally filed Amicus Curiae Brief.

Pursuant to NMRA Rule 12-309(c), the Respondents do not oppose this Motion and Petitioners do not oppose.

Respectfully submitted,

SaucedoChavez, P.C.

By: /s/ Christopher T. Saucedo

Christopher T. Saucedo

Daniel C. Apodaca

Post Office Box 30046

Albuquerque, NM 87190

(505) 338-3945

csaucedo@saucedochavez.com

dapodaca@saucedochavez.com

*Counsel for Individual members of the
minority caucuses*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing response and the attached exhibits were served via e-mail and electronic transmission to the following counsel of record at the addresses listed below on this 9th day of May, 2017, and upon information and belief, the transmission was successful:

Paul J. Kennedy
Arne R. Leonard
Paul Kennedy & Associates, P.C.
201 12th Street, N.W.
Albuquerque, NM 87102
(505) 842-8662
pkennedy@paulkennedylaw.com
aleonard@paulkennedylaw.com

Steven Blankinship
Matthew J. Stackpole
General Counsel
OFFICE OF THE GOVERNOR
490 Old Santa Fe Trail #400
Santa Fe, NM 87501-2704
(505) 476-2200
Steven.blankinship@staet.nm.us
Matthew.stackpole@state.nm.us

Attorneys for Respondents

Michael B. Browde
1117 Stanford, NE
MSC 11 6070
Albuquerque, NM 87131-0001
(505) 277-5326
browde@law.unm.edu

Jane B. Yohalem
P.O. Box 2827
Santa Fe, N.M. 87504 (505)
988-2826
jbyohalem@gmail.com

Counsel for Petitioners

Kevin K. Washburn
Regents Professor
UNM School of Law
1117 Stanford, NE
MSC 11 6070
Albuquerque, NM 87131-0001
washburn@law.unm.edu

*Counsel for invited amicus curiae
Council of University Presidents*

Regina Ryanczak
Director, Litigation Division
New Mexico Attorney General's
Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504 (505)
490-4052
rryanczak@nmag.gov

*Attorney to be noticed under Rule 12-
504(E)*

/s/ Christopher T. Saucedo
Christopher T. Saucedo

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Respondents.

On an Original Petition for an
Emergency Writ of Mandamus

**BRIEF OF INDIVIDUAL MEMBERS OF MINORITY CAUCUSES,
*AMICUS CURIAE***

Christopher T. Saucedo
Daniel C. Apodaca
SaucedoChavez, P.C.
Post Office Box 30046
Albuquerque, NM 87190
(505) 338-3945
csaucedo@saucedochavez.com
dapodaca@saucedochavez.com

*Counsel for Individual Members of
Minority Caucuses*

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STATEMENT OF COMPLIANCE

There are no references to audio, digital, or electronic recordings in this brief. The body of this brief contains 2707 words in Times New Roman typeface as counted using Word Version 2013.

By: /s/ Christopher T. Saucedo
Christopher T. Saucedo

TABLE OF AUTHORITIES

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Other Authorities

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| <i>Governor says she has a plan to fund higher education in NM,</i> Dan Boyd, Albuquerque Journal, May 3, 2017..... | 2 |

INTEREST OF INDIVIDUAL MEMBERS OF THE MINORITY CAUCUSES

As members of the minority caucuses in the New Mexico Senate and House of Representatives, Amici play an important part in the political process by making sure that the voices of all New Mexicans are heard. A minority caucus has the power to negotiate only when it is on a level playing field. As discussed in detail below, Petitioners seek not only to override the Governor's veto, but also to *disenfranchise* the minority caucus by undermining the veto override process itself.

If relief sought by Petitioners is granted, the Intervenors, current Republican members of the New Mexico Senate and House of Representatives would be disenfranchised from the legislative process. The New Mexico Senate is currently composed of twenty-six (26) Democrats and sixteen (16) Republicans.¹ The New Mexico House of Representatives is currently composed of thirty-eight (38) Democrats and thirty-two (32) Republicans.²

¹ Amici from the New Mexico Senate are Senator Mark Moores (R-Albuquerque), Senator William E. Sharer (R-Farmington), Senator Greg Baca (R-Belen), Senator Cliff R. Prittle (R-Roswell), Senator Pat Woods (R-Broadview), Senator Craig W. Brandt (R-Rio Rancho), Senator Candace Gould (R-Rio Rancho/Corrales), and Senator Ron Griggs (R-Alamogordo).

