

**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico

Opinion Number: \_\_\_\_\_

Filed 6/3/2025 2:14 PM

Filing Date: June 3, 2025



**No. A-1-CA-42006**

Cynthia A. Hernandez Madrid  
Acting Chief Clerk

**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-Appellees,

v.

**STATE OF NEW MEXICO; NEW MEXICO  
LEGISLATURE; GOVERNOR MICHELLE  
LUJAN GRISHAM; NEW MEXICO ENVIRONMENT  
DEPARTMENT; SECRETARY JAMES KENNEY,  
in his official capacity; ENERGY, MINERALS &  
NATURAL RESOURCES DEPARTMENT;  
SECRETARY DESIGNATE MELANIE A.  
KENDERDINE, in her official capacity;  
ENVIRONMENTAL IMPROVEMENT BOARD; and  
the OIL CONSERVATION COMMISSION,**

Defendants-Appellants,

and

**INDEPENDENT PETROLEUM ASSOCIATION  
OF NEW MEXICO,**

Intervenor/Defendant,

and

**NEW MEXICO CHAMBER OF COMMERCE,**

Intervenor/Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY  
Matthew Wilson, District Court Judge**

Gail Evans  
Colin Cox  
Albuquerque, NM

for Appellee Center for Biological Diversity

Tim Davis  
Samantha Ruscavage-Barz  
Santa Fe, NM

for Appellee WildEarth Guardians

Daniel Yohalem  
Santa Fe, NM

for Appellees

Raúl Torrez, Attorney General  
Mark W. Allen, Assistant Attorney General  
Seth C. McMillan, Deputy Solicitor General  
Ellen Venegas, Assistant Solicitor General  
Santa Fe, NM

for Appellants State of New Mexico, Environmental Improvement Board and Oil  
Conservation Commission

1 Hinkle Shanor LLP  
2 Thomas M. Hnasko  
3 Lisa G. Zammiello  
4 David A. Lynn  
5 Santa Fe, NM

6 for Appellant The New Mexico Legislature

7 Peifer, Hanson, Mullins & Baker, P.A.  
8 Elizabeth K. Radosevich  
9 Matthew E. Jackson  
10 Albuquerque, NM

11 for Appellants Governor Michelle Lujan Grisham, New Mexico Environment  
12 Department, Secretary James Kenney, Energy, Minerals & Natural Resources  
13 Department, and Secretary Designate Melanie A. Kenderdine

14 Baker & Hostetler LLP  
15 Mark S. Barron  
16 Denver, CO

17 for Appellant New Mexico Chamber of Commerce

18 Vernon Law and Graduate School  
19 Mia Montoya Hammersley, Assistant Professor of Law & Director  
20 Christophe Courchesne, Associate Professor of Law & Director  
21 Charlotte Bieri, Student Clinician  
22 Savannah Collins, Student Clinician  
23 Hannah Ziomek, Student Clinician  
24 Lauren Carita, Student Clinician  
25 Royalton, VT

26 Washburn University School of Law  
27 James R. May, Richard S. Righter Distinguished Professor of Law  
28 Topeka, KS

1 Northeastern University School of Law  
2 Martha F. Davis  
3 Boston, MA

4 for Amici Curiae Law Professors in Support of Plaintiffs-Appellees

5 Fine Law Firm  
6 Mark Fine  
7 Albuquerque, NM

8 University of Wisconsin Law School  
9 Steph Tai, Associate Dean  
10 Madison, WI

11 for Amici Curiae Public Health Professionals in Support of Plaintiffs-Appellees

## OPINION

**HANISEE, Judge.**

{1} This case presents novel questions of state law regarding the justiciability of  
claims alleging failures of the State, its legislative and executive branches of  
government, and several of its administrative entities and officers to adequately  
control pollution caused during the extraction and production of oil and natural gas.  
Plaintiffs, who are various advocacy organizations and individual New Mexicans,  
including several Indigenous people, filed suit against various executive agencies  
and officials, including Governor Michelle Lujan Grisham, the State of New Mexico  
itself, and the Legislature (all Defendants collectively referred to hereinafter as  
Defendants).<sup>1</sup> Plaintiffs seek various forms of declaratory and injunctive relief that,  
in general terms, call for the judiciary to declare that the current statutory and  
regulatory scheme controlling pollution from oil and natural gas fails to protect the  
environment under Article XX, Section 21 of the New Mexico Constitution (the

---

<sup>1</sup>For clarity and ease of reference, we collectively refer to the Governor, the New Mexico Environment Department (NMED), Secretary Kenney, the Energy, Minerals and Natural Resources Department (EMNRD), Secretary Designate Kenderdine, the Environmental Improvement Board (EIB), and the Oil Conservation Commission (OCC) as “Executive Defendants.” When referring to all the Defendants together, we use the term “Defendants.”

After initial pleadings in the case, Defendants New Mexico Chamber of Commerce (the Chamber) and Independent Petroleum Association of New Mexico (IPANM) intervened on behalf of Defendants. The Chamber and IPANM are included in our use of “Defendants” in this opinion.

1 Pollution Control Clause or PCC) and enjoin Defendants from permitting further oil  
2 and gas extraction until sufficient environmental protections are established.  
3 Plaintiffs further claim, via the New Mexico Civil Rights Act (NMCRA), NMSA  
4 1978, §§ 41-4A-1 to -13 (2021), and the Declaratory Judgment Act (DJA), NMSA  
5 1978, §§ 44-6-1 to -15 (1975), that the inadequacy of the current system regulating  
6 oil and gas pollution violates their constitutional rights to due process and equal  
7 protection of law under New Mexico's Bill of Rights. *See* N.M. Const. art. II, § 18.  
8 Defendants variously moved for dismissal of Plaintiffs' complaint or judgment on  
9 the pleadings in their favor. The district court substantially denied Defendants'  
10 motions, concluding that Plaintiffs set forth claims upon which relief can be granted.  
11 Defendants sought interlocutory appeal, which we granted. We conclude Plaintiffs  
12 have presented no claim upon which relief can be granted and reverse.

### 13 **BACKGROUND**

14 {2} This case arises over pollution caused by oil and gas extraction primarily in  
15 the northwest and southeast regions of New Mexico, known respectively as the San  
16 Juan and Permian Basins. The individual Plaintiffs live or work in close proximity  
17 to these regions or have significant cultural, ancestral, and religious ties to them. The  
18 organizational Plaintiffs are various advocacy groups representing populations  
19 particularly affected by climate change such as youths, Indigenous communities, and  
20 other grouped individuals living and working in the San Juan and Permian Basins.

1 Plaintiffs assert concrete, particularized, actual or imminent harm from Defendants’  
2 alleged collective failure to enact and enforce sufficient laws and regulations to  
3 protect the environment from oil- and gas-derived pollution.

4 {3} Plaintiffs’ complaint first points to our state constitution’s PCC, which  
5 provides the following:

6       The protection of the state’s beautiful and healthful environment is  
7       hereby declared to be of fundamental importance to the public interest,  
8       health, safety and the general welfare. The [L]egislature shall provide  
9       for control of pollution and control of despoilment of the air, water and  
10      other natural resources of this state, consistent with the use and  
11      development of these resources for the maximum benefit of the people.

12 N.M. Const. art. XX, § 21. Plaintiffs assert that this provision creates a “positive,  
13 mandatory, and judicially enforceable duty on the Legislature” to control pollution  
14 and to protect New Mexico’s natural resources from despoilment. The complaint  
15 alleges that the Legislature, in violation of the PCC, has not passed sufficient laws  
16 to protect the state’s natural resources. For instance, the complaint asserts that  
17 Defendant NMED, whose purpose is, in part, to protect New Mexicans “from health  
18 threats posed by the environment,” NMSA 1978, § 74-1-2 (1997), is—despite the  
19 agency’s name and other duties related to New Mexico’s environment—statutorily  
20 prohibited from regulating the oil and gas industry except to address air quality.

21 {4} Plaintiffs’ complaint further states that each of the following legislative  
22 enactments, which the NMED is tasked with enforcing, *see* NMSA 1978, § 74-1-7

1 (2000, amended 2024),<sup>2</sup> expressly exempts the oil and gas industry from its purview:  
2 the Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14 (1977, as amended through  
3 2021); the Radioactive and Hazardous Materials Act, NMSA 1978, §§ 74-4A-1  
4 to -14 (1979, as amended through 2023); the Solid Waste Act, NMSA 1978, §§ 74-  
5 9-1 to -43 (1990, as amended through 2011); the Groundwater Protection Act,  
6 NMSA 1978, §§ 74-6B-1 to -14 (1990, as amended through 2018); and the Water  
7 Quality Act (WQA), NMSA 1978, §§ 74-6-1 to -17 (1967, as amended through  
8 2019).<sup>3</sup>

---

<sup>2</sup>This section of the Hazardous Waste Act was amended after Plaintiffs filed their complaint in this case. *See* 2024 N.M. Laws, ch. 54, § 2 (adding Section 74-1-7(A)(15) and amending other subsections to permit the NMED’s regulation of transportation fuels). Because this amendment was enacted after this case began, and because Plaintiffs make no argument to the contrary, we do not consider its effect in this opinion. *See GEA Integrated Cooling Tech. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMCA-010, ¶ 17, 268 P.3d 48 (“Our courts follow the general rule that a statutory amendment applies prospectively unless the Legislature clearly intends to give the amendment retroactive effect.”).

