

**In the  
Supreme Court of the United States**



TIMOTHY BARTON,

*Petitioner,*

v.

SECURITIES AND EXCHANGE COMMISSION,

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit**

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**BRIEF OF AMICUS CURIAE  
RIO GRANDE FOUNDATION  
IN SUPPORT OF PETITIONER**

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## INTEREST OF THE AMICUS CURIAE

The Rio Grande Foundation (“RGF”) is an independent, non-partisan research and educational organization based in Albuquerque, New Mexico. Founded in 2000, RGF’s mission is to promote individual liberty, limited government, and economic opportunity for all New Mexicans through factual policy research and public education.<sup>12</sup> The Foundation’s work covers fiscal responsibility, regulatory reform, energy, education, and government transparency.

RGF’s experience with civil-asset-forfeiture reform gives it a direct and practical interest in this case. In 2015, New Mexico enacted *House Bill 560*, ending civil forfeiture statewide and requiring a criminal conviction before any property may be taken.<sup>3</sup> The law further mandates that all forfeiture proceeds be deposited into the state’s general fund, not retained by law-enforcement agencies, thereby eliminating self-funding enforcement and ensuring full legislative oversight of

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a) , Amicus Curiae provided timely notice of its intent to file this brief to counsel for all parties. No counsel for any party authored this brief in whole or in part, and no one other than Amicus and its supporters made any monetary contribution to its preparation or submission.

<sup>2</sup> Rio Grande Foundation, *Mission Statement* ¶ 1 (2000) (promoting liberty, limited government, and economic opportunity in New Mexico).

<sup>3</sup> H.B. 560, 52d Leg., 1st Sess. (N.M. 2015) (signed Apr. 10, 2015, by Gov. Susana Martinez).

public revenues.<sup>4</sup> RGF played a leading role in educating citizens and policymakers on the benefits of this reform, which passed the legislature unanimously and has since been recognized by national organizations as the strongest property-rights protection law in the United States.<sup>5</sup>

Through that work, RGF has witnessed firsthand that restoring due process and fiscal accountability strengthens, rather than weakens, public safety and economic vitality. New Mexico’s success demonstrates that limiting executive seizure power promotes both liberty and legitimacy—a lesson directly relevant to federal receiverships that now allow agencies to seize assets and fund enforcement outside congressional appropriations.<sup>6</sup>

RGF appears in this case to provide the state-level perspective: proof that constitutional discipline works in practice. New Mexico’s reforms show that ending self-funded enforcement does not hinder justice; it enhances it. By reaffirming that property cannot be taken or spent without lawful appropriation and due process, this Court would extend to the federal

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<sup>4</sup> N.M. Stat. Ann. § 31-27-11 (2015) (requiring forfeiture proceeds to be deposited in the state general fund and prohibiting agencies from retaining proceeds).

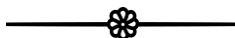
<sup>5</sup> Institute for Justice, *Policing for Profit: Civil Forfeiture in the United States* (3d ed. 2020) (rating New Mexico “A” for property-rights protection).

<sup>6</sup> U.S. Const. art. I, § 9, cl. 7 (providing that no money shall be drawn from the Treasury but in consequence of appropriations made by law).



government the same restraint New Mexico already applies to itself.<sup>7</sup>

The Foundation has no direct financial interest in the outcome of this case. Its participation arises solely from its commitment to defend property rights, taxpayer accountability, and the rule of law—the cornerstones of both state and national prosperity.<sup>8</sup>



## SUMMARY OF ARGUMENT

The question before the Court is whether the federal government may maintain enforcement programs that seize and spend funds outside the appropriations and due-process safeguards that define lawful governance. New Mexico answered that question decisively in 2015—no. When the State abolished civil asset forfeiture and barred agencies from financing themselves through seizures, it proved that liberty and law-enforcement effectiveness are not opposites but allies.<sup>9</sup>

The federal receivership challenged here revives the same structural flaw New Mexico cured: an executive branch empowered to confiscate first and account

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<sup>7</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022) (articulating the major-questions doctrine requiring clear congressional authorization).

<sup>8</sup> Sup. Ct. R. 37.6 (no counsel for a party authored this brief in whole or in part, and no party or party’s counsel made a monetary contribution intended to fund its preparation or submission).

