

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Defendant.

No. D-0101-CR-202300-039
Judge Mary Marlowe Sommer

**DEFENDANT'S MOTION TO DISQUALIFY THE SPECIAL PROSECUTOR
UNDER ARTICLE III OF THE NEW MEXICO CONSTITUTION**

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Counsel for Defendant

For the following reasons, Defendant hereby moves the Court for an order disqualifying the special prosecutor from further participation in this case.

INTRODUCTION

The special prosecutor in this case, Andrea Reeb, is a member of the New Mexico House of Representatives. Under Section 1 of Article III of the New Mexico Constitution, however, a sitting member of the Legislature may not “exercise any powers properly belonging” to either the executive or judicial branch. As a special prosecutor, Representative Reeb is vested by statute with “all the powers and duties” of a District Attorney, who is considered to be a member of either the judicial or executive branch of the New Mexico government. *State v. Surratt*, 2016-NMSC-004, ¶ 26, 363 P.3d 1204. Representative Reeb is therefore exercising either the executive power or the judicial power, and her continued service as a special prosecutor is unconstitutional. She must be disqualified.

BACKGROUND

This prosecution arises out of a tragic accident that took place on October 21, 2021, on a movie set near Santa Fe. While the cast and crew were rehearsing a scene for the Western film *Rust*, a firearm held by defendant Alexander Baldwin discharged a live round that hit cinematographer Halyna Hutchins and director Joel Souza. Ms. Hutchins died of her wound.

Representative Reeb is the former District Attorney for the Ninth Judicial District. She resigned from that position in March 2022. At some point before her resignation, she began

campaigning for the New Mexico House of Representatives.¹

On August 3, 2022, after Representative Reeb had secured the Republican nomination but before the general election, the District Attorney of the First Judicial District announced Representative Reeb’s involvement as special prosecutor for the investigation into the *Rust* accident under Section 36-1-23.1 of the New Mexico Statutes. Ex. B. That section provides that “[e]ach district attorney may, when he cannot prosecute a case for ethical reasons or other good cause, appoint a practicing member of the bar of this state to act as special assistant district attorney.” Under the statute, the appointed special prosecutor is vested with “all the powers and duties” of the appointing District Attorney with respect to the matter for which she is appointed. *Surratt*, 2016-NMSC-004, ¶ 26.

Less than a month later, on August 30, 2022, the First Judicial District Attorney requested \$635,500 in funding from the State of New Mexico Board of Finance for the prosecution of individuals related to the *Rust* shooting. Ex. C, at 1. The proposed budget included \$156,000 for Representative Reeb’s salary. *Id.* at 6. The Board of Finance agreed to provide half of the requested funds. Ex. D, at 10-11. The District Attorney’s office has told the Board of Finance that it intends to seek an additional appropriation from the Legislature in the legislative session currently in progress. *Id.* at 10. These funds would also be used in part to fund Representative Reeb’s salary.

On November 8, 2022, Representative Reeb was elected to the New Mexico House of

¹ Representative Reeb’s campaign-finance disclosure forms show that she received her first contribution in February 2022. Ex. A, at 3.

Representatives. See *2022 General Election Results*, N.M. SEC. OF STATE, <https://electionresults.sos.state.nm.us/resultsSW.aspx?type=LGX&map=CTY> (results for House District 64). She assumed office on January 1, 2023. N.M. Const. art. XX, § 3. Two days later, the District Attorney signed a Certificate of Appointment formally designating Representative Reeb “as Special Prosecutor in the case of State of New Mexico vs. Alexander Rae Baldwin” Certificate of Appointment (Feb. 3, 2023). This appointment was notarized and endorsed by the Court on February 3, 2023, nearly six months after the District Attorney announced Representative Reeb’s involvement in the case. *Id.*

On January 19, 2023, the District Attorney’s office announced through social media that she would charge Mr. Baldwin with two counts of involuntary manslaughter. Ex. E. On January 31, an information was filed charging Mr. Baldwin with two alternative counts of involuntary manslaughter under NMSA 1978, § 30-2-3(B). See Criminal Information, filed Jan. 31, 2023. For unknown reasons, the information was signed by the District Attorney, not Representative Reeb, even though the appointment of a special prosecutor is permissible only if the District Attorney “cannot prosecute a case” NMSA 1978, § 36-1-23.1. The District Attorney has also entered an appearance in this case as co-counsel.

ARGUMENT

Ms. Reeb’s continued service as a special prosecutor in this case is unconstitutional. The legal question is not a close one. She must be disqualified.

Article III, Section 1 of the New Mexico Constitution provides in relevant part:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others

As the New Mexico Supreme Court has explained, that “provision articulates one of the cornerstones of democratic government: that the accumulation of too much power within one branch poses a threat to liberty.” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 26, 125 N.M. 343.

Representative Reeb’s service as a special prosecutor violates that bedrock provision. As a state representative, Representative Reeb is unquestionably a “person . . . charged with the exercise of powers properly belonging” to the legislative department. *See* N.M. Const. art. IV, § 1 (“The legislative power shall be vested in a senate and house of representatives which shall be designated the legislature of the state of New Mexico”). Among her other powers, “the casting of votes on the floor of the House of Representatives . . . constitute[s] such an exercise” of “legislative power.” *Ballentine v. United States*, 486 F.3d 806, 812 (3d Cir. 2008) (internal quotation marks omitted) (discussing federal Constitution); *see also Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1659 (2020) (noting that “legislators . . . exercise the legislative power”) (citing *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 323 (1937)).

Because Representative Reeb is charged with the exercise of legislative power, her appointment as a special prosecutor is unconstitutional if that role confers on her power properly belonging to either the executive department or the judicial department. The New Mexico

Supreme Court has held that a special prosecutor appointed under Section 36-1-23.1 is vested with “all the powers and duties of [the District Attorney]” with respect to the particular case for which the appointment was made. *Surratt*, 2016-NMSC-004, ¶ 26. That includes “broad authority to control key aspects of a prosecution, including determinations about whom and whether to prosecute and what charges to bring.” *Ibid.*; *see id.* ¶ 14 (citing N.M.S.A. § 36-1-18(A)(1)).

That power is either executive or judicial in character. Neither the New Mexico Constitution nor caselaw is clear whether a District Attorney exercises the power of the executive department or the judicial department. On the one hand, the office of the District Attorney is established in Article VI of the Constitution, which governs the judicial department. *See* N.M. Const. art. VI, § 24. On the other hand, the power “to initiate criminal investigations and prosecutions” has long been considered a “core executive power[.]” *Seila Law LLC v. Consumer Fin. Protection Bureau*, 140 S. Ct. 2183, 2200 (2020), and New Mexico precedent suggests that “prosecution” is a principal function of the “executive branch,” *State v. Armijo*, 1994-NMCA-136, ¶ 48, 118 N.M. 802; *accord Pyke v. Cuomo*, 258 F.3d 107, 109 (2nd Cir. 2001) (explaining that prosecutorial judgment is a “core” executive function); *Steen v. Superior Court*, 331 P.3d 136, 137 (Cal. 2014) (“the discretionary power to initiate criminal prosecutions” is “a core function of the executive branch”); *In re Jackson*, 51 A.3d 529, 538 (D.C. 2012) (“[C]riminal prosecution is a core executive function, and that power is allocated to the executive branch of government”) (citation and internal quotation marks omitted). In addition, the Attorney General—who is clearly an executive officer, *see* N.M. Const. art. V, § 1—has the power to take over any criminal prosecution when, “in his judgment, the interest of the state requires such action,” and represents

the State in all criminal appeals. NMSA 1978, §§ 8-5-2(A), (B). That supports the inference that a District Attorney exercises state executive power when she prosecutes a case.