<sup>3</sup>The individual provisions to which Plaintiffs point within each act are: Section 74-4-3(K)(2)(a)-(g) (“‘Hazardous waste’ does not include . . . drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas” as well as various forms of ash, slag, and gas emission waste caused by oil and natural gas production); Section 74-4A-4(d) (excluding the same from the definition of “hazardous waste” in the Radioactive and Hazardous Materials Act); Section 74-9-3(N)(1)-(2) (excluding the same from the definition of “solid waste” under the Solid Waste Act); Section 74-6B-3(A)(3) (excluding from the Groundwater Protection Act fluid storage tanks common in the oil and gas industry such as any “surface impoundment, pit, pond or lagoon”); Section 74-6-12(G) (“The [WQA] does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act.”).



1 {5} Plaintiffs’ complaint goes on to contend that only one act, the New Mexico  
2 Air Quality Control Act (NMAQCA), NMSA 1978, §§ 74-2-1 to -17 (1967, as  
3 amended through 2021), “actually mandates the prevention or control of” oil and gas  
4 pollution, and that it is limited to regulating air quality. The complaint asserts that,  
5 despite the NMAQCA’s existence, Defendants have failed to comply with the Act  
6 or adequately enforce its requirements, alleging that pollution levels in and around  
7 the San Juan and Permian Basins have consistently exceeded those permitted by the  
8 NMAQCA. Plaintiffs’ complaint continues by asserting that other legislative  
9 enactments, such as the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -39 (1935, as  
10 amended through 2019), do not control pollution.

11 {6} In addition to attacking the adequacy of existing laws, Plaintiffs’ complaint  
12 alleges that the Legislature has failed to provide regulatory agencies with sufficient  
13 resources, primarily money, to “regulate, monitor and control” oil and gas pollution.  
14 The complaint points to insufficient staffing levels within the NMED and Defendant  
15 EMNRD, stagnant department budgets, and insufficient oversight and financial  
16 assurance requirements regarding cleanup and closure of abandoned oil and gas  
17 wells.

18 {7} As to the Executive Defendants, Plaintiffs assert that they have failed to  
19 enforce statutes and regulations already in existence and have not promulgated  
20 constitutionally adequate regulations to control pollution. Plaintiffs’ complaint

1 alleges that Executive Defendants are all varyingly responsible for overseeing,  
2 maintaining, developing, or enforcing laws and regulations that protect the  
3 environment; yet, each has failed their constitutional and statutory duties to do so.  
4 For instance, Plaintiffs' complaint points out that Defendant EIB exempts the oil and  
5 gas industry from its regulations limiting toxic air pollutants, *see* 20.2.72.402(C)(5)  
6 NMAC, and asserts that the Governor is "ultimately responsible for all [s]tate agency  
7 actions, including the authorization of oil and gas production with inadequate  
8 pollution controls."

9 {8} Based on the above allegations, Plaintiffs advance five causes of action  
10 against Defendants. First, by use of the DJA, Plaintiffs assert that Defendants  
11 collectively violate their constitutional duties under the PCC by failing to enact  
12 sufficient pollution-limiting legislation, continuing to permit oil and gas production  
13 despite such legislative inadequacy, and failing to enforce existing state and federal  
14 pollution limitations. Second, Plaintiffs pursue four causes of action variously  
15 asserting that Defendants' alleged failures violate Plaintiffs' rights under the  
16 Inherent Rights, Due Process, and Equal Protection Clauses of the state constitution.  
17 *See* N.M. Const. art. II, § 4 ("All persons are born equally free, and have certain  
18 natural, inherent and inalienable rights, among which are the rights of enjoying and  
19 defending life and liberty, of acquiring, possessing and protecting property, and of  
20 seeking and obtaining safety and happiness."); N.M. Const. art. II, § 18 ("No person

1 shall be deprived of life, liberty or property without due process of law; nor shall  
2 any person be denied equal protection of the laws.”). Plaintiffs advance their  
3 substantive due process and equal protection claims under the DJA and the NMCRA,  
4 which provide a private right of action for alleged violations of New Mexico’s Bill  
5 of Rights. *See* § 41-4A-3(B); *see also* N.M. Const. art. II, §§ 1-24 (containing the  
6 Bill of Rights, which includes the Inherent Rights Clause, N.M. Const. art. II, § 4,  
7 and the Due Process and Equal Protection Clauses, N.M. Const. art. II, § 18).

8 {9} In terms of relief, Plaintiffs request an order consistent with the above claims  
9 that amounts to various declarations that Defendants are out of compliance with their  
10 constitutional duties under the PCC and the New Mexico Bill of Rights. Regarding  
11 injunctive relief, Plaintiffs ask, among other things, that the judiciary enjoin  
12 Defendants to suspend additional permitting of oil and gas wells until Defendants  
13 have come into compliance with their constitutional duties by “enact[ing], fund[ing]  
14 and implement[ing] a statutory, regulatory and enforcement structure and plan” that  
15 complies with the PCC. Plaintiffs further seek an order requiring Defendants to “put  
16 in place a mandatory process whereby [Defendants] formally and publicly consider  
17 their constitutional obligations . . . when considering any policies or laws that impact  
18 New Mexico’s natural resources.” Finally, Plaintiffs ask that the judiciary retain  
19 ongoing jurisdiction over the case to ensure that Defendants comply with such  
20 directives.

1 {10} Defendants moved separately either for dismissal of Plaintiffs’ claims or for  
2 judgment on the pleadings in Defendants’ favor. In their various motions,  
3 Defendants all advance generally the same arguments: neither the PCC nor any other  
4 constitutional provision supplies or enables a cause of action such as this, Plaintiffs’  
5 claims and the relief they seek violate separation of powers principles, the complaint  
6 presents nonjusticiable political questions, a judicial determination in Plaintiffs’  
7 favor will not redress their alleged harms, and Defendants have already established  
8 a constitutionally adequate statutory and regulatory scheme controlling pollution  
9 caused by oil and natural gas production.

10 {11} The district court substantially denied Defendants’ motions, granting  
11 dismissal only of the claims against the Legislature and individual government  
12 officers alleging violations of the NMCRA. *See* § 41-4A-10 (preserving legislative  
13 immunity under the NMCRA); § 41-4A-3(C) (“Claims brought pursuant to the  
14 [NMCRA] shall be brought exclusively against a public body.”). In denying the  
15 remainder of Defendants’ motions, the district court stated simply that Plaintiffs  
16 alleged sufficient facts to support a claim for declaratory relief and that it was  
17 premature to determine whether “the New Mexico Constitution guarantees . . . a  
18 fundamental right to pollution control.” Defendants sought interlocutory appeal in  
19 this Court, which we granted.

## DISCUSSION

{12} All of the issues presented in this case, concerning both the denial of Defendants' motions and the associated statutory and constitutional arguments, are reviewed de novo. *See Valdez v. State*, 2002-NMSC-028, ¶ 4, 132 N.M. 667, 54 P.3d 71 (reviewing de novo dismissal of a case for failure to state a claim under Rule 1-012(B)(6) NMRA); *N.M. Pub. Regul. Comm'n v. New Mexican, Inc.*, 2024-NMSC-025, ¶ 17, 562 P.3d 548 (treating a motion for judgment on the pleadings the same as a motion to dismiss for failure to state a claim); *Am. Fed'n of State, Cnty. & Mun. Emps. Council 18 v. State*, 2013-NMCA-106, ¶ 6, 314 P.3d 674 (applying de novo review to matters of statutory and constitutional interpretation). In reviewing a motion to dismiss, we accept all well-pleaded factual allegations as true, but do not credit legal conclusions. *See Quarrie v. N.M. Inst. of Mining & Tech.*, 2021-NMCA-044, ¶ 5, 495 P.3d 645 ("A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint, not the facts that support it." (internal quotation marks and citation omitted)). Thus, the principal question here is whether Plaintiffs, through any version of the facts alleged, have stated a claim legally sufficient to maintain the causes of action brought against Defendants. Defendants maintain they have not.

{13} We first identify a common thread pertinent, albeit in differing ways, to each component of our analysis today: embedded in the fabric of our government lies the

1 foundational principle that each branch of government is coequal and that each,  
2 being entirely created by the Constitution of the State of New Mexico and deriving  
3 its sole authority therefrom, shall not exercise the powers of any other branch. *See*  
4 N.M. Const. art. III, § 1 (“The powers of the government of this state are divided  
5 into three distinct departments, the legislative, executive and judicial, and no person  
6 or collection of persons charged with the exercise of powers properly belonging to  
7 one of these departments, shall exercise any powers properly belonging to either of  
8 the others.”). Nonetheless, “absolute separation of powers is neither desirable nor  
9 realistic,” and the practical realities of our government require “some overlap of  
10 governmental functions.” *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 23,  
11 125 N.M. 343, 961 P.2d 768 (internal quotation marks and citation omitted).

12 {14} Within this constitutional framework, the Legislature is invested with the  
13 power to enact law and “possesses the police power, the broadest power possessed  
14 by governments, to protect public health and welfare.” *Lujan Grisham v. Reeb*, 2021-  
15 NMSC-006, ¶ 14, 480 P.3d 852 (internal quotation marks and citation omitted); *see*  
16 N.M. Const. art. IV, § 1 (vesting the legislative power in a senate and house of  
17 representatives and reserving to the people the right to annul any law enacted thereby  
18 excepting, in relevant part, “laws providing for the preservation of the public peace,  
19 health or safety”). As the primary voice of the people, the Legislature is entitled to  
20 broad latitude in exercising its inherent police powers and is the body particularly

1 responsible for making public policy. *See Ferguson v. N.M. Highway Comm’n*,  
2 1982-NMCA-180, ¶ 12, 99 N.M. 194, 656 P.2d 244 (“Determination of what is  
3 reasonably necessary for the preservation of the health, safety, and welfare of the  
4 general public is a legislative function and should not be interfered with absent clear  
5 abuse.”); *Hartford Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d  
6 176 (“It is the particular domain of the [L]egislature, as the voice of the people, to  
7 make public policy.” (alteration, internal quotation marks, and citation omitted)).  
8 Particularly relevant to Plaintiffs’ claims regarding inadequate funding of some of  
9 the Executive Defendants in this case, the Legislature has “exclusive power of  
10 deciding how, when, and for what purpose the public funds shall be applied in  
11 carrying on the government.” *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080,  
12 ¶ 14, 120 N.M. 820, 907 P.2d 1001 (internal quotation marks and citation omitted).