<sup>9</sup> H.B. 560, 52d Leg., 1st Sess. (N.M. 2015) (ending civil forfeiture and requiring criminal conviction and legislative deposit of proceeds).

later.<sup>10</sup> Allowing an agency to take property and finance enforcement from the proceeds transforms regulators into revenue collectors, undermines congressional control of spending, and erodes public trust.<sup>11</sup> The Constitution’s remedy for that danger is the same one New Mexico applied—legislative appropriation before expenditure, and judicial judgment before forfeiture.<sup>12</sup>

## **I. Federal Self-Funding Violates the Principles of Fiscal Accountability and Due Process**

Under Article I, only Congress may authorize spending or transfer of property. When agencies create “equitable” funds outside that system, they impose taxation without representation and circumvent the people’s elected guardians of the purse.<sup>13</sup> New Mexico’s reform shows that redirecting all forfeiture proceeds to the general fund eliminated conflicts of interest and

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<sup>10</sup> *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999) (holding that courts may not invent new equitable remedies beyond those authorized by statute).

<sup>11</sup> U.S. Const. art. I, § 9, cl. 7 (providing that no money shall be drawn from the Treasury but by law).

<sup>12</sup> *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291–92 (1850) (“However much money may be in the Treasury at any one time, not a dollar of it can be used in payment of anything not thus previously sanctioned.”).

<sup>13</sup> *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (explaining that the execution of the laws must remain under congressional control).

improved transparency without impeding legitimate enforcement.<sup>14</sup>

## **II. The Court Should Extend to Federal Agencies the Discipline That States Already Observe**

New Mexico, Nebraska, Maine, and North Carolina have all restricted or abolished civil forfeiture’s self-funding model.<sup>15</sup> Their example demonstrates that constitutional restraint is not theoretical; it works. Upholding the SEC’s receivership would invert that progress, rewarding the very conduct the States have rejected.<sup>16</sup>

The Rio Grande Foundation urges the Court to reaffirm that lawful power requires lawful funding—that enforcement, like taxation, must flow from explicit legislative consent.<sup>17</sup> By holding that agencies may not seize or spend without appropriation or conviction, this Court would restore the constitutional symmetry between liberty and accountability that has proven successful from Santa Fe to Washington.<sup>18</sup>

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<sup>14</sup> Institute for Justice, *Policing for Profit: Civil Forfeiture in the United States* (3d ed. 2020) (documenting transparency gains from New Mexico’s forfeiture reforms).

<sup>15</sup> Institute for Justice, *Policing for Profit* app. A (3d ed. 2020) (state grades for civil-forfeiture laws).

<sup>16</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022) (requiring clear congressional authorization for major agency actions).

<sup>17</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819) (observing that the Constitution endures because it limits and defines power).

<sup>18</sup> Milan Simonich, *Martinez Signs Bill to Limit Police Seizure of Cash Assets*, Santa Fe New Mexican (Apr. 10, 2015).



## ARGUMENTS

### I. Federal Self-Funding and Fiscal Accountability

The federal receivership model at issue mirrors the very self-funding enforcement New Mexico abolished. It allows agencies to seize property, manage it through court-appointed receivers, and spend the proceeds on enforcement or restitution without returning those funds to Congress or the Treasury.<sup>19</sup> In effect, it creates a shadow budget—public money spent by private order—contrary to the Appropriations Clause and every principle of transparent government.<sup>20</sup>

When the same body that enforces the law also profits from enforcement, the incentive structure turns upside down. Accountability gives way to accumulation: budgets grow in proportion to penalties, not to performance. This is the fiscal equivalent of printing money—creating new purchasing power without public consent.<sup>21</sup> New Mexico’s reform experience shows that severing this financial link restores both discipline and trust. Agencies that depend on legislative appropriations

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<sup>19</sup> *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999) (holding that courts may not invent equitable remedies beyond those authorized by statute).

<sup>20</sup> U.S. Const. art. I, § 9, cl. 7 (providing that no money may be drawn from the Treasury but by law).

<sup>21</sup> Ron Paul, *End the Fed* ch. 2 (2009) (arguing that inflation of authority mirrors inflation of currency).

answer to the people’s representatives; agencies that fund themselves answer to no one.<sup>22</sup>

Congress designed the federal budget process precisely to prevent that result. Article I vests spending power solely in the legislature, ensuring that every dollar and every action can be traced to a recorded vote.<sup>23</sup> The receivership mechanism bypasses this safeguard by converting judicial orders into appropriations. The court acts as cashier, the agency as executive, and the citizen as involuntary donor.<sup>24</sup>

The Supreme Court has long recognized that even well-intentioned departures from fiscal control invite abuse. In *Reeside v. Walker*, the Court warned that “not a dollar is to be paid” without statutory authority.<sup>25</sup> That rule guards both the Treasury and the taxpayer. The SEC’s receivership practice offends it by replacing legislative authorization with administrative convenience.<sup>26</sup> Just as the Constitution bars the Executive from spending without appropriation, it bars

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<sup>22</sup> Institute for Justice, *Policing for Profit: Civil Forfeiture in the United States* (3d ed. 2020) (reporting improved transparency after New Mexico’s reform).

