

FROM THE COURTS

NJ Justices Say Remote Grand Juries Temporary, Constitutional



CARMEN NATALE

"The virtual grand jury format—a temporary measure to meet a public health emergency—has not sacrificed any core principle animating the constitutional right to indictment by grand jury," Justice Barry Albin wrote for the court.

by Charles Toutant

The New Jersey Supreme Court has rejected a constitutional challenge of its use of virtual grand juries during the pandemic, finding no proof to claims that the court lacked authority to institute the program, that remote grand juries lacked secrecy and that they failed to draw from a cross section of the community.

In a 7-0 decision, the court denied a motion to dismiss the indictment of Omar Vega-Larregui on drug charges, finding that allowing grand jurors to participate from home via Zoom is a temporary but necessary measure due to the severity of the COVID-19 outbreak.

The ruling appears to end a dispute between the judiciary, on one side, and the amici curiae New Jersey State Bar Association and the Association of Criminal Defense Lawyers of New Jersey, on the other, over use of technology during the pandemic. The judiciary's use of virtual grand juries had also drawn criticism from the state's 21 county prosecutors.

"This court has utilized technology to preserve, not to undermine, the constitutional right of defendants to a grand jury presentation. The virtual grand jury format—a temporary measure to meet a public health emergency—has not sacrificed any core principle animating the constitutional right to indictment by grand jury," Justice Barry Albin wrote for the court.

Lawyers who challenged virtual grand juries said something was lost with virtual technology because jurors could not see the body language of those testifying. The court said several times that virtual grand juries would not continue indefinitely.

"Virtual grand juries are a temporary measure invoked to meet an extraordinary, life-threatening public health crisis," the court said. "As millions of New Jersey residents continue to receive vaccinations, we look forward in the near future to a return to normalcy and to reopened courthouses—and to grand jurors sitting together in the same room where testimony is taken," the court said.

The challengers had claimed that conducting remote grand juries compromised the secrecy of proceedings, and that those participating from home might talk to their families or friends about the

case, or let unauthorized persons watch the proceedings. But the court said jurors are repeatedly reminded about the sanctity of proceedings and the fines impose on those who violate the oath of secrecy.

"In effect, they urge that we discard the presumption that virtual grand jurors will act in accordance with their lawful duties. Because defendant and amici have no sound evidence to support their premise of virtual grand juror irresponsibility, they have resorted to speculation and hypothetical scenarios," the court said.

The justices recommended some minor changes in procedure to acknowledge some criticisms by the challengers. Where a prosecutor who was addressing the jurors asked if any had difficulty hearing and seeing the proceedings, their silence was presumed to indicate no problems. But defense lawyers said at oral argument that silence might indicate the jurors could not hear what was being said because of a poor connection or an activated mute button.

"In the future, to remove any doubt about a virtual grand juror's response to a question, the prosecutor should require a clear indication for the record, such as an audible response or a showing of hands," Albin wrote.

The defense lawyers also criticized the grand jury transcript's identification of persons as "unidentified speaker," to which the court said future grand jury proceedings should require persons speaking to identify themselves.

Vega-Larregui's lawyer, John Furlong of Furlong and Krasny in West Trenton, said the ruling was not unexpected given the way the oral argument went. He said he's not concerned about the ruling's impact on his client but was concerned that the ruling will enable the court to implement trial technology for the sake of expediency.

"You can say this is a temporary solution to a problem but once you write an opinion, the solution is permanent. We are now en route down a slippery slope towards virtual justice. Expediency should never define our criminal justice system," Furlong said.

Charles Toutant is a litigation writer for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at ctoutant@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **LOCAL PLANNING AGENCY MEETING** on **May 19, 2021** beginning at **10:00 AM**.

General Public Comments: members of the public that wish to provide comments in writing may do so by emailing the City Clerk at cityclerk@cityofdoral.com. Comments must be submitted with your name and full address by **Tuesday, May 18, 2021 at 5:00 pm**. The comments will be circulated to the elected officials and administration, as well as remain as a part of the record for the meeting.

Public Hearing Comments (Pre-Registration): interested parties that wish to speak on the Public Hearing item(s) **ONLY**, must register by **Tuesday, May 18, 2021 at 5:00 pm** via this link: <https://attendee.gotowebinar.com/register/1824723521766837005>

The meeting will be broadcasted live for members of the public to view on the City of Doral's website (<https://www.cityofdoral.com/government/city-clerk/council-meetings>) as well as Channel 77 and Facebook Live.

The City of Doral proposes to adopt the following Resolution:

RESOLUTION No. 21-

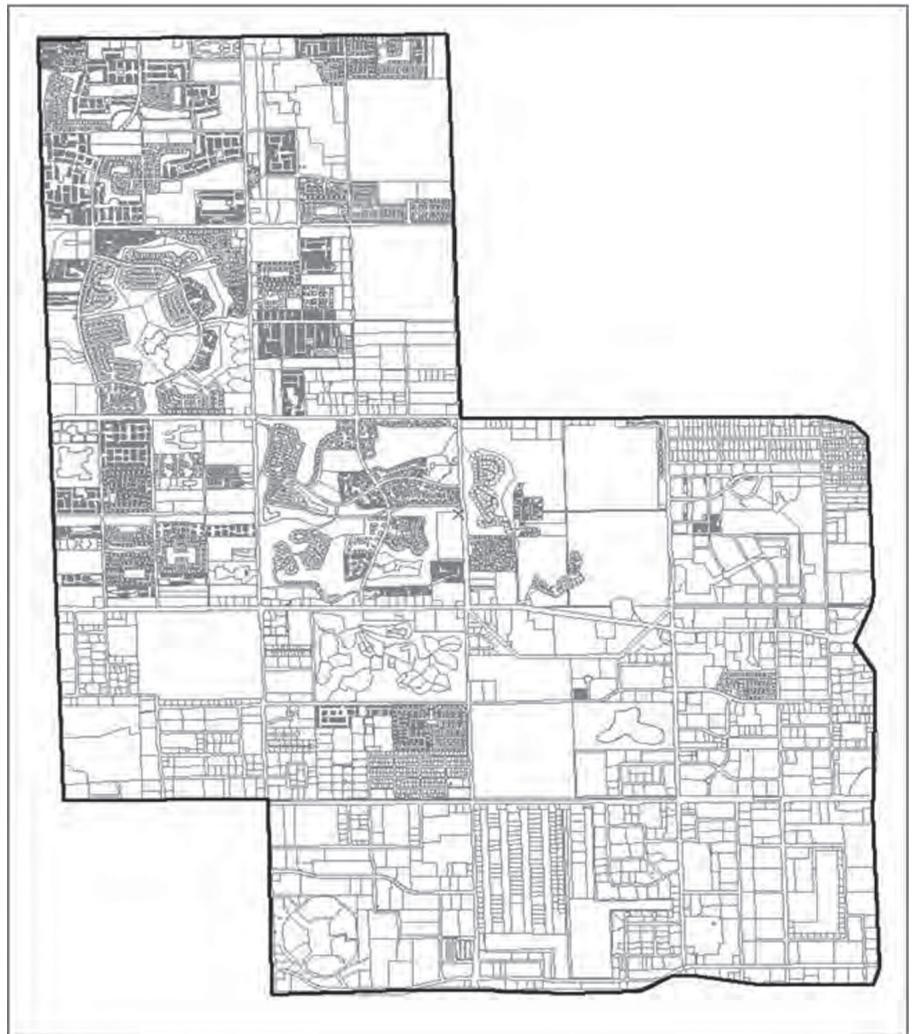
A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, SITTING AS THE LOCAL PLANNING AGENCY, RECOMMENDING APPROVAL / DENIAL OF, OR GOING FORWARD WITHOUT A RECOMMENDATION TO THE LOCAL GOVERNING BODY A TEXT AMENDMENT TO THE CITY OF DORAL LAND DEVELOPMENT CODE, CHAPTER 75, "PUBLIC ARTS PROGRAM," CREATING ARTICLE II, ENTITLED "MURALS" TO ESTABLISH REQUIREMENTS AND CRITERIA FOR MURALS; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 21-05-DOR-02

APPLICANT: City of Doral

REQUEST: The City of Doral Staff is requesting Mayor and City Council approval of a text amendment to Chapter 75 "Public Arts Program" of the City of Doral Land Development Code, to create Article II "Murals" to establish requirements and criteria for murals.

[Location Map](#)



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral City of Doral
5/5

21-07/0000527346M