



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, PUEBLO
ACTION ALLIANCE, INDIGENOUS
LIFEWAYS, THE CENTER FOR
BIOLOGICAL DIVERSITY, and WILDEARTH
GUARDIANS,

Plaintiffs-Petitioners,

v.

No. S-1-SC-40980
No. A-1-CA-42006
No. D-101-CV-2023-01038

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

Defendants-Respondents,

&

NEW MEXICO CHAMBER OF COMMERCE,
and INDEPENDENT PETROLEUM
ASSOCIATION OF NEW MEXICO,

Intervenors/Defendants-Respondents.

NEW MEXICO CHAMBER OF COMMERCE'S ANSWER BRIEF

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Intervenor/Defendant-Respondent New Mexico Chamber of Commerce (“Chamber”) shares Petitioners’ objective to ensure that New Mexico maintains a safe and healthy environment. Like Petitioners, the Chamber’s members live and work in New Mexico, raise their families in New Mexico, recreate in New Mexico, worship in New Mexico, and appreciate New Mexico’s majestic natural beauty. A safe and healthy environment is not only important, but essential to the Chamber’s fundamental purpose – the promotion of public welfare and economic prosperity in New Mexico.

This case is therefore not about disparate objectives. It is about differences in opinion concerning the best policies to achieve those objectives. In New Mexico, like the rest of the American system, those differences are resolved through elections and the political branches’ lawmaking processes. Dissatisfied with the ends they have achieved through those means, Petitioners request this Court circumvent the political will of New Mexico’s citizens and impose policies Petitioners have repeatedly failed to persuade government officials to adopt.

Petitioners attempt to disguise the nature of their claims as a straightforward application of constitutional text, while simultaneously ignoring the actual text of the constitutional provisions Petitioners seek to enforce. Petitioners argue that the State Defendants have failed to promulgate statutory and regulatory standards sufficient to satisfy the Defendants’ constitutional duties but offer no metrics by

which the State Defendants’ constitutional compliance can be measured. And Petitioners fail to advance facts which, even if proven true, could establish the constitutional breach Petitioners allege. Recognizing these defects – and following the lead of *every* court that has been asked to undertake the policy weighing task Petitioners wish to impose on this Court – the Court of Appeals held that Petitioners’ claims present non-justiciable questions and fail to state a claim for which relief may be granted. This Court should affirm.

I. BACKGROUND.

Petitioners seek to enjoin legal and heavily regulated oil and gas development activity throughout New Mexico. The activity Petitioners seek to prohibit generates billions of dollars in annual revenue to the State of New Mexico and provides extraordinary civic, economic, and social benefit to New Mexico’s citizens.¹

New Mexico has been a major producer of oil and gas since the 1920s. *See* Record Proper (“R.P.”) at 294. In recent years, the State of New Mexico has derived approximately half of its general fund revenues from taxes and royalties on oil and gas production. *See id.* These earnings support public schools, hospitals, and

¹ The Chamber has more than 400 members, including oil and gas producers and service providers whose business Petitioners seek to directly enjoin, delay, or curtail. But equally important, the Chamber represents a broad array of entities involved in all aspects of health care, education, agriculture, transportation, hospitality, real estate, finance, and countless other sectors that benefit from, directly and indirectly, a robust, healthy, and environmentally responsible oil and gas industry in New Mexico.

innumerable other state government operations. *See id.* Supporting more than 134,000 jobs throughout the state, *see id.*, “[t]he oil and natural gas industry . . . is a lynchpin of the state’s economy and is fiscally essential,” *id.* at 295. For a century now, “[o]il and gas development and its attendant industry [have been] identifiable components of the economic and social fabric of the region.” *Id.*

II. PROCEDURAL POSTURE.

1. On May 10, 2023, Petitioners filed their Complaint initiating this action. *See* R.P. at 1-107. Plaintiffs allege that the State Defendants have failed to satisfy constitutional duties “to control the despoilment of the air, water, environment and natural resources of New Mexico from the impacts of oil and gas pollution.” *Id.* at 4. Petitioners seek, among other relief, an order prohibiting Defendants from “authorizing new oil and gas production until Defendants have established and implemented a statutory, regulatory and enforcement framework in a manner consistent with their constitutional dut[ies].” *Id.*; *see also id.* at 106 ¶¶ 6, 8 (seeking order “[e]njoining Defendants to establish and implement a statutory, regulatory and enforcement structure and plan that ensures [Petitioners’] constitutional rights”).

2. Petitioners argue that Defendants are in violation of N.M. Const. art. XX, § 21:

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 [L]egislature 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.

See R.P. at 95-98 (Compl., Count 1).

3. Petitioners contend that Defendants are violating Petitioners' constitutional rights to "life, liberty or property without due process," R.P. at 98, (quoting N.M. Const. art. II, § 18), and Petitioners' "rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of seeking and obtaining safety and happiness," R.P. at 98 (quoting N.M. Const. art. II, § 4).

4. Petitioners finally assert that Defendants' alleged failure to control pollution from oil and gas activity has had a disparate and discriminatory impact on Plaintiffs in violation of N.M. art. II, § 18, and the New Mexico Civil Rights Act, N.M. Stat. Ann. §§ 41-4A-1 to -13. *See* R.P. at 99-104.

A. THE MOTIONS TO DISMISS.

5. On September 1, 2023, the State of New Mexico, Governor Lujan Grisham, the New Mexico Environment Department ("NMED"), Secretary Kenney, the Energy, Minerals and Natural Resources Department, Secretary Cottrell Propst, the Environmental Improvement Board ("EIB"), and the Oil Conservation Commission ("OCC") (collectively, the "Executive Defendants") filed a motion to dismiss Petitioners' claims. *See* R.P. at 219-46. The Executive Defendants argued that Petitioners' suit threatens "core democratic function[s]" because "[Petitioners]

ask the Court to define pollution control; substitute the Court’s judgment regarding the balance of development and pollution control for that of the Legislature and the [defendant] agencies”; and order the Defendants “to adopt new laws and regulations related to the oil and gas industry.” *Id.* at 220. Executive Defendants also note that N.M. Const. art. II, § 18 “does not [c]reate a [f]undamental [r]ight to [s]pecific [e]nvironmental [p]rotections.” *Id.* at 238.

6. On September 22, 2023, the New Mexico Legislature filed a motion for judgment on the pleadings.² *See* R.P. at 262-86. The Legislature’s motion contends that Petitioners’ suit is premised on “a non-justiciable political question that fundamentally ignores the Legislature’s constitutional duty to promote natural resource development for the ‘maximum benefit of the people.’” *Id.* at 263.

7. On April 9, 2024, after being granted leave to intervene, the Chamber filed a notice of joinder – adopting the motions to dismiss as the Chamber’s responsive pleading in this action – and was a co-movant in both motions. *See* R.P. at 989.

8. In its own moving papers on the motions to dismiss, the Chamber emphasized that Petitioners “offer no standards by which the State [D]efendants’

² For ease of reference, and except as otherwise specified herein, the Chamber refers to the Executive Defendants’ motion to dismiss and the Legislature’s motion for judgment on the pleadings collectively as the “motions to dismiss.”

constitutional compliance can be measured” and “present non-justiciable political questions.” R.P. at 1000.

9. On January 12, 2024, the movants filed reply memoranda in support of the motions to dismiss. In Reply, the Executive Defendants requested that, should the district court deny any part of the motions to dismiss, the district court “find that the issues presented are appropriate for interlocutory review.” R.P. at 537 n.1 (citing N.M. Stat. Ann. § 39-3-4(A)). The Executive Defendants observed that the parties’ briefing raised controlling questions of law, including:

1) Whether the New Mexico constitution, Art. XX, Section 21, and Art. II Sections, 4 and 18 provides a judicial remedy for a claim of alleged inadequate control of oil and gas pollution;

2) Whether the issue of alleged inadequate control of oil and gas pollution is a justiciable issue; and if such a claim is justiciable under the New Mexico Constitution, what standard should the district court apply to determine whether the legislature and executive have provided 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.”