13 {15} The power of the executive, on the other hand, at least in the context of law-  
14 making, is generally limited to vetoing or signing and enforcing the laws passed by  
15 the Legislature. *See* N.M. Const. art. IV, § 22 (providing the Governor’s veto  
16 power); N.M. Const. art. V, § 4 (“[T]he [G]overnor . . . shall take care that the laws  
17 be faithfully executed.”). The Legislature may delegate its rule-making authority to  
18 the executive agencies, in order to enforce the enacted laws. *See City of Albuquerque*  
19 *v. N.M. Pub. Reg. Comm’n*, 2003-NMSC-028, ¶ 16, 134 N.M. 472, 79 P.3d 297. But  
20 otherwise, “[a]ny legislative power that the Governor possesses must be expressly

1 granted to [them] by the constitution.” *State ex rel. Clark v. Johnson*, 1995-NMSC-  
2 048, ¶ 40, 120 N.M. 562, 904 P.2d 11 (internal quotation marks and citation  
3 omitted). If the “state constitution is silent on a particular issue,” or if any residual  
4 government authority is to be found, such authority rests with the Legislature and  
5 not the executive branch. *Id.*

6 {16} The judiciary’s role “is to construe laws and render judgments in the cases  
7 that come before it.” *State ex rel. Jud. Standards Comm’n v. Espinosa*, 2003-NMSC-  
8 017, ¶ 13, 134 N.M. 59, 73 P.3d 197. When concerns regarding legislative acts are  
9 raised, courts may “conduct[] judicial review of legislation alleged to commit  
10 constitutional harm.” *Lujan Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 36, 539  
11 P.3d 272. Indeed, it is axiomatic that the judiciary’s “proper function and duty is to  
12 say what the law is and what the Constitution means.” *Id.* (text only) (citation  
13 omitted); *see Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“It is emphatically the  
14 province and duty of the judicial department to say what the law is.”). Essential to  
15 this purpose, and to maintaining the balance of powers in our government, it “is the  
16 constitutional responsibility of the courts” to consider the legality of government  
17 conduct and “safeguard[] constitutional rights.” *Van Soelen*, 2023-NMSC-027, ¶ 38  
18 (internal quotation marks and citation omitted). Nonetheless, this constitutional duty  
19 is not a license to review every governmental act and supplant the decisions made  
20 by coordinate branches with our own. *See id.* ¶ 37 (“[W]e will not question the



1 wisdom, policy, or justness of a statute, and the burden of establishing that the statute  
2 is invalid rests on the party challenging the constitutionality of the statute. . . . It is  
3 only when a legislative body adopts internal procedures that ignore constitutional  
4 restraints or violate fundamental rights[] that a court can and must become  
5 involved.” *Id.* (alterations, internal quotation marks, and citation omitted)). In order  
6 to ensure that the judiciary remains in this well-defined lane, we use justiciability as  
7 a self-imposed guidepost, which includes as prudential components the doctrines of  
8 ripeness, mootness, and standing. *See New Energy Econ., Inc. v. Shoobridge*, 2010-  
9 NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746.

10 {17} With these principles in mind, we examine Plaintiffs’ complaint and  
11 Defendants’ ensuing arguments supporting its dismissal. On appeal, Defendants  
12 broadly present two categories of argument: (1) those challenging the judiciary’s  
13 threshold ability to review Plaintiffs’ claims, such as separation of powers principles  
14 and redressability; and (2) those asserting that even if the judiciary could review  
15 such claims, Defendants have satisfied their constitutional duties to control  
16 pollution. We agree with Defendants’ threshold arguments and hold that Plaintiffs’  
17 claims premised upon the PCC are nonjusticiable. That is to say, the relief Plaintiffs  
18 seek—as presented by their complaint—exceeds the boundary of that which the  
19 judiciary is authorized to grant. Regarding Plaintiffs’ due process and equal  
20 protection claims, we conclude they have not stated a claim upon which relief can

1 be granted. Given these determinations, we decline to address Defendants’  
2 substantive arguments regarding the adequacy of the existing laws and regulations  
3 currently applicable to the oil and gas industry.

4 {18} Our opinion proceeds in three parts. We begin by discussing Plaintiffs’ claim  
5 under the PCC. Then, we address Plaintiffs’ due process claim, and, finally, their  
6 equal protection challenges.<sup>4</sup>

### 7 **I. The Pollution Control Clause**

8 {19} A central premise of Plaintiffs’ case, embedded within their due process and  
9 equal protection claims, but particularly pertinent to their claim under the PCC, is  
10 that the Legislature has a constitutional duty to *adequately* control pollution to  
11 prevent despoilment of the state’s natural resources. *See* N.M. Const. art. XX, § 21.  
12 In response, Defendants advance several arguments urging a conclusion that  
13 Plaintiffs have failed to state a justiciable claim arising under the PCC. First, they  
14 argue that the provision does not create an individual right, but instead confirms the

---

<sup>4</sup> We note that Defendants’ arguments regarding the nonjusticiability of Plaintiffs’ claims can be read to assert that the complaint presents nonredressable harms, a component of standing. *Am. Civ. Liberties Union of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 10, 144 N.M. 471, 188 P.3d 1222 (stating that “injury in fact, causation, and redressability” are requirements to obtain standing). We nonetheless elect to confer standing in this case because it involves systemic challenges to pollution control policies and separation of powers concerns, both of which are matters of great public importance. *See State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 21, 128 N.M. 154, 990 P.2d 1277 (conferring standing under the doctrine of great public importance and citing cases when the doctrine has been invoked to address separation of powers concerns).

1 Legislature’s duty to balance competing policy interests: pollution limitation and  
2 natural resource development for the maximum benefit of all New Mexicans. *See id.*  
3 If the PCC does create or recognize an individual right to adequate pollution control,  
4 Plaintiffs could, at a minimum, use the DJA to compel the judiciary to recognize and  
5 enforce it. *See* § 44-6-2 (“In cases of actual controversy, district courts within their  
6 respective jurisdictions shall have power to declare rights . . . whether or not further  
7 relief is or could be claimed.”).<sup>5</sup> Thus, whether the PCC creates an individual right  
8 to an adequate, or even a certain, judicially determined amount of pollution control  
9 is central to whether Plaintiffs have presented a viable cause of action.

10 {20} Second, Defendants assert that, partly because there is no individual right to  
11 adequate pollution-limiting legislation, the judiciary cannot resolve Plaintiffs’ claim  
12 without exercising authority expressly reserved to the Legislature by the PCC. *See*  
13 N.M. Const. art. XX, § 21 (stating that the “the [L]egislature shall” control  
14 pollution). On this point, Defendants rely on separation of powers principles to posit  
15 that addressing Plaintiffs’ claims “would usurp the Legislature’s policy-making and  
16 financial powers [and] nullify administrative procedures and agency expertise.”

---

<sup>5</sup>Defendants also argue, for various reasons, that Plaintiffs’ complaint does not present an actual controversy sufficient to maintain an action under the DJA. Because we resolve this appeal on separate grounds, we do not address this argument.

1 Lastly, Defendants assert that all of Plaintiffs’ claims present political questions the  
2 judiciary cannot answer.<sup>6</sup> We address each of these three arguments in turn.

3 **A. The PCC Does Not Create a Judicially Enforceable Individual Right to**  
4 **Any Measure of Pollution Control**

5 {21} Much of Plaintiffs’ complaint—and, in turn, their arguments on appeal—rests  
6 on the premise that the PCC recognizes a judicially enforceable right to adequate  
7 pollution control legislation or, at least, supports an inferred “fundamental right to a  
8 beautiful and healthful environment.” In their complaint, Plaintiffs analogize the  
9 education clause of the state constitution, N.M. Const. art. XII, § 1, to the PCC and  
10 assert the following: “[p]ursuant to the positive right created by the [PCC], the  
11 Legislature must establish a sufficient statutory framework . . . to control pollution.”  
12 On appeal, however, Plaintiffs rephrase this argument slightly, asserting that the  
13 PCC, viewed in isolation, creates a binding duty on the Legislature and the other  
14 Defendants to enact and enforce an adequate statutory scheme to limit pollution.  
15 Plaintiffs now ask that we acknowledge this duty and permit Plaintiffs to hold  
16 Defendants accountable to it. *See State ex rel. Taylor*, 1998-NMSC-015, ¶ 1 (stating  
17 that it is “the function of the judiciary to measure the acts of the executive and the

---

<sup>6</sup>Defendants’ arguments regarding separation of powers principles and the political question doctrine generally apply to all of Plaintiffs’ claims, including those advanced under the Due Process and Equal Protection Clauses of the New Mexico Constitution. *See* N.M. Const. art. II, § 18. We address these doctrines in this section of our opinion due to their acute applicability to Plaintiffs’ claims under the PCC but reference our analysis as necessary in our discussion of Plaintiffs’ other claims.

legislative branch solely by the yardstick of the constitution” (text only) (citation omitted)).