But whether a District Attorney exercises the powers of the judicial department or the executive department is immaterial here. She clearly exercises one or the other—and certainly not the power of the legislative department. For that reason, Representative Reeb is not constitutionally permitted to serve simultaneously as a legislator and a special prosecutor. Doing so vests two core powers of different branches—legislating and prosecuting—in the same person and is thus barred by the plain language of Article III of the New Mexico Constitution.

There does not appear to be a reported judicial decision addressing an attempt by a New Mexico state legislator to simultaneously serve as a prosecutor—perhaps because no one has attempted such a facially unconstitutional action in this State. But last year, two Justices of the Nevada Supreme Court concluded that a similar appointment violated a materially identical separation-of-powers provision of the Nevada Constitution.² In *Caruso v. Eighth Judicial District Court in and for County of Clark*, 509 P.3d. 604, 2022 WL 1584695 (Nev. May 18, 2022), a state senator had served as a deputy district attorney and had prosecuted the defendant, who then challenged the prosecutor’s appointment through a mandamus petition seeking dismissal of the

² The Nevada Constitution’s separation-of-powers provision reads:

The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in cases expressly directed or permitted in this constitution.

Nev. Const. art. III, § 1, subsec. 1.

charges against him. *Id.* at *1. The majority declined to reach the separation-of-powers question on the ground that dismissal of the charges was not an appropriate remedy and the defendant had not sought a lesser remedy such as disqualification. *See ibid.* (expressing “no opinion on the merits of the separation-of-powers issue”).

But two Justices reached the merits question and found the appointment unconstitutional.³ *See Caruso*, 2022 WL 1584695, at *2 (Silver, J., dissenting, joined by Pickering, J.). As Justice Silver concluded, “[t]he Nevada Constitution’s separation of powers clause prohibits [a] Senator . . . from serving as a legislator, passing laws, and at the same time working as a prosecutor, in the executive branch, enforcing those laws.” *Ibid.* She explained that the “language [of the separation-of-powers provision] is plain and unambiguous and there is no need to look beyond it.” *Id.* at *3. She observed that “legislators hold offices that are expressly created by Article 4 of the Nevada Constitution and are charged with the exercise of the legislative branch’s powers[,]” and that “it is clear that prosecuting a crime—even at the local level—is an executive function.” *Ibid.* For that reason, “the separation of powers clause forbids legislators who are promoting legislation on behalf of their constituents from concurrently acting as a prosecutor—executing criminal prosecutions through enforcement of our state criminal laws.” *Ibid.*⁴

³ Unlike the defendant in *Caruso*, Mr. Baldwin is seeking the lesser remedy of disqualification. The merits question is therefore properly presented in this case, where the reasoning of these Nevada Supreme Court Justices applies with full force and requires disqualification of Representative Reeb.

⁴ In a separate case involving a challenge to the employment of sitting Nevada state legislators as public school teachers and public defenders, a court, applying common law rules, followed the same logic: “A District Attorney’s Office brings charges on behalf of the State against those who have allegedly violated the laws of the State and the Legislature enacts such laws. Therefore,

Like the senator in *Caruso*, Representative Reeb’s “appear[ance] in court as a [special prosecutor] prosecuting cases on behalf of the plaintiff State of [New Mexico] and under the authority of the executive branch” is “repugnant to the constitution.” *Caruso* 2022 WL 1584695, at *4 (Silver, J., dissenting) (internal quotations omitted). She must therefore be disqualified.

This case exemplifies the concerns that underpin the New Mexico Constitution’s separation-of-powers provision. As the New Mexico Supreme Court has explained in describing its purpose, “[t]he doctrine of separation of powers rests on the notion that the accumulation of too much power in one governmental entity presents a threat to liberty.” *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 48, 150 N.M. 562 (citing *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991)). The diffusion of power is especially important in the criminal justice system, where the state’s exercise of its police power most directly impacts the liberty of the citizenry. Legislators enact general laws that can be harsh, arbitrary, or unwise in particular applications, but prosecutorial discretion serves as a check on that danger. See *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 386 (2004). At the same time, by amending laws, exercising oversight, and setting budgets, legislators can rein in prosecutors who abuse their authority or exercise their discretion in a manner that legislators regard as unfair or excessive.

Here, however, Representative Reeb—who has publicly touted her prosecutorial expertise

serving in the Legislature while simultaneously employed as a member of a county district attorney’s office is incompatible based on the common law doctrine.” *Nevada Pol’y Rsch. Inst., Inc. v. Miller, et al.*, No. A-20-817757-C, slip op. at 11 (Nev. Dist. Ct. Jan. 4, 2023).

in connection with her promises to reform New Mexico’s criminal laws⁵—is legislating while also executing those very same criminal laws by prosecuting Mr. Baldwin. Her potential influence on her colleagues in the Legislature could thwart any efforts to legislatively foreclose a prosecution that has been widely criticized as unjust and unprecedented.⁶ Even if she recuses from votes on her own compensation, her clout with her colleagues on other matters could (wittingly or not) encourage them to maintain funding for her position. Were the arrangement here approved by the courts, future District Attorneys could seek to curry favor with legislators who control their budgets by appointing them to high-profile cases—distorting the legislative process. Indeed, the Incompatibility Clause of the federal Constitution, U.S. Const. art. I, § 6, which similarly bars federal legislators from serving in executive and judicial offices, was adopted precisely to “guard[] against the danger of executive influence upon the legislative body.” *Federalist* No. 76; *see United*

⁵ *See* ANDREA REEB, <https://andreareeb.com/crime/> (last visited Feb. 6, 2023).

⁶ *See, e.g.,* Phaedra Haywood, *DA Expected to Announce this Month If Charges Will Be Filed in ‘Rust’ Shooting*, SANTA FE NEW MEXICAN (Jan. 14, 2023), https://www.santafenewmexican.com/news/local_news/da-expected-to-announce-this-month-if-charges-will-be-filed-in-rust-shooting/article_d037fcce-9048-11ed-a6cc-fb0f9016fc24.html (quoting State Representative Jason Harper as stating that the charges are “a frivolous use of tax dollars and a waste of time”); Julia Jacobs & Graham Bowley, *Alec Baldwin Will Be Charged with Involuntary Manslaughter in ‘Rust’ Killing*, N.Y. TIMES (Jan. 19, 2023), <https://www.nytimes.com/2023/01/19/arts/rust-shooting-charges-alec-baldwin.html> (quoting the leading actors’ union as calling the charges “wrong and uninformed”); Ray Sanchez, *How Strong Is the Criminal Case Against Alec Baldwin?*, CNN (Jan. 20, 2023), <https://www.cnn.com/2023/01/20/us/alec-baldwin-involuntary-manslaughter-case/index.html> (quoting a legal analyst as describing it as “an ill advised prosecution”); Pilar Melendez & Justin Rohrlich, *Why the ‘Bold’ Prosecution of Alec Baldwin Could End in Disaster*, DAILY BEAST (Jan. 19, 2023), <https://www.thedailybeast.com/alec-baldwin-charges-why-the-bold-prosecution-could-end-in-disaster> (quoting former federal prosecutor as stating “[t]his is overcharging”).

States v. Lane, 64 M.J. 1, 7 (C.A.A.F. 2006).

At the same time, allowing a single person to exercise both legislative and prosecutorial power could taint prosecutorial decision-making. A prosecutor who also serves as a legislator could face pressure to make prosecutorial decisions that serve her legislative interests, such as by prosecuting a prominent defendant associated with an opposing faction within the Legislature even in the face of conflicting evidence or law. And even if she does not allow her legislative interests to influence her prosecutorial choices, the perception of bias could diminish public confidence in the fairness of the criminal process.⁷ *State v. Hill*, 1975-NMCA-093, ¶ 14, 88 N.M. 216 (“In the performance of his duties [a prosecutor] must not only be disinterested and impartial but must also appear to be so.”). Moreover, although the Attorney General is vested with the power to take over a prosecution and to confess error on any appeal, see NMSA 1978, §§ 8-5-2(A), (B), doing so in this circumstance would directly conflict with the interests of a state legislator who will be voting on legislation of importance to the Attorney General—inverting the ordinary incentives for executive-branch supervision of prosecutors.