R.P. at 537 n.1.

B. THE DISTRICT COURT’S ORDER.

On June 10, 2024, the district court entered its Order denying the motions to dismiss. *See* R.P. at 1067-76 (“Order”). In its Order, the district court “conclude[d] that [Petitioners] allege sufficient facts to support a claim . . . that Defendants are noncompliant” with N.M. Const. art. XX, § 21 and N.M. Const. art II, §§ 4 and 18.

R.P. at 1072-73. The district court did not identify any factual allegations on which it was relying for this conclusion, merely stating that “[w]hile the [district] Court may ultimately decline to enter declaratory judgment or grant injunctive relief under the political questions doctrine, the [district] Court concludes that [Petitioners] have set forth claims upon which relief may be granted.” *Id.* at 1073.

Citing two case involving constitutional questions that preceded to summary judgment and/or trial, the district court also stated that “whether the New Mexico Constitution guarantees the fundamental right to a beautiful and healthful environment or, a fundamental right to pollution control, is ill-suited for resolution at the motion to dismiss stage.” *Id.* (internal quotations omitted) (citing *Morris v. Brandenburg*, 2015-NMCA-100; *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 2015-NMCA-063). The district court observed that “a determination as to the existence, or nonexistence, of a fundamental right directly impacts how claims alleged by [Petitioners] may be further analyzed,” R.P. at 1073, but did not explain what factual issues required further development for that determination to be made. Nor did the district court address any New Mexico cases that have evaluated the existence of a fundamental right in the context of a motion brought under Rule 1-012 NMRA. *See, e.g., Wills v. Bd. of Regents of Univ. of N.M.*, 2015-NMCA-105, ¶ 29 (affirming district court order granting motion for judgment on the pleadings based on the finding that plaintiff did not have a fundamental right to sue government

agencies for damages); *Pinnell v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 1999-NMCA-074, ¶¶ 7 & 17, 127 N.M. 452, 454 & 456 (holding, in the context of a motion to dismiss for failure to state a claim, that County Board's rules that grant Board Chair's right to vote only when necessary to break a tie cast by a board quorum did not violate plaintiffs' fundamental right to have their votes count equally).

C. THE CERTIFIED QUESTIONS.

While declining to dismiss Petitioners' complaint, the district court agreed the questions presented in the motions to dismiss were appropriate for interlocutory review, observing that the "appropriate controlling questions" for interlocutory appeal were the questions identified in the Executive Defendants' Reply memorandum in support of the motions to dismiss:

1. Whether the New Mexico constitution, Art. XX, Section 21, and Art. II Sections, 4 and 18 provides a judicial remedy for a claim of alleged inadequate control of oil and gas pollution; and

2. Whether the issue of alleged inadequate control of oil and gas pollution is a justiciable issue; and if such a claim is justiciable under the New Mexico Constitution, what standard should the district court apply to determine whether the legislature and executive have provided 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.”

See R.P. at 1075; *see also supra* Part II.A ¶ 9.

Because justiciability “is a necessary precondition to invoke a court’s jurisdiction to decide a declaratory judgment action,” the first question poses a threshold issue that must be answered in the affirmative for this case to proceed. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharm.*, 2022-NMCA-047, ¶ 11; *see also State ex rel. Stratton v. Roswell Indep. Schs.*, 1991-NMCA-013, ¶¶ 42-44, 111 N.M. 495, 507 (recognizing that justiciability “predicates a district court’s jurisdiction”); *North v. Pub. Serv. Co. of N.M.*, 1983-NMCA-124, ¶ 28, 101 N.M. 222, 230 (emphasizing that when there is a question of whether a justiciable action lies, the “trial court should first make the threshold determination as to whether a justiciable issue exists”). But even if a remedy exists, neither the plain language of the constitutional provisions on which Petitioners rely nor any New Mexico authority: (i) recognizes a right (express or implied) to any specific degree of pollution control; or (ii) articulates metrics for determining what constitutes “control” of pollution or what outcomes would represent the “maximum benefit of the people.” N.M. Const. art. XX, § 21. So if this Court affirms the district court’s jurisdiction, it must answer the second question to determine what Petitioners would have to prove to prevail on their claims.

D. THE COURT OF APPEALS' ORDER.

On June 3, 2025, the Court of Appeals reversed the district court's order. *See Atencio v. New Mexico*, __ P.3d __, 2025 WL 1621659 (N.M. Ct. App. 2025). The Court of Appeals accepted Petitioners' contention that N.M. Const. art. XX, § 21 establishes a constitutional duty to control pollution. *See Atencio*, 2025 WL 1621659, at *7, ¶ 24 (agreeing with Petitioners' assertion that N.M. Const. art. XX, § 21 "is a mandate to act to . . . control pollution"). But the Court of Appeals explained that this finding "does not resolve [the] inquiry because a legislative duty to control pollution does not guarantee any specific amount of pollution control to any individual group." *Atencio*, 2025 WL 1621659, at *7, ¶ 24. Recognizing that N.M. Const. art. XX, § 21's plain language imposes a *conditional* duty, the Court of Appeals understood that "the Legislature's duty to control pollution is neither absolute nor does it exist in isolation." *Atencio*, 2025 WL 1621659, at *8, ¶ 25. The "plain meaning" of the provision requires "balancing competing interests, neither of which will attain all that its advocates wish." *Id.*

The Court of Appeals determined that granting the relief Petitioners seek in this suit would violate separation of powers principles because it "would both unconstitutionally infringe upon past legislative action and impermissibly encroach on future legislative power, as well as nullify Executive Defendants' ability to act

under their statutory authority.”³ *Id.*, 2025 WL 1621659, at *9, ¶ 31. The Court of Appeals noted that Petitioners “do not allege that Defendants have done *nothing* to control pollution caused by oil and natural gas production,” but only that what has been done is inadequate in Petitioners’ estimation. *Id.*, 2025 WL 1621659, at *10, ¶ 34. The Court of Appeals observed that the Oil Conservation Division (“OCD”) is authorized to, among other charges, regulate produced water and other well waste to “protect[] public health, the environment and fresh water resources” and to plug abandoned wells. *See id.* (citing N.M. Stat. Ann. § 70-2-12(B)(15), (18), and (21)-(22)). The Court of Appeals emphasized that OCD has, in fact, exercised this power, citing regulations to protect fresh water, reduce air emissions from venting and flaring, and promote public health. *See id.*, 2025 WL 1621659, at *10, ¶ 35.

The Court of Appeals also rejected Petitioners’ alternative claims alleging violations of the New Mexico Constitution’s due process and equal protection guarantees. The Court of Appeals explained that Petitioners’ asserted “right to a beautiful and healthful environment” under the Inherent Rights Clause, N.M. Const. art. II, § 4, cannot be reconciled with “the law, history, and tradition of our state

³ Although recognizing that it was merely persuasive under New Mexico law, *see Atencio*, 2025 WL 1621659, at *12, ¶ 45, the Court of Appeals also observed that the political question doctrine similarly “supports judicial restraint in this instance . . . [because Petitioners’ N.M. Const. art. XX, § 21] claim cannot be resolved by the courts without unconstitutionally intruding upon the powers of Defendants,” *id.*, 2025 WL 1621659, at *14, ¶ 51.

demonstrate[ing] that resource extraction must be considered alongside, and must coexist with, pollution control legislation.” *Atencio*, 2025 WL 1621659, at *15, ¶ 56. And the Court of Appeals emphasized that “the geographic proximity of Plaintiffs to places with elevated instances of oil and gas development . . . leads more appropriately to the conclusion that [Petitioners] are not similarly situated to other New Mexicans, rather than a determination that a government classification exists.” *Id.*, 2025 WL 1621659, at *16, ¶ 61.