{22} On appeal, Defendants challenge this premise. For instance, Executive Defendants broadly state, “Because [the PCC] does not create an independently enforceable right to pollution control,” Plaintiffs’ claim based upon the clause should be dismissed. To reiterate, the PCC 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 [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.

N.M. Const. art XX, § 21. Whether this provision supplies an individual right to adequate pollution control legislation, or may serve as the basis for a “fundamental right to a beautiful and healthful environment” as Plaintiffs suggest, is determined, if possible, by the plain meaning of the PCC’s language. *See Hem v. Toyota Motor Corp.*, 2015-NMSC-024, ¶ 10, 353 P.3d 1219 (“Just as if we were interpreting a statute, to determine the meaning of a constitutional provision, we begin with the language used in the provision and the plain meaning of that language.” (internal quotation marks and citation omitted)).

{23} By its plain text, the PCC contains no enforceable right, guaranteed to any individual or group, to be free from a given amount of pollution. Nor can it be inferred to create an enforceable right to a beautiful and healthful environment. In

1 contrast to other constitutional provisions that have been deemed to create  
2 enforceable rights, the first sentence of the PCC contains a broad statement  
3 acknowledging the importance of a healthy environment to the general public: a  
4 “beautiful and healthful environment is hereby declared to be of fundamental  
5 importance *to the public interest, health, safety and the general welfare.*” Compare  
6 N.M. Const. art. XX, § 21 (emphasis added), *with Van Soelen*, 2023-NMSC-027,  
7 ¶ 24 (concluding that the freedom of elections clause of the constitution, N.M. Const.  
8 art. II, § 8, “[b]y its plain language . . . implicitly asserts the importance of the free  
9 exercise of the right of suffrage” (internal quotation marks and citation omitted)).  
10 The language in the first sentence of the PCC parallels that used to set out the  
11 constitutional powers of the Legislature. *See* N.M. Const. art. IV, § 1 (vesting  
12 legislative power and exempting laws designed for the “preservation of the public  
13 peace, health or safety” from public annulment by petition). Thus, the first sentence  
14 on its own is more aptly viewed as a declaration that a beautiful and healthful  
15 environment is in the public interest and, therefore, that pollution is within the power  
16 of the Legislature to regulate.

17 {24} Plaintiffs contend that the PCC stands for more than a mere declaration of  
18 legislative power to pass environmental laws because the Legislature already had  
19 such authority under its inherent police powers before the clause was added to the  
20 constitution. *Cf.* §§ 74-2-1 to -17 (comprising the NMAQCA, which was enacted in

1 1967, *before* the PCC was enacted in 1971). Plaintiffs assert that the language of the  
2 PCC makes clear that “it is more than a grant of authority—it is a mandate to act to  
3 . . . control pollution.” We agree. *See Sanders-Reed v. Martinez*, 2015-NMCA-063,  
4 ¶ 16, 350 P.3d 1221 (“Article XX, Section 21 of [the New Mexico C]onstitution  
5 recognizes the duty to protect the atmosphere and other natural resources, and it  
6 delegates the implementation of that specific duty to the Legislature.”). However,  
7 such alone does not resolve our inquiry because a legislative duty to control pollution  
8 does not guarantee any specific amount of pollution control to any individual or  
9 group. We, therefore, shift our analysis to the second sentence of the PCC.

10 {25} As Defendants point out, the Legislature’s duty to control pollution is neither  
11 absolute nor does it exist in isolation. Rather, the Legislature is directed to both  
12 “provide for” pollution control and do it in a manner “consistent with the use and  
13 development of [natural] resources for the maximum benefit of the people.” N.M.  
14 Const. art. XX, § 21. The operative term, “consistent,” is generally defined as  
15 “marked by harmony” and “free from variation or contradiction.”<sup>7</sup> Thus, the plain  
16 meaning of the provision requires that legislation designed to limit pollution only do  
17 so to the extent that it does not contradict the development and use of natural  
18 resources for the stated maximum benefit of all New Mexicans. *Id.* Said differently,

---

<sup>7</sup> *See Consistent*, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/consistent?src=search-dict-hed> (last visited Mar. 8, 2025).

1 the Legislature’s duty is one of balancing competing interests, neither of which will  
2 attain all that its advocates wish.

3 {26} As to the manner the Legislature must undertake to fulfill its duties required  
4 by the PCC, we cannot ignore that the term “maximum benefit” is in the portion of  
5 the clause regarding “the use and development” of natural resources, and not the  
6 phrase regarding pollution control. The provision does not read, as it easily could,  
7 “The [L]egislature shall provide *for control of pollution and control of despoilment*  
8 *of the air, water and other natural resources of this state for the maximum benefit of*  
9 *the people*, consistent with the use and development of these resources.” Such  
10 phrasing would indicate, if nothing else, a stronger emphasis on the pollution control  
11 portion of the provision than the resource development portion. However, such is  
12 not the wording of the constitutional provision before us. Despite Plaintiffs’  
13 suggestions to the contrary, the PCC also lacks any language that we may infer to  
14 create a standard against which the maximum amount of allowable pollution could  
15 be measured. *Contra* N.M. Const. art. XII, § 1 (stating that the state’s public schools’  
16 system must be “sufficient” for education).

17 {27} Throughout this case, Plaintiffs heavily rely on two cases to impliedly assert  
18 that they have an individual enforceable right to a certain amount of pollution  
19 control. First, they point to a district court case in which the district court determined  
20 that the “education system in New Mexico violates the New Mexico Constitution,



1 art. XII, § 1.” See Decision & Order at 59, *Yazzie v. New Mexico*, No. D-101-CV-  
2 2014-02224 (1st Jud. Dist. Ct. July 20, 2018). However, *Yazzie* was not appealed  
3 and is not binding precedent. Moreover, assuming the district court’s conclusion in  
4 that case to have been correct, the constitutional provision then at issue tasked the  
5 Legislature with no balancing of interests, but rather commanded that the public  
6 education system be “sufficient” to serve identified purposes. See N.M. Const. art.  
7 XII, § 1 (“A uniform system of free public schools sufficient for the education of,  
8 and open to, all the children of school age in the state shall be established and  
9 maintained.”). As we stated above, the PCC contains no “sufficiency” language  
10 regarding pollution control and requires legislative balancing of competing interests.  
11 See N.M. Const. art. XX, § 21.

12 {28} Plaintiffs similarly direct us to *Van Soelen*, in which our Supreme Court  
13 concluded that a partisan gerrymander would violate New Mexicans’ constitutional  
14 rights. See 2023-NMSC-027, ¶¶ 22-23, 26, 34, 67. As in *Yazzie*, the constitutional  
15 right at issue in *Van Soelen*, the right to vote in free and fair elections, is categorically  
16 different than the *duty* imposed on the Legislature by the PCC. See 2023-NMSC-  
17 027, ¶ 22 (“The right to vote is the essence of our country’s democracy, and therefore  
18 the dilution of that right strikes at the heart of representative government.”  
19 (alteration, internal quotation marks, and citation omitted)); see also N.M. Const.  
20 art. II, § 8 (“All elections shall be free and open, and no power, civil or military,

1 shall at any time interfere to prevent the free exercise of the right of suffrage.”).

2 Thus, the reasoning in both *Yazzie* and *Van Soelen* in regard to the existence of an  
3 individual constitutional right is not applicable.

4 {29} Because the PCC imposes only a duty on the Legislature to “provide for”  
5 pollution control “consistent with” resource use and development, and does not  
6 contain rights-creating language nor a standard by which we may measure pollution  
7 limitation, we conclude that it does not create an individual right the judiciary may  
8 enforce or protect. Having so concluded, and before we consider Plaintiffs’ due  
9 process, inherent rights, and equal protection claims, we turn to whether the  
10 judiciary—despite the absence of an individual constitutional right to a “beautiful  
11 and healthful” environment or a specific amount of pollution-limiting legislation—  
12 otherwise has the power to consider Plaintiffs’ allegations that Defendants have not  
13 fulfilled their constitutional duty to adequately control pollution.

14 **B. Judicial Resolution of Plaintiffs’ Claim Under the PCC Violates**  
15 **Separation of Powers**

16 {30} Defendants’ principal argument in this case is that judicial review of  
17 Plaintiffs’ claims, even those advanced under our state’s Bill of Rights, violates  
18 constitutional separation of powers. In general terms, Defendants assert that  
19 pollution regulation and control requires policy considerations that “balance  
20 competing social, political and economic interests” existing at the core of legislative  
21 power. Defendants extend this argument to Plaintiffs’ due process and equal

1 protection claims and point to the PCC as evidence that the authority to regulate  
2 pollution is constitutionally assigned to the exclusive authority of the Legislature.  
3 *See* N.M. Const. art. XX, § 21. Defendants argue that even a declaration that  
4 Defendants have violated due process, inherent, or equal protection rights is afield  
5 of the judiciary’s authority and would not redress Plaintiffs’ harms because any such  
6 declaration would merely amount to “a reaffirmation of the Legislature’s  
7 constitutional role to balance pollution controls consistent with the use and  
8 development of natural resources for all New Mexicans.” *See id.*

9 {31} While Defendants’ separation of powers arguments span the gamut of  
10 Plaintiffs’ claims, we address them here as a component of Plaintiffs’ PCC claim  
11 because, in our view, it is the PCC that places Plaintiffs’ claims beyond the reach of  
12 the judiciary. The PCC reserves to the Legislature policy decisions regarding  
13 pollution control, including balancing pollution-limiting legislation with the  
14 economic benefits obtained from oil and gas development, determining the  
15 maximum allowable amounts of pollution in the environment, and creating and  
16 funding enforcement agencies. In turn, the Legislature has delegated to Executive  
17 Defendants the regulatory and enforcement aspects of pollution control. To afford  
18 the relief sought by Plaintiffs in this case would both unconstitutionally infringe  
19 upon past legislative action and impermissibly encroach on future legislative power,  
20 as well as nullify Executive Defendants’ ability to act under their statutory authority.

