May 6, 2020

The Honorable William Barr
U.S. Attorney General
950 Pennsylvania Ave NW,
Washington, DC 20530

Dear Attorney General Barr,

I am writing to you to join our voice with those of our elected state representatives who communicated with your office last week.

We want to express our fears and frustrations regarding New Mexico Gov. Lujan Grisham’s public health order, a policy many in our state believe to be a blatant violation of peoples’ civil rights, liberties and their right to conduct free commerce. The situation in New Mexico is one that is unjust and inequitable.

You have made it clear that your office would be looking at the states and the legality of how different governors are responding to the crisis.

For weeks the governor has kept small businesses closed, impacting hundreds of thousands of owners and families, while destroying New Mexico’s economy. The governor has been discriminatory in her policies, keeping big box corporate giants open—draining New Mexico dollars out of state—while shutting down mom-and-pop locally owned establishments. This is not only preferential treatment for the big box stores but a violation of the civil rights of our small business owners whose livelihoods are now in free fall.

I, along with Republicans across the state, continue to stress that health and safety of all constituents during this pandemic are paramount. Nevertheless, there is no reason why small business, the heartbeat of our state’s economy, cannot practice social distancing, even better than the big box stores. The irony is that customers are often sandwiched together at the national chains, while locally owned shops remain shuttered or are limited to offering delivery of their product at the curb.
I completely agree with your position that businesses must have more freedoms to operate in a way that’s reasonably safe and that governors must not impinge on civil rights or commerce.

Yet our governor’s Administration has fined businesses, threatened to strip licenses from the owners or threatened them with jail time if they violate her executive orders.

Last week the State fined a business in Grants, NM, $60,000, despite the owner having implemented strict social distancing and other precautions in her small pawn shop and gun store. The owner, a woman whose husband is a veteran and also disabled, is typical of many small business owners in New Mexico.

During the period that the state declared her in violation, local law enforcement officers had found it convenient to make necessary purchases at her store, rather than driving 78 miles to Albuquerque, which makes her claim of being an essential business more compelling. Also, in a poor state like New Mexico, many people do not qualify for loans from banks, so her pawn shop helps people who are struggling from paycheck to paycheck; that also seems to put her in the same essential category as more traditional lenders.

The pawn shop/gun store owner’s fine came two days after a half dozen State Police officers surrounded her store as they posted a notice to her door. Is this America? Do business owners deserve intimidation like this?

More than likely, the $60,000 fine will bankrupt her business. Many other small businesses face the same conclusion without a fine.

New Mexico’s economy is crushed and so are its citizens. Many establishments simply cannot recover.

The purpose of New Mexico’s Public Health Emergency Response Act is to “provide the state of New Mexico with the ability to manage public health emergencies in a manner that protects civil rights and liberties of individual persons.” All case law related to police powers and civil rights indicates that such authority must be restricted to the least intrusive impact on civil liberties possible. This act has nothing to do with business closings or mass gatherings.

New Mexico-owned businesses and the people they employ have a constitutional right to equal protection under the law. Small businesses should be allowed to operate under the same rules as the big box stores.

Across the state local elected leaders have expressed frustration with the governor’s “one-size fits all” approach. According to a recent Breitbart article, New Mexico is experiencing less than a third of the infection rate as the rest of the country – 5% compared to 16% nationwide. New Mexico is a large and diverse state, and efforts to protect public health, while allowing businesses to reopen, should be based on what makes sense in each section of the state.
Unfortunately, the governor’s blanket approach is violating citizens’ rights and instituting policy that has little or no legal justification.

I am asking that you please consider looking into this matter before more economic devastation occurs and before more freedoms are taken from the great people of New Mexico.

Sincerely,

Steve Pearce
Chairman, Republican Party of New Mexico