III. STANDARD OF APPELLATE REVIEW.

New Mexico appellate courts “review the denial of a motion to dismiss de novo because such a motion tests the legal sufficiency of the allegations.” *State ex rel. Children, Youth & Families Dep’t v. Cosme V.*, 2009-NMCA-094, ¶ 13, 146 N.M. 809, 813 (quoting *Padilla v. Wall Colmonoy Corp.*, 2006-NMCA-137, ¶ 7, 140 N.M. 630, 632); *see also N.M. Pub. Regul. Comm’n v. New Mexican, Inc.*, 2024-NMSC-025, ¶ 17 (“This Court reviews the district court’s grant of a Rule 1-012(C) NMRA motion for judgment on the pleadings de novo.”). “A judgment on the pleadings is treated as a motion to dismiss when the district court considers matters contained solely within the pleadings.” *Glaser v. LeBus*, 2012-NMSC-012, ¶ 8.

IV. PETITIONERS’ CLAIMS ARE NON-JUSTICIABLE.

No party contests the unremarkable proposition that “state courts are obliged to weigh the constitutionality of legislative acts.” Pls.-Pet’rs.’ Br. in Chief at 26 (Jan.

23, 2026) (“Pet’rs’ Br.”). But Petitioners misapply this black letter law. Petitioners do not ask the Court to declare any legislative or regulatory provision unconstitutional on its face. Petitioners do not ask the Court to rule that any specific application of an executive or legislative power constitutes a breach of a constitutional provision. What Petitioners request is a finding that the State Defendants should have balanced two independent constitutional imperatives in a manner more in accord with Petitioners’ subjective preferences. There is no precedent for that extraordinary proposition.

Petitioners acknowledge that implementation of N.M. Const. art. XX, § 21 involves accounting for two separate objectives: pollution control and beneficial use of New Mexico’s natural resources. *See* Pet’rs.’ Br. at 12 (conceding that “environmental protection must be ‘consistent with the use and development of [natural] resources for the maximum benefit of the people’”). The Court of Appeals understood the constitutional text to impose a conditional duty, obligating the Legislature to control pollution, so long as the effort to control pollution does not frustrate the use and development of New Mexico’s resources “for the maximum benefit of the people.” *Atencio*, 2025 WL 1621659, at *8, ¶¶ 25-26 (“[T]he Legislature’s duty is one of balancing competing interests.”)

Contrary to Petitioners’ representation, the Court of Appeals did not “put natural resources development above pollution control, or even require that the two

be evenly balanced.” Pet’rs’ Br. at 12. The Court of Appeals merely noted that there were varying ways that N.M. Const. art. XX, § 21 *could* have been drafted to prioritize pollution control over resource development and emphasized that the provision did not include “any language that we may infer to create a standard against which the maximum amount of allowable pollution could be measured.” *Atencio*, 2025 WL 1621659, at *8, ¶ 26. In doing so, the Court of Appeals correctly recognized that the Constitution’s text does not dictate *how* the Legislature should balance the competing values for which the Legislature is constitutionally obligated to account. N.M. Const. art. XX, § 21 neither provides any metrics for determining what constitutes “control” of pollution nor specifies what outcomes would represent the “maximum benefit of the people.”

A. NO COURT HAS DONE WHAT PETITIONERS REQUEST.

Petitioners rely on the First Judicial District Court decisions in *Martinez* and *Yazzie* as support for the proposition that the district court can establish judicially manageable standards for evaluating Defendants’ compliance with N.M. Const. art. XX, § 21.⁴ See Pet’rs’ Br. at 13. In *Martinez-Yazzie*, Judge Sarah M. Singleton was called to interpret N.M. Const. art. XII, § 1: “A uniform system of free public schools

⁴ See *Yazzie v. New Mexico*, Order Denying Defs.’ Mot. to Dismiss, No. D-101-CV-2014-02224 (1st Jud. Dist., N.M. Dec. 10, 2014); *Martinez v. New Mexico*, Order Denying Defs.’ Mot. to Dismiss Pls.’ First & Second Compl., No. D-101-CV-2014-00793 (1st Jud. Dist., N.M. Nov. 14, 2014).

sufficient for the education of and open to all children of school age in the state shall be established and maintained.” This duty to maintain “public schools sufficient for the education of . . . all children” is not qualified by a corresponding obligation to consider any other value. Judge Singleton needed to interpret the constitutional meaning of “sufficient,” but she did not need to evaluate whether the Legislature had properly balanced its obligation to provide sufficient schools against any other constitutional mandate. The claims in *Martinez-Yazzie* constituted a traditional as-applied challenge that required the court to assess whether specific legislative and executive actions complied with a discrete constitutional standard. Petitioners’ claims here are different.

As Petitioners concede, *Martinez-Yazzie* “is a non-precedential district court opinion.” Pet’rs’ Br. at 13 n.5. But that is not why the Court of Appeals found *Martinez-Yazzie* unpersuasive. The Court of Appeals correctly observed that N.M. Const. art. XII, § 1 “tasked the Legislature with no balancing of interests, but rather commanded that the public education system be ‘sufficient’ to serve identified purposes.” *Atencio*, 2025 WL 1621659, at *8, ¶¶ 27. The Court of Appeals distinguished the imperative structure of N.M. Const. art. XII, § 1 from N.M. Const. art. XX, § 21 which “contains no ‘sufficiency’ language regarding pollution control and requires legislative balancing of competing interests.” *Atencio*, 2025 WL 1621659, at *8, ¶¶ 27.

Other New Mexico appellate courts have similarly rejected invitations to interfere in the political branches' balancing of policy choices. In *Sanders-Reed*, plaintiffs asserted that the common law public trust doctrine imposed a duty on the State to regulate greenhouse gas emissions. *See* 2015-NMCA-063, ¶ 1. Among other relief, the plaintiffs sought an order requiring the State to produce: (i) “an assessment of greenhouse gas levels in New Mexico and the ‘concomitant climate change impacts based on current climate change science,’”; and (ii) plans for redressing and preventing the impairment to the atmosphere caused by greenhouse gases, thereby mitigating the effects of climate change.” *Id.* ¶ 3. The plaintiffs in *Sanders-Reed* acknowledged that both the Legislature and executive agencies had taken actions to address the atmospheric impacts with which the plaintiffs were concerned (i.e., greenhouse gases’ impact on the atmosphere), “but asserted that [these actions] were insufficient to meet the State’s public trust duty to protect the atmosphere.”⁵ *Id.* ¶ 4.

⁵ In December 2010, acting pursuant to its authority under the Air Quality Control Act (“AQCA”), EIB promulgated regulations limiting greenhouse gas emissions.” *Sanders-Reed*, 2015-NMCA-063, ¶ 4. In May 2011, the plaintiffs in *Sanders-Reed* filed their complaint challenging the sufficiency of those regulations. *See id.* In July 2011, energy industry stakeholders – with NMED’s support – filed petitions to repeal the regulations. *See id.* ¶ 5. EIB conducted ten months of hearings on the petitions. *See id.* Following the hearings, EIB repealed the regulations based on the finding that “regulating greenhouse gas emissions in New Mexico will have no perceptible impact on climate change or global warming.” *Id.* (internal quotation omitted).

The Court of Appeals dismissed the plaintiffs’ action, holding that the plaintiffs’ claim under the public trust doctrine was not cognizable because “the common law does not apply to the extent the subject matter of the duty or right asserted is covered by constitution, statute, or rule.” *Id.* ¶ 16. The Court of Appeals explained that any common law cause of action for environmental protection had been supplanted by New Mexico’s “constitutional and statutory provisions,” *id.* ¶ 15, noting expressly that N.M. Const. art. XX, § 21 “recognizes the duty to protect the atmosphere and other natural resources, and it delegates the implementation of that specific duty to the Legislature,” 2015-NMCA-063, ¶ 16.