In short, there can be no question that Representative Reeb is violating both the plain text and the purpose of the New Mexico Constitution’s separation-of-powers provision by serving simultaneously as a legislator and a prosecutor. She must be removed.

⁷ David Oscar Markus, *Prosecutors Pursuing Alec Baldwin for All the Wrong Reasons*, ALBUQUERQUE J. (Jan. 24, 2023), <https://www.abqjournal.com/2567134/prosecutors-pursuing-alec-baldwin-for-all-the-wrong-reasons.html> (noting that “District Attorneys (unlike federal prosecutors) are elected” and suggesting that the District Attorney believes “this prosecution will help her in the next election”).

CONCLUSION

Defendant respectfully asks the Court to disqualify the special prosecutor from further participation in this case.

Date: February 7, 2023

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas

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heather@bll.law

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2023, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system, which caused all participants and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Heather LeBlanc
Heather LeBlanc

Exhibit A



OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
 Phone: (505) 827-3600 Toll-Free: (800) 477-3632
 Fax: (505) 827-8403

First Primary Report

FORM A

Candidate's Name Andrea Rowley Reeb
 Date Submitted: 4/4/2022 Date Due: 4/11/2022

1.	Full name of Candidate Andrea Rowley Reeb	Office Sought or Held State Representative - Curry - DISTRICT 64
	Mailing Address 15 San Vincente Circle	City, State & Zip Code Clovis, NM 88101
	Phone # (575) 219-9687	Fax #
2.	Full name of Campaign Committee Committee to Elect Andrea Reeb	Phone # (575) 219-9687
	Mailing Address 15 San Vincente Circle	City, State & Zip Code Clovis, NM 88101
		Fax #
3.	Full name of Treasurer Megan Palla	Phone # (575) 935-7363
	Mailing Address 1800 Sheffield Dr, Suite A	City, State & Zip Code Clovis, NM 88101
		Fax #
	Name & Street Address of Financial Institution Where bank account is maintained (Bank Account Located in New Mexico) The Citizens Bank of Clovis. 421 Pile Street, Clovis, NM 88101	

4.	FINANCIAL SUMMARY	Opening Balance
a.	OPENING BALANCE for reporting period ("0" if first report, or CLOSING BALANCE FROM LAST REPORT)	\$0.00
b.	Total Monetary Contributions this Reporting Period (Form B1 + Form B3)	\$1,000.00
c.	Total Expenditures this Reporting Period (Form C+ Form C1)	\$369.55
d.	Total Amount Raised from one or more Special Events Special Event Worksheet(s) attached Yes X No	\$0.00
e.	Closing Balance this Reporting Period (4a + 4b + 4d - 4c)	\$630.45
f.	Total Loans To the Committee this Reporting Period (Form A1)	\$0.00
g.	Total Unpaid Campaign Debt (Form A1)	\$0.00
h.	Total In-Kind Contributions this Reporting Period (Form B2)	\$650.00

First Primary Report

Report of Expenditures and Contributions

Form A 1

Candidate's Name Andrea Rowley Reeb
Date Submitted: 4/4/2022 Date Due: 4/11/2022

1.	TOTAL DEBT CARRIED FORWARD	\$0.00
2.	TOTAL LOAN CONTRIBUTIONS	\$0.00
3.	TOTAL DEBT PAID	\$0.00
4.	TOTAL LOANS FORGIVEN	\$0.00
5.	TOTAL UNPAID DEBT	\$0.00

First Primary Report

Report of Expenditures and Contributions

**FORM B 1
MONETARY CONTRIBUTIONS**

Candidate's Name Andrea Rowley Reeb
Date Submitted: 4/4/2022 Date Due: 4/11/2022

DATE	NAME and ADDRESS of CONTRIBUTOR	OCCUPATION	AMOUNT
2/24/2022	RANDAL S CROWDER 2400 FAIRWAY TERRACE CLOVIS, NM 88101 Contribution	Candidate	\$1,000.00
TOTAL			\$1,000.00

First Primary Report

Report of Expenditures and Contributions

**FORM B 2
IN-KIND CONTRIBUTIONS**

Candidate's Name Andrea Rowley Reeb
Date Submitted: 4/4/2022 Date Due: 4/11/2022

DATE	NAME and ADDRESS of CONTRIBUTOR	OCCUPATION	AMOUNT
4/1/2022	FOCAL SHIFT MEDIA 508 E 17TH LANE PORTALES, NM 88130 SOCAL MEDIA SET UP	Advertising	\$650.00
TOTAL			\$650.00

First Primary Report

Report of Expenditures and Contributions

**FORM B 3
LOAN CONTRIBUTIONS**

Candidate's Name Andrea Rowley Reeb
Date Submitted: 4/4/2022 Date Due: 4/11/2022

DATE	TRANSFER DATE	NAME and ADDRESS of CREDITOR	AMOUNT
TOTAL			

First Primary Report

Report of Expenditures and Contributions

**FORM B 4
LOANS FORGIVEN**

Candidate's Name Andrea Rowley Reeb
Date Submitted: 4/4/2022 Date Due: 4/11/2022

DATE	NAME and ADDRESS of CREDITOR	AMOUNT
TOTAL		

First Primary Report

Report of Expenditures and Contributions

**FORM C
EXPENDITURES**

Candidate's Name Andrea Rowley Reeb

Date Submitted: 4/4/2022

Date Due: 4/11/2022

DATE	NAME and ADDRESS of PAYEE	PURPOSE	Type	AMOUNT
3/3/2022	Whitco Checks 1513 S Tyler Amarillo, TX 79101 Office Supplies	Office expenses	Expenditure	\$19.55
3/17/2022	Rebecca L. Dow P.O. Box 358 Alto, NM 88312 Contribution	Contribution (explain nonmonetary)*	Expenditure	\$200.00
3/31/2022	LARRY R SCOTT 406 E ARRIBA DR HOBBS, NM 88240 Contribution	Contribution (explain nonmonetary)*	Expenditure	\$150.00
TOTAL				\$369.55

First Primary Report

Report of Expenditures and Contributions

**FORM C 1
LOAN REPAYMENTS**

Candidate's Name Andrea Rowley Reeb

Date Submitted: 4/4/2022

Date Due: 4/11/2022

DATE	NAME of CREDITOR	AMOUNT
TOTAL		

First Primary Report

Report of Expenditures and Contributions

SPECIAL EVENT WORKSHEET

Candidate's Name Andrea Rowley Reeb
 Date Submitted: 4/4/2022 Date Due: 4/11/2022

1.	Brief description of event		
2.	Names of Individuals or entities that sponsored the event		
3.	a. Date of event	b. Admission price (or less)	c. Number in attendance
4.	Actual location and street address		
5.	Admission Fees Received		
6.	Unidentifiable / Anonymous Contributions : (Aggregate amount received during event)		
7.	Total unidentifiable contributions (add lines 5 and 6)		
8.	Expenditures (made in relation to Special Event)		
9.	Difference (Subtract line 8 from line 7) (If figure on line 9 is more than , complete lines 10 and 11)		
10.	After expenses allowance		
11.	Excess on unidentifiable cash contributions that must be donated (Subtract line 10 from line 9)		

Exhibit B

Good afternoon,

Please see the statement below from DA Mary Carmack-Altewies regarding the Rust case:

“To dispel any rumors about the Rust case, I am providing the following official update. As I have previously stated, once the First Judicial District Attorney’s Office (“FJDA”) receives the completed investigation from the Santa Fe County Sheriff’s Office (“SFSO”), the FJDA will begin the screening process and any necessary follow-up investigation. To date, my office has received portions of the Rust investigation from SFSO but is still awaiting the balance of supplemental reports including, but not limited to, the following: FBI firearm and tool mark analyses, forensic testing on the firearm itself, the forensic download from Suffolk County PD of Mr. Baldwin’s phone, and the pathology report from the New Mexico Office of the Medical Investigator. Once SFSO receives those—and any other outstanding items—and completes its supplemental reports, the screening process will begin, and my team and I will make a charging decision. To expedite the FJDA review process, I have added retired Ninth Judicial District Attorney, Andrea Reeb to the team, as a special prosecutor for this case. To remain transparent to the local and national community, the FJDA will proactively disseminate information as it becomes available.”