1 **1. Pollution Control Policymaking Is Within the Exclusive Power of the**  
2 **Legislature**

3 {32} The test for infringement on our constitutional separation of powers is whether  
4 the actions of one governmental branch “disrupts the proper balance” between the  
5 branches. *See State ex rel. Taylor*, 1998-NMSC-015, ¶ 24 (internal quotation marks  
6 and citation omitted). Here, Plaintiffs do not challenge the constitutionality of a  
7 single statute or specific government conduct. Rather, they assert that numerous  
8 legislative enactments and executive actions and inactions, operating collectively,  
9 are constitutionally inadequate.

10 {33} Plaintiffs’ complaint states, “Defendants are violating the [PCC] by  
11 permitting oil and gas production . . . without adequately controlling pollution.”  
12 However, as we explained above, the word “adequate,” or any word like it, is not in  
13 the PCC. *See* N.M. Const. art. XX, § 21. If it were, judicial review could perhaps  
14 find some foothold by which we could measure the sufficiency of the Legislature’s  
15 pollution control policies. Even if the provision contained a standard, however, the  
16 PCC imposes not just a duty to “provide for” pollution control, but requires that “the  
17 [L]egislature . . . shall” balance that duty against other competing interests. *See id.*  
18 At its core, Plaintiffs’ complaint asks that we reweigh these interests and, separate  
19 and apart from the Legislature, determine that it has failed to balance these interests  
20 in accordance with a judicially created standard. *See id.* Such is beyond the  
21 judiciary’s authority to do. *See Cline*, 2006-NMSC-033, ¶ 8 (“It is the particular

1 domain of the [L]egislature, as the voice of the people, to make public policy.”  
2 (alteration, internal quotation marks, and citation omitted)).

3 {34} Importantly, Plaintiffs do not allege that Defendants have done *nothing* to  
4 control pollution caused by oil and natural gas production. Indeed, Defendants have  
5 so acted. *See* § 70-2-12(B)(15) (empowering the oil conservation division (OCD) of  
6 EMNRD to “regulate the disposition, handling, transport, storage, recycling,  
7 treatment and disposal of produced water during, or for reuse in, the exploration,  
8 drilling, production, treatment or refinement of oil or gas . . . in a manner that  
9 protects public health, the environment and fresh water resources”); § 70-2-  
10 12(B)(18) (empowering the OCD to “spend the oil and gas reclamation fund and do  
11 all acts necessary and proper to plug dry and abandoned oil and gas wells”); § 70-2-  
12 12(B)(21), (22) (enabling the OCD to “regulate the disposition of nondomestic  
13 wastes resulting from the exploration, development, production or storage of crude  
14 oil or natural gas” or “resulting from the oil field service industry”).

15 {35} Although the OCD’s power under these statutes is discretionary, *see* § 70-2-  
16 12(B) (stating the OCD “may” make such rules), it has exercised its authority to  
17 create rules controlling pollution. *See* 19.15.2.8(B) NMAC (requiring that virtually  
18 all operations “related to the drilling, equipping, operating, producing, plugging and  
19 abandonment of oil, gas, injection, disposal and storage wells or other facilities” be  
20 conducted “in a manner that prevents . . . the contamination of fresh waters”);

1 19.15.27.6 NMAC (expressing, in part, that the objective in regulating “the venting  
2 and flaring of natural gas from wells and production equipment and facilities” is to  
3 “protect correlative rights, public health, and the environment”); 19.15.27.8 NMAC  
4 (prohibiting or otherwise controlling venting or flaring of natural gas and requiring  
5 that such practices conform to state and federal law); 19.15.27.9 NMAC (requiring,  
6 in part, certifying compliance with gas capture requirements).

7 {36} The Legislature has also required the Water Quality Control Commission  
8 (WQCC) to adopt regulations “to prevent or abate water pollution in the state or in  
9 any specific geographic area, aquifer or watershed of the state or in any part thereof,  
10 or for any class of waters.” Section 74-6-4(E). We note that Plaintiffs have  
11 specifically alleged in their complaint that the enactment that created the WQCC,  
12 the WQA, Section 74-6-1, expressly exempts activities “subject to the authority of  
13 the [OCC].” *See* § 74-6-12(G). This exemption, though, is another concrete example  
14 of the balance the Legislature has performed—providing for control of water  
15 pollution consistent with the development and use of oil and gas resources. Absent  
16 a specific controversy regarding application of some rule of law or an allegation that  
17 an individual right has been violated, the judiciary cannot reweigh the Legislature’s  
18 decisions balancing competing public policy decisions.

19 {37} The above statutes and regulations are not an exhaustive list of all the policies  
20 Defendants have created aimed at curbing pollution. As stated, we make no comment

1 on their adequacy or efficacy. Rather, such provisions indicate that the Legislature  
2 *has* complied with its constitutional duty to balance pollution control policies with  
3 resource development that maximally benefits the people of New Mexico. As  
4 evidence of this balancing, the Legislature points to the numerous ways revenue  
5 obtained from oil and gas production provides “crucial support” for “fundamental  
6 operations of [the] state.” The Land Grant Permanent Fund, for example, uses  
7 proceeds from oil and gas leases to fund public education around the state. *See*  
8 Ferguson Act of 1898, ch. 489, § 1, 30 Stat. 484; Enabling Act for New Mexico, ch.  
9 310, §§ 1, 6-9, 36 Stat. 557 (1910); N.M. Const. art. XXIV, § 1; N.M. Const. art.  
10 XII, § 12. The Legislature further points to the Severance Tax Permanent Fund and  
11 numerous tax laws that obtain funds critical to the various operations of the state.  
12 *See* N.M. Const. art. VIII, § 10; NMSA 1978, § 7-26-3 (1977) (imposing an excise  
13 tax for severance of the state’s natural resources); *see also, e.g.*, NMSA 1978, § 7-  
14 25-2 (1966) (“The purpose of the Resources Excise Tax Act is to provide revenue  
15 for public purposes by levying a tax on the privilege of severing and processing  
16 natural resources within New Mexico.”).

17 {38} In our review of whether Plaintiffs have stated legally sufficient claims, our  
18 inquiry is limited by separation of powers and asks only whether the Legislature has  
19 complied with its constitutional duty to balance pollution control with resource  
20 development. As we have said, reweighing these interests and supplanting the

1 Legislature’s policy choices with judicial determinations exceeds the judiciary’s  
2 constitutional authority.

3 **2. Granting Plaintiffs Relief Would Preempt and Nullify Existing Statutory**  
4 **and Regulatory Remedies Afforded by the Executive Branch**

5 {39} Plaintiffs’ claims are also nonjusticiable as to the Executive Defendants,  
6 because the redress Plaintiffs seek would obviate existing statutory and regulatory  
7 processes and require technical expertise that is found in Executive Defendants and  
8 that is beyond the practical capabilities of the judiciary. Our Supreme Court has  
9 cautioned

10 against using a declaratory judgment action to challenge or review  
11 administrative actions if such an approach would foreclose any  
12 necessary fact-finding by the administrative entity, discourage reliance  
13 on any special expertise that may exist at the administrative level,  
14 disregard an exclusive statutory scheme for the review of  
15 administrative decisions, or circumvent procedural or substantive  
16 limitations that would otherwise limit review through means other than  
17 a declaratory judgment action.

18 *Shoobridge*, 2010-NMSC-049, ¶ 10 (internal quotation marks and citation omitted).

19 Generally, courts can properly consider a declaratory judgment action before  
20 exhaustion of established administrative remedies if the “matter at issue (1) is purely  
21 legal, (2) requires no specialized agency fact-finding, and (3) there is no exclusive  
22 statutory remedy.” *Id.* ¶ 12. These limitations on the use of declaratory judgment  
23 actions “respect the role of each branch of government in the constitutional scheme  
24 and the administrative processes put in place by the Legislature.” *Id.* ¶ 14.



1 {40} Here, Plaintiffs chose not to challenge any executive administrative action  
2 related to the claims they now advance and, thus, are not attempting to circumvent  
3 an ongoing proceeding. Instead, they opted to proceed straight to the judiciary,  
4 rendering particularly relevant the principles discussed in *Shoobridge* that caution  
5 against judicial review of highly technical matters for which administrative agencies,  
6 such as some of the Executive Defendants in this case, have been statutorily created  
7 to address. *See id.* ¶ 10 (discussing our Supreme Court’s admonition “against using  
8 judicial action to circumvent the requirements of administrative proceedings  
9 authorized by the Legislature” out of deference “to the legislative process that  
10 creates an agency and empowers it to adopt rules or regulations to carry out its  
11 powers”). Judicial intervention of the type Plaintiffs seek—a declaration that the  
12 laws and regulations at issue are all collectively inadequate along with a command  
13 for something different and ongoing judicial review of what that is—before  
14 Plaintiffs avail themselves of existing administrative remedies, would nullify such  
15 remedies before they are used. *Cf. id.* ¶ 14 (“Courts should not intervene to halt  
16 administrative hearings before rules or regulations are adopted.”).

