

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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; THE CENTER FOR
BIOLOGICAL DIVERSITY; and
WILDEARTH GUARDIANS;

Plaintiffs,

v.

No.: D-101-CV-2023-01038

THE 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.

**INTERLOCUTORY ORDER DENYING DEFENDANTS' MOTION TO DISMISS
AND
INTERLOCUTORY ORDER DENYING IN PART AND GRANTING IN PART
DEFENDANT THE NEW MEXICO LEGISLATURE'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

THIS MATTER came before the Court on a Motion to Dismiss and Defendant the New Mexico Legislature's Motion for Judgment on the Pleadings and Memorandum in Support, filed separately by Defendants. Having reviewed the pleadings, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

I. Procedural and Factual Background.

On May 10, 2023, Plaintiffs filed their Complaint¹ against Defendants. According to their Complaint, Plaintiffs are “frontline community members, Indigenous peoples, youth, and environmental organizations that advocate for environmental justice for frontline community members, Indigenous peoples, and youth, and for conservation.” Compl. ¶ 10; *see also* Compl. ¶ 11 (“Frontline community members are people who live near oil and gas production sites.”). In turn, according to Plaintiffs’ Complaint, Defendants—composed of the State of New Mexico, the New Mexico Legislature, the Governor of New Mexico, and other executive officials and departments, a commission, and a board—“have the authority and are constitutionally mandated to regulate, limit and deny the extraction and production of oil and gas to limit or prohibit emissions and pollution in a manner that prevents the despoilment of New Mexico’s beautiful and healthful environment and protects Plaintiffs from the harmful impacts of oil and gas pollution.” Compl. ¶ 134.

Plaintiffs’ Complaint charges five counts: Count I: “Violation of Pollution Control Clause, Article XX, Section 21 of the New Mexico Constitution,” Compl. 95; Count II: “Violation of the Frontline, Indigenous and Youth Plaintiffs’ Inherent Rights and Substantive Due Process Rights Under Article II, Sections 4 and 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41-4A-13,” Compl. 98; Count III: “Disparate and Discriminatory Impact on Frontline Community Member Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the

¹ The full title of the Complaint is: “Complaint to Enforce Constitutional Rights for a Healthful and Beautiful Environment and Protection of Natural Resources from Despoilment Due to Oil and Gas Pollution, and to Enforce the Rights of Frontline Communities, Indigenous Peoples, and Youth to Life, Liberty, Property, Safety, Happiness, and Equal Protection in the Face of the State’s Permitting of Oil and Gas Production and Pollution, and for Declaratory and Injunctive Relief.”

New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41-4A-13,” Compl. 99; Count IV: “Disparate and Discriminatory Impact on Indigenous Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41-4A-13,” Compl. 101; and, Count V: “Disparate and Discriminatory Impact on Youth Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41-4A-13,” Compl. 103.

Regarding requested relief, Plaintiffs seek declarations that Defendants are out of compliance with their constitutional duties, and that the current statutory, regulatory, and administrative framework results in a violation of certain rights of Plaintiffs enumerated in the New Mexico Constitution. Compl. 104-05. Further, in addition to other requested injunctive relief, Plaintiffs ask the Court to enjoin Defendants to “suspend additional permitting of oil and gas wells until [Defendants] have come into compliance with their constitutional duties,” and enjoin Defendants to “enact, fund and implement a statutory, regulatory and enforcement structure and plan that complies with the State’s constitutional mandate to protect our beautiful and healthful environment, air, water and other natural resources from despoilment by pollution caused by the oil and gas industry.” Compl. 106. Plaintiffs additionally seek attorneys’ fees and other relief as deemed proper by the Court. Compl. 106-07.