The court in *Sanders-Reed* emphasized that, consistent with that constitutional duty, “[t]he Legislature has enacted a statutory framework to address how protections for the atmosphere are implemented.” *Id.* The Court of Appeals observed that the Legislature had enacted the AQCA – a statute that “permits citizens to be involved in the regulatory process” and which grants a right to judicial review to citizens who disagreed with EIB’s decisions implementing the AQCA. Recognizing that the AQCA and EIB’s application of the statute represented the State’s chosen policy mechanism for implementing the duty expressed in N.M. Const. art. XX, § 21 as it pertained to protection of the atmosphere, the Court of Appeals held that “[s]eparation of powers principles would be violated by adhering to Plaintiffs’

request for a judicial decision that independently ignores and supplants the procedures established under the [AQCA].”⁶ 2015-NMCA-063, ¶ 18.

Like the plaintiffs in *Sanders-Reed*, Petitioners here do not allege that the state defendants are not regulating oil and gas development; Petitioners simply request that the Court make the state defendants regulate in a different manner more consistent with Petitioners’ preferences. That the plaintiffs in *Sanders-Reed* raised only a common law action and Petitioners here now assert a failure to fulfill constitutional duties is a distinction without significance. Irrespective how Petitioners characterize their claims, the Court of Appeals in *Sanders-Reed* treated the public trust obligation as co-extensive with the duties that N.M. Const. art. XX, § 21 imposes. More important, the Court of Appeals understood that how the State fulfills its duties under N.M. Const. art. XX, § 21 is within the prerogative of the

⁶ The Court of Appeals in *Sanders-Reed* affirmed a summary judgment that the district judge granted to the state defendants in that case. Judge Singleton, the district judge who decided *Martinez-Yazzie*, was the district judge that entered summary judgment in *Sanders-Reed*. To the extent Petitioners contend that N.M. Const. art. XX, § 21 can be judicially enforced in the same manner as the education mandate in N.M. Const. art. XII, § 1, Judge Singleton herself rejected that argument. Judge Singleton understood that the plaintiffs in *Sanders-Reed* sought political relief. Judge Singleton noted that the State was “not ignoring [atmospheric damage from greenhouse gases], it just disagrees with what the Plaintiff[s] think[] is needed.” R.P. at 530. Judge Singleton emphasized that “what we are really talking about, at bottom, are political differences, and that the real remedy is to elect people who believe that greenhouse gases are a problem, that man does contribute to climate change, and those are the people that should be making policy decisions.” *Id.* at 531. Judge Singleton concluded that this was “a political decision, not a Court decision.” *Id.*

political branches, explaining that to find otherwise would disregard the State Defendants’ factfinding function, discourage reliance on the expertise of the specialized agencies tasked with regulating oil and gas production, disregard existing legislative schemes, and circumvent the procedural and substantive limitations that otherwise limit review of executive action.⁷ See 2015-NMCA-063, ¶ 18.

When courts in other jurisdictions have been asked to undertake the type of balancing evaluation Petitioners request here, they have likewise rejected those requests as non-justiciable. In *Sagoonick v. State*, 503 P.3d 777 (Alaska 2022), the Alaska Supreme Court construed two constitutional provisions that, in the supreme court’s view, collectively required the State to undertake an “appropriate balancing of resource development against environmental protection.”⁸ *Id.* at 796. Like Plaintiffs here, the plaintiffs in *Sagoonick* contended that “the State ha[d] contributed

⁷ One of the special interest group plaintiffs in this case, WildEarth Guardians, was also a plaintiff in *Sanders-Reed*. Despite *Sanders-Reed* being the only New Mexico appellate decision to analyze N.M. Const. art. XX, § 21’s functionality – and despite having participated in that case directly – Petitioners’ Brief in Chief omits any discussion of *Sanders-Reed*.

⁸ Petitioners attempt to distinguish *Sagoonick* based on the mistaken premise that “the Alaska Constitution’s Natural Resources Clause is very different from [N.M. Const. art. XX, § 21].” Pet’rs’ Resp. at 16 n.7. To the extent that Petitioners suggest that the Alaska Constitution does not require Alaska state actors to balance environmental impacts against the benefits of resource development, that suggestion is directly contrary to the understanding that the Alaska Supreme Court articulated in *Sagoonick*. See 503 P.3d at 796.

to climate change and resulting violations of their individual constitutional rights by and through [the statutory energy policy], implemented through [the State's] historical and ongoing affirmative aggregate and systemic actions.” *Id.* (internal quotations omitted). The Alaska Supreme Court explained that “the nature of plaintiffs’ as-applied claims upsets our usual approach to reviewing State agency action.” *Id.* In light of the “constitutional mandate that the legislature manage natural resources in the public interest for the maximum benefit to Alaskans collectively,” the Alaska Supreme Court concluded that it would be “impossible to grant plaintiffs’ requested injunctive relief without also infringing on an area constitutionally committed to the legislature . . . and 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.” *Id.*

Petitioners offer no authority inconsistent with *Sagoonick*. Petitioners instead cite *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So. 2d 1152 (La. 1984), for the proposition that the “balancing process . . . is not immune from judicial review.” Pet’rs’ Br. at 18. But to the extent that *Save Ourselves* is not inapposite, it undermines Petitioners’ claims. In *Save Ourselves*, the Louisiana Supreme Court considered an as-applied challenge to construction permits the Louisiana Environmental Control Commission (“ECC”) issued for a hazardous

waste disposal facility. The supreme court observed that when evaluating permit applications, ECC had constitutional and statutory obligations to undertake “a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.” *Id.* at 1157. The court in *Save Ourselves* remanded the case not because the permitted activity had environmental impacts, but because ECC’s factual findings were insufficient to determine whether the Commission had engaged in the balancing process at all.

Petitioners both overlook the significant difference between the programmatic nature of Petitioners’ claims and the narrow as-applied challenge at issue in *Save Ourselves* and misrepresent the Louisiana Supreme Court’s holding in the latter. The Louisiana Supreme Court never agreed to evaluate whether ECC had properly balanced the factors the agency was required to consider. To the contrary, the supreme court emphasized that it “did *not* intend to enter the province that belongs to the [Commission],” *id.* at 1161 (quoting *Phelps Dodge Corp. v. Nat’l Lab. Rels. Bd.*, 313 U.S. 177, 197 (1941)) (emphasis added), concluding that its decision was meant “to affirm most emphatically [ECC’s] authority.”⁹ *Id.*

⁹ The Louisiana Supreme Court has observed that “the 1974 Louisiana Constitution imposes a duty of environmental protection on all state agencies and officials.” *Save Ourselves*, 452 So. 2d at 1156 (citing La. Const art. IX § 1). Like N.M. Const., art. XX, § 21, the Louisiana Constitution requires a “balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.” *Save Ourselves*, 452 So. 2d at 1157. In addition to *Save Ourselves*, Petitioners cite to Louisiana decisions in which courts

Petitioners’ reliance on *Michigan State Highway Commission v. Vanderkloot*, 220 N.W.2d 416 (Mich. 1974) and *Robinson Township, Washington County v. Pennsylvania*, 83 A.3d 901 (Pa. 2013) – two cases that, unlike this one, involved discrete challenges to the constitutionality of specific legislative provisions – is misplaced for similar reasons. In *Vanderkloot*, the Michigan Supreme Court rejected plaintiffs’ contention that Michigan’s Highway Condemnation Act was unconstitutional because the Act did not contain provisions directing compliance with the Michigan Constitution’s environmental protection amendment. The supreme court explained that *how* the Legislature complied with the constitutional amendment was entirely within the Legislature’s discretion. *See id.* at 426 (noting that the “Legislature is only enjoined to enact legislation protecting natural resources from pollution, impairment and destruction” and emphasizing that the Legislature’s

have reversed discrete agency permitting decisions because there was no evidence in the administrative record that the agency engaged in *any* balancing of environmental and resource development factors before issuing the permits at issue. *See In re Gen. Permit for Discharges from Oil & Gas Expl. Dev., & Prod. Facilities*, 70 So.3d 101, 111 (La. Ct. App. 2011) (remanding renewal of wastewater discharge permit to agency when agency did not perform tests to determine whether discharges would have environmental impacts); *In re Am. Waste & Pollution Control Co.*, 633 So.2d 188, 194 (La. Ct. App. 1993) (“We cannot determine from the record that the [agency] fully conducted the function of balancing the benefits of the proposed project . . . against the risk to the environment.”). But Petitioners here do not raise an as-applied challenge to any specific decision or action attributable to the State Defendants. And Petitioners have not identified any case in which a court in Louisiana (or any other jurisdiction) has adjudicated whether state officials struck the *correct* balance when weighing competing environmental and resource development values.