17 {41} Moreover, Plaintiffs’ complaint fails to satisfy each of the three prongs  
18 mentioned in *Shoobridge* justifying declaratory relief. *See id.* ¶ 12. First, Plaintiffs’  
19 claims are not purely legal. For Plaintiffs to ultimately succeed in their case, the  
20 judiciary must engage in a sweeping factual inquiry involving the levels of pollutants

1 in the environment, their sources, and most importantly to our separation of powers  
2 concerns today, comparison of such pollution levels to any benefit they provide,  
3 however quantified.

4 {42} Second, Plaintiffs' claims also require technical expertise in order to  
5 determine how Defendants might more effectively protect the environment, whether  
6 such is economically and practically feasible, and if related costs benefit all New  
7 Mexicans, as required by the PCC. *See* N.M. Const. art. XX, § 21. Judicial inquiry  
8 into Plaintiffs' allegations requires precisely the expertise the Legislature has created  
9 in Executive Defendants and employed in their respective internal proceedings. *See*  
10 *Shoobridge*, 2010-NMSC-049, ¶ 10 (stating that courts should "defer[] to the  
11 legislative process that creates an agency and empowers it to adopt rules or  
12 regulations to carry out its powers"). The factual inquiry we discussed above reveals  
13 the necessity of specialized agency fact-finding the judiciary does not possess.

14 {43} Third, Defendants have created exclusive statutory and regulatory remedies  
15 to improve pollution control. The statutes and regulations we discussed above are  
16 concrete examples of this. *See, e.g.*, § 70-2-12(B)(15, 21, 22); 19.15.4.11(C) NMAC  
17 (allowing intervention in cases before the OCC if such participation "will contribute  
18 substantially to the prevention of waste, protection of correlative rights or protection  
19 of public health or the environment"). Judicial intervention before the established  
20 process is used would prematurely obviate and nullify established statutory and

1 regulatory remedies. *See Shoobridge*, 2010-NMSC-049, ¶ 14 (“Because of the  
2 necessity to respect the separate branches of government, courts should not intervene  
3 to halt administrative hearings before rules or regulations are adopted. To do so  
4 could deprive the public of the opportunity to propose rules or regulations and  
5 otherwise participate in the rule-making process.”). At the very least, “the  
6 administrative agency should be given the opportunity to correct any errors that have  
7 been brought to its attention during the course of such proceedings.” *Id.*

8 {44} For the above reasons, we conclude that Plaintiffs’ claims related to the breach  
9 of constitutional duty arising under the PCC and the relief they seek are beyond the  
10 lawful scope of the judiciary’s authority. *See id.* ¶ 9 (“The New Mexico Constitution  
11 establishes the legislative branch as the entity to represent the collective will of the  
12 populace for purposes of creating laws to effectuate the public policy of the [s]tate.”  
13 (internal quotation marks and citation omitted)). Plaintiffs challenge a vast  
14 interwoven network of statutes and regulations rather than advancing a claim that a  
15 particular statute or rule is unlawful or constitutes a dereliction of some specific duty  
16 that is required to be performed to a particular standard. To resolve these abstract  
17 claims would require the judiciary to conduct anew the deliberative legislative  
18 process that resulted in the laws and regulations currently in place and find that they  
19 fall below a standard we alone would create. This we cannot do. *See Van Soelen*,  
20 2023-NMSC-027, ¶ 37 (“It is only when a legislative body adopts internal

procedures that ignore constitutional restraints or violate fundamental rights that a court can and must become involved.” (text only) (citation omitted)).

### C. The Political Question Doctrine Cautions Against Judicial Review

{45} In concert with the above, we briefly address the political question doctrine, recognizing it is merely persuasive under New Mexico law, but which, as Defendants point out, urges dismissal of Plaintiffs’ complaint. *See generally Baker v. Carr*, 369 U.S. 186, 208-37 (1962) (explaining the political question doctrine).

{46} The political question doctrine initially arose in federal courts as a component of their jurisdictional limits under Article III, Section 2 of the United States Constitution. *See Baker*, 369 U.S. at 198-99. New Mexico courts, being courts of general jurisdiction and not subject to such federal limitations, are not strictly bound by the jurisdictional limits imposed by the political question doctrine. *See Van Soelen*, 2023-NMSC-027, ¶ 48 (stating that the political question doctrine, and its limits in federal court, are “nonbinding” on state courts). Nonetheless, the doctrine is relevant, if only persuasively, to prudential concerns “about the proper—and properly limited—role of courts in a democratic society.” *Id.* (internal quotation marks and citation omitted); *see Baker*, 369 U.S. at 210 (“The nonjusticiability of a political question is primarily a function of the separation of powers.”).

{47} The political question doctrine represents inherent limits on the judiciary’s authority—or practical capability—to decide certain types of controversies for

1 which judicial resolution is inappropriate under a tripartite system of government  
2 based on principles of representative democracy. *Baker*, 369 U.S. at 210-11. The  
3 United States Supreme Court has identified six such circumstances, any one of  
4 which presents a nonjusticiable political question:

5 [(1)] a textually demonstrable constitutional commitment of the issue  
6 to a coordinate political department; [(2)] a lack of judicially  
7 discoverable and manageable standards for resolving it; [(3)] the  
8 impossibility of deciding without an initial policy determination of a  
9 kind clearly for nonjudicial discretion; [(4)] the impossibility of a  
10 court's undertaking independent resolution without expressing lack of  
11 the respect due coordinate branches of government; [(5)] an unusual  
12 need for unquestioning adherence to a political decision already made;  
13 [(6)] or the potentiality of embarrassment from multifarious  
14 pronouncements by various departments on one question.

15 *Id.* at 217; *see also id.* (stating if “one of these formulations is inextricable from the  
16 case” the matter becomes nonjusticiable).

17 {48} Here, all six circumstances are presented by Plaintiffs' complaint. First, as we  
18 discussed above, the PCC expressly commits pollution control and resource  
19 development to the Legislature. N.M. Const. art. XX, § 21. Second, the PCC  
20 contains no standard by which we may measure Defendants' environmental  
21 protection policies. *See id.* Any resolution of Plaintiffs' claims necessarily requires  
22 judicial invention of some standard of maximum allowable pollutants in the  
23 environment. Plaintiffs offer this Court no meaningful explanation of how this could  
24 be accomplished. Plaintiffs base their allegations that Defendants have failed to  
25 adequately protect the environment, in large part, on their own individualized harms.

1 However, Plaintiffs do not explain how the judiciary could create a standard for  
2 adequate pollution control laws that protects every individual in every circumstance  
3 and geographic location in the state. *See Morris v. Brandenburg*, 2016-NMSC-027,  
4 ¶ 34, 376 P.3d 836 (“[I]f it is a right, it must be made available to everyone.”).

5 {49} Third, as indicated by the previous two circumstances, as well as our  
6 preceding discussion, the judiciary cannot resolve Plaintiffs’ claims without making  
7 a policy determination that Defendants have failed to properly balance pollution  
8 controls with resource development. Without cognizable standards the judiciary may  
9 use to make such a determination, any conclusion we could offer would simply  
10 amount to a judicial declaration that our weighing of competing interests is superior  
11 to that of the Legislature’s.

12 {50} Finally, the fourth, fifth, and sixth circumstances presenting a political  
13 question are presented by Plaintiffs’ complaint. Each of these relates to the need for  
14 the judiciary to respect policy decisions made by “coordinate branches of  
15 government,” adhere to political decisions “already made,” and avoid  
16 “embarrassment” by making numerous, and possibly conflicting, pronouncements  
17 on the same questions presented to other branches. *Baker*, 369 U.S. at 217. Plaintiffs’  
18 complaint asks not only that we reconsider the policy decisions already made by  
19 Defendants, but that, in so doing, we undermine the expertise of established  
20 administrative bodies and supplant decisions they are statutorily created to make.

1 Indeed, absent specific controversies regarding particular agency decisions or  
2 regulations, and developed argument by litigants, the judiciary risks running afoul  
3 of previous, unappealed administrative rulings relating to the balance of interests  
4 articulated in the PCC.

5 {51} Therefore, the political question doctrine persuasively supports judicial  
6 restraint in this instance. As indicated by both our analysis of separation of powers  
7 and the political question doctrine, Plaintiffs’ PCC-based claim cannot be resolved  
8 by the courts without unconstitutionally intruding upon the powers of Defendants.  
9 *See Shoobridge*, 2010-NMSC-049, ¶ 9 (“The New Mexico Constitution establishes  
10 the legislative branch as the entity to represent the collective will of the populace for  
11 purposes of creating laws to effectuate the public policy of the [s]tate.” (internal  
12 quotation marks and citation omitted)). Having so concluded, we turn now to  
13 Plaintiffs’ due process and equal protection claims.

## 14 **II. Due Process**

15 {52} While we conclude that the PCC neither creates nor recognizes an enforceable  
16 right to a certain amount of pollution control, such does not resolve Plaintiffs’ due  
17 process claim, which rests on the assertion that the New Mexico Constitution,  
18 through its PCC and Inherent Rights and Due Process Clauses, implies a  
19 “fundamental right to a beautiful and healthful environment.” *See* N.M. Const. art.  
20 XX, § 21; *see also* N.M. Const. art. II, § 4 (“All persons are born equally free, and

1 have certain natural, inherent and inalienable rights, among which are the rights of  
2 enjoying and defending life and liberty, of acquiring, possessing and protecting  
3 property, and of seeking and obtaining safety and happiness.”); N.M. Const. art. II,  
4 § 18 (“No person shall be deprived of life, liberty or property without due process  
5 of law.”). Plaintiffs allege that Defendants’ authorization and management of oil and  
6 gas extraction and the resulting pollution violate this fundamental right as well as  
7 Plaintiffs’ rights to life, liberty, property, safety, and happiness as recognized in the  
8 Due Process and Inherent Rights Clauses. Plaintiffs extend this argument to  
9 reincorporate their assertion that Defendants are obligated to enact a “sufficient  
10 statutory, regulatory and enforcement scheme that controls pollution.” Thus, despite  
11 our conclusion regarding the PCC and the lack of an associated individual right, we  
12 must determine if the Due Process Clause may serve as a separate vehicle for  
13 Plaintiffs’ allegations.<sup>8</sup> We conclude that it cannot.