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Indeed, Petitioners have been straightforward with their intentions to circumvent this political process. House Speaker Brian Egolf (D-Santa Fe) shared: “We should all keep in mind that the agenda and need for a special session will not be fully known until the Supreme Court makes a decision after the May 15 hearing.” *Special Session to start May 24, Martinez proclaims*, Heath Haussamen, NMPolitics.net, May 5, 2017. Senator John Arthur Smith (D-Deming) further opined: “I’m a little leery of where she’s [the Governor] at, and I’m patient enough to let the courts resolve this . . . I think she’s just trying to cut her losses.” *Governor says she has a plan to fund higher education in NM*, Dan Boyd, Albuquerque Journal, May 3, 2017. Evidently, Petitioners are capable of both requesting an extraordinary writ so the Court may act on an “emergency basis” (pg. 1, *Petitioner’s Brief*), and also patiently delaying the historically accordant remedy.

(R-Hobbs), Rep. Cathrynn N. Brown (R-Carlsbad), Rep. Zachary J. Cook (R-Ruidoso), Rep. Jimmie C. Hall (R-Albuquerque), Rep. Candy Spence Ezzell (R-Roswell), Rep. Rebecca Dow (R-Truth or Consequences), Rep. Rick Little (R-Chaparral), Rep. Jason C. Harper (R-Rio Rancho), Rep. Alonzo Baldonado (R-Los Lunas), Rep. Dennis J. Roch (R-Logan), Rep. Bob Wooley (R-Roswell), and Rep. James R.J. Strickler (R-Farmington).

BACKGROUND

The Court is presented with a political issue—not a legal question. Thus, certain members of the minority caucus implore this Court to exercise restraint and allow the political process to unfold as the Constitution of New Mexico intended.

The Court does not have authority to determine whether a Governor’s veto is a good idea or good policy. Therefore, the question that is properly before the Court is whether the Governor has the constitutional authority to veto part of an appropriations bill. The Constitution answers that question in the affirmative. “The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided.” N.M. Const. art. IV § 22. Once a veto occurs, the Legislature has the option of overriding the veto. For reasons unclear, the New Mexico Legislative Council asks this Court to act as an arm of the Legislature itself by judicially overriding the Governor’s veto.

During these difficult budgetary times, the Legislature attempted to pass both tax reform and a budget. Among other things, the proposed tax reform would have broadened the tax base, lowered the tax rate and increased revenue. The increase in revenue would have paid for the proposed budget. Senate Amici voted for both the tax reform and the budget. While tax reform failed, the budget passed. The Governor,

exercising her constitutional authority and duty, vetoed parts of the budget and included an Executive Message expressing her intention for a special session.

Petitioners filed their brief seeking to have the Court override the Governor's vetoes. If this Court grants Petitioners' requested relief, it will have both created an unbalanced budget and undermined the deliberative legislative process.

ARGUMENT

I. DISENFRANCHISEMENT

As this Court previously found in *State ex rel. Cisneros v. Martinez*, 2015-NMSC-001, ¶42, 340 P.3d 597 (per curiam), the “appropriations process offers the best solution.” This Court noted the basic premise of the appropriations process.

In truth, the appropriations process is largely unregulated; our constitution has left it that way for over one hundred years. As we explained forty years ago in *Sego*, **the legislative power of the State of New Mexico is vested in the Legislature**. Except for interest or other payments on the public debt, money shall be paid out of the treasury of the State only upon appropriations made by the Legislature, and every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied. The supreme executive power of the State is vested in the Governor, whose principal function, insofar as legislatively enacted law is concerned, is to faithfully execute these laws. **[She] does, however, have the power to exercise veto control over the enactments of the Legislature to the extent that this power or authority is vested in [her] by Art. IV, § 22, supra**. As to bills appropriating money, [she] clearly has the power to veto a “part or parts” or “item or items” thereof. 1974–NMSC–059, ¶ 12, 86 N.M. 359, 524 P.2d 975 (internal citations omitted).

Id. ¶ 43 (emphasis added).