responsive action “can be in specific provisions in pertinent enactments or in the form of generally applicable legislation”). In *Robinson Township*, a plurality of the Pennsylvania Supreme Court found that several statutory provisions violated the Pennsylvania Constitution’s Environmental Rights Amendment because the statutes preempted municipal land use planning that accounted for environmental impacts. The supreme court emphasized, however, that it was *not* reviewing the Pennsylvania Legislature’s “policy decision respecting encouragement and accommodation of rapid exploitation of [oil and gas resources],” because that decision was “squarely within [the Legislature’s] bailiwick,” 83 A.3d at 928.

More contemporary decisions have been even more express in rejecting requests to balance policy objectives in the manner Petitioners seek here. In *Held v. Montana*, 560 P.3d 1235, 2024 MT 312, the Montana Supreme Court ruled that a provision in the Montana Environmental Policy Act prohibiting state agencies conducting environmental reviews for fossil fuel projects from evaluating “greenhouse gas (“GHG”) emissions and corresponding impacts to the climate in the state or beyond the state’s borders,” *id.*, 2024 MT 312, ¶11 (quoting Mont. Code Ann. § 75-1-201(2)(a)), violated the Montana Constitution’s guarantee of a “clean and healthful environment,” *id.*, 2024 MT 312, ¶ 68. In doing so, however, the supreme court expressly distinguished *Held* from cases in which plaintiffs “sought a declaration that an entire statutory scheme was unconstitutional—without

reference to any statute—potentially impacting many statutes in unknowable and unintended ways.” 2024 MT 312, ¶ 48. The Montana Supreme Court stated that the “proper way to deal with [plaintiffs’] concerns were with specific suits directed at specific, identifiable statutes.”¹⁰ *Id.* The supreme court observed that in cases “without specific statutes alleged unconstitutional, the broad injunction and declaratory judgment sought would just lead to further confusion and litigation,” summarizing that “[b]roadly determining the constitutionality of a ‘statutory scheme’ . . . is contrary to established jurisprudence.” *Id.*

Most recently, in *Natalie R. ex rel. Roussel v. Utah*, 2025 UT 5, 567 P.3d 550, the Utah Supreme Court rejected the claims of plaintiffs who, like Petitioners here, alleged that Utah government officials “engage in an ongoing pattern and practice of maximizing, promoting, and systematically authorizing the development of fossil fuels,” *id.* ¶ 14, in alleged violation of the plaintiffs’ rights to life and liberty under the inherent rights clause of the Utah Constitution, *see id.* ¶ 15 (referencing Utah Const. art. I, §§ 1 & 7). Like the court in *Held*, the court in *Roussel* explained that because the plaintiffs “have not challenged the constitutionality of any specific state

¹⁰ Like Petitioners here, the plaintiffs in *Held* initially brought claims seeking injunctive relief meant to remedy alleged programmatic defects. The Montana plaintiffs requested: (i) a full accounting of Montana’s GHG emissions; (ii) a remedial plan to reduce GHGs; (iii) a special master to administer the remedial plan; and (iv) jurisdiction to be retained in the district court to enforce compliance with the plan. *See Held*, 2024 MT 312, ¶ 7. The Montana District Court dismissed all these claims as beyond the court’s authority. *See id.*, 2024 MT 312, ¶ 8.

action, such as a granted permit or other regulatory decision[,] . . . the district court cannot apply the law to a set of facts to determine whether such action is unconstitutional.” 2025 UT 5, ¶ 52.

Notably missing from Petitioners’ Brief in Chief is any reference to *Held* or *Roussel*. And none of the cases on which Petitioners rely stand for the proposition that courts may inject themselves into a dispute over how two competing constitutional mandates should be balanced. Because Petitioners do not raise either a facial or an as-applied challenge to any legislative or executive act, but only seek to impose their own subjective policy preferences on the State Defendants, Petitioners’ claims are non-justiciable.

B. PETITIONERS CONFLATE THE BALANCING PROCESS WITH BALANCING OUTCOMES.

Petitioners criticize the Court of Appeals for holding that “the Legislature *has* complied with its constitutional duty to balance pollution control policies with resource development that maximally benefits the people.” Pet’rs’ Br. at 27 n.16 (quoting *Atencio*, 2025 WL 1621569, at *10, ¶ 37). Petitioners suggest that the Court of Appeals could not have reached this conclusion because, even if N.M. Const. art. XX, § 21 does require a balancing of environmental protection with use and development of natural resources, Petitioners’ Complaint alleges that the State Defendants have *not* properly balanced pollution control with economic gain and, at the motions to dismiss phase, the Court is required to accept well-pled facts in

Plaintiffs' complaint as true. *See* Pet'rs' Br. at 27 n.16. Petitioners' assertion evinces a fundamental misunderstanding of the applicable standard of review and misstates the bases for the Court of Appeals' ruling.

Petitioners' *opinion* that the State Defendants have not properly balanced the Constitution's competing demands to "control pollution" and develop resources for the "maximum benefit of the people" is not entitled to any presumption of truth. *See Patten v. Santa Fe Nat. Life Ins. Co.*, 1943-NMSC-023, ¶ 8, 47 N.M. 202 (observing that matters of opinion are not presumed to be true and explaining that a pleading "does not admit facts which the court will take judicial notice are not true"); *Romero v. U.S. Life Ins. Co. of Dallas*, 1986-NMCA-044, ¶ 8, 104 N.M. 242 (emphasizing that, while "all well-pleaded facts are accepted as true[,] . . . [l]egal conclusions or inferences that may be drawn from the allegations are not admitted"). Petitioners offer a cherry-picked list of environmental statutes that Petitioners allege are insufficient to satisfy the State Defendants' constitutional obligations, highlighting provisions in those statutes that exempt certain activities from the statutes' application.¹¹ But these authorities do not represent the full legal framework

¹¹ Plaintiffs contend that the Legislature has excluded oil and gas activity from, among other statutes, the: (i) Hazardous Waste Act, *see* R.P. at 45 ¶ 185 (citing N.M. Stat. Ann. § 74-4-3(K)(2)(A)); (ii) Hazardous and Radioactive Materials Act, *see* R.P. at 46 ¶ 188 (citing N.M. Stat. Ann. § 74-4A-4(D)); (iii) Solid Waste Act, *see* R.P. at 46 ¶ 191 (citing N.M. Stat. Ann. § 74-9-3(N)(1)); R.P. at 428 n. 33; (iv) Groundwater Protection Act ("GPA"), *see* R.P. at 47-48 ¶ 194 (citing N.M. Stat. Ann. § 74-6B-3(A)(3) and alleging that the GPA does not include provisions to

governing oil and gas activities in New Mexico and the mere existence of specific exemptions in certain laws does not equate to an allegation that oil and gas development is otherwise unregulated.¹²

The Court of Appeals was entitled to, and did, take judicial notice of the numerous legislative and regulatory provisions that protect the land, water, air, and other environmental values about which Petitioners are concerned. *See Atencio*, 2025 WL 1621569, at *10, ¶¶ 34-36. The Court of Appeals acknowledged that OCD has been charged with, among other tasks: (i) “regulating the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas . . . in a manner that protects public health, the environment and fresh water

prevent petroleum tanks from leaking); and (v) Water Quality Act, *see* R.P. at 48 ¶ 197 (citing N.M. Stat. Ann. § 74-6-12(G)).