Respectfully,

Franchesca Perdue
Data and Communications Specialist
First Judicial District Attorney’s Office
505-428-6984

Exhibit C



STATE OF NEW MEXICO

First Judicial District Attorney
Santa Fe, Rio Arriba & Los Alamos Counties

Mary Carmack-Altwies
District Attorney

Santa Fe Main Office
327 Sandoval Street
PO Box 2041
Santa Fe, NM 87504-2041
Telephone: (505) 827-5000
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Espanola Office
1122 Industrial Park Road
PO Box 1209
Espanola, NM 87532
Telephone: (505) 753-7131
Fax: (505) 753-7133

August 30, 2022

State of New Mexico Board of Finance
407 Galisteo Street Ste 166
Santa Fe, NM 87501

Dear Board of Finance:

I appreciate the consideration for emergency grant funding for the First Judicial District Attorney's Office. In October of 2021, the "RUST" movie production was taking place at the Bonanza Creek Ranch in Santa Fe County. During the filming of this movie, Alec Baldwin shot and killed Halyna Hutchins and injured Joel Souza while rehearsing a scene. Many individuals had handled the gun that ultimately killed Hutchins and injured Souza. Since October of 2022, my office has been waiting for evidence to be examined by the FBI. The results of the investigation have now been returned to my office. Only a few items are outstanding but are expected any day. I am ready to start the decision of what individuals will be criminally charged in this case. If charges are warranted, the FJDA anticipates prosecuting up to four (4) individuals. My expenses for the "RUST" will begin immediately and will be costly.


I have reviewed my current budget, and I do not have the proper funding in my budget to prosecute such a high-profile case. I am requesting emergency grant funding of \$635,500.00. I have laid out in my application my justification for this funding. I need funding for an attorney, investigator, media contact person, paralegal, expert witnesses, and general trial expenses. I will not be able to wait 11 more months to get this funding from the Legislature. I anticipate if emergency grant funding is granted, I will still need to go to the Legislature for a special appropriation depending on the number of trials held. Most defendants get separate jury trials and will not be tried at the same time. Each jury trial will take weeks to a month to complete. Experts will have to testify at these trials. In addition, each defendant will get a preliminary hearing within 60 days of charging to determine if there is probable cause to go to trial. These hearings will take weeks to complete and will happen rather quickly once charges are filed. Experts will additionally need to testify at these hearings.

I greatly appreciate you taking the time to carefully consider my application. I believe the application should address any questions and justifications you may have about why the funding is needed, how much funding is needed, and specific numbers addressing how I came up with the \$635,500 I am requesting. My goal and job are to handle this matter to best of my ability using

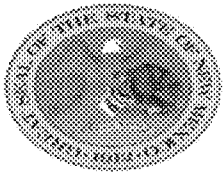
every resource possible to obtain justice for the victims and families in this matter. This gap funding will assist my office in a competent and thorough prosecution of those individuals responsible for taking the life of Halyna Hutchins and injuring Joel Souza.

Please reach out to me if you have any additional questions.

Sincerely,



Mary Carmack-Altwies



**NEW MEXICO STATE BOARD OF FINANCE (SBOF) SUBMISSION
 REQUIREMENT CHECKLIST FOR APPROVAL OF LOANS AND GRANTS
 TO PUBLIC ENTITIES FROM THE EMERGENCY FUND PURSUANT TO
 SECTION 6-1-2 NMSA AND EMERGENCY FUNDING POLICY 11-03**

Submitted by: Mary Carmack-Altwives, First Judicial District Attorney Date: 8/30/2022
 Public Entity: First Judicial District Attorney Address: 327 Sandoval Street, Santa Fe New Mexico 87501
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 Presenter(s): Mary Carmack-Altwives Title: District Attorney Email: mcarmack-altwives@da.state.nm.us
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The following checklist is intended to assist applicants in complying with SBOF Emergency Funding Policy 11-03. Click → Emergency Funding Policy 11-03 for full requirements. The applicant must provide with a detailed cover letter one (1) original hard copy to: *Director, State Board of Finance, 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501*; and one (1) identical bookmarked PDF file on CD or flash drive delivered with the hard copy or via email to bof.administrator@state.nm.us, (SBOF Contact: 505-827-4980). Check off items from the list below, complete as applicable and prepare attachments as needed.

- 1. List of all other possible funding sources and austerity measures explored and exhausted: SEE ATTACHMENT
- 2. Nature of emergency, including the governmental services not being delivered and effect of the failure of the service on the public health, safety and welfare of individuals and/or community: SEE ATTACHEMENT
- 3. Explanation of why the situation is an unforeseen circumstance that could not reasonably have been addressed at a past legislative session: SEE ATTACHMENT
- 4. Reason why the emergency cannot reasonably await funding from the next legislative session: SEE ATTACHMENT
- 5. Number of individuals affected and the nature of the effect: SEE ATTACHMENT
- 6. Description of how the public entity responded to the emergency: SEE ATTACHMENT
- 7. Whether the emergency funding is requested as a loan or a grant
- 8. The amount of emergency funding requested, with priority given to requests that can be addressed without unreasonably restricting the amount of emergency funding available for other potential emergency funding requests that may be made through the remainder of a fiscal year: SEE ATTACHMENT 2
- 9. Whether the public Entity is in compliance with all applicable audit requirements: Yes
- 10. If a loan is requested:
 - The proposed timeline for repayment: _____
 - Confirmation that the public entity will pledge and encumber funds for repayment each fiscal year that the loan is outstanding, in accordance with the repayment schedule proposed by the public entity: _____
 - Listing of the public entity's existing outstanding debt, including bonds, lease purchase agreements and other loans and the debt service schedule associated with such outstanding debt: _____
 - Demonstration of a feasible plan and commitment to repay the loan over the timeline proposed in the public entity's repayment schedule: _____
 - Description of the public entity's plan for future financial stability: _____
 - When emergency funding is requested in the form of a loan, whether the public entity agrees to pledge its revenues for loan repayment, with priority given to public entities that have taken steps or agree to take steps to pledge revenues for loan repayment: _____
- 11. A statement that the public entity will agree to submit completed quarterly reports on SBOF authorized forms.
- 12. Recommendation from the Environment Department and Office of the State Engineer on the current situation, if applicable.
- 13. Resolution of the governing body, if applicable, requesting the emergency loan or grant.