More important for this matter, the “New Mexico Constitution also provides the political and logistical framework within which the appropriations process takes place.” *Id.* ¶ 44. This process begins with Legislative consideration and development of a general appropriations act. The development of the act necessitates cooperation and a “give and take” approach. *Id.* Indeed, “[i]f a particular appropriation amounts to a ‘deal breaker’ for the Governor, the Legislature then has to weigh the value of that particular appropriation against the likelihood of a gubernatorial veto and even the possibility of a special session.” *Id.* “This is all part of the give and take of any legislative session, and it is where the competing interests of those two co-equal branches of state government are best played out.” *Id.*

The 2017 General Appropriations Act contemplated this political process. The Legislature knowingly passed an act that failed to address issues deemed critical to the Governor. The Legislature also knew that a veto and a resultant special session were possible and, indeed, likely. The Governor accordingly line item vetoed many appropriations in the Appropriations Act and expressed her intention in her Executive Message to call a special session. She did so in a May 5, 2017 Special Session Proclamation.

The “give and take” process referred to in *Cisneros* is required not only between the Legislature and the Governor, but also between the majority and the minority caucuses within each chamber of the Legislature. A simple majority vote

is required to pass an appropriations bill, but the majority should be mindful of the Governor's veto.

Upon a veto,³ the Legislature has two options. First, it can override the veto. “[T]he act cannot become law unless two-thirds of the members of the house and senate vote to override the Governor's objections.” *Id.* ¶ 45. To achieve the requisite support, members from each chamber must participate in the “give and take” between the majority and the minority caucuses of each chamber. Second, the Legislature itself can create a new appropriations bill. A new appropriations bill developed during a special session also requires “give and take” within the Legislature and allows members of the respective minority caucuses to publicly debate the issues. The majorities’ failure to consider and incorporate the minorities’

³ The Legislature’s authority to call a special session is not limited to the discretion of the Governor.

[W]hen three-fifths of the members elected to the house of representatives and three-fifths of the members elected to the senate shall have certified to the governor of the state of New Mexico that in their opinion an emergency exists in the affairs of the state of New Mexico, it shall thereupon be the duty of said governor and mandatory upon him, within five days from the receipt of such certificate or certificates, to convene said legislature in extraordinary session for all purposes[.]”

N.M. Const. art. IV § 6.

concerns runs the risk of again having the bill subjected to another veto without the support to override the veto.

Petitioner's requested relief, if granted, will have a dramatic and undesirable effect. The minority caucuses of the House and Senate will be effectively stripped of their constitutional right to participate in the state appropriations process, which would in turn render New Mexicans across the entire state voiceless.

II. SEPARATION OF POWERS OFFENSE

Petitioners argue that it is a violation of the separation of powers provision of the Constitution for the Governor to veto funding for statutorily and constitutionally created entities. Petition at pp. 14-15. On the contrary, the Constitution specifically grants that veto authority to the Governor. N.M. Const. art. IV § 22.

Ironically it is the Petitioners who seek to restrict the separation of powers by effectively asking the Court to render the Governor's veto power meaningless. This results in two ways. First, almost every appropriation relates to a constitutional or statutorily created agency. Thus, a ruling such as Petitioners suggest would permit any Agency to argue that the funding veto effectively eliminated its ability to function and was unconstitutional. This is especially so since the Governor must veto the entirety of an appropriation and cannot simply reduce the funding. *See Cisneros*, 2015-NMCA-001 (holding that the Legislature does not have to provide a line item for each measure of funding, which leaves the Governor with only the

option of vetoing all of an appropriation). Second, if the Governor cannot veto certain parts of the appropriation as Petitioners request, then she could not veto the whole of the appropriation which contains those parts. Thus, the Executive is excluded from its own constitutional role in the appropriations process.

The Constitutional language could not be clearer: “[t]he governor may in like manner approve or disapprove *any* part or parts, item or items, of *any* bill appropriating money . . .” N.M. Const. art IV § 22 (emphasis added). In *Cisneros*, the Court restricted the Governor’s line-item veto authority when it held that she had to veto the whole funding package when a specific appropriation was not identified. Petitioner now takes the opposite position, arguing that the Governor cannot veto the whole package because doing so defunds an agency.

The heart of the Petition in the instant case is what would be left of the Governor’s veto authority. Petitioners request that this Court do the Legislature’s job by awarding majority-preferred funding for each constitutional and statutorily-created agency without consulting deliberative process.

III. GOVERNOR’S VETO AUTHORITY

Petitioners correctly argue, yet do not appear to recognize, that no one branch may act unilaterally to preclude another branch or other constitutional or statutorily-created entity from performing its essential functions under the law.

