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Supreme Court of New Mexico
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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 4, 2020

NO. S-1-SC-38336

MICHELLE LUJAN GRISHAM, Governor of New Mexico; MARK R. SHEA, Secretary of the New Mexico Department of Public Safety; KATHYLEEN KUNKEL, Secretary of the New Mexico Department of Health,

Petitioners,

v.

HON. DAVID P. REEB, District Court Judge, Ninth Judicial District Court,

Respondent,

and

SID STREBECK; SSET LLC d/b/a K-BOB'S STEAKHOUSE; JIM BURLESON; TERRI CHRISMAN; FRONTIER AUTO, INC.; KATHY DIAZ; CHRISTOPHER & MICHELLE KEMP; BODY & SOL FITNESS, LLC; KEMP'S INVESTMENTS, LLC; SHELLY QUARTIERI; COLFAX TAVERN & DINER, LLC; JOY THOMPSON; and J. JONES MASSAGE,

Real Parties in Interest.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of superintending control, response of the real parties in interest, amici curiae briefs, petitioners' reply and notice of supplemental authority, and the oral argument of the parties on August 4, 2020;

WHEREAS, petitioners seek a writ of superintending control from this Court to resolve the following two issues: "(1) whether the State may issue civil administrative penalties under the Public Health Emergency Response Act for violations of restrictions on mass gatherings and business operations contained in emergency public health orders; and (2) whether temporary business closures and restrictions as a public health measure constitute a 'taking' requiring monetary payments to business owners;" and

WHEREAS, the Court having considered the foregoing and being sufficiently advised, Chief Justice Michael E. Vigil, Justice Barbara J. Vigil, Justice Judith K. Nakamura, Justice C. Shannon Bacon, and Justice David K. Thomson concurring;

NOW, THEREFORE, IT IS ORDERED that the petition is GRANTED as to Issue 1 and a writ shall issue directing the district court to resolve counts 1 and 2 of the complaint in cause numbered D-905-CV-2020-00233 in accordance with this Court's conclusion that the New Mexico Legislature has clearly given the

Governor of New Mexico authority to issue civil administrative penalties under the Public Health Emergency Response Act for violations of restrictions on mass gatherings and business operations contained in emergency public health orders;

IT IS FURTHER ORDERED that the Court declines to issue a writ with respect to Issue 2 in the petition;

IT IS FURTHER ORDERED that the stay previously issued by this Court is LIFTED; and

IT IS FURTHER ORDERED that this Court shall issue an opinion at a later date to further explain its ruling in this case.

IT IS SO ORDERED.

WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 4th day of August, 2020.

Joey D. Moya, Chief Clerk of the Supreme Court of the State of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties or their counsel of record on date filed.
Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico