



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MARIO ATENCIO; PAUL AND MARY ANN ATENCIO;
DANIEL TSO; SAMUEL SAGE; CHEYENNE ANTONIO;
KENDRA PINTO; JULIA BERNAL; JONATHAN ALONZO;
PASTOR DAVID ROGERS; YOUTH UNITED FOR CLIMATE
CRISIS ACTION (YUCCA); PUEBLO ACTION ALLIANCE;
INDIGENOUS LIFEWAYS; CENTER FOR BIOLOGICAL
DIVERSITY; and WILDEARTH GUARDIANS,

Plaintiffs-Petitioners,

v.

No. S-1-SC-40980

STATE OF NEW MEXICO; THE NEW MEXICO
LEGISLATURE; GOVERNOR MICHELLE LUJAN GRISHAM;
NEW MEXICO ENVIRONMENT DEPARTMENT; SECRETARY
JAMES KENNEY, in his official capacity; ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT; SECRETARY SARAH
COTTRELL PROPST, in her official capacity; ENVIRONMENTAL
IMPROVEMENT BOARD; and the OIL CONSERVATION COMMISSION,

Defendants-Respondents,

and

NEW MEXICO CHAMBER OF COMMERCE, and
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO,
Intervenors-Defendants.

THE NEW MEXICO LEGISLATURE'S ANSWER BRIEF

From New Mexico Court of Appeals, No. A-1-CA-42006,
First Judicial District Court, Santa Fe County, No. D-101-CV-2023-01038

ORAL ARGUMENT REQUESTED

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INTRODUCTION

This case underscores the importance of separation of powers among the legislative, executive, and judicial branches of government. Article IV, Section 1 of New Mexico's Constitution establishes the Legislature as the first branch of government, vested with the sole and exclusive authority to determine public policy of our State through the deliberative legislative process. Recognizing that the Legislature has the duty to weigh the numerous interests of our State, the Constitution was amended in 1971 to require that the Legislature, as part of its policy-making function, "provide for control of pollution and control of despoilment of the air, water, and other natural resources of this state, *consistent with* the use and development of these resources for the *maximum benefit of the people*." N.M. Const. art. XX, 21 (emphasis added).

The Legislature has the exclusive duty to weigh and balance the dual interests set forth in Article XX, Section 21 to enact laws that vest appropriate pollution control authority within the executive branch, while also ensuring that the public derives appropriate benefits from the use and development of natural resources. Despite this dual interest mandated by the Constitution, Petitioners claim a singular interest in Article XX and assert that their constitutional rights have been violated allegedly because the environmental laws enacted by the Legislature and implemented by executive agencies are not "sufficient" or "adequate." **[RP 95-107]**.

Petitioners assert their claims under Article XX, Section 21, the Due Process, Equal Protection, and Inherent Rights Clauses under Article II, Section 18, and the New Mexico Civil Rights Act, NMSA 1978, §§ 41-4A-1 to 41-4A-13.¹

On June 3, 2025, the Court of Appeals rejected Petitioners’ claims and entered an order directing the dismissal of Petitioners’ Complaint for failure to state a claim on which relief may be granted. The Court of Appeals held that Article XX, Section 21 does not create a judicially enforceable right to particular pollution controls, that judicial resolution of the claims under Article XX, Section 21 would violate separation of powers, and that the political question doctrine militated against judicial review. *Atencio v. State*, No. A-1-CA-42006, 2025 WL 1621659, at *6-14, ¶¶ 19-51 (N.M. Ct. App. June 3, 2025). The Court of Appeals also held that Petitioners’ Due Process claims were legally deficient because the New Mexico Constitution does not confer a due process right to a “beautiful and healthful environment,” or guarantee a right to a certain level of pollution controls. *Id.* at ¶¶ 52-57. Finally, the Court of Appeals held that Petitioners’ equal protection claims were deficient because Petitioners pointed to no government classification, explicit or as-applied, that would result in discrimination. *Id.* at ¶¶ 58-61.

¹ Petitioners have abandoned their New Mexico Civil Rights Act claims against the Legislature.

The Court of Appeals correctly concluded that Petitioners' claims are legally untenable for several reasons. First, Article XX, Section 21 contains two separate clauses addressing competing policy interests, and does not provide any basis for judicial intervention to reweigh those policy decisions and encroach on separation of powers principles. *See Id.* at ¶ 33. Any judicial declaration would merely restate Article XX, Section 21's command that the Legislature balance the enumerated dual interests, a function that the Legislature has accomplished and continues to effectuate when establishing public policy.

Second, Petitioners' claims under Article II, Section 18 do not identify any specific legislative action that creates an identified class or results in "as-applied" discrimination. Likewise, Petitioners have failed to identify a specific legislative act that somehow abridges Petitioners' fundamental rights to life, liberty, or property as guaranteed by the Due Process Clause.

The Legislature – not the judiciary – is the body entrusted with the duty to balance natural resource development with laws designed to promote environmental protection for all New Mexicans. This balancing is constitutionally assigned to the deliberative legislative process, conducted on behalf of all New Mexicans through their elected representatives, and not accomplished through a complaint seeking judicial intervention to direct the Legislature to promote one policy interest over

another. Based on principles of separation of powers, the Court should affirm the Court of Appeals' decision directing the dismissal of Petitioners' Complaint.

STANDARD OF REVIEW

The Court's Order granting the Petition for Writ of Certiorari follows an interlocutory appeal of the district court's order concerning, *inter alia*, the Legislature's Motion for Judgment on the Pleadings. Under Rule 1-012(C) NMRA, motions for judgment on the pleadings are reviewed according to the same standard that applies to motions to dismiss made pursuant to Rule 1-012(B)(6) NMRA. The Court's review is *de novo*, and the Court accepts as true the well pleaded allegations in the plaintiff's complaint. However, conclusions of law or inferences that may be drawn from the allegations of the complaint are not accepted even when posed as a fact. *See Romero v. U.S. Life Ins. Co. of Dallas*, 1986-NMCA-044, ¶ 8, 104 N.M. 241 ("Legal conclusions or inferences that may be drawn from the allegations are not admitted"); *Duran v. New Mexico Monitored Treatment Program*, 2000-NMCA-023, ¶ 19, 128 N.M. 659 ("conclusions of law are not admitted"). [*See e.g.*, BIC 6-9].

ARGUMENT

I. ARTICLE XX, SECTION 21 DOES NOT CREATE A JUDICIALLY ENFORCEABLE STANDARD TO BROADLY CHALLENGE ENVIRONMENTAL POLICY

A. Article XX, Section 21 is a Dual Public Interest Clause

Article XX, Section 21 states:

The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The **legislature shall** provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, *consistent with the use and development of these resources for the maximum benefit of the people.*

N.M. Const. art. XX, § 21² (emphasis added). This article must be applied accordingly to the “plain meaning” of its language. *Hem v. Toyota Motor Corp.*, 2015-NMSC-024, ¶ 10, 353 P.3d 1219. The Dual Interest Clause unambiguously provides that “the [L]egislature shall” provide pollution controls and that such controls be “*consistent with*” the development of natural resources for the “*maximum benefit of the people.*” (emphasis added). “Consistent” is defined as “marked by harmony” and “free from variation or contradiction.” *Consistent*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/consistent?src=search-dict-hed> (last visited Feb. 20, 2025).

² This Clause may be referred to as the “Dual Interest Clause” throughout this brief.

A plain reading of this Dual Interest Clause reveals that the policy interest in pollution control does not exist singularly, but must be considered in “harmony” with the stated policy interest in the development of natural resources for the benefit of all New Mexicans. The Dual Interest Clause, therefore, does not identify a singular interest in pollution control but requires that the Legislature balance that interest with natural resource development to establish public policy. This is quintessentially a political question committed to the deliberative legislative process.

The judiciary must give meaning to each word in the Dual Interest Clause. *See State v. Jonathan M.*, 1990-NMSC-046, ¶ 4, 109 N.M. 789 (construction must give effect to the intent of the authors); *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24, 309 P.3d 1047 (same). In accordance with this principle, the Court of Appeals correctly concluded that the Dual Interest Clause does not create an isolated right to pollution controls and that it placed an obligation on the Legislature to balance two competing policy interests. *See Atencio v. State*, No. A-1-CA-42006, 2025 WL 1621659, at *9, *cert. granted*, 2025-NMCERT-011. While the protection of the environment is recognized as “of fundamental importance,” the Constitution also calls on *the Legislature* to ensure that natural resources are used and developed for

the “maximum benefit of the people.”³ N.M. Const. art. XX, § 21 (“the [L]egislature shall”). Contrary to Petitioners’ assertion, this language does not elevate pollution controls over natural resource development because such an elevation would render meaningless the Dual Interest Clause’s requirement to develop natural resources for the maximum benefit to the people. *See Denish v. Johnson*, 1996-NMSC-005, ¶ 37, 121 N.M. 280 (“no part of a constitutional provision should be interpreted so that it is rendered meaningless or superfluous.”); *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 25, 539 P.3d 272 (same); *Hem*, 2015-NMSC-024, ¶ 10 (same).

Petitioners request the Court to perform the balancing act the Legislature is constitutionally mandated to perform. Recently, however, this Court reaffirmed that “the Legislature’s constitutional power and prerogative includes ‘the right to determine what the law shall be,’ ‘to create substantive law,’ and ‘to make public policy.’” *Amdor v. Grisham*, 2025-NMSC-024, ¶ 104, 578 P.3d 971 (quoting *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶¶ 33–34, 120 N.M. 562, *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 8, 438 P.3d 343, and *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶¶ 21, 24–25, 49, 125 N.M. 343). Petitioners contend that one policy interest set forth in the Dual Interest Clause constitutes a right or positive

³ Petitioners’ restrictive reading of the Dual Interest Clause in footnote 4 of the BIC ignores the clause’s inclusion of “other natural resources of this state,” which necessarily includes renewable and non-renewable resources.

duty, while the other policy interest is merely an advisory consideration. **[BIC 12-13]**. This selective reading of the Dual Interest Clause extracts the language mandating that the Legislature also enact laws promoting the development of natural resources and, thus, unconstitutionally deprives the Legislature of its prerogative to “make [that] public policy.” *Amdor*, 2025-NMSC-024, ¶ 104.

To support their claims, Petitioners rely on case law interpreting structurally distinct constitutional clauses. For example, Petitioners point to *Martinez/Yazzie v. State*, No. D-101-CV-2014-02224, Decision and Order (1st Jud. Dist. Ct. July 20, 2016). This decision is neither controlling nor persuasive. *Martinez/Yazzie* considered whether the education system in New Mexico violated Article XII, Section 1 of the Constitution. Article XII, Section 1, however, provides a singular interest in a “sufficient” education, an objective standard that permitted judicial enforcement. *Id.* at 9. This singular “adequacy clause” is materially different from the dual interests represented in Article XX, Section 21, which require a balancing of policy interests entrusted to the Legislature.

The Dual Interest Clause does not articulate a singular interest subject to objective standards of “adequate” or “sufficient.” Instead, the Constitution reflects differing policy priorities: pollution control and maximizing resource development. As confirmed by the Court of Appeals, determining the proper balance between those interests is a legislative function and not a matter for judicial resolution.

Atencio v. State, No. A-1-CA-42006, 2025 WL 1621659, at *9 (citing *Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16); *see also New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 9, 149 N.M. 42 (“The New Mexico Constitution establishes the legislative branch as the entity to represent the collective of the populace for purposes of creating laws to effectuate the public policy of the State.”); *State v. Maestas*, 2007-NMSC-001, ¶ 25, 140 N.M. 836 (the court will not “question the wisdom, policy, or justness of legislation enacted by [the] [L]egislature”).

Petitioners also rely on the Supreme Court of Alaska decision in *Sagoonick v. State*, 503 P.3d 777 (Alaska 2022). But that case supports the Legislature, not Petitioners. In *Sagoonick*, the Alaska Supreme Court rejected the plaintiffs’ claims based on constitutional provisions similar to the Dual Interest Clause. Like the Dual Interest Clause, the Alaska Constitution entrusted to its legislature the duty to balance conservation with promoting the maximum use of resources for the benefit of the citizenry: “It is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with public interest.” Ak. Const. art. VIII, § 1. The Alaska Constitution also cautioned that the legislature shall provide for the “utilization, development, *and conservation* of all natural resources belonging to the state, including land and waters, *for the maximum benefit* of its people.” Ak. Const. art. VIII, at § 2 (emphasis added). Interpreting these provisions harmoniously, the Court in *Sagoonick*

concluded that Alaska’s Constitution “expressly delegated to the legislature the duty to balance competing priorities for the collective benefit of all Alaskans.” *Sagoonick*, 503 P.3d at 788.

The Supreme Court of Alaska thus rejected plaintiffs’ argument that the legislature must elevate environmental concerns over the obligation to promote the development of natural resources for the benefit of the people. The Court noted that the judiciary could not restrain the legislature by specifying “*how* the state should develop what action would be for the maximum benefit of the Alaskan people.” *Sagoonick*, 503 P.3d at 803 (emphasis added). The Court in *Sagoonick* explained that the natural resource clause provided the legislature with the exclusive power to implement public policy related to natural resource development and that the legislature is constitutionally entrusted with “the duty to determine the procedures necessary for ensuring . . . the state’s [natural] resources are used ‘for the maximum benefit of the Alaskan people.’” *Sagoonick*, 503 P.3d at 788 (quoting *Sullivan v. REDOIL*, 311 P.3d 625, 635 (Alaska 2013)).

Like the plaintiffs in *Sagoonick*, Petitioners here do not base their claims on a discrete agency decision, but submit a general, abstract challenge to public policy regarding environmental protection and natural resource development. [*See generally* **RP 1-107**]. Petitioners inappropriately request that the judiciary be the ultimate arbiter to determine an appropriate balance between natural resource

development and pollution control measures, asserting that the Legislature must “establish and fund a statutory, regulatory, and enforcement scheme that protects a beautiful and healthful environment, the land, air, water, natural resources, public health and climate from despoilment due to pollution” **[RP 105]**.

The Dual Interest Clause is unambiguous and it does not set forth an exclusive constitutional obligation for the Legislature to provide for pollution control measures and disengage from resource development. The Dual Interest Clause requires a balancing of two stated policy interests, and it expressly delegates to the Legislature the responsibility to balance those competing interests for the collective benefit of all New Mexicans. Thus, the Court of Appeals correctly concluded that it was “beyond the judiciary’s authority” to “reweigh these interests and, separate and apart from the Legislature, determine that it has failed to balance these interests in accordance with a judicially created standard.” *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *9, ¶ 33.

B. The Policy Interests of the Dual Interest Clause are Within the Exclusive Realm of the Legislature Pursuant to Separation of Powers.

The foundation of our constitutional democracy is the division of power between three co-equal branches of government with “each branch [] maintain[ing] its independent and distinct function.” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21. The “legislature makes, the executive executes, and the judiciary construes the laws.” *State v. Fifth Judicial Dist. Court*, 1932-NMSC-023, ¶ 9. In the current

circumstances, Petitioners ask the Court to enjoin the fundamental essence of the legislative function: the public policies the Legislature should prioritize, and how the Legislature should appropriate funds to promote those policies. **[RP 106]**. These matters are inherently legislative functions that separation of powers protects from judicial infringement. *See e.g., Franklin v. Massachusetts*, 505 U.S. 788, 826 (1992) (Scalia, J., concurring) (finding that declaratory or injunctive relief that directs a co-equal branch of government’s performance of its official duties would violate separation of powers).

1. The Legislature is Entrusted With the Exclusive Obligation to Formulate Public Policy.

In New Mexico, policymaking is within the exclusive control of the Legislature. The Legislature effectuates the public policy of the State and has sole province to balance the dual policy interests enshrined in the Dual Interest Clause. *See Unite New Mexico v. Oliver*, 2019-NMSC-009, ¶ 6 (acknowledging that when the constitution provides express authority to the Legislature to enact legislation in a specific area of law, the Legislature is vested with plenary authority). *State ex rel. State Highway Comm’n v. City of Aztec*, 1967-NMSC-046, ¶ 9 (the normal rules of statutory construction apply equally to constitutional provisions); *State v. Isaac M.*, 2001-NMCA-088, ¶ 5 (the “primary rule of construction is that, when possible, [the court] give[s] effect to the clear and unambiguous language of a statute.”).

Moreover, the intentional design of New Mexico’s government confers the policy-making function to the Legislature. *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21 (“[I]t is a particular domain of the Legislature, as the voice of the people, to make public policy.”); *State v. Fifth Judicial Dist. Court*, 1932- NMSC-023 (noting that the legislature makes, the executive executes, and the judiciary construes the laws). The conclusion, therefore, is inescapable: the Legislature is constitutionally assigned the exclusive authority to balance competing interests and establish natural resource policy. *Unite N.M.*, 2019-NMSC-009; *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 9 (“The New Mexico Constitution establishes the legislative branch as the entity to represent the collective of the populace for purposes of creating laws to effectuate the public policy of the State.” (internal citations omitted)).

The Alaska Supreme Court reached a similar result by determining that the legislature possessed the exclusive power to implement public policy for natural resource development. *Sagoonick*, 503 P.3d at 788. The Court observed that Alaska’s Constitution “expressly delegated to the legislature the duty to balance competing priorities for the collective benefit of all Alaskans.” *Id.* It emphasized that the legislature is constitutionally entrusted with “‘the duty to determine the procedures necessary for ensuring . . . the state’s [natural] resources are used ‘for the maximum benefit of the Alaskan people.’” *Id.* (quoting *Sullivan v. REDOIL*, 311 P.3d 625, 635

(Alaska 2013)). The Court determined that as a result of this legislative prerogative, it could not provide the broad relief requested by the plaintiffs:

Plaintiffs ask the judicial branch to establish constitutional common law controlling State policy about the appropriate balancing of resource development against environmental protection. And plaintiffs ask us to *jettison the constitutional mandate that the legislature manage* natural resources in the public interest and for the maximum benefit to Alaskans collectively.

Sagoonick, 503 P.3d at 796 (emphasis added).

As in *Sagoonick*, the Petitioners’ requested remedy in the current circumstance is to establish common law specifying how the Legislature must establish public policy, effectively “jettisoning” the Dual Interest Clause’s mandate for *the Legislature* to strike a deliberative balance between pollution control and the development of natural resources. Such requested relief frustrates the balance of powers in our democratic system of governance because “it is a particular domain of the Legislature, as the voice of the people, to make public policy.” *State ex rel. Taylor*, 1998-NMSC-015, ¶ 21.

2. The Dual Interest Clause Does Not Provide a Judicially Enforceable Standard.

Because the Dual Interest Clause imposes an obligation on the Legislature to balance competing policy considerations, there is no judicially enforceable standard available to disturb this determination reached through the deliberative legislative process. The Dual Interest Clause does not state that the Legislature must provide a

“sufficient” or “adequate” healthful environment; instead, the Legislature must “provide for” pollution control that is “consistent with” the use and development of natural resources.

The lack of a judicially discoverable and manageable standard is highlighted where the court is asked to “decide matters beyond the scope of [its] authority with resources not available to the judiciary.” *Aji P. by & through Piper v. State*, 16 Wash. App. 2d 177, 189–90 (2021). The absence of a judicially manageable standard is evident when resolution of the claim requires the court to consider “scientific expertise” and to “balance the many implicated and varied interests affected” by the requested relief. *Id.* To make any such policy determination, the Court must rely on scientific expertise to rule on “the best available science to detect and analyze the environmental health impacts” caused by oil and gas production and “to control the release of oil and gas pollution.” **[RP 106]**. In the current circumstances, these determinations have been delegated by the Legislature to administrative agencies in the executive branch with the scientific expertise to render sound judgments on the subject matter. *See infra*, Section I(D)(1).

In an attempt to manufacture support for a judicial standard, Petitioners point to the word “control,” as stated in the text of the Dual Interest Clause, and the statement that the “protection of a beautiful and healthful environment is of fundamental importance.” But, neither the word “control” nor the phrase “protection

of a beautiful and healthful environment is of fundamental importance” creates a judicially manageable standard to enforce the Dual Interest Clause. The obligation to balance pollution controls with the use and development of natural resources is explicitly delegated to the Legislature, with no qualification on how to balance these policy interests.

Additionally, Petitioners claim that the Dual Interest Clause does not “even require that the two [policy interests] be evenly balanced.” **[BIC 12]**. This may be true, but the Dual Interest Clause requires that the *Legislature*, not the Petitioners, weigh those competing interests and make that determination.

C. Separation of Powers Prevents Injunctive or Declarative Relief for Non-Justiciable Political Questions.

1. Petitioners’ Claims Present a Non-Justiciable Political Question.

This Court has acknowledged that the political question doctrine derives from separation of powers. *See Van Soelen*, 2023-NMSC-027, ¶ 48; *see also State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶¶ 24, 27 (reversing the district court’s decision to confer standing by relying, in part, on the political question doctrine because it is not within the court’s authority to “question the wisdom, policy, or justness of legislation enacted by our Legislature.”). Petitioners’ claims seek to impose policy choices and value determinations on the judiciary and extract them from the legislative function. Accordingly, prudence requires judicial restraint in the current circumstances.

The following factors, set forth in *Baker v. Carr*, 369 U.S. 186, 217 (1962), guide the analysis of whether Petitioners’ claims involve policy choices and value determinations that should be decided by the Legislature: (1) a commitment of the issue to a branch of government other than the judiciary; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of the judiciary to resolve the issue without first making a policy determination; (4) a judicial decision of the matter without expressing lack of respect due to other branches of government; (5) a political question has already been made; or (6) the potential of embarrassment from multiple pronouncements by various branches on one question. *Id.* at 217.

The case of *Aji P.*, 16 Wash. App. 2d at 189, illustrates the application of the *Baker* factors in circumstances substantially similar to the present case. The plaintiffs in *Aji P.* requested an order directing the state to create and implement legislation sufficient to address environmental concerns. *Aji P.*, 16 Wash. App. 2d at 189. The Washington Court of Appeals, however, found that such a request implicated the first *Baker* factor (a commitment of the issue to a branch of government other than the judiciary) and thus precluded judicial review. The court held that interference by the judiciary amounted to “forc[ing] the legislature to legislate” over a matter that was constitutionally committed to the Legislature. *Aji P.*, 16 Wash. App. 2d, at 189. Like the plaintiffs in *Aji P.*, Petitioners seek to invoke

the judiciary to require the “[L]egislature to legislate” according to Petitioners’ policy preferences. However, the plain and unambiguous text of Article XX, Section 21, together with the principles of separation of powers, assigns those environmental policy choices to the Legislature. *See* N.M. Const. art. XX, § 21. Therefore, the first *Baker* factor is met and militates against Petitioners’ requested relief.

Furthermore, the Court in *Aji P.* explained that the second *Baker* factor is met when the court is asked to “decide matters beyond the scope of [its] authority with resources not available to the judiciary.” *Aji P.*, 16 Wash. App. 2d at 189–90. Namely, the lack of judicially manageable standards is evident when resolution of the claim requires the court to consider “scientific expertise” and to “balance the many implicated and varied interests affected” by the requested relief. *Id.* To make any such determination, the Court must rely on scientific expertise to rule on “the best available science to detect and analyze the environmental health impacts” caused by oil and gas production and “to control the release of oil and gas pollution.” **[RP 106]**. In the current circumstances, such a decision has already been delegated by the Legislature to administrative agencies with scientific expertise within the executive branch. *See infra*, Part D. Thus, the second *Baker* factor militates against Petitioners’ requested relief.

The Supreme Court of Alaska has also held that the third *Baker* factor is implicated when the “court must make a policy judgment of a legislative nature.”

Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res., 335 P.3d 1088, 1097 (Alaska 2014) (quotations and citation omitted) (addressing constitutional claims that the state violated its duties to the environment). The Court reasoned that the legislative body is better suited to balance “employment, resource development, power generation, health, culture, or other economic and social interests . . . against implementing what the plaintiffs term the ‘best available science.’” *Kanuk.*, 335 P.3d, at 1097–98. Consequently, because the courts lack “scientific, economic, and technological resources,” they cannot “commission scientific studies or convene groups of experts for advice, or issue rules under notice-and-comment procedures.” *Kanuk.*, 335 P.3d, at 1099. These decisions also involve complex scientific and technical issues that are better left to the agencies, which are equipped with the knowledge and resources necessary to consider and promulgate proper standards. Thus, the third *Baker* factor is also met.

Additionally, Petitioners’ request for the Court to retain jurisdiction over this case for some indefinite period satisfies the fourth *Baker* factor. The court in *Aji P.* held that such relief “disrespect[s] the coordinate branches” because it requires the court to police “the legislative and executive branches’ policy-making decisions.” *Aji P.*, 16 Wash. App. 2d at 191. Necessarily, this relief would “usurp[] . . . legislative authority.” *Id.* Accordingly, the fourth *Baker* factor is met because it “would require

the [C]ourt to bulldoze[] any notion of a separation of powers.” *Id.* (quotations and citation omitted) (alteration in original).

Finally, the fifth and sixth *Baker* factors are also met because, as discussed in Section I(D), *infra*, the Legislature has already answered the political question by enacting laws that provide for extensive pollution control and resource development and should not be subject to multiple and varying pronouncements.

While the satisfaction of only one *Baker* factor establishes a non-justiciable political question, Petitioners’ requests for injunctive relief meets all six. Therefore, “respect for, not dereliction of, the court’s constitutional duty,” commands judicial restraint not to review Petitioners’ non-justiciable political questions. *Sagoonick*, 503 P.3d at 795–96. As explained by the Supreme Court of Alaska:

Judges would be deciding the extent of individual Alaskans’ constitutional right to some level of development or conservation under [the natural resources clause] based on those individual Alaskans’ arguments about what would provide them ‘a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry’ under [the bill of rights]. *But the Constitution expressly delegated to the legislature the duty to balance competing priorities for the collective benefit of all Alaskans.* It thus is impossible to grant plaintiffs’ requested injunctive relief without also infringing on an area constitutionally committed to the legislature. . . . disrespecting our coordinate branches of government by supplanting their policy judgments with our own normative musings about the proper balance of development, management, conservation, and environmental protection. . . . the ‘science- and policy-based inquiry’ and policy choices necessary to implement resource development are ‘better reserved’ for the [legislature].”

Sagoonick, 503 P.3d at 796 (quoting *Kanuk*, 335 P.3d at 1092) (emphasis added).

Accordingly, each of the *Baker* factors militates against Petitioners’ requested relief.

2. The Relief Sought Against the Legislature is also Illusory.

The foundation of our constitutional democracy is the division of power between three co-equal branches of government with “each branch [] maintain[ing] its independent and distinct function.” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21. The “legislature makes, the executive executes, and the judiciary construes the laws.” *State v. Fifth Judicial Dist. Court*, 1932-NMSC-023, ¶ 9.

Petitioners request the Court to control the fundamental essence of the legislative function: the public policies the Legislature should prioritize, and how the Legislature should appropriate funds to promote those policies. **[RP 106]** These matters are inherently legislative functions that separation of powers protects from judicial infringement. *See e.g., Franklin v. Massachusetts*, 505 U.S. 788, 826 (1992) (Scalia, J., concurring) (finding that declaratory or injunctive relief that directs a co-equal branch of government’s performance of its official duties would violate separation of powers).

Thus, because institutional limits plainly prevent the Court from “direct[ing]... [the Legislature] to perform particular legislative duties,” the only possible declaration the Court could issue, with respect to the Legislature’s constitutional duties, would be a simple restatement of Article XX, Section 21’s dual policy directive to the Legislature to balance competing interests. As noted by the Alaska Supreme Court, “declaratory judgment concerning the legislature's article

VIII duties would do little more than *restate the constitutional provisions while leaving the legislature to resolve how the State should fulfill those duties* for the maximum benefit of Alaskans collectively.” *See Sagoonick*, 503 P.3d at 802 (emphasis added). As in *Sagoonick*, Petitioner’s request seeks illusory and ineffectual relief because the only conceivable judicial declaration would be a command for the Legislature to balance the competing interests set forth in Article XX, Section 21 in a manner the Legislature deems appropriate. Accordingly, Petitioners’ claims under the Declaratory Judgment Act (“DJA”) are deficient because declaratory relief will not (1) clarify and settle the legal relations at issue and (2) terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding. *See Taos County Bd. of Educ. v. Sedillo*, 1940-NMSC-026, ¶ 24; *see also* NMSA 1978, § 44-6-7.

Petitioners nonetheless ask the Court to limit the constitutional directive and declare that the Dual Interest Clause creates an absolute right to unspecified pollution control and that the current natural resource policy is inadequate. Petitioners also request that the Court order the Legislature to implement, fund, and enforce a new natural resource policy that aligns with Petitioners’ policy preferences, disregarding the Dual Interest Clause’s command to develop natural resources for the maximum benefit of the people. **[RP 104-105]**

To grant such irregular relief, the Court must rewrite Article XX, Section 21, extract the command to develop natural resources for the maximum benefit of the people, and declare that Article XX, Section 21 creates an absolute interest in pollution control. This would clearly exceed the judiciary’s authority because “the Court, under the guise of judicial interpretation, may not rewrite or add language to our state Constitution.” *Pirtle v. Legislative Council Comm. of New Mexico Legislature*, 2021-NMSC-026, ¶ 54; *Aji P. by & through Piper v. State*, 16 Wash. App. 2d 177, 189 (2021) (declaratory relief denied because it would improperly tell Legislature how to legislate).

Moreover, seeking injunctive and declaratory relief against a co-equal branch of government “should [] raise[] judicial eyebrows.” *Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992) (emphasis added). In *Franklin*, the United States Supreme Court reviewed requests for injunctive and declaratory relief against the Secretary of Commerce and the President. *Id.* While the Court declined to address the merits of declaratory relief against the President, Justice Scalia concluded by stating that “there is no doubt that we cannot direct [the President or Congress] in the performance of their constitutionally prescribed duties.” *Id.* at 828. Justice Scalia reasoned that immunity from “requests for declaratory or injunctive relief in official-capacity suits...is rooted in the constitutional tradition of separation of powers.” *Id.* Similarly, in the current circumstances, separation of powers militates against

declaratory relief that directs or constrains the Legislature’s “performance of [its] constitutionally prescribed duties.” *Id.*

3. *Save Ourselves* Underscores the Limited Nature of Judicial Review.

Petitioners rely on *Save Ourselves, Inc. v. La. Env’t’l Control Comm’n*, a case interpreting the Louisiana Constitution, to support their position. [BIC 17–19]; 452 So. 2d 1152 (La. 1984). However, *Save Ourselves* is not helpful to Petitioners’ argument because that case addressed a distinct agency action and it otherwise acknowledged the limited nature of judicial review:

Due concern both for the intention of the constitution and the statute, and, more generally, for the boundaries between the legislative and the judicial functions, demands that a reviewing court exercise certain aspects of its review function with more circumspection than is appropriate to others. In light of the structure and aims of the public trust doctrine and the environmental act, and the breadth of authority delegated to the ECC, the judicial review function encounters significant limitations in the substantive aspects where the given statutory standards are “arbitrary”, “capricious” or “abuse of discretion”.

Save Ourselves, Inc., 452 So. 2d, at 1159. Thus, Petitioners must point to a specific agency decision, as opposed to broad challenges to a legislative policy determination, to overcome separation of powers concerns. “It is ... ‘not the province of this Court to invalidate substantive policy choices made by the legislature.’” *Mott v. Sun Country Garden Products*, 1995-NMCA-066, ¶ 19 (quoting *Eturriaga v. Valdez*, 109 N.M. 205, 209, (1989)). Petitioners have not done so, but instead have asserted broad, abstract claims that necessarily require the

judiciary to reweigh the policy established by the Legislature. This falls far short of an identification of any specific legislative or agency decision to form the basis for judicial review.

D. Consistent with the Constitutional Directive, the Legislature has Balanced Competing Interests and Delegated to Administrative Agencies Plenary Authority to Implement and Enforce Environmental Regulations.

The Court of Appeals correctly observed that its inquiry into whether Petitioners have stated legally sufficient claims is “limited by separation of powers and asks only whether the Legislature has complied with its constitutional duty to balance pollution control with resource development.” *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *11, ¶ 38. It is uncontroverted that the Legislature has enacted and continues to enact laws protecting the environment and public health, while also ensuring the public derives appropriate benefits from natural resource development.

The judiciary “shall take judicial notice of... whatever is established by law.” Rule 1-044(A)(2) NMRA; *City of Aztec v. Gurule*, 2010-NMSC-006 (judicial notice of a municipal DWI ordinance). The Court can judicially notice the statutory enactments “at any time during the proceeding.” *Gurule*, 2010-NMSC-006, ¶ 6. The following comprehensive enactments were “established by law” and demonstrate that the Legislature has provided for both pollution control *and* natural resource development for the maximum benefit of all New Mexicans.

1. The Legislature Has Granted Broad Authority to Administrative Agencies to Promulgate Rules to Protect Public Health and the Environment from Oil and Gas Activities.

The Oil and Gas Act (“OGA”), Sections 70-2-1 to -39 (1935, as amended through 2020), confers authority on the Oil Conservation Division (“OCD”) and Oil Conservation Commission (“OCC”) to adopt and enforce stringent public health and environmental protection regulations for the oil and gas industry. *See* NMSA 1978, §§ 70-2-6, 70-2-12. The OGA states, “[t]he division shall have authority . . . over all . . . matters or things,” NMSA 1978, § 70-2-6(A), including the authority to “make rules and orders to . . . regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas *to protect public health and the environment*,” NMSA 1978, § 70-2-12 (B)(21), and to “regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil *to protect public health and the environment*, including administering the Water Quality Act” NMSA 1978, § 70-2-12(B)(22) (emphasis added). The OCD also has authority to regulate produced water “in a manner that protects public health, the environment, and fresh water resources[.]” NMSA 1978, § 70-2-12(B)(15).

Additionally, the OGA also established a reclamation fund, NMSA 1978, § 70-2-38, that is funded by industry operators through the Oil and Gas Conservation

Tax. NMSA 1978, §§ 7-30-4; 7-1-6.21. The OGA enables the OCD to use those funds “to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the [OGA].” NMSA 1978, § 70-2-12(18).

In addition to the OGA, the oil and gas industry is regulated under the Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -22 (1967, as amended through 2024). Under the AQCA, the Air Quality Bureau of the New Mexico Environment Department has adopted by reference the federal New Source Performance Standard (“NSPS”) for Crude Oil and Natural Gas Production and the National Emission Standards for Hazardous Air Pollutants (“NESHAP”). 20.2.77.9 and 20.2.78.2 NMAC. Together, these regulations work to reduce emissions of air pollutants, including particulate matter, nitrogen oxides, benzene and other volatile organic compounds. *See* 40 C.F.R. §§ 60.100 to 60.109; 40 C.F.R. 61.110 to 61.112.

The existence of this authority belies Petitioners’ assertion that the oil and gas industry is exempted from environmental protection statutes and regulations. **[BIC 7, 23–25]**. The Legislature has appropriately determined as a matter of policy that the oil and gas industry should be regulated by the administrative bodies that have the required expertise in the area. Thus, the Legislature has conferred broad authority to administrative bodies that specialize in oil and gas matters to promulgate, modify,

and enforce all appropriate regulations to “protect public health and the environment” from oil and gas activities. NMSA 1978, § 70-2-12(B)(21)–(22).

Not only do Petitioners mistake the nature and extent of administrative authority to regulate oil and gas, but they also incorrectly assert that the Legislature has not authorized control of pollution in New Mexico since the Dual Interest Clause was enacted. **[BIC 7]** That claim is demonstrably incorrect. For example, in 2019, the Legislature enacted the Produced Water Act, Sections 70-13-1 to -5 (2019), which provided jurisdiction to OCD and to the Water Quality Control Commission (“WQCC”) to regulate produced water as provided in the OGA and the Water Quality Control Act, Sections 74-6-1 to -17 (1967, as amended through 2025). Additionally, the Legislature amended the OGA in 2020 to enable OCD to impose significant civil penalties when a person violates the OGA or any “rule, order, permit or authorization issued pursuant to that act”. NMSA 1978, § 70-2-31(A). The amendment also imposes severe criminal penalties for any violation of the OGA, including environmental regulations. NMSA 1978, § 70-2-31(f).

Pursuant to their delegated authority, administrative agencies have recently promulgated additional regulations to control pollution. For example, as of 2021, oil and gas operators are prohibited from routine flaring and venting of natural gas except for limited operational reasons. 19.15.27.8 NMAC. In 2021, the OCC also promulgated a regulation to prohibit releases from extractive activities and to require

the party responsible for the release of oil, gases, produced water, condensate or oil field waste, or other oil field related chemicals and contaminants to report and respond to the release. 19.15.29.6 NMAC. Critically, the party responsible for the release must restore the contaminated area and remediate the release. 19.15.29.12 NMAC.

The foregoing laws and regulations work together to establish a framework of stringent regulations to protect public health and the environment. However, if any interested party desires to increase or modify any regulation, or to propose new regulations altogether, the Legislature has provided procedures to advocate for those changes. For example, the AQCA and OGA provide that any person may recommend or propose regulations for adoption. *See* NMSA 1978, § 74-2-6 (providing that “[a]ny person may recommend or propose regulations to the environmental improvement board or the local board for adoption.”); NMSA 1978, §§ 70-2-12.2, 74-2-6. *see also* 19.15.3.8 NMAC. Further, any person adversely affected by a rule adopted pursuant to the OGA may appeal such decision to the Court of Appeals. NMSA 1978, § 70-2-12.2. Likewise, the Environmental Improvement Act allows any person adversely affected by a rule or regulatory change to stay the action and proceed with an appeal of the decision. *See* 20.1.1.501 NMAC. Thus, to the extent that Petitioners seek changes in the regulatory

framework, their remedy is not through improper judicial intrusion, but through the available administrative process.

Despite the availability of administrative processes to challenge or modify rules and particular permitting decisions, Petitioners have failed to exhaust those remedies. Their failure to do so renders their claims non-justiciable. *See Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 2015-NMCA-063, ¶ 18, 350 P.3d 1221 (concluding that separation-of-powers principles “would be violated by adhering to Plaintiffs’ request for a judicial decision that independently ignores or supplants the procedures established under the Air Quality Control Act.”). Pursuant to this established authority, the Court of Appeals correctly concluded that “[j]udicial intervention before the established [administrative] process is used would prematurely obviate and nullify established statutory and regulatory remedies.” *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *15 (citing *Shoobridge*, 2010-NMSC-049, ¶ 14). Accordingly, Petitioners’ claims are non-justiciable because they have failed to exhaust available administrative remedies to challenge any regulations they consider inadequate for the oil and gas industry.

2. The Legislature has Enacted Laws to Ensure that the Use and Development of Natural Resources Result in a Maximum Benefit to all New Mexicans.

In addition to enacting pollution control measures, the Legislature ensures that the people of New Mexico receive a maximum benefit from the severance and

processing of natural resources within New Mexico. Those benefits support health care, education, economic development, public safety, and many other areas of significant importance for all New Mexicans. Economic benefits are realized through taxes imposed on those using and developing New Mexico's natural resources, as authorized under the Resources Excise Tax, NMSA 1978, Sections 7-25-1 *et seq.*, the Severance Tax, NMSA 1978, Sections 7-26-1 *et seq.*, the Severance Tax Bonding Act, NMSA 1978, Sections 7-27-1 to -52 (1961, as amended through 2024), the Oil and Gas Severance Tax, NMSA 1978, Sections 7-29-1 to -23 (1953, as amended through 2025), the Oil and Gas Conservation Tax, NMSA 1978, Sections 7-30-1 to -27 (1959, as amended through 2025); the Oil and Gas Emergency School Tax, NMSA 1978, Sections 7-31-1 to -27 (1959, as amended through 2025), the Oil and Gas Ad Valorem Production Tax, NMSA 1978, Sections 7-32-1 to -28 (1959, as amended through 2025), the Natural Gas Processors Tax, NMSA 1978, Sections 7-33-1 to -22 (1963, as amended through 2025), and the Oil and Gas Production Equipment Ad Valorem Tax, NMSA 1978, Sections 7-34-1 to -20 (1969, as amended through 2025).

While each tax focuses on a different aspect of natural resource development, generally their overall purpose is “to provide resources for public purposes” *See, e.g.*, NMSA 1978, § 7-25-2 (“The purpose of the Resources Excise Tax Act is to provide revenue for public purposes by levying a tax on the privilege of severing

and processing natural resources within New Mexico.”). All New Mexicans, including Petitioners, depend on the continued production of oil and gas to fund necessary services for the public.

For example, the Legislature implements two constitutionally-protected permanent funds, which are funded by natural resource development and provide crucial support for our educational institutions and the State’s general fund. The Land Grant Permanent Fund (“LGPF”) is a beneficiary of the proceeds derived from oil and gas leases to fund public education in the State of New Mexico. *See* The Ferguson Act of 1898, ch. 489, 30 Stat. 484 (1898); The Enabling Act of 1910, ch. 310, § 1 *et seq.*, 36 Stat. 557–79 (1910); New Mexico Statehood and Enabling Act Amendments of 1997, PL 105–37, August 8, 1997, 111 Stat 1113; N.M. Const. art. XII, §§ 2, 7; and N.M. Const. art. XXIV, § 1; N.M. Const. art. XII, § 12.

The Severance Tax Permanent Fund (“STPF”) relies on oil and gas production for bond projects to fund capital improvements throughout the State and also is a major contributor to the general fund, which is the main source of payment for the fundamental operations of our state. *See* N.M. Const. art. VIII, §10; NMSA 1978, § 7-29-4. The fund is managed by the State Investment Council with the objective to “provide a steady stream of income that maintains its value . . . for future generations” and to “stimulate the economy of New Mexico . . . , which expands business activity, [and] promotes the creation and preservation of jobs”

2.60.25.9 NMAC. Through the elaborate framework discussed above, the Legislature has honored its constitutional mandate to “develop . . . [natural] resources for the maximum benefit of the people.” N.M. Const. art. XX, § 21.

It is not the role of the judiciary to “reweigh the Legislature’s decisions balancing competing policy decisions.” *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *10 ¶ 36. Petitioners’ extraordinary request for judicial intrusion ignores the Legislature’s comprehensive enactment of the aforementioned laws that are specifically designed for resource development that benefits all New Mexicans and laws that operate to control pollution from oil and gas extraction. Because the Legislature has enacted comprehensive pollution control measures and has implemented revenue-generating mechanisms to ensure that natural resources are used for the maximum benefit of the people, the Legislature has fulfilled and continues to fulfill its constitutional obligations under the Dual Interest Clause. As a result, Petitioners’ claims against the Legislature under the Dual Interest Clause are legally untenable, and the Court should affirm the Court of Appeals’ decision dismissing Petitioners’ Complaint.

II. PETITIONERS FAIL TO ALLEGE THAT A SPECIFIC LEGISLATIVE ACT VIOLATED DUE PROCESS OR EQUAL PROTECTION, AND THE LEGISLATURE IS IMMUNE FOR ANY ACTIONS TAKEN PURSUANT TO ITS LEGISLATIVE FUNCTION.

Petitioners’ claims asserting due process and equal protection violations by the Legislature are unsubstantiated. “The burden of establishing that the statute is

invalid rests on the party challenging the constitutionality of the statute.” *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, ¶ 11, 306 P.3d 457. Under due process and equal protection, the analysis begins with the identification of a specific statute, government action, or legislation that interferes with a constitutional right. *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 10, 138 N.M. 331 (threshold equal protection question contemplates whether “legislation” creates a class of individuals); *Bounds*, 2013-NMSC-037, at ¶ 50 (substantive due process cases inquire into “a statute or government action”).

Here, Petitioners’ constitutional claims are based on general allegations that the Legislature *should act* in an unspecified manner to further regulate oil and gas activities and that the alleged inaction is discriminatory and has deprived Petitioners of their rights. **[BIC 36–38, 41]; [RP 31–32, 39–40, 54]**. These accusations of due process and equal protection violations are based on the incorrect premise that an unspecified legislative omission can result in a generic constitutional rights violation. **[BIC 36–38, 41]**. Petitioners’ claim fails to apprise the Court of any specific legislative act or acts that allegedly result in a violation of the New Mexico Constitution. *See Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, (equal protection challenge against Section 52-1-6(A) of the Workers’ Compensation Act); *Morris v. Brandenburg*, 2016-NMSC-027, 376 P.3d 836 (due process challenge against Section 30-2-4 regarding physician-assisted suicide); *State v. Druktenis*, 2004-

NMCA-032, 135 N.M. 223 (due process challenge against Sections 29-11A-1 to -19 regarding right to privacy). Thus, Petitioners have failed to satisfy the threshold question of an equal protection or due process claim by failing to identify a statute or legislative action which allegedly infringes on their constitutional rights.

A. Petitioners Fail to Allege Particular Legislative Action that Violates Equal Protection.

Equal Protection focuses on whether legislation “permits some individual to exercise a specific right while denying it to others.” *Marrujo v. N.M. State Highway Transp. Dep’t*, 1994-NMSC-116, ¶ 9, 118 N.M. 753. Under New Mexico law, the threshold question for any equal protection claim is whether a party identifies a specific statute or government action that creates a class of similarly situated individuals who are treated dissimilarly. *Breen*, 2005-NMSC-028, at ¶ 10; *see Griego v. Oliver*, 2014-NMSC-003, ¶ 27, 316 P.3d 865 (equal protection analysis “requires us to first determine whether the legislation creates a class of similarly situated individuals and treats them differently”); *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 51, 539 P.3d 272 (affirming the threshold equal protection test from *Breen* in the context of partisan gerrymandering). If a plaintiff properly identifies a government action that creates a classification, then the court “must determine what level of scrutiny applies.” *Breen*, 2005-NMSC-028, at ¶ 8.

As determined by the Court of Appeals, the Petitioners have not alleged that any classification was created by a legislative act. *Atencio*, No. A-1-CA-42006, 2025

WL 1621659, at *16. Even now, Petitioners do not allege that the Legislature created or enforced any facially discriminatory statute or a statute that creates a classification. [BIC 36–37]. Instead, Petitioners allege that the Legislature is responsible for disparate impact through the “permitting of oil and gas extraction without controlling pollution.” [BIC 36–37, 39].

A prima facie disparate impact claim does not require a party to demonstrate discriminatory intent, but the party must identify a specific policy or practice that has a discriminatory effect. *Gonzales v. N.M. Dep’t of Health*, 2000-NMSC-029, ¶ 30, 129 N.M. 586 (In employment discrimination cases, a prima facie disparate impact claim must show that “a specific identifiable employment practice or policy caused” disparate impact on a protected class). Without pointing to a *specific* government action or statute, Petitioners also fail to make a prima facie disparate impact claim. See *Wagner v. AGW Consultants*, 2005-NMSC-016, 137 N.M. 734 (due process challenge to a specific administrative order); *Breen*, 2005-NMSC-028 (equal protection challenge to a specific administrative order); *Griego*, 2014-NMSC-003 (equal protection challenge to specifically identified statutes).

Petitioners’ vague disparate impact attack on the statutory program that allegedly “authoriz[es] [] oil and gas production” without the pollution controls Petitioners desire is facially flawed because it does not identify any specific and identifiable legislative act which could conceivably lead to a disparate impact. [BIC

36–37]; *Gonzales*, 2000-NMSC-029, at ¶ 30 (requiring parties to identify a specific “employment practice or policy” for disparate impact). While Petitioners point to allegedly “special rules” that regulate drilling and pollution in certain areas, these are administrative regulations that have been promulgated by the OCD and OCC pursuant to their enabling authority and not legislative enactments. **[BIC 39]** (citing 19.15.39.9 and 19.15.39.10 NMAC).

Any disparate impact claim certainly cannot be based on the sensible legislative act of enacting broad enabling legislation establishing the rule-making authority of agencies. *See* NMSA 1978, §§ 70-2-6, 70-2-12 (delegating authority to adopt and enforce public health and environmental protection regulations to the OCD and OCC). Notably, to ensure that all citizens may participate in agency development of pollution controls, the Legislature specifically crafted a rulemaking procedure for all citizens to advocate for, modify, or object to proposed environmental regulations within the appropriate agency. *See* NMSA 1978, § 74-2-6. NMSA 1978, §§ 70-2-12.2, 74-2-6; *see also* 19.15.3.8 NMAC.

Contrary to Petitioners’ analysis, the Court cannot assign a scrutiny level to a legislative act that does not create a classification. *Breen*, 2005-NMSC-028, at ¶ 10. The Legislature satisfied its obligation by enacting facially neutral legislation that assigns broad authority to executive agencies to regulate resource development and pollution control. In creating these regulatory duties, the Legislature specifically

crafted a universal opportunity for citizens to participate in the rulemaking process and did not permit some individuals to exercise that right while denying that same right to others. *Marrujo*, 1994-NMSC-116, at ¶ 9. Therefore, the Petitioners have failed to allege a prima facie equal protection claim.

B. Petitioners’ Claims for Violation of Substantive Due Process Fail to Identify a Legislative Act Which Abridges Their Fundamental Rights to Life, Liberty, or Property.

Due process focuses on whether legislation “equally burdens all persons in the exercise of a specific right.” *Id.* at ¶ 9. Substantive due process claims inquire whether a statute or government action shocks the conscience or interferes with rights that are implicit in the concept of ordered liberty. *Wagner*, 2005-NMSC-016, at ¶ 30 (citing *State v. Rotherham*, 1996-NMSC-048, 122 N.M. 246, 259) (internal quotations omitted). To assert a prima facie substantive due process claim, a party must identify a statute or government action which causes a deprivation of rights. *Bounds*, 2013-NMSC-037, at ¶ 50. Judicial self-restraint is encouraged whenever courts are asked to “break new ground in the field of substantive due process.” *Morris*, 2015-NMCA-100, at ¶ 31 (citing *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992)).

Petitioners allege that that the New Mexico Constitution provides “a fundamental foundation of the guarantees embodied in New Mexico’s Due Process and Inherent Rights Clauses, and results in the inclusion of the right to a healthful

environment in the Constitution’s fundamental rights.” **[BIC 35]**. As noted by the Court of Appeals, Petitioners request that the Court break new ground by identifying a right to some unidentified legislation to further control oil and gas production. *Atencio*, No. A-1-CA-42006, 2025 WL 1621659, at *15. Specifically, Petitioners claim that the Legislature has violated this alleged right by “fail[ing] to control oil and gas pollution” which shocks the conscience and demonstrates deliberate indifference to their right to healthful environment. **[BIC 44–45]**. Again, Petitioners have failed to assert a prima facie substantive due process claim because Petitioners have not identified any specific legislative act or statute which interferes with their alleged right to life, liberty, property, or a healthful environment. *Bounds*, 2013-NMSC-037, at ¶ 50 (“Petitioners have been unable to demonstrate *with specificity* how [respondent] caused or will cause any deprivation”); **[BIC 44–46]**

The Due Process Clause guarantees that the Legislature cannot create a statute that deprives Petitioners of life, liberty, or property, but Petitioners must identify the action the Legislature undertook to deprive them of that right. *Id.* Here, the Petitioners’ vague allegations fail to make any causal connection to the Legislature’s statutory enactments regarding the control of oil and gas pollution and the alleged deprivation of their recognized rights.

As the Court of Appeals held in *Sugg v. Albuquerque Pub. Sch. Dist.*, 1999-NMCA-111, 128 N.M. 1, the Due Process Clause “is not a guarantee of a minimal

level of safety or security.” *Id.* at 15. (citing *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195 (1989)). Petitioners’ generic attack asserts that the Due Process Clause requires that the Legislature “must provide pollution controls,” which is the same impermissible guaranteed minimal level of safety argument rejected in *Sugg.* 1999-NMCA-111, at ¶ 15; **[BIC 36]**. Substantive Due Process claims cannot be employed to compel the Legislature to create new statutory systems; rather, courts are limited to analyzing whether a particular statute is invalid. *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶¶ 26, 31, 122 N.M. 524 (“Substantive due process protects individuals from arbitrary and discriminatory laws.”) (“Due process does not require the Legislature to maintain [a] scheme indefinitely”).

Furthermore, the legislative act of conferring authority to executive agencies to regulate resource development and pollution control cannot reasonably be construed to be an act which shocks the conscience. *See Starko, Inc. v. Gallegos*, 2006-NMCA-085, ¶ 25, 140 N.M. 136, 140 P.3d 1085 (“the test for a substantive due process violation is difficult to meet. It requires facts that shock the conscience or which amount to one of those ‘truly horrendous situations’ of governmental abuses.”) (internal quotation omitted); *cf. Montoya v. O’Toole*, 1980-NMSC-045, ¶ 2 (holding that the Legislature’s delegation of power to the Board of Pharmacy did not violate due process). Accordingly, Petitioners’ substantive due process claim

should also be denied because New Mexico’s Constitution does not obligate the Legislature to guarantee the Petitioners a statutory program that incorporates their preferred regulatory concepts.

C. The New Mexico Constitution Provides Absolute Legislative Immunity for Actions Taken Pursuant to the Legislative Function.

Legislative immunity arises from the New Mexico Constitution Article IV, Section 13, known as the speech and debate clause, to ensure the independence and unimpeded functioning of the legislative body. See *Albuquerque Metro. Arroyo Flood Control Auth. v. Swinburne*, 1964-NMSC-206 (relying on Article IV, Section 13 to support legislative discretion in creating policy). Article IV Section 13 closely mirrors the Speech and Debate Clause of the United States Constitution; thus, this Court may look to federal law for guidance. *Stewart v. Ramczyk*, 2025-NMSC-032, ¶ 15, 578 P.3d 1100.

In *Supreme Court of Virginia v. Consumers Union of the United States*, 446 U.S. 719 (1967), the United States Supreme Court held that the Virginia Supreme Court was absolutely immune for its legislative function of implementing the Virginia State Bar Code. The Court reasoned that “we generally have equated the legislative immunity to which state legislators are entitled under § 1983 to that accorded Congressmen under the Constitution” — “an immunity that is similar in origin and rational to that accorded Congressmen under the Speech and Debate Clause.” 446 U.S. at 732–33. Therefore, there was “little doubt that if the Virginia

Legislature had enacted the State Bar Code and if suit had been brought against the legislature, its committees, or members for refusing to amend the Code . . . the defendants in that suit could successfully have sought dismissal on the grounds of absolute legislative immunity.” *Id.* at 733–34.

In *Stewart v. Ramczyk*, this Court affirmed that “the purpose of [legislative] immunity is to ensure ‘that the legislative function may be performed without fear of outside influence.’” 2025-NMSC-032, ¶ 16, 578 P.3d 1100 (quoting *Supreme Court of Virginia*, 446 U.S. at 731). As such, legislative immunity is a critical tool when applying the separation of powers doctrine among the three co-equal branches of government. *Id.* at ¶ 16; *see supra*, Section II(C). Legislative immunity is properly applied when the act is within the “sphere of legitimate legislative activity.” *Id.* at ¶¶ 18–20 (internal quotation omitted). This includes “matters within the legislature’s jurisdiction under the constitution.” *Id.* at ¶ 21 (citing *Gravel v. United States*, 408 U.S. 606, 625, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972)).

It is indisputable that the Legislature exercised a legislative function when it enacted laws designed to control oil and gas pollution and to maximize development for the benefit of the people. Petitioners desire additional unspecified laws and administrative regulations, but this is a matter within the Legislature’s prerogative and the administrative agencies’ rulemaking process. **[BIC 41]**; N.M. Const. art. IV. While Petitioners may challenge a specific statute as enforced, a generic challenge

to the Legislature's function is a challenge to a matter within the Legislature's exclusive jurisdiction under the Constitution. *See generally* N.M. Const. art. IV. Accordingly, the Legislature enjoys absolute legislative immunity for exercising its constitutionally-delegated authority in enacting comprehensive statutes providing for resource development and pollution control.

CONCLUSION

For the reasons set forth above, the Legislature respectfully requests that the Court affirm the decision of the Court of Appeals.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-502(E), the undersigned counsel certifies that this Answer Brief complies with the type-volume limitation of Rule 12-502(D)(3) NMRA because it contains 9,771 words, excluding the parts exempted by Rule 12-502(D)(1) NMRA.

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, I caused the foregoing Answer Brief to be filed and served electronically through the Court's electronic filing system, causing all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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