In her Executive Message, and myriad media statements since its issuance, the Governor clearly stated that she would call a special session with the intent of resolving the budget impasse. On May 5, 2017, the Governor supported her prior statements by issuing the Proclamation for the special session. This is the path provided by the plain language of the Constitution to facilitate co-equal branches of government working together to negotiate legislative enactments reflecting public policy.

Second, certain members of the minority caucus are hopeful that they can work with their counterparts in the Legislature to produce a responsible budget, which includes tax reform. If the Court grants the Writ, the Court will have supplanted its will for that of the Legislative and Executive branches and made it virtually impossible for a minority caucuses to voice their concerns, and severely hinder their ability to negotiate a balanced approach to New Mexico's fiscal challenges.

In one of the most recent decisions on the Governor's veto authority, this Court took the opportunity to admonish that when the Governor exercises her authority under N.M. Const. Art IV § 22, "the Governor had to veto the 'whole' appropriation where the Legislature placed it." *Cisneros*, 2015-NMSC-001, ¶¶ 35, 36, 39, 45 and 46. The Court is now being asked by Petitioners to ignore that the Governor must "veto the entire appropriation" "if she found it objectionable" as laid

out in *Cisneros*, and instead hold that she does not have constitutional authority to veto the entire appropriation. *Id.* ¶ 46. Moreover, the Court twice explained the legislative process. “If a particular appropriation amounts to a “deal breaker” for the Governor, the Legislature then has to weigh the value of that particular appropriation against the likelihood of a gubernatorial veto and even the possibility of a special session. This is all part of the give and take of any legislative session, and it is where the competing interests of those two co-equal branches of state government are best played out.” *Id.* at ¶ 44. The Court rightly held in *Cisneros* that a veto is “all part of the give and take of any legislative session”. *Id.* What is not part of the give and take is the Court picking and choosing when the Governor can exercise Constitutional authority.

Petitioners’ comparison of the current situation to that of *Thompson v. Legislative Audit Commission*, 79 N.M. 693 (1968) is misplaced. In *Thompson* the Legislature was using a statute to transfer the duties of an Agency created by the Constitution. The Legislature did not have the authority to transfer constitutional duties through statutory means. *Thompson* is unlike the instant case where the Governor is exercising her constitutional authority in the only way left after this Court’s rulings in *Cisneros*. The Governor is not “unilaterally precluding” the Legislature from performing its essential function under the law as Petitioners claim, but instead is performing her essential function under the Constitution.

CONCLUSION

Amici respectfully requests that this Court allow the political process to prevail, which requires unimpeded participation by members of the minority caucuses. Amici respectfully request this Court dismiss Petitioner's request for relief without prejudice, or hold it in abeyance pending the outcome of the special session.

Respectfully submitted,

SaucedoChavez, P.C.

By: /s/ Christopher T. Saucedo

Christopher T. Saucedo

Daniel C. Apodaca

Post Office Box 30046

Albuquerque, NM 87190

(505) 338-3945

csaucedo@saucedochavez.com

dapodaca@saucedochavez.com

*Counsel for Individual members of the
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Paul J. Kennedy
Arne R. Leonard
Paul Kennedy & Associates, P.C.
201 12th Street, N.W.
Albuquerque, NM 87102
(505) 842-8662
pkennedy@paulkennedylaw.com
aleonard@paulkennedylaw.com

Steven Blankinship
Matthew J. Stackpole
General Counsel
OFFICE OF THE GOVERNOR
490 Old Santa Fe Trail #400
Santa Fe, NM 87501-2704
(505) 476-2200
Steven.blankinship@staet.nm.us
Matthew.stackpole@state.nm.us

Attorneys for Respondents

Michael B. Browde
1117 Stanford, NE
MSC 11 6070
Albuquerque, NM 87131-0001
(505) 277-5326
browde@law.unm.edu

Jane B. Yohalem
P.O. Box 2827
Santa Fe, N.M. 87504 (505)
988-2826
jbyohalem@gmail.com

Counsel for Petitioners

Kevin K. Washburn
Regents Professor
UNM School of Law
1117 Stanford, NE
MSC 11 6070
Albuquerque, NM 87131-0001
washburn@law.unm.edu

*Counsel for invited amicus curiae
Council of University Presidents*

Regina Ryanczak
Director, Litigation Division
New Mexico Attorney General's
Office
P.O. Drawer 1508
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Christopher T. Saucedo