<sup>23</sup> *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (explaining that the execution of the laws must remain under congressional control).

<sup>24</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022) (requiring clear congressional authorization for major agency actions).

<sup>25</sup> *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291–92 (1850) (“However much money may be in the Treasury at any one time, not a dollar of it can be used in payment of anything not thus previously sanctioned.”).

<sup>26</sup> *United States v. MacCollom*, 426 U.S. 317, 321 (1976) (holding that public funds may not be disbursed absent statutory authorization).

the Judiciary from authorizing such spending under the guise of equity.<sup>27</sup>

The result is not merely technical misallocation but constitutional distortion. Self-funded enforcement blurs the separation between the sword and the purse—the very division Madison described as the first protection of liberty.<sup>28</sup> By contrast, New Mexico’s statutory discipline has proven that restoring that division yields real benefits: clearer budgets, cleaner incentives, and renewed citizen confidence.<sup>29</sup>

Fiscal accountability is more than good management; it is the moral architecture of republican government. Every appropriation is an act of consent, every expenditure a test of trust. When agencies collect and spend outside that process, they spend the people’s liberty along with their money.<sup>30</sup> The Constitution offers a simple remedy: enforce the rule that those who tax

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<sup>27</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952) (holding that even necessary actions exceeding executive authority are unconstitutional).

<sup>28</sup> *The Federalist* No. 47 (James Madison) ¶ 6 (warning that the accumulation of all powers in the same hands is the definition of tyranny).

<sup>29</sup> Paul Gessing, *New Mexico Leads on Property-Rights Protection*, Tipping Point New Mexico Podcast, Ep. 312 (July 2021).

<sup>30</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819) (observing that the Constitution endures because it limits and defines power).

must face the taxpayer, and those who spend must face the legislator.<sup>31</sup>

New Mexico has shown that this discipline is not theoretical. It works. Federal agencies should be held to no lesser standard than the States that model constitutional restraint.<sup>32</sup> By reaffirming that no enforcement can finance itself, this Court would replace today’s shadow budgets with the bright sunlight of accountability.

## II. State Experience and the Constitutional Model

The States have long been called the “laboratories of democracy.” New Mexico’s civil-forfeiture reform demonstrates that those laboratories still function—and that constitutional discipline produces stronger, not weaker, government.<sup>33</sup> When New Mexico abolished civil forfeiture and required that all seizures follow a criminal conviction, critics predicted chaos: collapsing budgets, un-funded enforcement, and criminals free to keep their spoils. None of it happened.<sup>34</sup>

Instead, the reform delivered what the Founders promised and modern citizens demand—lawful account-

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<sup>31</sup> *INS v. Chadha*, 462 U.S. 919, 951 (1983) (explaining that separation of powers preserves accountability to the people).

<sup>32</sup> H.B. 560, 52d Leg., 1st Sess. (N.M. 2015) (eliminating self-funded forfeiture and depositing proceeds in the general fund).

<sup>33</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (describing the States as “laboratories of democracy”).

<sup>34</sup> H.B. 560, 52d Leg., 1st Sess. (N.M. 2015); Paul Gessing, *NM Civil Forfeiture Reform a Success Story*, Albuquerque J., Apr. 12, 2018.

ability. Law-enforcement agencies continue to operate effectively, local crime rates have remained stable, and public confidence has increased.<sup>35</sup> By routing all proceeds through the state’s general fund, legislators achieved transparency and ensured that no officer or agency benefits financially from the act of confiscation.<sup>36</sup> That structure mirrors the very checks the federal Constitution imposes on Congress and the Executive.

New Mexico’s experience also vindicates the principle that due process and fiscal restraint are mutually reinforcing. The criminal-conviction requirement guarantees that property may be taken only after proof of wrongdoing; the appropriation requirement guarantees that funds may be spent only after legislative approval.<sup>37</sup> Together, they replicate the dual protections of the Fifth Amendment and Article I, § 9, clause 7.<sup>38</sup>

Other States have followed this path. Nebraska (2016), Maine (2021), and North Carolina (since 1985) now require criminal convictions for most forfeitures, and each directs proceeds to a neutral state fund.<sup>39</sup> The empirical result is consistent: the rule of law improves when incentives are aligned with justice

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<sup>35</sup> Institute for Justice, *Policing for Profit: Civil Forfeiture in the United States* (3d ed. 2020) (app. B) (crime-rate data post-reform).

