

# Who's responsible for businesses' shutdown costs?

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SANTA FE – Gov. Michelle Lujan Grisham's office has asked New Mexico's Supreme Court to rule on whether state government can be held liable for economic losses incurred by businesses and individuals during the coronavirus pandemic.

In recent months, at least 14 lawsuits have been filed at the District Court level around the state against the Lujan Grisham administration in an attempt to recoup such losses.

The plaintiffs, which include a Roswell musician, a Clovis liquor store and a Santa Fe oxygen bar, claim the Lujan Grisham administration's business restrictions imposed in response to the COVID-19 pandemic have led to significant financial losses.

In some cases, the losses have been as high as hundreds of thousands of dollars, said Albuquerque attorney Blair Dunn, whose law firm filed the lawsuits.

However, Governor's Office attorneys have sought to have the lawsuits dismissed. They have also argued that, under legal precedent, emergency orders aimed at protecting public health of New Mexicans are not grounds for compensation claims.

In a 20-page motion filed last week, the Governor's Office and Attorney General Hector Balderas' office jointly asked the Supreme Court to decide the underlying legal issue in order to avoid "confusion, contradictory orders and unwieldy burdens on the state and the courts."

If the state's highest court declines to do that, the Governor's Office suggested that only one case be allowed to move forward – and the others put on hold – or that the Supreme Court order all the cases be consolidated and then heard by a single lower court judge, possibly in the Santa Fe-based 1st Judicial District.

"The purpose for filing the motion with the Supreme Court was to consolidate the 14 or so suits that have been filed across the state so the Supreme Court can decide the issue faster without having all these duplicative district court suits," Lujan Grisham spokeswoman Nora Meyers Sackett said Thursday.

“We wish to definitively resolve the matter as fast as possible,” she added.

The plaintiffs in the lawsuits argue the state’s Public Health Emergency Response Act calls for state government to provide compensation for health facilities and other businesses it takes over during an emergency. But it’s unclear whether state-level business restrictions – such as ordering businesses to operate at limited capacity – would also amount to a takeover under that law.

Dunn, a former Libertarian attorney general candidate, accused the Governor’s Office of “judge shopping” in response to the recent Supreme Court motion. He also pointed out there have been no hearings yet on any of the lawsuits in question.

“What they’re doing is saying, ‘We don’t trust some of these District Court judges to deliver the rulings we want,’” Dunn said in an interview Thursday.

“I think our District Court judges are perfectly capable of handling these (cases),” he added.

Lujan Grisham has acknowledged the economic damage inflicted by the pandemic, including a state unemployment rate that has been among the nation’s highest in recent months. But she has said the business restrictions are necessary to keep the virus from spreading rapidly and overwhelming New Mexico’s health care system.

In an attempt to keep businesses afloat, the state has also launched two separate programs to provide low-interest loans from one of New Mexico’s two large permanent funds.

However, participation in at least one of those programs has been lower than expected due to strict eligibility guidelines, prompting the governor to say it may need to be overhauled during the upcoming 60-day legislative session.

Meanwhile, the Supreme Court has not yet announced whether it will grant the Governor’s Office’s motion, though it ordered plaintiffs to file a response by Oct. 26.