ATTACHMENT 1: "RUST" Emergency Grant Funding Request:

- 1. List all other possible funding sources and austerity measures explored and exhausted:** The First Judicial District Attorney's Office has reviewed our budget including vacancy savings in our general fund. There is no available funding. If the First Judicial District Attorney (FJDA) were to take funding for the "RUST" prosecution out of the general fund, there would not be enough funding to pay our employees, expert witnesses needed for other cases, and general everyday expenses of the office. The agency has two vacant positions that are unfunded, meaning there is currently no money to fill these positions. One position is for an attorney and the other is a special programs position. The FJDA does receive grant monies, but these monies can only be used for the specified purpose of the grant. None of these grants would qualify for use on the RUST prosecution. The FJDA has explored all available funding options. Emergency funding and eventually a special appropriation is the only available funding for the FJDA on the "RUST" prosecution.
- 2. Nature of emergency, including the governmental services not being delivered and effect of the failure of the service on the public health, safety, and welfare of individuals and/or community:** The "RUST" case occurred unexpectedly in October of 2021. This is a high-profile case with competent, well-paid, and experienced defense lawyers. The "RUST" prosecution could potentially be prosecutions from one (1) to four (4) defendants. One of the possible defendants is well-known movie actor Alec Baldwin. This case could require up to 4 separate jury trials. The current FJDA budget cannot cover the cost of this prosecution without depleting their current budget. The current budget of the FJDA's office is needed to prosecute the everyday cases that occur throughout the district. If the current budget is depleted to handle the "RUST" case, other cases within the FJDA's office potentially could not get handled properly. The FJDA would not be able to hire experts and pay our staff. This is extremely dangerous to the community as dangerous criminals could possibly be released or not prosecuted properly or aggressively. In addition, the FJDA is already understaffed and lacks funding resources. To contract with independent experts, an attorney, an investigator, a public information officer, and/or a paralegal would require the FJDA to not fill needed, essential positions to allow for savings for these contracts.
- 3. Explanation of why the situation is an unforeseen circumstance that could not reasonable have been addressed at a past legislative session:** The "RUST" shooting did not occur until October of 2021. The State has been waiting since October 21, 2021, for important labs, phone records, and autopsy results to come back. These results have just been returned within the last few weeks. The State is still waiting for a few additional items which are expected to be delivered any day.
- 4. Reason why the emergency cannot reasonably await funding from the next legislative session:** Because the evidence has just been returned, the State is ready to make charging decisions in the "RUST" case. The State requires an additional, more qualified attorney to assist in the prosecution of this matter, as the other attorneys working the "RUST" prosecution still have additional cases to handle and the elected District Attorney must administratively run the FJDA's office. The FJDA would like to contract with a prosecutor who has 26 years' experience as a prosecutor. Due to the high publicity and media attention of this case, this attorney can devote

her full time and attention to this matter. In addition, a special investigator, a paralegal, a media spokesperson, and numerous experts need to be hired. If these employees are taken from the current staff, the current employees will not be able to do their everyday jobs. Experts in firearms, the handling of firearms on movie sets, and safety protocols on movie sets must be retained immediately. The FJDA does not have the budget to wait until the legislative session to ask for money. In addition, the money for "RUST" would not be appropriated until July 1, 2023, if pursued through the legislative session. The "RUST" case needs to be prosecuted immediately, and the costs to prosecute the case will come immediately. The FJDA may still need to ask for additional funding during the legislative session.

5. **Number of individuals affected and the nature of the event:** If gap funding is denied, the entire community will be affected. The FJDA will not be able to fund the case and will have to use its current budget to pay for the "RUST" prosecution and the individuals/costs needed to prosecute the case. The result will be taking the attorneys, investigators, support staff, etc. from the current district attorney's office staff to help on the "RUST" matter. Monies will have to be moved off lower profile cases to supplement prosecuting the "RUST" case. This could allow repeat and dangerous offenders to be pled out versus pursuing jury trials to save money. This will put dangerous criminals back on the streets and will affect the safety of the entire community. Also, the current District Attorney's Office staff will be overworked which often results in mistakes happening, again affecting the safety of the community.
6. **Description of how the public entity responded to the emergency:** The FJDA has used its current resources to investigate this case. It wasn't until the evidence recently was returned that the FJDA realized that defendants from "RUST" would need to be prosecuted immediately. The FJDA did not want to prematurely ask for funding, not knowing what the results of the evidence would be. It is obvious from all the recent media coverage that most of the "RUST" results from the evidence has been returned. The victims, suspects, and the citizens of New Mexico are waiting for a charging decision from the FJDA. The FJDA is the only entity that is responsible for prosecuting this matter and has primary jurisdiction.
7. **Whether emergency funding is requested as a loan or grant?** Grant
8. **The amount of emergency funding requested, with priority given to requests that can be addressed without unreasonably restricting the amount of emergency funding available for other potential emergency funding requests that may be made through the remainder of a fiscal year:** The FJDA is requesting a total of \$635,500.00 for the "RUST" prosecution. Please see Attachment 2, listing the exact way the proposed grant would be used for the prosecution of "RUST." This attachment includes the costs estimated for the additional employees, experts, and trial expenses expected.
9. **Whether the public Entity is in compliance with all applicable audit requirements:** YES
10. N/A
11. **A statement that the public entity will agree to submit quarterly reports to SBOF authorized forms:** The FJDA agrees to submit the required forms quarterly. The "RUST" funding will be kept separate, carefully audited, and only used for the "RUST" prosecution. We acknowledge that any unused grant money would revert to the State General Fund.
12. N/A
13. N/A

Proposed Rust Case Budget

	Hourly	# of Hours per pay period	Bi-weekly	Bi-weekly	Total
Attorney	100	60	6,000	26	156,000
Investigator	75	50	3,750	26	97,500
Paralegal	50	30	1,500	26	39,000
PIO	75	20	1,500	26	39,000
Expert Witnesses	<i>Total</i> 75,000	<i># of Experts</i> 3			225,000
Trial Prep Materials					79,000
Transcriptions					
District Court Supplemental Questionnaires					
Office Supplies (External drives, paper, diagrams)					
Printing					
Travel / Lodging					
				TOTAL	635,500

Exhibit D

NEW MEXICO STATE BOARD OF FINANCE

REGULAR MEETING

Santa Fe, New Mexico

September 20, 2022

A regular meeting of the New Mexico State Board of Finance was called to order on this date at 9:00 a.m. in the Governor's Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL -- QUORUM PRESENT

Members Present:

The Hon. Howie Morales, Lt. Governor [not present 9:15 – 10:30 a.m.]
Mr. Joseph Badal, Public Member
Mr. Paul Cassidy, Public Member
Mr. Michael S. Sanchez, Secretary, Public Member
Ms. Wendy Trevisani, Public Member

Members Excused:

The Hon. Michelle Lujan Grisham, President
The Hon. Tim Eichenberg, State Treasurer

Staff Present:

Ms. Ashley Leach, Director
Mr. Marcos B. Trujillo, Deputy Director
Ms. Debbie Romero, Secretary, Department of Finance and Administration

Legal Counsel Present:

Ms. Sally Malavé

2. APPROVAL OF AGENDA

Mr. Sanchez moved approval of the agenda, as amended. Mr. Badal seconded the motion, which passed unanimously.

3. APPROVAL OF MINUTES: July 19, 2022 (Regular Meeting)

Ms. Trevisani moved for approval of the minutes of the July 19, 2022, meeting. Mr. Cassidy seconded the motion, which passed unanimously.

CONSENT AGENDA (Items 4-16)

Presenter: Ashley Leach, Director, Board of Finance

Submitted by: Mona Romero, Real Estate Property Agent, Bernalillo County

4. **Bernalillo County—Requests Approval of the Lease of Real Property Located at 201-209 San Pablo SE in Albuquerque to PB&J Family Services (\$97,500/year, services in lieu of rent)**
-

- Contingent upon director's and counsel's receipt of a fully executed lease agreement

5. **Bernalillo County—Requests Approval of the Lease of Real Property, Located at 1714 Centro Familiar in Albuquerque, to Youth Development Inc. (\$28,400/year, services in lieu of rent)**
-

- Contingent upon director's and counsel's receipt of a fully executed lease agreement

Submitted by: Olivia Padilla-Jackson, VP Finance and Operations, CNM

6. **Central New Mexico Community College—Requests Approval of an Amendment to the Lease of Real Property, Located at the Joseph M. Montoya Campus in Albuquerque, to New Mexico State University (\$38,385/year)**
-

- Contingent upon director's and counsel's receipt of fully executed lease amendment

Submitted by: Susan Odegard-Fellows, Strategic Assets Coordinator, Los Alamos Public Schools

7. **Los Alamos Public Schools—Requests Approval of the Lease of Real Property, Located at 2101 Trinity Drive, Suite S, in Los Alamos, to Pajarito Music, LLC (\$8,565/year)**
-

