

STATE EX REL. NICHOLS V. ZINN, 1965-NMSC-122, 75 N.M. 508, 407 P.2d 53 (S. Ct. 1965)

**STATE of New Mexico upon the relation of Homer P. NICHOLS,
Petitioner,**

vs.

**Frank B. ZINN, District Judge, Eleventh Judicial District
of the State of New Mexico, Respondent**

No. 8015

SUPREME COURT OF NEW MEXICO

1965-NMSC-122, 75 N.M. 508, 407 P.2d 53

October 29, 1965

Peremptory Writ of Prohibition

JUDGES

CARMODY Chief Justice, wrote the opinion.

AUTHOR: CARMODY

OPINION

CARMODY, Chief Justice.

{1} To: The Honorable Frank B. Zinn, District Judge, Eleventh Judicial District of the State of New Mexico.

{2} WHEREAS, upon the verified Petition of Homer P. Nichols, it appears that in Cause No. A-15542, District Court in and for the County of Bernalillo, an order has been entered requiring Archie Westfall, Sam Brown, Luther Heilman, Ralph Trigg and Emmanuel Schifani, City Commissioners of the City of Albuquerque to show cause before you at 2:30 P.M. on November 14th 1965, as to why they should not be restrained from calling and conducting an election upon the gasoline tax ordinance of the City of Albuquerque, and,

{3} IT FURTHER APPEARING that pursuant to opinion of this Court and mandate heretofore entered in Cause No. 7813, a judgment has been entered by the District Court of Bernalillo County, Cause No. A-10434 ordering and directing the said City Commissioners to call and hold an election on November 16, 1965, and,

{4} IT FURTHER APPEARING that a restraining order or other proceedings in Cause No. A-15542 pursuant to the complaint would be in violation of this Court's opinion and mandate and that accordingly you have no jurisdiction to proceed further in said cause, and,

{5} IT FURTHER APPEARING that in this case the Supreme Court should exercise its power of superintending control over inferior courts to enforce its opinions and mandates and the judgments entered pursuant thereto.

{6} IT IS, THEREFORE, ORDERED AND COMMANDED that you refrain and desist from proceeding with the hearing on the Show Cause Order on November 4, 1965 and from taking any other action or proceeding pursuant to the complaint filed in Cause No. A-15542, District Court Bernalillo County, New Mexico.

{7} IT IS FURTHER ORDERED that a copy of this Writ and of the Petition be served on the respondent in the same manner as a summons in the civil action.