¹² To the extent that Petitioners allege that the framework the state defendants have put in place to regulate oil and gas is inadequate generally, that allegation constitutes an opinion which should not be accepted as true. To the extent Petitioners allege that the framework is legally insufficient to meet constitutional mandates, that allegation represents a conclusion of law to which no deference is due. *See Premier Trust of Nev., Inc. v. City of Albuquerque*, 2021-NMCA-004, ¶ 2 (observing that municipal ordinances were properly categorized as law “which may be judicially noticed by all courts in New Mexico” and disregarding a plaintiff’s legal construction of the ordinances “as we [would] any unwarranted deductions of fact”); *see also C & H Constr. & Paving, Inc. v. Found. Reserve Ins. Co.*, 1973-NMSC-076, ¶ 9, 85 N.M. 374, 376 (“For purposes of [a] motion [to dismiss], the well-pleaded material allegations of the complaint are taken as admitted; but conclusions of law or unwarranted deductions of fact are not admitted.”) (internal quotation omitted).

resources,” *Atencio*, 2025 WL 1621659, at *10, ¶ 34 (quoting N.M. Stat. Ann. § 70-2-12(15)); *see also* N.M. Admin. Code 19.15.2.8(B) (requiring that all operations are conducted in a manner that “prevents . . . the contamination of fresh waters”); (ii) regulating hazardous waste that results from oil and gas activities, *see Atencio*, 2025 WL 1621659, at *10, ¶ 34 (citing N.M. Stat. Ann. § 70-2-12(21)-(22)); *see also* N.M. Admin. Code 19.15.34.20(B) (prohibiting disposition “of produced water or other oil field waste . . . in a manner that may constitute a hazard to fresh water, public health, or the environment”); and (iii) “spend[ing] the oil and gas reclamation fund and do[ing] all acts necessary and proper to plug dry and abandoned oil and gas wells,” *Atencio*, 2025 WL 1621659, at *10, ¶ 34 (quoting N.M. Stat. Ann. § 70-2-12(B)(18)).

The Court of Appeals emphasized that OCD “has exercised its authority to create rules controlling pollution.” *Atencio*, 2025 WL 1621569, at *10, ¶ 35; *see also* N.M. Admin. Code *id.* § 19.15.8.9 (requiring financial assurance for both active wells and well plugging and abandonment costs for inactive wells); *id.* § 19.15.16.10 (mandating casing and cement procedures adequate to protect ground water); *id.* § 19.15.16.12 (requiring installation and maintenance of blowout preventers on drilling rigs); *id.* § 19.15.17.12 (requiring that producers “operate and maintain a pit or closed-loop system, below-grade tank or sump to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system,

prevent contamination of fresh water and protect public health and the environment”); *id.* §§ 19.15.27.8 and 19.15.27.9 (limiting venting and flaring of natural gas to meet statewide natural gas capture requirements). As the Court of Appeals recognized, “[t]he above statutes and regulations are not an exhaustive list of all the policies Defendants have created aimed at curbing pollution.”¹³ *Atencio*, 2025 WL 1621569, at *10, ¶ 37.

Disregarding these authorities, Petitioners conflate the State Defendants’ “balancing” process with the outcomes that process generates. Petitioners are incorrect that, if [N.M. Const. art. XX, § 21] “requires a ‘balancing’ of environmental protection with use and development of natural resources, that ‘balancing’ is still subject to judicial review based on actual evidence.” Pet’rs’ Br. at 27. Petitioners here cannot and do “not allege that Defendants have done *nothing* to control pollution caused by oil and natural gas production.” *Atencio*, 2025 WL 1621569, at *10, ¶ 34. Petitioners simply wish Defendants had done more and/or acted differently. But as the Court of Appeals correctly understood, that wish is

¹³ Nor is OCD the only agency that has taken action to control pollution from oil and gas operations. *See, e.g.*, N.M. Stat. Ann. § 74-3-9(B) (requiring operators obtain a license from the environmental protection division of the department of environment before they may “possess, use, store, dispose of, manufacture, process, repair or alter any radioactive material”); N.M. Admin. Code §§ 20.3.14.1 to 20.3.14.1419 (establishing a comprehensive licensing scheme for handling radioactive materials in the oil and gas industry).

irrelevant. The Court is not tasked with evaluating the desirability of the outcomes the political branches' balancing of policy choices produces. *See id.* (declining to address the “adequacy or efficacy” or legislative and regulatory measures adopted to curb pollution); *see also State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 24, 128 N.M. 154, 162 (“[I]t is not the province of this Court to question the wisdom, policy, or justness of legislation enacted by our Legislature.”) (quoting *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 10, 122 N.M. 524, 530). Where, as here, there is no dispute that balancing occurred, “reweighing these interests and supplanting the Legislature’s policy choices with judicial determinations exceeds the judiciary’s constitutional authority.” *See Atencio*, 2025 WL 1621569, at *11, ¶ 38.

C. PETITIONERS CANNOT OFFER A VIABLE STANDARD BY WHICH TO MEASURE COMPLIANCE.

Petitioners represent that they are merely asking the Court “to measure the acts of the executive and the legislative branch solely by the yardstick of the constitution.” Pet’rs’ Br. at 30. But as the Court of Appeals emphasized, N.M. Const. art. XX, § 21 does not mandate that any individual or group “be free from a given amount of pollution.” *Atencio*, 2025 WL 1621569, at *7, ¶ 23. The constitutional text offers no quantitative (or qualitative) methodology that could be used to measure the State defendants’ compliance with N.M. art. XX, § 21.

Petitioners incorrectly suggest that implementing legislation can assist this Court establish enforceable metrics for determining what constitutes “control” of pollution or what outcomes would represent the “maximum benefit of the people.” *See Petr’s’ Br.* at 22. But the statutes on which Petitioners rely are no more unequivocal than N.M. Const. art. XX, § 21 itself, reflecting an intent to balance environmental protection against social well-being and economic productivity. The Environmental Improvement Act is intended to “ensure an environment that . . . will confer optimum health, safety, comfort and *economic and social well-being on its inhabitants*” and “*maximize the economic and cultural benefits* of a healthy people.” N.M. Stat. Ann. § 74-1-2 (emphasis added). The Environmental Quality Control Act, now repealed, stated a policy to “encourage *productive* and enjoyable harmony between man and his environment, promote efforts to prevent *or* eliminate damage to and improve the environment and biosphere and *stimulate the health and welfare of man.*” N.M. Stat. Ann. § 12-20-1(A) (1971) (emphasis added). The Hazardous Waste Act was passed not only to “ensure the maintenance of the quality of the state’s environment,” but also “to confer optimum health, safety, *comfort and economic and social well-being* on its inhabitants[] and to protect the *proper utilization of its lands.*” N.M. Stat. Ann. § 74-4-2 (emphasis added). The Radioactive and Hazardous Materials Act was enacted to address public concern over the handling of radioactive waste, *see* N.M. Stat. Ann. § 74-4A-3(A), “without

unnecessarily hampering the nuclear energy industry or compromising the nation's defense,” *id.* § 74-4A-3(B). The Solid Waste Act is intended to, among other purposes, “enhance the beauty and quality of the environment,” *id.* § 74-9-2(C); but to achieve this purpose, government officials are expected to “plan [] and regulate[] in the most economically feasible, cost-effective and environmentally safe manner,” *id.* § 74-9-2(D).