On September 1, 2023, Defendants the State of New Mexico, Governor Michelle Lujan Grisham, the New Mexico Environment Department, Secretary James Kenney, the Energy, Minerals and Natural Resources Department, Secretary Sarah Cottrell Propst, the Environmental Improvement Board and the Oil Conservation Commission (collectively, the “Executive Branch

Defendants”), filed their Motion to Dismiss. In summary, Executive Branch Defendants contend that the sought-after relief is beyond the Court’s authority to grant, that the Court “cannot assume powers the New Mexico Constitution expressly granted to the Legislature,” and that the Court “cannot interfere with administrative review procedures.” Executive Branch Defs.’ Mot. to Dismiss 3. Executive Branch Defendants further argue, “[n]one of Counts II through V states a claim upon which relief can be granted. Neither Article II, Section 4, nor Section 18, create a right to a specific type or level of pollution control that would allow the Court to review the substance of the statutory pollution control and natural resource development decisions that Plaintiffs challenge here.” *Id.* at 19.

Similarly, on September 22, 2023, Defendant the New Mexico Legislature (“Defendant Legislature”) filed its Motion for Judgment on the Pleadings and Memorandum in Support (“Motion for Judgment on the Pleadings”). In summary, Defendant Legislature argues, “Plaintiffs’ Complaint against the Legislature should be dismissed because it improperly requests the Court to compel the Legislature to enact unspecified legislation to satisfy Plaintiffs’ generalized complaints about environmental regulation. This request severely encroaches upon legislative authority and violates the constitutional doctrine of separation of powers.” Mot. for J. on the Pleadings 1. Defendant Legislature continues, “because injunctive relief against the Legislature is not appropriate, declaratory relief is also inappropriate because it would provide no relief from the harm alleged by Plaintiffs. . . . Finally, Plaintiffs’ civil rights claims fail to state a claim upon which relief may be granted because the Legislature is immune from liability under the New Mexico Civil Rights Act.” *Id.* at 3.

On November 21, 2023, Plaintiffs filed their Response to Defendants’ Motion to Dismiss and Defendant Legislature’s Motion for Judgment on the Pleadings (“Response”). Thereafter,

Executive Branch Defendants filed their Reply in Support of the Motion to Dismiss on January 12, 2024; and, Defendant Legislature filed its Reply in Support of Motion for Judgment on the Pleadings on January 12, 2024. *See also* N.M. Chamber of Commerce’s Notice of Re-Filing of Moving Papers, filed April 9, 2024.

On April 12, 2024, the Court entertained oral argument. Following argument, the Court reserved ruling on the motions. The Court now enters its ruling via the instant order.

II. Analysis and Ruling.

In reviewing a motion to dismiss for failure to state a claim upon which relief may be granted, the Court “accept[s] as true all facts well pleaded and question[s] only whether the plaintiff might prevail under any state of facts provable under the claim.” *Cal. First Bank v. State*, 1990-NMSC-106, ¶ 2, 111 N.M. 64 (quotation marks and citation omitted). “In doing so, ‘the complaint must be construed in a light most favorable to [the non-moving party] and with all doubts resolved in favor of its sufficiency.’” *Milliron v. Cnty. of San Juan*, 2016-NMCA-096, ¶ 4, 384 P.3d 1089 (citation omitted). “A motion to dismiss pursuant to Rule 12(b)(6) merely tests the legal sufficiency of the complaint and is infrequently granted because its purpose is to test the law of the claim, not the facts that support it.” *Env’tl. Improvement Div. of N.M. Health & Env’t Dep’t v. Aguayo*, 1983-NMSC-027, ¶ 10, 99 N.M. 497. The Court reviews motions for “judgments on the pleadings made pursuant to Rule 1-012(C) NMRA according to the same standard as motions for failure to state a claim under Rule 1-012(B)(6) NMRA.” *Vill. of Angel Fire v. Bd. of Cnty. Comm’rs of Colfax Cnty.*, 2010-NMCA-038, ¶ 5, 148 N.M. 804.

a. Plaintiffs State Claims Upon Which Relief May Be Granted.

The New Mexico Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 to -15 (1975), provides, in part, that “[i]n cases of actual controversy, district courts within their respective

jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” NMSA 1978, § 44-6-2 (1975). Further, “the state of New Mexico, or any official thereof, may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof.” NMSA 1978, § 44-6-13 (1975). “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” NMSA 1978, § 44-6-9 (1975). In addition, pursuant to NMSA 1978, Section 44-6-7 (1975), “[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.”