Submitted by: Joseph F. Sawyer, County Attorney, San Juan County

8. **San Juan County—Requests Approval of the Sale of Real Property, Located at 805 Maddox Avenue in Aztec, to Presbyterian Medical Services (\$220,000)**
-

- Contingent upon director's and counsel's receipt and review of (1) a fully executed purchase agreement and (2) a fully executed quitclaim deed

Submitted by: Gerald Hoehne, Capital Projects Director, Higher Education Department

9. **New Mexico Military Institute—Requests Approval of Capital Expenditures for the Repair and Replacement of Campus Plumbing (\$825,000)**
-

Submitted by: Anna Silva, Director, Facilities Management Division

10. **General Services Department—Requests Approval of an Amendment to the Contract with HB Construction Inc. for Renovations to the Pinetree Child Wellness Center, Located at 4801 Indian School Rd NE in Albuquerque (\$43,485,122.70, increase of \$393,560.15)**

- Contingent upon director's receipt of the fully executed contract change order

11. **Capital Buildings Repair Fund Financial Status Report for Months-Ended July 31, 2022, and August 31, 2022**

12. **Legislative Capital Projects Financial Status Report for Months-Ended July 31, 2022, and August 31, 2022**

Submitted by: Vikki Hanges, Chief Investment Officer, State Treasurer's Office

13. **State Treasurer's Office Investment Report for Months-Ended June 30, 2022, and July 31, 2022**

Submitted by: Ashley Leach, Director, Board of Finance

14. **Emergency Balances – September 30, 2022**

	<u>Balance</u>	<u>Appropriation</u>
Operating Reserve Fund	\$2,500,000.00	\$2,500,000.00
Emergency Water Fund	\$ 73,900.00	\$ 109,900.00

15. **Fiscal Agent and Custodial Bank Fees Reports**

16. **Joint Powers Agreements for Months-Ended July 31, 2022 and August 31, 2022**

Mr. Cassidy moved approval of the Consent Agenda, as presented. Mr. Sanchez seconded the motion, which passed unanimously.

BONDING PROGRAMS

Presenters: Ashley Leach, Director, State Board of Finance; Ken Guckenberger, Partner, Kutak Rock; Noelle Graney, Partner, Kutak Rock

17. **Consideration and Ratification of the Preliminary Official Statement for State of New Mexico Severance Tax Bonds, Series 2022B**

Ms. Leach stated that the board will issue these bonds on September 28 with the closing on October 11, for roughly \$316,000,000.

Ms. Graney said the Preliminary Official Statement is based on the one completed earlier for the June Issuance, as a lot of information for FY 2022 is not yet available. They did get the updates that they could, including recent updates from the Consensus Revenue Estimating Group. They relied very heavily on Ms. Leach and her team at DFA for those updates, but also checked in to get dates from Taxation & Revenue and from all of the other state agencies that they consult for these issuances.

Mr. Cassidy moved for approval. Mr. Badal seconded the motion, which passed unanimously.

[Lt. Governor Morales stepped away from the meeting.]

Presenters: Ashley Leach, Director, State Board of Finance; David Buchholtz, Director, Rodey, Dickason, Sloan, Akin & Robb, P.A. Luis Carrasco, Director, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Parker Schenken, Member, Sherman & Howard, LLC; Jill Sweeney, Member, Sherman & Howard (Co-Bond Counsel); David Paul, President, Fiscal Strategies Group

18. Amending Resolution for State of New Mexico Severance Tax Bonds, Series 2022B. Maximum Principal Amount of \$370,000,000

Ms. Leach said these bonds are set to be sold on September 28 with a closing date of October 11. The final project list has been completed and they are issuing \$316,000,000.

Mr. Schenken said this amending resolution incorporates the list of approved projects that were authorized by the legislature and were not issued or funded with the 2022A bonds. They have been vetted and reviewed by the bond counsel team, tax counsel, board staff and board counsel, and take into account projects that weren't ready to proceed or were otherwise not in compliance. The final project list total is \$316,000,000. The anticipated principal amount of the bonds is approximately \$288,000,000, subject to change from market conditions.

Responding to Mr. Cassidy's request for comment, Mr. Paul stated much of the rest of the world has been in a recession for two years already, while the U.S. has been an outlier in terms of the strength of its economy. While it can withstand the impacts of higher interest rates, he expects the rest of the world is on the edge of another debt crisis, and the recession is only going to get worse in Europe. While historically what's bad for the rest of the world has been good for the bond market, that has not been the case this time around. The U.S. is in a relative period of stability compared to where it was four months ago, and the rates anticipated next week are probably about 10 basis points higher on an aggregate true interest cost basis than the rates on the 2022A bonds.

Mr. Badal moved for approval. Ms. Trevisani seconded the motion, which passed unanimously.

STATE TREASURER'S OFFICE

Presenter: Vikki Hanges, Chief Investment Officer, State Treasurer's Office

19. Quarterly Investment Report for Quarter-Ended June 30, 2022

Ms. Hanges reported that, at the end of June, STO managed about \$14.5 billion in assets, about \$2.7 billion higher than at the end of the first quarter. Since the end of August, STO has paid out \$1.5 billion to the Early Childhood Fund, but tax receipts and oil & gas receipts have continued to come in very strongly. In addition, the Severance Tax Bonding Fund, which had been coming in at \$30-\$35 million per month, came in over \$300 million last month.

HIGHER EDUCATION DEPARTMENT

CAPITAL EXPENDITURES

Presenters: Gerald Hoehne, Director, Higher Education Department; Dr. Sam Minner, President, NMHU; Max Baca, Vice President of Financial, Administration, and Government Relations, NMHU; Dr. Denise Montoya, Assistant Vice President of Financial, Administration, and Government Relations, NMHU; Sylvia Baca, Director of Facilities and Planning, NMHU

20. New Mexico Highland University—Requests Approval of Capital Expenditures for Renovation of Sininger Hall (\$7,282,330)

Mr. Hoehne stated that New Mexico Highlands University (NMHU) is requesting approval of capital expenditures in the amount of \$7,282,330 to renovate Sininger Hall in Las Vegas. Sininger Hall was originally constructed in 1961 as a dormitory and has been converted to house the NMHU School of Business and Media Technology, Graduate Office, Contracts Office, Office of Institutional Research, and ITV operations. The renovation project includes a large variety of major renovations, including space reconfiguration for the existing programs, ADA improvements, LEED improvements, safety improvements, solar panel installation, and upgrades and/or replacement of nearly all building systems. The project has been included in NMHU's capital outlay plan since 2016. The university will use \$7,000,000 in GO bond proceeds and \$282,330 in university funds for the project.

President Minner provided more detail on this project. He said there was an increase in enrollment this fall, for the first time in many years, of 3.8 percent. He had hoped for more, but mitigating factors were the Cerro Grande fire and flooding. Fall retention was also very good and he feels will continue to improve over time.

Mr. Cassidy asked if there are any backup plans for having cash available if the budget turns out to be insufficient, given the rise in construction costs.

Dr. Minner responded that he did not feel NMHU would have sufficient money because of supply chain problems and other cost increases. Their next step is to seek guidance from their board. They have some reserves, but he did not want to commit to that without board direction.

Mr. Sanchez asked Dr. Minner what he could attribute to the increase in enrollment this fall.

Dr. Minner responded that the Opportunity Scholarship has helped. He also changed NMHU's original strategy of limiting the number of contacts it made on the front end and then pressing hard to get those students to enroll and actually show up. Given the population decline in most of Northern New Mexico from 2010-2020, he feels the shift in strategy to recruit from other areas has been very successful. They have students in and around the Denver area after making several trips there, and have made a renewed effort to recruit across New Mexico, including Southern New Mexico.

Dr. Minner said they have strong programs online, including their nursing program. Online enrollment is up, including their international program.