<sup>36</sup> N.M. Stat. Ann. § 31-27-11 (2015) (depositing forfeiture proceeds into the general fund).

<sup>37</sup> U.S. Const. amend. V (Due Process Clause).

<sup>38</sup> U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause).

<sup>39</sup> L.B. 1106, 104th Leg., 2d Sess. (Neb. 2016); Me. Rev. Stat. tit. 15, § 5821 (2021); N.C. Gen. Stat. § 90-112 (1985).



rather than revenue.<sup>40</sup> These reforms refute any claim that constitutional limits impede enforcement; they show that restraint is an advantage, not a handicap.<sup>41</sup>

The federal government should not lag behind its States in protecting liberty. The Appropriations Clause and the Due Process Clause are not advisory—they are constitutional operating instructions.<sup>42</sup> If the Constitution’s limits can work on Central Avenue in Albuquerque, they can work on Constitution Avenue in Washington.<sup>43</sup>

Federalism was designed to let States model solutions for national problems. Here the model already exists. By recognizing that New Mexico’s experience validates the Founders’ design, this Court can reaffirm that liberty thrives not by accident but by architecture—by laws written, funded, and enforced through consent.<sup>44</sup> The State’s record proves that constitutional restraint is practical governance.<sup>45</sup> To restore public

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<sup>40</sup> Jonathan Blanks, *Civil Asset Forfeiture Reform Five Years Later*, Cato Inst. Policy Analysis No. 912 (2021).

<sup>41</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022) (holding that major agency actions require clear congressional authorization).

<sup>42</sup> *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (explaining that the execution of the laws must remain under congressional control).

<sup>43</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819) (observing that the Constitution endures because it limits and defines power).

<sup>44</sup> *The Federalist* No. 62 (James Madison) ¶ 4 (emphasizing predictable law as a foundation of commerce and public trust).

<sup>45</sup> Ron Paul, *Liberty Defined* 23 (2011) (arguing that restraint and transparency are essential conditions of freedom).

trust nationwide, the same rule should apply to every federal agency: no seizure without conviction, and no spending without appropriation.<sup>46</sup> That is not innovation; it is the Constitution working as intended.<sup>47</sup>

### III. Federalism and National Consistency

Federalism was not designed to create conflict between the States and the national government; it was designed to create consistency through competition.<sup>48</sup> When a State discovers a constitutional solution that works, the nation benefits from its example. New Mexico’s civil-forfeiture reform is such an example. It demonstrates that eliminating self-funding enforcement restores public trust and fiscal accountability without sacrificing the rule of law.<sup>49</sup>

The federal government, by contrast, continues to operate enforcement programs that spend funds beyond the reach of congressional appropriations and often retain proceeds in agency accounts.<sup>50</sup> This practice

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<sup>46</sup> Paul Gessing, *Transparency and Trust Go Together*, Tipping Point New Mexico Podcast, Ep. 333 (Sept. 2022).

<sup>47</sup> *The Federalist No. 84* (Alexander Hamilton) ¶ 9 (noting that written limits, faithfully observed, secure liberty).

<sup>48</sup> *The Federalist No. 39* (James Madison) ¶ 5 (describing federalism as a “compound republic” that promotes balance and consistency).

<sup>49</sup> H.B. 560, 52d Leg., 1st Sess. (N.M. 2015); Paul Gessing, *Civil Forfeiture Reform: A Model for the Nation*, Albuquerque J., Apr. 5, 2021.

<sup>50</sup> U.S. Gov’t Accountability Office, *Asset Forfeiture Funds: Transparency and Oversight Needed* (GAO-21-206, 2021) (finding billions in agency-held balances outside the appropriations process).

contradicts both the letter and spirit of the Appropriations Clause and violates the principle of horizontal accountability that federalism was meant to preserve.<sup>51</sup> In Madison’s words, “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments.”<sup>52</sup> Each level of government must therefore respect the limits that define its proper sphere.

