Economic whiplash

Written by By Beth Blakeman Associate Editor
Friday, 31 July 2020 03:50







Courts duel over restaurants reopening

The New Mexico Supreme Court granted an emergency request by Governor Michelle Lujan Grisham to stay an order issued earlier that on July 20 in Carlsbad.

That Carlsbad order by Judge Raymond Romero of the Fifth Judicial District Court in Eddy and Chaves counties would have allowed indoor dining at restaurants in New Mexico, despite an emergency health order to the contrary. The decision came at the request of the New Mexico Restaurant Association, which was seeking to overturn the governor's emergency health order July 13 (7.13.20-PHO-1).

The order from Carlsbad said that restaurants and breweries in the state could reopen indoor dining at 50 percent capacity and granted a ten-day injunction. It also scheduled a hearing for July 30 at 1:30 pm.

In the ruling, (Case No. D-503-CV-2020-506), it stated that, "Immediate irreparable injury, loss or damage will result to the applicants before the respondents or their attorneys can be heard in opposition to the application for temporary restraining order, to wit: permanent loss of revenue, permanent business closure, and/or bankruptcy."

In a response that same day in the state Supreme Court (NO. S-1-SC-38396), three judges, Barbara J. Vigil, Judith K. Nakamura and David K. Thomson agreed to grant the Lujan Grisham Administration request for a stay of Judge Romero's order to reopen restaurants until further order of the state's high court.

"I am grateful for the court's quick action," Lujan Grisham said. "Businesses all across New Mexico have been battered by the effects of this pandemic; they are owed consistency and fairness, which my administration has endeavored to provide at every opportunity.

"We will continue to provide that while taking every single possible action to protect the health and well-being of New Mexicans — including workers and customers at our restaurants. I appreciate the high court's recognition of the importance of consistent application and

enforcement and the opportunity to bolster our case that high-contact indoor environments where face-coverings cannot be worn present an untenable risk given the incredible danger of COVID-19 at the moment," she said.

Carol Wight, CEO of the New Mexico Restaurant Association, told the *Gallup Sun* that the back and forth between opening and closing was hard on members.

"One of the points of our lawsuit is that it's very difficult for businesses and most specifically restaurants to be closed down … even four days … doesn't allow us to use our inventory [and] take care of employees the way we should," she said.

"There weren't that many restaurants that even had time to contemplate opening on that day [July 20], but some did. They brought in extra employees for that evening.

"There were obviously some restaurants that didn't get the message that we were again closed, so they might have opened for dinner that evening," Wight added.

At this time, following the stay by the state Supreme Court, restaurants in New Mexico are permitted to operate outdoor and patio dine-in services at 50 percent capacity in accordance with COVID-Safe Practices. Restaurants may also provide carryout and delivery services.

Dine-in service in indoor seating areas is prohibited.

Wight says that now that the State Supreme Court issued the stay, the argument will move up to the higher court.

She says the New Mexico Restaurant Association is hopeful and believes the governor's move to close indoor dining was arbitrary and capricious.

Wight says Lujan Grisham gave no data to support closing restaurants.

“She [Lujan Grisham] said restaurants didn’t do this to restaurants. New Mexicans did this to restaurants,” Wight continued.

“The inference is that she is punishing New Mexicans by closing down restaurants,” Wight said. “That’s the way we heard it.”

She said she believed the issue would be back in court in approximately ten days.

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