Mr. Hoehne said NMHED this year requested higher education institutions to provide information that supports projects that are already funded but which have experienced shortfalls because of the increase in construction costs, in order to make a recommendation to the upcoming legislature that it make those projects whole.

Mr. Hoehne stated that NMHED asked Higher Education institutions to provide a detailed plan on improving enrollment retention and graduation across New Mexico. These plans have been reviewed and NMHED is assisting in providing some funding from the legislature to them to help them build up their programs to support those initiatives of recruitment, retention and wraparound student services.

Mr. Cassidy moved for approval. Ms. Trevisani seconded the motion, which passed unanimously.

Mr. Badal asked Mr. Hoehne if NMHED has looked at ways that all of the institutions in New Mexico might be able to realize economic efficiencies through the sharing of expertise that one institution might have that another might not have. Perhaps NMHED could make a core curriculum available to all institutions across the state. This would reduce redundancies and would be cost efficient.

Mr. Hoehne responded that NMHED has been working closely with higher education institutions over the last 8 to 10 years on several such initiatives. The first is the common course numbering to ensure that classes and courses are transferable across all higher education institutions in New Mexico. In addition, higher education institutions have

continued to build on the partnerships they currently have from one institution to another, and NMHED will continue to build on those collaborations.

Presenters: Gerald Hoehne, Director, Higher Education Department; Dr. Monica Torres, President, DACC; Kelly Brooks, Vice President of Business and Finance, DACC

21. New Mexico State University, Doña Ana Community College—Requests Approval of Capital Expenditures for Construction of a New Creative Media Facility at Arrowhead Park (\$11,020,000)

Mr. Hoehne stated that NMSU, Doña Ana Community College (DACC) is requesting approval of capital expenditures of \$11,020,000 for construction of the new Creative Media Building at Arrowhead Park. The new facility will focus on educating students in creating digital media, including video games, animation, digital audio/video and photography, graphic and web design, and film production. The scope of work includes a new 13,912-square-foot single-story facility with a multipurpose open studio/production stage, two digital classrooms, four offices, a reception area, and a common gathering area for student and public interaction. The facility will include LED lighting, sound deadening wall treatment, a loading dock to facilitate moving production set pieces and equipment, and independent HVAC controls for creating isolated environments. A new parking lot with 40 spaces will also be part of the project. Funding sources for this project include \$2,960,000 from 2018 and \$5,400,000 from 2021 General Obligation Bond proceeds, \$1,500,000 from 202 State General Obligation Bond proceeds, and \$1,160,000 from institutional capital outlay funds.

Dr. Torres stated that this is a healthy program from the enrollment perspective. The program and project is part of a broader collaboration in southern New Mexico, which they are calling the Creative Campus, which will be housed at Arrowhead Park. Their partners include the university Creative Media program, public schools, several nonprofits, the public radio and television station, and the City of Las Cruces. In addition, the Governor was in Las Cruces to announce that there would also be a hub of the New Mexico Media Academy, and they are in conversations right now with the New Mexico Economic Development Department and New Mexico Film Office to create a working arrangement for the hub as part of this broader collaboration. She said the collaboration's two goals are to make sure they have educational programs that prepare students for good-paying jobs in the region, and to build and support a robust economy in the region. She said film and digital media is a state priority, and is a priority in Doña Ana County as well. She commented that the film and digital media business is exploding in the southern part of the state. In FY 2019, direct spend dollars were \$2.6 million with 500 worker days, and in FY 2022, it rose to \$7.9 million and 9,000 worker days.

Mr. Sanchez noted that the state's Native American population is starting to use animated videos to teach the younger generation their language and dialects, as well as their culture and history. He asked Dr. Torres to consider this as a possible addition to the program.

Mr. Badal moved for approval. Mr. Sanchez seconded the motion, which passed unanimously.

[Lt. Governor Morales rejoined the proceedings.]

BONDS

Presenters: Gerald Hoehne, Director, Higher Education Department; D'Anne Stuart, Associate Vice President of Finance and Business, NMSU; Erik Harrigan, Managing Director, RBC Capital Markets, LLC; Katherine McKinney, Attorney, Modrall Sperling Law Firm

22. New Mexico State University—Requests Approval of the Issuance of System Revenue Bonds, Series 2022 (Not to exceed \$28,500,000)

Mr. Hoehne stated that NMSU is requesting approval of the Issuance of System Revenue Bonds not to exceed \$28,500,000. This issuance will fund several capital projects at NMSU, including the university's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building, and the Pan American Center. Each project will be brought forward for approval once it is ready for construction. All of the facilities are currently funded by student fees. The bond issuance will take advantage of existing debt that is retiring, which is paid from student fee revenues. By doing this, there will not be an increase in the student fees nor an increase in the university's annual debt service that it has historically paid for student fee related debt. The bonds will be sold as a private placement with New Mexico Finance Authority (NMFA). The bond issuance was recommended for approval by the NMHED Capital Outlay Committee at its September 14, 2022, hearing.

Ms. Stuart commented that they take it very seriously when the students support this, and want to make sure that they have a level of stewardship on how they spend those funds. Each facility's investment will support the student experience, especially in the way of recruitment and retention.

Mr. Harrigan said the bonds will be sold in conjunction with the NMFA going into the market, which is expected the last week of October or the first week of November, and the NMFA board is expected to take action on authorizing the bonds at its meeting later this week. The annual debt service will be \$3.6 million, which is the student fee revenue amount. The issuance of the bonds will not increase the university's annual debt service; and in fact, the total combined debt service will continue to decline over the next couple of years, even with the addition of these bonds, due to the university's attractive debt profile. Anticipated rate on the bonds is about 3.5 percent.

Mr. Cassidy asked Ms. Stuart if there is supplemental cash available in the event there are cost overruns. He asked if they are going to proceed with all of the projects simultaneously, or will they be prioritized.

Mr. Cassidy noted that this is a 20-year amortization, which is a positive change, representing a change from what the university used to do. He asked Mr. Harrigan to comment.

Ms. Stuart responded that they haven't finalized all the projects. Some will have to be re-estimated, and then they will prioritize them based on the need, condition assessment, what critical systems need to be updated, and what enhancements can be added. Each project will be on a different timeline, and because these are all student activity buildings, they will time the projects where the students are the least impacted.

Responding to Mr. Cassidy's question, Mr. Harrigan said the debt is structured to allow for a decline in debt service by about \$1 million in 2032, giving the university flexibility to come back to issue additional bonds for projects at that time.

Mr. Cassidy moved for approval. Ms. Trevisani seconded the motion, which passed unanimously.

Ms. Leach read the parameters of the resolution.

EMERGENCY FUNDING REQUESTS

Presenters: Mary Carmack-Altwies, District Attorney, First Judicial District Attorney's Office; Jennifer Padgett Macias, Chief Deputy District Attorney, First Judicial District Attorney's Office; Brenda Rael Martinez, Chief Financial Officer, First Judicial District Attorney's Office

23. First Judicial District Attorney's Office—Requests Approval of an Emergency Operating Grant for Costs Related to RUST Movie Shooting (\$635,500)

Ms. Carmack-Altwies stated this emergency funding request, which was originally for \$635,000, comes from the case from the "RUST" movie set incident on October 21, 2021. The office of the First Judicial District Attorney (FJDA) will shortly receive the final report from the Sheriff's Office and FBI reports, and there were hundreds of people to interview. It has become apparent that they will be potentially charging between one and four people with criminal charges, and each charge will probably include some variation of the homicide statute. She commented that homicide cases are the most complex and litigious, and one of the people that are looking at potential charges already has attorneys. The FJDA's Office has spoken with about a dozen attorneys from around the country who are dealing with these cases. She said these cases will be too big for just her office to handle on its own. There are three attorneys (including herself) from her office assigned to the case, all of whom have caseloads already they have to deal with. The office needs an almost-full time attorney and someone who is very experienced on

complex cases and with litigation. Additionally, that person will then need paralegal support staff, an investigator to follow up on missing pieces, finding witnesses and so forth, and the biggest other chunk of money they will need will be to retain experts. They will need a firearms expert, an armorer who has worked on movies before and knows the protocols and procedures on movie sets, and an expert on safety protocols on movie sets. The attorney they will need will be employed for about 60 hours out of an 80-hour pay period. She said one of their other requests is for a public information officer. When these charges first happened, her office was overwhelmed with media attention, phone calls, faxes, and emails from in the U.S. and other countries. She said her office doesn't have the capacity to handle those requests. Ms. Carmack-Altwies noted that they have two vacancies, but they are unfunded, and the rest of their office is fully staffed, which means their budget is completely accounted for.