Petitioners complain that the Court of Appeals wrongfully interpreted N.M. Const. art. XX, § 21 “to put economic development over all other interests” and determined that “the ‘use and development of the resources for the maximum benefit of the people’ can be measured simply by State revenues from oil and gas development, without considering resulting harms to the people or other beneficial uses.” Pet’rs’ Br. at 25-26. The Court of Appeals did no such thing. The Court of Appeals held only that acknowledging the “crucial support” oil and gas revenue provide for “fundamental operations of the state” was evidence “that the Legislature *has* complied with its constitutional duty to balance pollution control policies with resource development that maximally benefits the people of New Mexico.” *Atencio*, 2025 WL 1621569, at *10, ¶ 37.

Petitioners’ argument entirely disregards the beneficial impacts that the consumption of oil and gas have on economic generation, public health, and socio-emotional well-being after the oil and gas is processed, refined, fractionated, and

turned into thousands of products — including circuit boards for cell phones and computers, blades for wind turbines, plastics for everything from household products to outdoor recreational equipment, and jet fuel for connecting us to business colleagues and loved ones. Petitioners disregard the importance of petroleum-based fertilizers in ensuring the availability of a vast and nutritious food supply. Petitioners do not account for the benefit of oil and gas used in pharmaceuticals and the delivery of health care services that allow individuals to prevent or overcome illness, workers to remain in the workforce, and athletes to recover from injuries. Petitioners do not recognize the positive public health outcomes associated with well-educated, prosperous communities. Nor do Petitioners account for the geopolitical strategic advantage that production of domestic oil and gas provides to New Mexico and the nation. All these uses and outcomes certainly afford environmental and public health benefits, implicate the “public interest” and “general welfare” at the heart of N.M. Const. art. XX, § 21, and are properly included in the Legislature’s evaluation of what is in the “maximum benefit of the people.”

Petitioners’ suggestion that the State Defendants *could have* prioritized environmental protection over the economic and non-economic benefits that oil and gas production provides New Mexicans, even if true, would not establish that the State Defendants did not satisfy their constitutional mandate to balance pollution control and resource development. It would only prove that Petitioners’ would have

preferred a different policy outcome. In other words, Petitioners have not pled facts which, even if proved true, could establish the constitutional breach Petitioners allege.

V. PLAINTIFFS ASSERT FUNDAMENTAL RIGHTS AT THE EXPENSE OF OTHER NEW MEXICANS.

Petitioners’ failure to engage the constitutional text on which their claims are premised also undermines Petitioners’ contention that the enactment of the N.M. Const. art. XX, § 21 confirmed that “protection of a healthful environment is 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.” Pet’rs’ Br. at 35. As Petitioners understand, “[a] fundamental right is that which the Constitution explicitly or implicitly guarantees.” *Id.* (quoting *Richardson v. Carnegie Libr. Rest., Inc.*, 1988-NMSC-084, ¶ 28, 107 N.M. 688, 696 overruled on other grounds by *Trujillo v. City of Albuquerque*, 1998-NMSC-031, 125 N.M. 721). N.M. Const. art. XX, § 21 includes no explicit guarantees. As the Court of Appeals recognized, any rights the section provides – whether in the context of pollution control or resource development – are *explicitly* conditioned on the Legislature balancing those rights against competing values. *Atencio*, 2025 WL1621659, at *15, ¶ 55 (“[W]e reiterate that [N.M. Const. art. XX, § 21] does not recognize any enforceable rights, but instead requires the Legislature to balance competing policy interests.”).

And while N.M. Const. art. XX, § 21 declares the “state’s beautiful and healthful environment” to be of “fundamental importance,” the provision’s plain language demonstrates that this importance is not a guarantee to individuals like Petitioners; the provision emphasizes instead a healthy environment’s fundamental importance “to the *public* interest, health, safety and the *general* welfare.” N.M. Const. art. XX, § 21 (emphasis added). Petitioners’ attempt to manufacture an individual cause of action under N.M. Const. art. XX, § 21 fails to account for the detrimental impact the relief Petitioners seek would have on *other* New Mexicans with policy preferences different from Petitioners (including the Chamber’s members), and who benefit from the oil and gas industry’s contribution to health care, education, agriculture, transportation, hospitality, real estate, and finance in the State. Acknowledging the “long history of permitting oil and gas extraction within our borders,” the Court of Appeals properly noted that “the law, history, and tradition of our state demonstrates that resource extraction must be considered alongside, and must coexist with, pollution control legislation.” *Atencio*, 2025 WL1621659, at *15, ¶ 56. This Court should likewise reject Petitioners’ attempt to fashion individual privileges for themselves at the expense of the “public interest” and the “general welfare” of New Mexicans as a whole.

Petitioners’ understanding of the rights derived under N.M. Const. art. II, § 4 – the “Inherent Rights” clause – is flawed for similar reasons. The Inherent Rights

clause recognizes that “[a]ll persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.” Petitioners assert that the “right to be free from government action that undermines health and safety underpins every substantive due process right—and health and safety are undermined by government-sanctioned pollution.” Pet’rs’ Br. at 34. But as the Court of Appeals recognized, the “Inherent Rights Clause has not been interpreted ‘to be a fountain for as-yet-undiscovered rights.’” *Atencio*, 2025 WL1621659, at *15, ¶ 55 (quoting *Morris*, 2015-NMCA-100, ¶ 59 (Hanisee, J., concurring in part), *aff’d* 2016-NMSC-027). This Court has similarly cautioned that “the Inherent Rights Clause has never been interpreted to be the exclusive source for a fundamental or important constitutional right, and on its own has always been subject to reasonable regulation.” *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 51.

As with N.M. Const. art XX, § 21, Petitioners seek to create new inherent rights for themselves under N.M. Const. art. II, § 4 at the expense of other New Mexicans. Oil and gas production is a well-established component of many New Mexicans’ identity and culture. *See* R.P. at 295 (describing oil and gas activity as “identifiable components of the economic and social fabric of the region”). The relief Petitioners seek would injure other New Mexicans economically, limit access

to educational opportunities, degrade New Mexicans’ socio-emotional well-being, compromise public health, and imperil geopolitical security. *See id.* at 220; *id.* at 521-22. More specifically, Petitioners’ action would: (i) dilute the value of other New Mexicans’ private property, *see id.* at 351-52 (explaining how a moratorium on new drilling permits – of any duration – would decrease production revenue and lower the value of existing oil and gas leases); (ii) restrict how New Mexican businesses plan and operate, *see id.* at 353; and (iii) preclude New Mexicans from engaging in their chosen professions, *see id.* Petitioners fail to acknowledge *any* of these consequences.

Petitioners misrepresent their claims as seeking “a statutory, regulatory, and enforcement scheme to protect [Petitioners] from the damages of oil and gas pollution.” Pet’rs’ Br. at 32-33. But New Mexico already has a system of statutes and regulations that governs oil and gas production. What Petitioners truly want is to compel Defendants to adopt a *new* scheme that aligns with Petitioners’ preferences.

Petitioners contend that the proposed right to a healthful environment is “included” in Petitioners’ rights as enumerated in the Inherent Rights Clause, *see* Pet’rs’ Br. at 36. But imposing a regulatory framework that the democratic majority of New Mexicans has rejected is contrary to those New Mexicans’ rights. Other New Mexicans may reasonably conclude that expanding educational opportunities,

providing safe and efficient infrastructure, promoting prosperity, and maintaining public safety are all essential elements to guaranteeing the right to a “healthful environment.”

