



## Administrative Office of the Courts

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### **NM Supreme Court outlines limits on its equitable powers in primary election case**

SANTA FE – The state Supreme Court issued an opinion today explaining its legal reasoning for ordering the state's top election official to mail applications for absentee ballots to all eligible primary election voters last year during the public health emergency from the COVID-19 pandemic.

"This remedy promoted the health of the voting public and election workers by making it easier for voters to cast their ballots from the safety of their own homes. We also honored the separation of powers by preserving the Legislature's plenary power to set election procedures," the Court wrote in a unanimous opinion by Chief Justice Michael E. Vigil. "The writ we issued was designed to protect public health, promote free and open elections, and preserve the rule of law."

About two months before the June 2, 2020 election, 27 of the state's 33 county clerks asked the Court to use its equitable powers to require the secretary of state to conduct the election by mail – sending absentee ballots to all eligible voters rather than allowing in-person voting at polling places across New Mexico.

After hearing oral arguments in the case in April 2020, the Court ruled from the bench and directed Secretary of State Maggie Toulouse Oliver to mail applications for absentee ballots to all major party voters in the primary election. Voters would receive a ballot if they submitted a completed application. The Court announced it would later issue a written opinion with a detailed legal explanation for its decision.

In today's opinion, the Court explained that election laws do not provide for a statewide primary election conducted exclusively through a vote-by-mail arrangement and the secretary of state cannot "mail absentee ballots directly to voters without a prior request from the voters."

"Our equitable powers do not extend so far as to allow us to disregard procedures set forth by statute or to rearrange the Election Code," the Court wrote. "To do so would violate the separation of powers."

But the Court determined that nothing in the Election Code prohibited the secretary of state from "encouraging voters to exercise their right to vote by mail and facilitating absentee voting" by sending every eligible primary election voter an application that could be used to request a ballot.

The secretary of state is required during the pandemic to comply with provisions of the governor's public health emergency orders and "had a duty to manage the election in a manner that minimized the risk of spreading COVID-19 and protected lives by helping voters stay home as much as possible," according to the Court. The secretary also had an obligation to follow state election laws.

Under the circumstances of the case, the Court concluded, the secretary of state "had an affirmative duty arising from the pandemic-related executive and public health orders to mail absentee ballot applications to all eligible New Mexico voters." As a result, the justices explained, the Court issued a writ of mandamus directing the secretary of state to carry out that "nondiscretionary duty."

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To read the decision in *Riddle v. Oliver*, No. S-1-SC-38228, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/496596/index.do>