Filed
Supreme Court of New Mexico
4/16/2020 5:11 PM
Office of the Clerk
Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

April 16, 2020

NO. S-1-SC-38228

STATE OF NEW MEXICO, ex rel.,
M. KEITH RIDDLE, in his official capacity
as Clerk of Catron County, and Chair of
the New Mexico County Clerks Affiliate;
SHELLY K. TRUJILLO, in her official capacity
as Clerk of Sierra County, and Chair-Elect of the
New Mexico County Clerks Affiliate;
LINDA STOVER, in her official capacity
as Clerk of Bernalillo County, and Vice President
of the New Mexico Association of Counties;
MICHELLE E. DOMINGUEZ, in her official capacity
as Clerk of Cibola County;
RAYETTA M. TRUJILLO, in her official capacity
as Clerk of Colfax County;
ROSALIE A. GONZALES-JOINER, in her official capacity
as Clerk of De Baca County;
AMANDA LOPEZ ASKIN, in her official capacity
as Clerk of Dona Ana County;
ROBIN VAN NATTA, in her official capacity
as Clerk of Eddy County;
MARISA CASTRILLO, in her official capacity
as Clerk of Grant County;
PATRICK Z. MARTINEZ, in his official capacity
as Clerk of Guadalupe County;
C.J. GARRISON, in her official capacity
as Clerk of Harding County;
MELISSA K. DE LA GARZA, in her official capacity
as Clerk of Hidalgo County;
NAOMI D. MAESTAS, in her official capacity
as Clerk of Los Alamos County;
ANDREA RODRIGUEZ, in her official capacity
as Clerk of Luna County;

HARRIETT K. BECENTI, in her official capacity as Clerk of McKinley County;
CARLOS ARELLANO, in his official capacity as Clerk of Mora County;
ROBYN HOLMES, in her official capacity as Clerk of Otero County;
ELLEN L. WHITE, in her official capacity as Clerk of Quay County;
LINDA J. PADILLA, in her official capacity as Clerk of Rio Arriba County;
GERALDINE E. GUTIERREZ, in her official capacity as Clerk of San Miguel County;
EILEEN GARBAGNI, in her official capacity as Clerk of Sandoval County;
GERALDINE SALAZAR, in her official capacity as Clerk of Santa Fe County;
BETTY SAAVEDRA, in her official capacity as Clerk of Socorro County;
ANNA MARTINEZ, in her official capacity as Clerk of Taos County;
LINDA JARAMILLO, in her official capacity as Clerk of Torrance County;
MARY LOU HARKINS, in her official capacity as Clerk of Union County; and
PEGGY CARABAJAL, in her official capacity as Clerk of Valencia County,

Petitioners,

v.

MAGGIE TOULOUSE OLIVER, in her official capacity as Secretary of State,

Respondent,

and

REPUBLICAN PARTY OF NEW MEXICO,
DAVE KUNKO, Chaves County Clerk,
KEITH MANES, Lea County Clerk,
WHITNEY WHITTAKER, Lincoln County Clerk,
TANYA SHELBY, San Juan County Clerk,
Senator STUART INGLE,
Senator CRAIG BRANDT,
Senator BILL BURT,
Senator GREGG FULFER,
Senator GAY KERNAN,
Senator MARK MOORES,
Senator STEVE NEVILLE,
Senator CLIFF PIRTLE,
Senator SANDER RUE,
Senator WILLIAM SHARER,
Representative JIM TOWNSEND,
Representative PHELPS ANDERSON,
Representative GAIL ARMSTRONG,
Representative RACHEL BLACK,
Representative PAUL BANDY,
Representative CATHRYNN BROWN,
Representative JACK CHATFIELD,
Representative ZACH COOK,
Representative RANDAL CROWDER,
Representative CANDY EZZELL,
Representative DAVID GALLEGOS,
Representative JASON HARPER,
Representative TIM LEWIS,
Representative ROD MONTOYA,
Representative GREG NIBERT,
Representative JANE POWDRELL-CULBERT,
Representative BILL REHM,
Representative GREGG SCHMEDES,
Representative LARRY SCOTT,
Representative JAMES STRICKLER, and
Representative MARTIN ZAMORA,

Intervenors,

and

NEW MEXICO LEGISLATIVE COUNCIL,
GOVERNOR OF NEW MEXICO,
DEMOCRATIC PARTY OF NEW MEXICO, and
LIBERTARIAN PARTY OF NEW MEXICO

Interested Parties

ORDER

WHEREAS, this matter came on for consideration by the Court upon Verified Emergency Petition Seeking Extraordinary Relief for the 2020 Primary Election and Presidential Primary Election; Response in Intervention of the Republican Party, County Clerks and Legislators; Response of the Governor of New Mexico; Response of the New Mexico Legislative Council; Response of the Democratic Party of New Mexico, Response of the Libertarian Party of New Mexico; Supplemental Brief of Petitioners; Supplemental Brief of Intervenors; Amicus Brief of the League of Women Voters, Common Cause, American Civil Liberties Union of New Mexico, Disability Rights New Mexico, Native American Voters Alliance Education Project, and Santa Domingo Pueblo; Amicus Brief of Professors of the University of New Mexico School of Law; Amicus Brief of Voters; Amicus Brief of the Navajo Nation; the oral argument of the parties on April 14, 2020, and Respondent Secretary of State's Notice for Clarification in Supreme Court's Final Order;

WHEREAS, this Court takes judicial notice of the public health emergency declared by the Governor of New Mexico on March 11, 2020, and the Executive Orders and Public Health Orders issued to date by the Governor and the Secretary of the New Mexico Department of Health to address the public health emergency;

WHEREAS, the mailing of an absentee ballot by a county clerk under NMSA, 1978, Section 1-6-5(F) (2019), "shall not be delivered by the county clerk to any person other than the applicant for the ballot," but the Election Code does not prohibit the Secretary of State and county clerks from mailing applications for absentee ballots to New Mexico registered voters;

WHEREAS, there is no dispute in this proceeding that in-person voting poses a substantial health risk to New Mexicans and that absentee voting is, therefore, the preferred method for voting during the current public health emergency; and

WHEREAS, in light of the foregoing, and the Court having considered the pleadings and arguments of the parties and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice Richard C. Bosson, sitting by designation, and Justice Edward L. Chavez, sitting by designation, concurring;

NOW, THEREFORE, IT IS ORDERED that a writ of mandamus shall issue

directing the Secretary of State and County Clerks of New Mexico to mail an application for an absentee ballot to every major party registered voter in New Mexico who has not already submitted an absentee ballot application for the 2020 primary election and conduct in-person voting for the upcoming primary election, whether on election day or during early voting, in compliance with the Election Code and all applicable Executive Orders and Public Health Orders issued by the Governor of New Mexico and Secretary of the New Mexico Department of Health; 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 Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 16th day of April, 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