Pursuant to the New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 to -13 (2021), “[a] person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.” NMSA 1978, § 41-4A-3(B) (2021).

Upon review of the Complaint, the Court concludes that Plaintiffs allege sufficient facts to support a claim for declaratory relief under the Declaratory Judgment Act that Defendants are noncompliant with Article XX, Section 21 of the New Mexico Constitution (*i.e.*, Count I). Further, upon review of the Complaint, the Court concludes that Plaintiffs allege sufficient facts to support claims for declaratory relief under the Declaratory Judgment Act and the New Mexico Civil Rights

Act that: (a) Defendants violate certain Plaintiffs’ inherent rights and substantive due process rights pursuant to Article II, Sections 4 and 18, of the New Mexico Constitution (*i.e.*, Count II); and, (b) Defendants violate certain Plaintiffs’ rights to equal protection of the laws pursuant to Article II, Section 18 of the New Mexico Constitution (*i.e.*, Counts III-V).²

While the Court may ultimately decline to enter declaratory judgment or grant injunctive relief under the political question doctrine, the Court concludes that Plaintiffs have set forth claims upon which relief may be granted. *Cf. Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 48, 539 P.3d 272 (“[F]ederal prudential standards—including the political question doctrine—are relevant here but are merely persuasive[.]”).

Further, an analysis as to whether the “New Mexico Constitution guarantees the fundamental right to a beautiful and healthful environment,” Resp. 51, or, a fundamental right to pollution control,³ is ill-suited for resolution at the motion to dismiss stage. *See, e.g., Morris v. Brandenburg*, 2015-NMCA-100, ¶¶ 4, 12-13, 356 P.3d 564 (acknowledging trial court’s analyzing—at a trial on the merits—whether aid-in-dying constituted a fundamental right, thereby implicating “the inherent-rights guarantee and substantive due process protections afforded by Article II, Section 4 and Article II, Section 18 of the New Mexico Constitution”); *Sanders-Reed ex. rel. Sanders-Reed v. Martinez*, 2015-NMCA-063, ¶ 8, 350 P.3d 1221 (acknowledging trial court’s resolution of case at summary judgment). In turn, a determination as to the existence, or nonexistence, of a fundamental right directly impacts how claims alleged by Plaintiffs may be further analyzed. *See Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 12, 137 N.M. 734

² Nonetheless, the Court notes that Plaintiffs and individual Executive Branch Defendants stipulated to a dismissal of certain claims brought pursuant to the New Mexico Civil Rights Act. *See Stipulated Dismissal of NMCRA Claims Against the Individual Government Officials Only*, filed August 31, 2023. In addition, the Court concludes below that Defendant Legislature is entitled to legislative immunity for Plaintiffs’ claims made pursuant to the New Mexico Civil Rights Act.

³ *See* Executive Branch Defendants’ Reply in Support of the Motion to Dismiss 24.

(“Before turning to the merits of the equal protection and due process challenges, we must identify the appropriate level of scrutiny for reviewing the challenged law. What level of scrutiny we use depends on the nature and importance of the individual interests asserted and the classifications created by the statute.”). Given the standard of review at this stage, the Court denies in full Executive Branch Defendants’ Motion to Dismiss, and denies in part Defendant Legislature’s Motion for Judgment on the Pleadings.

b. Defendant Legislature Is Entitled to Legislative Immunity for Plaintiffs’ New Mexico Civil Rights Act Claims.

Defendant Legislature asserts, “[i]n addition to constitutional claims, Counts II through V of Plaintiffs’ complaint allege violations of Plaintiffs’ rights under the New Mexico Civil Rights Act However, the Legislature is entitled to absolute immunity from liability under the New Mexico Civil Rights Act for its legislative activities.” Mot. for J. on the Pleadings 24. The Court agrees.