14 {53} The due process protections under Article II, Section 18 of the New Mexico  
15 Constitution include substantive components, which protect against “a statute or  
16 government action [that] shocks the conscience or interferes with rights implicit in

---

<sup>8</sup>We note that our above-stated concerns regarding separation of powers also shape the confines of our analysis of Plaintiffs’ due process claim. Nonetheless, the DJA specifically grants courts the “power to declare rights . . . whether or not further relief is or could be claimed.” Section 44-6-2. Thus, while separation of powers continues to limit our review of Plaintiffs’ claims, we must determine whether Plaintiffs have sufficiently pleaded a violation of their due process rights such that declaratory relief to that effect could be granted.



1 the concept of ordered liberty.” *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037,  
2 ¶ 50, 306 P.3d 457 (internal quotation marks and citation omitted). The rights  
3 “implicit in the concept of ordered liberty” are those deemed to be “fundamental  
4 rights.” *Am. Civ. Liberties Union of N.M. v. City of Albuquerque*, 2006-NMCA-078,  
5 ¶ 16, 139 N.M. 761, 137 P.3d 1215 (internal quotation marks and citation omitted).  
6 “The threshold question in evaluating a due process challenge is whether there is a  
7 deprivation of liberty or property.” *Bounds*, 2013-NMSC-037, ¶ 51 (alteration,  
8 internal quotation marks, and citation omitted). Generally, to determine whether  
9 Plaintiffs were deprived of an individual right, fundamental or otherwise, or other  
10 liberty or property interest, we first look to federal precedent construing an  
11 analogous provision in the United States Constitution. *See Morris*, 2016-NMSC-  
12 027, ¶¶ 18-19 (applying the “interstitial approach”).

13 {54} Here, “[o]ur state constitution’s due process guarantees are analogous to the  
14 due process guarantees provided under the United States Constitution.” *Id.* ¶ 18.  
15 However, Plaintiffs do not point us to, nor has our research revealed, federal  
16 precedent recognizing a due process right to adequate pollution control policies or a  
17 beautiful and healthful environment. Indeed, Plaintiffs’ due process claims are  
18 largely based on the presence of the PCC and the Inherent Rights Clause of the New  
19 Mexico Constitution, which have no federal analog. *See* N.M. Const. art. XX, § 21;  
20 N.M. Const. art. II, § 4. Thus, federal case law construing the United States

1 Constitution’s Due Process Clause is not applicable, and we must consider whether  
2 New Mexico’s distinctive characteristics—either in law or through its history and  
3 tradition—imply or recognize an individual right to adequate environmental  
4 protection or a beautiful and healthful environment, as Plaintiffs suggest.

5 {55} Beginning with the PCC, we reiterate that it does not recognize any  
6 enforceable rights, but instead requires the Legislature to balance competing policy  
7 interests. *See* N.M. Const. art. XX, § 21. Indeed, one of those interests, the use and  
8 development of the state’s natural resources, impliedly *permits* pollution. *See id.*  
9 Thus, the PCC cannot be interpreted on its own to support an inferred due process  
10 right to a “beautiful and healthful environment.” *See id.* Plaintiffs next point to the  
11 Inherent Rights Clause, N.M. Const. art. II, § 4, arguing that it is a distinctive  
12 characteristic of the New Mexico Constitution that supports a fundamental right to  
13 a “beautiful and healthful environment” that can be enforced through the Due  
14 Process Clause. Plaintiffs acknowledge, however, that the Inherent Rights Clause  
15 has not been interpreted “to be a fountain for as-yet-undiscovered rights.” *Morris v.*  
16 *Brandenburg*, 2015-NMCA-100, ¶ 59, 356 P.3d 564 (Hanisee, J., concurring in  
17 part), *aff’d*, 2016-NMSC-027; *see also Morris*, 2016-NMSC-027, ¶ 51 (“[T]he  
18 Inherent Rights Clause has never been interpreted to be the exclusive source for a  
19 fundamental or important constitutional right, and on its own has always been  
20 subject to reasonable regulation.”). Thus, Plaintiffs provide us with no legal

1 authority supporting their claim that the New Mexico Constitution provides or  
2 recognizes a right supporting their claims, fundamental or otherwise.

3 {56} Plaintiffs assert that, aside from unique constitutional provisions, “the right to  
4 a beautiful and healthful environment is grounded in the law, history and tradition  
5 of our state.” However, by Plaintiffs’ own allegations, New Mexico has a long  
6 history of balancing natural resource development with environmental protection.  
7 The PCC and the Land Grant Permanent Fund are textual evidence of this history.  
8 *See* N.M. Const. art. XX, § 21; N.M. Const. art. XII, §§ 2, 7 (investing revenue from  
9 lease of public lands into the state’s public schools). While Plaintiffs correctly  
10 observe that, as the “Land of Enchantment,” the state’s beauty is central to our  
11 identity, we cannot ignore the long history of permitting oil and gas extraction within  
12 our borders. If anything, the law, history, and tradition of our state demonstrates that  
13 resource extraction must be considered alongside, and must coexist with, pollution  
14 control legislation.

15 {57} As such, the New Mexico Constitution does not recognize, through either the  
16 Due Process or Inherent Rights Clauses or the PCC, an individual right that supports  
17 Plaintiffs’ complaint.<sup>9</sup> Absent such a right or liberty or property interest, Plaintiffs’

---

<sup>9</sup>We note that Plaintiffs also allege a due process violation on the basis that Defendants’ actions constitute “deliberate indifference to [Plaintiffs’] li[ves], liberty, property, safety or happiness.” On appeal, Plaintiffs draw the “deliberate indifference” standard from a case considering inadequate medical treatment of incarcerated inmates, *see Lessen v. City of Albuquerque*, 2008-NMCA-085, ¶ 30,

1 due process claim must necessarily fail and we need not subject the laws and  
2 regulations they challenge to any level of scrutiny. *See Bounds*, 2013-NMSC-037,  
3 ¶¶ 50-54 (stating, “In order to prevail on a substantive due process claim, the plaintiff  
4 must establish that its property interests were *injured* by governmental action that  
5 shocks the conscience,” and concluding that since the petitioners had “not been  
6 deprived of anything,” their “due process challenge must fail” (internal quotation  
7 marks and citation omitted)); *see also Nash v. Bd. of Cnty. Comm’rs of Catron Cnty.*,  
8 2021-NMSC-005, ¶ 36, 480 P.3d 842 (“Substantive due process cases inquire  
9 whether a statute or government action shocks the conscience or interferes with  
10 rights implicit in the concept of ordered liberty.” (internal quotation marks and  
11 citation omitted)).

---

144 N.M. 314, 187 P.3d 179, and further argue that Defendants’ conduct “shocks the conscience.” Plaintiffs have not shown the deliberate indifference standard is applicable outside of the above context, which includes a showing that prison officials acted with a “sufficiently culpable state of mind.” *See Cordova v. LeMaster*, 2004-NMSC-026, ¶ 30, 136 N.M. 217, 96 P.3d 778 (internal quotation marks and citation omitted). We conclude that Plaintiffs have not established that the “deliberate indifference” standard has any place in this context, and they have not alleged sufficient facts to support it. Regarding Plaintiffs’ argument that Defendants’ actions shock the conscience, this allegation is not present in Plaintiffs’ complaint. Moreover, “shocking the conscience” requires facts that demonstrate “truly horrendous situations of governmental abuses.” *Starko, Inc. v. Gallegos*, 2006-NMCA-085, ¶ 25, 140 N.M. 136, 140 P.3d 1085 (internal quotation marks and citation omitted). Plaintiffs do not allege facts supporting this claim, and we conclude this allegation to be unsupported by Plaintiffs’ complaint.

### III. Equal Protection

{58} The final claims in Plaintiffs’ complaint allege that Defendants have violated their state constitutional right to equal protection under law. *See* N.M. Const. art. II, § 18 (stating no person shall “be denied equal protection of the laws”). Plaintiffs claim that Defendants’ failure to “adequately regulate oil and gas production and pollution” has resulted in unconstitutionally disparate treatment of frontline community members (people who live near oil and gas production cites), Indigenous people, and New Mexico’s youth. On appeal, the Legislature and Executive Defendants argue, in pertinent part, that Plaintiffs’ allegations fail to establish a valid equal protection claim because they have not identified government-created classes of persons subject to discriminatory treatment. In their answer brief, Plaintiffs concede that they are not alleging Defendants have created or enforced any facially discriminatory statute. Rather, Plaintiffs argue that Defendants’ failure to control pollution has disproportionately affected them in comparison with other similarly situated New Mexicans. We conclude Plaintiffs have not established a viable equal protection claim.