In the end, Petitioners assert a purported right to their subjectively preferred environmental conditions without regard for that right’s impact on the rights of other New Mexicans, including the Chamber’s members, to pursue the professional livelihood of their choice, realize and protect the full value of their private property, and enjoy the social, cultural, educational, and economic advantages that environmentally responsible oil and gas production bestows. Recognizing that “[f]undamental constitutional rights that protect life, liberty, or happiness are ‘enjoyed by *all* New Mexicans,’” *Morris*, 2015-NMCA-100, ¶ 47 (quoting *Griego v. Oliver*, 2014-NMSC-003, ¶ 1), New Mexico courts have expressly declined to interpret N.M. Const. art. II. § 4 “to recognize an inferred fundamental right benefitting only a select few New Mexicans,” *Morris*, 2015-NMCA-100, ¶ 47. Having failed to demonstrate how exercise of the rights Petitioners allege can be exercised without intruding on the inherent rights of other New Mexicans, Petitioners’ contention that they have implied fundamental rights under N.M. Const. art. II, § 4 fails as a matter of law and cannot sustain Petitioners’ claims.

VI. PETITIONERS' CLAIMS ARE NOT JUDICIALLY REDRESSABLE.

Even if the Court were to determine that separation of powers principles did not automatically preclude adjudication of Petitioners' claims (which they do), consideration of the second question the district court approved for interlocutory appeal demonstrates that Petitioners' claims are not judicially redressable. As referenced above, Petitioners allege that Defendants have failed to "control pollution" and, in so doing, to protect Petitioners' rights to life, liberty, and property. But Petitioners have not offered criteria the district court can use to assess whether pollution is controlled or offered any metrics the district court should apply to determine what outcomes provide the "maximum benefit of the people" or gauge the scope of any alleged infringement on Petitioners' life, liberty, and property.

Without this Court's guidance on how the Defendants' compliance can be measured and evaluated, there is no way the district court could effectively manage proceedings in this litigation. Absent proper framing, all varieties of fact and expert evidence could theoretically be relevant to assessing what level of pollution constitutes "control" and what degree of regulation results in the "maximum benefit." Should pollution be measured by the parts per million of total dissolved solids in ground water? Or the density of a specific hazardous air pollutant in a cubic meter of air? Where should the measurements be taken? What instruments should be used? How should baseline levels be established?

Equally important, how should the benefits of oil and gas development be measured? Beyond the economic value attributable to revenue derived from the sale of oil and gas, how should the parties judge the civic value of school funding that facilitates the establishment of an educated citizenry and a capable workforce? Or the social value of dependable infrastructure capable of connecting communities across a vast rural state and bringing tourists from around the world to Albuquerque's Balloon Fiesta and the plazas of Santa Fe and Taos? Given the essential role that petroleum products provide to power and fertilize modern agriculture, what value should be ascribed to the cultural pride New Mexicans derive from enjoying and exporting their incomparable chiles, pecans, lavender, craft beers, and other similar treasures?¹⁴

It is axiomatic that addressing all these issues and evaluating, comparing, and prioritizing the interests each issue implicates will require the resolution of

¹⁴ These questions represent just a tiny, illustrative example of the diverse concepts and concerns policy makers must consider when prioritizing state action. There are many more. Petitioners take for granted, for example, that oil and gas production is harmful to human health. But ninety-nine percent of the “feedstock” chemicals for pharmaceuticals comes from petroleum. When the availability of non-reusable N-95 masks became scarce during the height of the COVID-19 pandemic, inventors turned to polypropylene pellets to make masks that could be sterilized and reused every day. Hand sanitizer, protective personal equipment, antiseptics, plastic gloves, and the solvents to keep hospitals free of germs are all based on petroleum products. *See* Editorial Bd., *Big Oil to the Coronavirus Rescue*, Wall St. J. (Apr. 23, 2020); Poe Leggette, *Fighting climate change should not come at the expense of fighting viruses*, Houston Chron. (Mar. 20, 2020).

quintessential policy questions. That, of course, is the province of the Legislature, not the courts. *See Coll*, 1999-NMSC-036, ¶ 24, 128 N.M. at 162 (declining “to question the wisdom, policy or justness of legislation enacted by our Legislature”) (quoting *St. Joseph Hosp.*, 1996-NMSC-064, ¶ 10, 122 N.M. at 530); *State v. Martinez*, 2019-NMCA-049, ¶ 3 (recognizing that “the consideration of public policy is the province of the Legislature”); *State v. Vest*, 2021-NMCA-020, ¶ 60 (Thomson, J., dissenting) (“[T]he power to make policy resides in the Legislature, not this Court.”).

Even if the Court could wade into the policy questions this case raises, how would it do so without the assistance of outside regulatory specialists, environmental scientists, epidemiologists, toxicologists, hydrologists, geophysicists, petroleum engineers, reservoir engineers, economists, forensic accountants, educators, actuaries, and many, many other professionals? It is the executive branch, not the Courts, that possess this expertise. *See Atencio*, 2025 WL 1621659, at *11, ¶ 39 (“[T]he redress Plaintiffs seek would obviate existing statutory and regulatory processes and require technical expertise that is found in Executive Defendants and that is beyond the practical capabilities of the judiciary.”); *see also New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 10, 149 N.M. 42, 46 (criticizing use of declaratory judgment actions that “foreclose any necessary fact finding by the administrative entity [or] discourage reliance on any special expertise that may exist

at the administrative level”) (quoting *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 15, 142 N.M. 786, 791). It is precisely for this reason that New Mexico “appellate courts generally accord deference to an agency’s determination of a factual matter within its specialized expertise and do not substitute judgment for that of the agency.” *Sw. Research & Info. Ctr. v. N.M. Env’t Dep’t*, 2014-NMCA-098, ¶ 21. *See also Plains Elec. Generation & Transmission Co-op., Inc. v. N.M. Pub. Utility Comm’n*, 1998-NMSC-038, ¶ 7, 126 N.M. 152, 155 (observing that courts defer to agency decisions “requiring expertise in highly technical areas”).

In New Mexico, the principle of separation of powers is more than structurally implied, it is mandated expressly in the text of the state constitution:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.¹⁵

N. M. Const. art. III, § 1. The fact that this Court could not answer the district court’s second certified question without assuming the functions committed to the political

¹⁵ This Court has observed that while the “absolute separation of powers is ‘neither desirable nor realistic,’” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 23, 125 N.M. 343, 350 (quoting *State ex rel. Clark v. Johnson*, 1995-NMSC-051, ¶ 32, 120 N.M. 562, 573), the Court “must give effect to [N.M. Const. art III, § 1], and [] not be reluctant to intervene where one branch of government unduly encroaches or interferes with the authority of another branch,” *Taylor*, 1998-NSC-015, ¶ 23, 125 N.M. at 350.

branches – violating constitutional separation of powers principles – proves that Petitioners’ claims are non-justiciable and must be dismissed.

VII. CONCLUSION.

Petitioners advance a challenge designed to circumvent the organizational structure of New Mexico’s government, undermining the exclusivity of the elected branches’ role in setting policy that protects New Mexico’s environmental integrity and promotes the general welfare. Petitioners seek to elevate their individual policy preferences over those the majority of New Mexicans have endorsed, at the expense of the States’ most important commercial activity and to the detriment of New Mexicans’ political sovereignty, public health, and economic security. The Court of Appeals appropriately rejected this effort and this Court should affirm.

Submitted respectfully this 9th day of March, 2026,

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CERTIFICATE OF COMPLIANCE WITH RULE 12-318 NMRA

This brief complies with the type-volume limitation of 35 pages or 11,000 words, because this brief contains 10,590 words, excluding the parts of the brief exempted by Rule 12-318(F)(1) NMRA.

This brief complies with the typeface requirements of Rule 12-305 NMRA and the type style requirements of this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in Times New Roman, 14 point.

Date: March 9, 2026.

/s/ Mark S. Barron

Mark S. Barron

CERTIFICATE OF SERVICE

I hereby certify that, on March 9, 2026, I served a true and correct copy of the foregoing **NEW MEXICO CHAMBER OF COMMERCE’S ANSWER BRIEF** through the Court’s electronic filing system, which caused the parties or counsel reflected on the Notice of Electronic filing to be served by electronic means.

/s/ Mark S. Barron

Mark S. Barron