Pursuant to Section 9 of the New Mexico Civil Rights Act, “[t]he state shall not have sovereign immunity for itself or any public body within the state for claims brought pursuant to the New Mexico Civil Rights Act, . . .” NMSA 1978, § 41-4A-9 (2021). Nonetheless, “the waiver of sovereign immunity pursuant to Section 9 of [the New Mexico Civil Rights Act] shall not abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.” NMSA 1978, § 41-4A-10 (2021).

In *Bolen v. N.M. Racing Comm’n*, 2024-NMCA-____, ¶ 12, ____ P.3d ____, 2024 WL 1714975 (A-1-CA-41120, Apr. 16, 2024), the New Mexico Court of Appeals analyzed the scope of immunities reserved by Section 41-4A-10. Therein, the Court of Appeals held that a public body “sued under the [New Mexico Civil Rights Act] may raise judicial immunity, as well as quasi-judicial immunity, as a defense.” *Id.* In accordance with this decision, the Court concludes

that Defendant Legislature is entitled to legislative immunity for claims brought pursuant to the New Mexico Civil Rights Act. *See also Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 733-34 (1980) (“Thus, there is 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 in the wake of our cases indicating that the Code in some respects would be held invalid, the defendants in that suit could successfully have sought dismissal on the grounds of absolute legislative immunity.”).

Therefore, the Court grants in part Defendant Legislature’s Motion for Judgment on the Pleadings on grounds of legislative immunity with respect to Plaintiffs’ claims pursued under the New Mexico Civil Rights Act as set forth in Counts II through V. Judgment is hereby entered in favor of Defendant Legislature on Plaintiffs’ New Mexico Civil Rights Act claims.

c. The Court Grants Executive Branch Defendants’ Request for Authorization of Interlocutory Appeal.

Executive Branch Defendants ask the “Court to find that the issues presented are appropriate for interlocutory review.” *See* Executive Branch Defs.’ Reply in Support of the Mot. to Dismiss 2 n.1. The Court grants Executive Branch Defendants’ request.

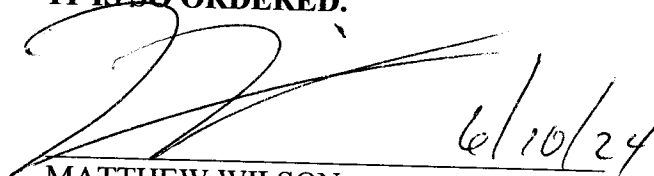
Pursuant to NMSA 1978, Section 39-3-4(A) (1999), the Court “believes th[is] order or decision involves [] controlling question[s] of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order or decision may materially advance the ultimate termination of the litigation.” The Court finds that Executive Branch Defendants have identified the appropriate controlling questions of law within their Reply in Support of the Motion to Dismiss. *See* Executive Branch Defendants’ Reply in Support of the Mot. to Dismiss 2 n.1. However, unless otherwise ordered by the New Mexico Court of Appeals or the New Mexico Supreme Court, the Court does not enter a stay of these proceedings. *See* § 39-

3-4(C) ("Application under this section for an order allowing appeal does not stay proceedings in the district court unless so ordered by the district judge or a judge or justice of the court to which application is made.").

CONCLUSION

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is hereby DENIED.
IT IS FURTHER ORDERED that Defendant the New Mexico Legislature's Motion for Judgment on the Pleadings and Memorandum in Support is hereby GRANTED IN PART and DENIED IN PART.

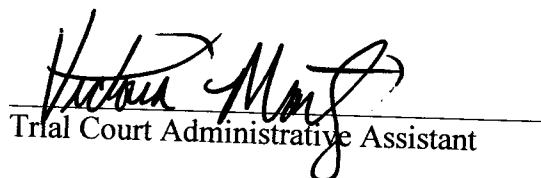
IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Matthew Wilson', is written over a horizontal line. To the right of the signature, the date '6/10/24' is handwritten.

MATTHEW WILSON
DISTRICT COURT JUDGE
DIVISION IX

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter.

A handwritten signature in black ink is written over a horizontal line. Below the line, the text 'Trial Court Administrative Assistant' is printed.