Administrative Office of the Courts

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Supreme Court rules against citizen petitions for grand jury investigations of the governor

SANTA FE – Citizen-initiated petitions to convene grand juries to investigate the governor's response to the COVID-19 pandemic are legally invalid, the state Supreme Court ruled today.

The Court issued an order directing district court judges to deny grand jury petitions filed in Chaves, Eddy and Lea counties and any similar petitions elsewhere in the state "because they only describe lawful, noncriminal activity," which is outside the boundaries of what a grand jury can investigate.

The Court noted its previous rulings that Gov. Michelle Lujan Grisham "acted lawfully and within the scope of her executive authority when she declared a public health emergency due to the COVID-19 pandemic and delegated power to the Secretary of Health to further issue emergency orders to protect public health and safety."

The New Mexico Constitution – Article II, Section 14 – allows citizens to submit petitions to a state district court to convene a grand jury to investigate alleged criminal conduct or malfeasance by a public official.

The Supreme Court ruled nearly three decades ago – in a case known as *Dist. Ct. of Second Jud. Dist. v. McKenna* – that judges must determine whether a grand jury petition is valid "on its face" and specifies "an area of inquiry that colorably lies within the permissible scope of a grand jury inquiry."

Citing that ruling in today's order, the Court concluded that grand jury petitions involving the governor's pandemic response were "facially invalid."

Gov. Lujan Grisham filed a case in the Supreme Court last November challenging the validity of three citizen grand jury petitions, and in the lawsuit noted that it was difficult to determine how many petitions had been filed or to respond to them because the proceedings are sealed and confidential under court rules of procedure.

In today's order, the Court directed a judicial committee to consider possible rule changes to require a notice to the public official who is the target of a grand jury petition and allow that individual to intervene in the case. The Rules of Criminal Procedure for State Courts Committee also is to consider whether rules should "explicitly require the district court to rule on the legal validity" of a petition seeking to convene a grand jury.

Currently, Rule 5-302B NMRA governing citizen-initiated grand juries instructs judges about verifying whether a petition contains the number of voter signatures required by the state constitution.

Supreme Court-approved rules govern civil and criminal proceedings, including setting deadlines and spelling out the actions that judges and attorneys must take as a case moves forward. Court-appointed committees study possible rule amendments and make recommendations to the justices.

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Click here to read the Court's order in *Grisham v. Hudson*, No. S-1-SC-39072.