Responding to Ms. Trevisani, Ms. Carmack-Altwies said she anticipates hiring people from New Mexico, if only because they will have to meet very frequently about this case. As far as expert witnesses, it appears they might be able to get a gun safety expert from New Mexico, but the other two will have to come from out of state.

Mr. Cassidy commented to board members that what he is noticing is that the board is getting requests from agencies it hasn't heard from in the past, and it was apparent it was going to have to ask for additional emergency funding in the future.

Responding to Mr. Cassidy, Ms. Carmack-Altwies said that they expect to ask the legislature for an additional appropriation in the next session for approximately the same amount, but can't wait until January or February. The report coming in from the FBI in October means they will be pressed to get moving on these cases.

Mr. Sanchez asked if the FJDA has asked for assistance from the Attorney General's Office in terms of the prosecution of these cases, as well as manpower such as private investigators. Ms. Carmack-Altwies responded they haven't specifically reached out about this case in particular, but they frequently reach out to and collaborate with the Attorney General's Office on other cases; however, that office also now has fairly full caseloads and would not have an attorney that could devote 60 hours every two weeks to handling this case. The attorney she is planning to hire is a retired district attorney with 25+ years of experience, and this will be her only case for the next 12 to 18 months, which is by design. With regard to investigators and paralegals, those individuals will be working half time, and the Attorney General's Office does not have the resources to devote that much time to the FJDA.

Ms. Leach stated that they have a draft resolution with contingency language that includes receiving invoices, and they would be providing funding on a reimbursement basis as well as reporting on any updates on the trial, the need for these funds, and the requirement to return funds should they not be expended following the special legislative session. They are also recommending providing half of the original requested

amount in the form of a grant totaling \$317,750, which is half the original request, providing an opportunity for the District Attorney to seek that special appropriation. The board can take action at a later date if necessary.

Mr. Sanchez moved for approval. Mr. Cassidy seconded the motion, which passed unanimously.

STAFF ITEMS

Presenter: Ashley Leach, Director, Board of Finance

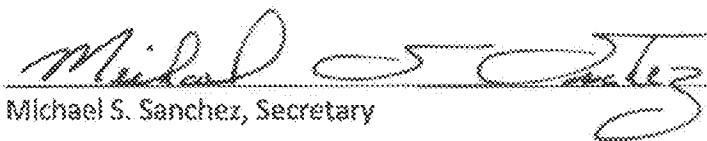
24. Report on Revised Emergency Funding Request Project

Ms. Leach stated that, at July's Board of Finance meeting, staff was looking to amend and update the application for emergency funds. She noted that a lot of emergency requests being received don't necessarily provide staff with enough information to fully vet a project in order to bring it forward. She said it is staff's responsibility to ensure that these entities have the appropriate guidance in front of them when preparing their requests. She reviewed the amended and updated application in the board packet (page 1,309).

~~ADJOURNMENT: 11:05 a.m.~~


Michelle Lujan Grisham, President

Date


Michael S. Sanchez, Secretary

Nov. 4, 2022
Date

Exhibit E



DA to File Criminal Charges

in 'Rust' Shooting

Producer Alec Baldwin & Armorer to Face Involuntary Manslaughter Charges in Death of Halyna Hutchins
Assistant Director Pleads to Negligent Use of Deadly Weapon

For Immediate Release: January 19, 2023

Contact: Heather Brewer, 505-310-5957, heather@hbstrategiesnm.com

SANTA FE, N.M.—New Mexico First Judicial District Attorney Mary Carmack-Altwies announced on Thursday that, in keeping with her commitment to pursue justice for all victims and to hold everyone accountable under the law, her office before the end of the month will file criminal charges in the "Rust" film-set shooting.

"Rust" actor and producer Alec Baldwin and armorer Hannah Gutierrez-Reed will each be charged with two counts of involuntary manslaughter in the death of Halyna Hutchins on the film's Santa Fe County set in 2021.

Assistant director David Halls has signed a plea agreement for the charge of negligent use of a deadly weapon. The terms include a suspended sentence and six months of probation. A copy of the plea agreement will be available after it has been filed with the court.

No charges will be filed specific to the non-fatal shooting of "Rust" director Joel Souza.

"After a thorough review of the evidence and the laws of the state of New Mexico, I have determined that there is sufficient evidence to file criminal charges against Alec Baldwin and other members of the 'Rust' film crew," Carmack-Altwies said. "On my watch, no one is above the law, and everyone deserves justice."

Baldwin and Gutierrez-Reed will be "charged in the alternative" with the two counts of manslaughter, meaning that a jury would decide not simply if they were guilty, but under which definition of involuntary manslaughter they were guilty.

The first charge can be referred to simply as involuntary manslaughter. For this charge to be proved there must be underlying negligence. Under New Mexico law, involuntary manslaughter is a fourth-degree felony and is punishable by up to 18 months in jail and a \$5,000 fine. This charge also includes the misdemeanor charge of negligent use of a firearm, which would likely merge as a matter of law.

The other charge is involuntary manslaughter in the commission of a lawful act. This charge requires proof that there was more than simple negligence involved in a death. This is also a fourth-degree felony punishable by up to 18 months in jail and up to a \$5000 fine. This charge includes a firearm enhancement, or added mandatory penalty, because a firearm was involved. The firearm enhancement makes the crime punishable by a mandatory five years in jail.

"If any one of these three people—Alec Baldwin, Hannah Gutierrez-Reed or David Halls—had done their job, Halyna Hutchins would be alive today. It's that simple," said Andrea Reeb, the special prosecutor appointed by the DA to the case. "The evidence clearly shows a pattern of criminal disregard for safety on the 'Rust' film set. In New Mexico, there is no room for film sets that don't take our state's commitment to gun safety and public safety seriously."

Carmack-Altwies and Reeb will formally file charges with New Mexico's First Judicial District Court before the end of the month. Following the filing of charges, each defendant will be issued a summons with the charging information. Shortly after receiving the summons each defendant is required to make a "first appearance," a procedure that is often referred to in other jurisdictions as an arraignment. That first appearance can be done virtually, and defendants can even move to have their first appearance waived. First appearance dates are set by the court, not by the District Attorney.

Given that the First Judicial District in New Mexico is only impaneling grand juries under certain circumstances due to ongoing COVID restrictions, the next step after first appearance will be a preliminary hearing. In this process, a judge takes on the role of the grand jury. The District Attorney and the special prosecutor present their case to the judge. The judge then rules whether there is probable cause to move forward with a trial. The dates for a preliminary hearing will be set by the court, not by the District Attorney. However, preliminary hearings are typically scheduled within 60 days of charges being filed.

"There is a very clear process for pursuing justice in this case," Carmack-Altwies said. "We are committed to upholding the integrity of that process to ensure equal justice under the law."

Once charges are filed, more detailed paperwork will be available online through the court that details the evidence the DA and the special prosecutor cite. An announcement will be made to the public when the charges have formally been filed.

The District Attorney received the final Santa Fe County Sheriff's report on October 27, 2022, and moved quickly to carefully and thoughtfully review the evidence, allowing the DA to make her decision on charges less than three months after receiving the initiating report.

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