Federal agencies that self-fund enforcement blur those lines, effectively making the States subject to policies and economic distortions they never consented to.<sup>53</sup> This Court’s modern federalism cases—*Printz v. United States* and *Murphy v. NCAA*—recognize that the federal government may not commandeer state resources or compel their participation in federal programs.<sup>54</sup>

The Supreme Court has already restored the balance between federal and state authority in other contexts. In *West Virginia v. EPA*, the Court reaffirmed that major policy decisions must come from Congress, not agencies.<sup>55</sup> Extending that reasoning to receiver-ships and asset seizures would not expand doctrine; it would simply enforce consistency across federal opera-

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<sup>51</sup> U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause).

<sup>52</sup> *The Federalist No. 51* (James Madison) ¶ 5 (explaining that a compound republic divides power to secure liberty).

<sup>53</sup> *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that federal commandeering violates basic federalism principles).

<sup>54</sup> *Murphy v. NCAA*, 584 U.S. \_\_\_\_ (2018) (holding that the federal government cannot compel state action).

<sup>55</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022) (requiring clear congressional authorization for major agency actions).

tions.<sup>56</sup> If Congress itself must authorize spending, agencies must not be allowed to do so by judicial proxy.

National uniformity in constitutional practice is not achieved by federal dominance but by federal humility.<sup>57</sup> When the federal government adopts the best lessons from the States, it fulfills the promise of the Tenth Amendment rather than threatening it. New Mexico’s experience shows that respecting these limits enhances the rule of law, economic growth, and citizen confidence.<sup>58</sup> The Rio Grande Foundation therefore urges this Court to ensure that the federal government meets at least the same standards of due process and fiscal accountability that the States already uphold.<sup>59</sup>

Federalism was intended to protect liberty through mutual accountability. The Constitution’s vertical checks—State to federal, and federal to State—work only if both sides adhere to the same constitutional

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<sup>56</sup> *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (explaining that execution of the laws must remain under congressional control).

<sup>57</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819) (noting that the Constitution endures because it limits and defines power).

<sup>58</sup> Paul Gessing, “How New Mexico’s Transparency Reforms Boosted Confidence,” *Tipping Point New Mexico Podcast*, Episode 348 (Feb. 2023).

<sup>59</sup> *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291–92 (1850) (“However much money may be in the Treasury at any one time, not a dollar of it can be used in payment of anything not thus previously sanctioned.”).

principles.<sup>60</sup> By enforcing those principles uniformly, this Court can guarantee that citizens enjoy equal protection from arbitrary seizure whether they live in Santa Fe or St. Louis.<sup>61</sup> True national consistency will come not from expanding federal reach, but from restoring constitutional discipline at every level of government.<sup>62</sup>

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<sup>60</sup> *The Federalist No. 62* (James Madison) ¶ 4 (predictable law as the foundation of trust and commerce).

<sup>61</sup> *The Federalist No. 84* (Alexander Hamilton) ¶ 9 (written limits, faithfully observed, secure liberty).

<sup>62</sup> *INS v. Chadha*, 462 U.S. 919, 951 (1983) (separation of powers preserves accountability to the people).



## CONCLUSION

The Constitution's limits are not obstacles to governance; they are the rules that make self-government possible.<sup>63</sup> Federal agencies should be held to the same standard of discipline and transparency that New Mexico and other States already observe. The power to seize and the power to spend are inseparable; each must remain under the watch of the people's representatives.<sup>64</sup> When executive agencies fund themselves, they reverse that relationship and make the government its own master. That is the very concentration of power the Constitution forbids, and the American Revolution repudiated.<sup>65</sup>

The Rio Grande Foundation submits this brief not to advocate policy, but to defend principle: that the people's property cannot be taken without conviction, and the people's money cannot be spent without law.<sup>66</sup> Those rules safeguard every citizen, regardless of party or place. They work in New Mexico, they work

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<sup>63</sup> *The Federalist No. 51* (James Madison) ¶ 5 (structure, not discretion, secures liberty).

<sup>64</sup> *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (execution of the laws must remain under congressional control).

<sup>65</sup> *The Federalist No. 47* (James Madison) ¶ 6 (explaining that the accumulation of all powers in the same hands constitutes tyranny).

<sup>66</sup> *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291–92 (1850) (“However much money may be in the Treasury at any one time, not a dollar of it can be used in payment of anything not thus previously sanctioned.”).

in the States, and they will work at the federal level if this Court restores them.

For these reasons, *Amicus Curiae the Rio Grande Foundation* respectfully urges the Court to grant the petition for a writ of certiorari and to reaffirm that liberty and accountability are not competing values—they are the same value, expressed through law.<sup>67</sup>

Respectfully submitted,

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<sup>67</sup> *The Federalist* No. 84 (Alexander Hamilton) ¶ 9 (explaining that written limits, faithfully observed, secure liberty).