{59} “Equal protection guarantees prohibit the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on real differences.” *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 7, 138 N.M. 331, 120 P.3d 413. “The threshold question in analyzing all equal

1 protection challenges is whether the legislation creates a class of similarly situated  
2 individuals who are treated dissimilarly.” *Id.* ¶ 10. Only if a plaintiff is successful in  
3 establishing unconstitutional governmental classification, either expressly or as  
4 applied through conduct, do we then determine what level of scrutiny to apply to the  
5 challenged government act and review the law thereunder. *See id.* ¶ 8 (“If [the  
6 p]etitioners are successful in proving [dissimilar treatment due to legislative  
7 classification], then a court must determine what level of scrutiny should be  
8 applied.”); *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 23, 137 N.M. 734, 114  
9 P.3d 1050 (holding that because the statute challenged differentiated between two  
10 classes of people as applied, the court had to then apply the appropriate level of  
11 scrutiny).

12 {60} Here, Plaintiffs do not allege that any statute or conduct creates any  
13 classification at all. Instead, Plaintiffs’ equal protection claims rest squarely on their  
14 assertion that Defendants’ failure to “adequately regulate oil and gas extraction”  
15 causes Plaintiffs to “suffer harsher, disproportionate and discriminatory levels of  
16 contamination, environmental degradation and health risks as compared with other  
17 New Mexicans.” While Plaintiffs do point to specific statutes exempting oil and gas  
18 pollution from certain legislative enactments, *see, e.g.*, § 74-4-3(K)(2)(a), these  
19 statutes create neither expressly identified classes nor “as-applied” discrimination of  
20 the type the Equal Protection Clause protects against. *See Marrujo v. N.M. State*

1 *Highway Transp. Dep't*, 1994-NMSC-116, ¶ 9, 118 N.M. 753, 887 P.2d 747 (“Equal  
2 protection . . . focuses on the validity of legislation that permits some individuals to  
3 exercise a specific right while denying it to others.”); *State v. Gwynne*, 2018-NMCA-  
4 033, ¶ 42, 417 P.3d 1157 (“A statute that does not create two separate classifications  
5 subject to different treatment cannot be said to violate equal protection.” (internal  
6 quotation marks and citation omitted)).


7 {61} Plaintiffs’ claims seek to cast the effects of pollution as de facto classifications  
8 that result in discriminatory treatment. Nowhere in our jurisprudence have New  
9 Mexico courts held that generally applicable, facially neutral statutes that result in  
10 incidental harms based on the geographic location of individuals violate the Equal  
11 Protection Clause of the New Mexico Constitution. Moreover, the geographic  
12 proximity of Plaintiffs to places with elevated instances of oil and gas  
13 development—and the related pollution—leads more appropriately to the  
14 conclusion that Plaintiffs are not similarly situated to other New Mexicans, rather  
15 than a determination that a government classification exists. *See Breen*, 2005-  
16 NMSC-028, ¶ 7 (“Equal protection, both federal and state, guarantees that the  
17 government will treat *individuals similarly situated* in an equal manner.” (emphasis  
18 added)). We, therefore, conclude Plaintiffs have alleged no classification that results  
19 in discriminatory treatment and have not presented an equal protection claim upon

1 which relief can be granted. As such, we need not apply any level of scrutiny to the  
2 laws they challenge.

3 **CONCLUSION**

4 {62} For the reasons explained above, we reverse the order of the district court  
5 denying Defendants' motions to dismiss. We remand with instructions that the  
6 district court is to dismiss Plaintiffs' complaint.

7 {63} **IT IS SO ORDERED.**

8   
9 **J. MILES HANISEE, Judge**

10 **WE CONCUR:**

11   
12 **JACQUELINE R. MEDINA, Chief Judge**

13 **KATHERINE A. WRAY, Judge (specially concurring)**



1 **WRAY, Judge (specially concurring).**

2 {64} The Court’s opinion rejects the position that the PCC establishes an individual  
3 or enforceable right under the New Mexico Constitution to a beautiful and healthful  
4 environment. To this extent, I join completely in the analysis of the PCC’s language  
5 and of the justiciability doctrines. The Court’s opinion, however, takes a step further  
6 and limits the PCC’s language to the creation of a Legislative duty to balance  
7 interests. I hesitate to foreclose the possibility that the PCC creates any right at all,  
8 especially when a constitutional duty could be read to acknowledge a corresponding  
9 constitutional right. *Cf. Van Soelen*, 2023-NMSC-027, ¶ 26 (declining to decide  
10 whether certain constitutional provisions are “merely meant to express basic political  
11 principles or are meant as a textual enumeration of certain substantive rights”  
12 (omission, alteration, internal quotation marks, and citation omitted)). Regardless of  
13 whether any right exists, the nature of Plaintiffs’ claims and the relief requested  
14 would require the judiciary to second-guess the policy choices the Legislature has  
15 made pursuant to its constitutional duty under the PCC, and as the Court’s opinion  
16 explains, judicial review of those choices would be without legal standards or  
17 guideposts. Short of examining the policy reasons supporting the Legislature’s  
18 decisions, no further judicial inquiry is constitutionally justified. *See id.* ¶ 37.  
19 Because the existence of *no* right is not essential to the justiciability holding, I would

1 limit the holding to reject only the right that Plaintiffs posit—the right to a beautiful  
2 and healthful environment.

3 {65} This is because absence of any right does impact the remaining constitutional  
4 analysis, because constitutional rights have power even if a cause of action does not  
5 directly lie. The contours of the right to be protected are a vital part of any claim  
6 brought by a party who alleges that the enforcement or lack of enforcement of a  
7 statute or regulation has violated due process or equal protection principles. *See*  
8 *Morris*, 2016-NMSC-027, ¶¶ 18, 19 (considering first for the purposes of due  
9 process analysis “whether an asserted right is protected” under the federal or state  
10 constitutions); *see also Marrujo*, 1994-NMSC-116, ¶ 9 (“Equal protection, on the  
11 other hand, focuses on the validity of legislation that permits some individuals to  
12 exercise a specific right while denying it to others.”). The analysis of Plaintiffs’ due  
13 process claims in the Court’s opinion depends heavily on the view that the PCC  
14 affords no individual, enforceable constitutional right. I disagree, because regardless  
15 of whether no individual, enforceable right exists in the PCC—a question I think we  
16 need not answer broadly—it does not necessarily follow that no constitutionally  
17 protected right or interest exists to support a due process claim.

18 {66} The constitutional challenge must instead be put in the relevant constitutional  
19 context, even though the outcome may be the same. In the absence of a fundamental  
20 right, due process review is limited to whether Defendants have asserted a rational


1 basis for the entire statutory and regulatory system for pollution control in New  
2 Mexico. *See Morris*, 2016-NMSC-027, ¶ 52. I agree that the PCC creates no  
3 fundamental right to a beautiful or healthful environment. As the Court’s opinion  
4 explained, the Legislature struck a balance between pollution control and the use and  
5 development of natural resources, and the Executive Defendants have implemented  
6 regulations and administer that balance. *See Op.* ¶¶ 34-37. Applying rational basis  
7 review, Plaintiff has not “demonstrate[d] that the legislation is not supported by a  
8 firm legal rationale or evidence in the record.” *Morris*, 2016-NMSC-027, ¶ 57.

9 {67} Similarly, Plaintiffs’ equal protection claim is not dependent entirely on the  
10 existence of a fundamental right. Whether a court applies strict or a lesser form of  
11 scrutiny depends on whether the plaintiff can establish either that the “violated  
12 interest is a fundamental personal right or civil liberty” or that the governmental  
13 action “focuses upon inherently suspect classifications.” *Marrujo*, 1994-NMSC-  
14 116, ¶ 10. If the claim implicates only an “important—rather than fundamental—  
15 individual interest” or a “sensitive—rather than suspect—classification,”  
16 intermediate scrutiny is warranted. *Id.* ¶ 11. To “all other interests,” rational basis  
17 scrutiny again applies. *Id.* ¶ 12 (internal quotation marks and citation omitted). As  
18 noted, Plaintiffs have established no fundamental right and have otherwise not  
19 argued for intermediate scrutiny. The question of suspect classifications therefore  
20 becomes the key.

{68} Plaintiffs allege that Defendants’ conduct has had a disparate impact on people who live near oil and gas sites, Indigenous peoples, and youth who feel the effects of pollution disproportionately to other New Mexicans. The Court’s opinion focuses on the neutral nature of the statutory and regulatory scheme and disposes of Plaintiffs’ equal protection claim based on the lack of explicit classifications of people. *See* Op. ¶¶ 58-61. The statutory and regulatory scheme, however, on its face does create two classes of people: those who live near permitted oil and gas sites and those who do not. Within the category of those who live near oil and gas sites, Plaintiffs’ arguments identify groups of people who are disproportionately affected and suggest that these are improper classifications based on race and intrinsic characteristics. *See Marrujo*, 1994-NMSC-116, ¶ 10 (identifying as “suspect classifications . . . race, national origin, religion, or status as a resident alien”). But the facially neutral statutory and regulatory scheme, absent something more, cannot be said to be responsible for the disproportionate impact of pollution on these subgroups, which themselves are not created by the statutory or regulatory scheme. Plaintiffs do not allege facts to support a conclusion that Defendants’ actions or inactions have caused oil and gas sites to be located disproportionately near a particular racial, cultural, or generational group. As a result, with no suspect or quasi-suspect class implicated, rational basis review is again appropriate and the statutory and regulatory scheme easily passes muster under that standard. *See id.* ¶ 12 (“The

1 rational basis standard of review is triggered by all other interests: those that are not  
2 fundamental rights, suspect classifications, important individual interests, and  
3 sensitive classifications.” (internal quotation marks omitted)).

4 {69} I therefore write separately, to express a more narrow view of the necessary  
5 holding regarding the rights inherent in the PCC and an alternate view of Plaintiffs’  
6 due process and equal protection claims. Otherwise, I join the Court’s opinion.

7   
8 **KATHERINE A. WRAY, Judge**