

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

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

Plaintiffs-Petitioners,

v.

No. S-1-SC-40980

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-Respondents,

v.

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

Intervenors-Defendants-Respondents.

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**BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE  
OF THE UNITED STATES OF AMERICA IN SUPPORT OF  
DEFENDANTS-RESPONDENTS AND INTERVENORS-  
DEFENDANTS-RESPONDENTS**

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 12-318(G) NMRA, *amici curiae* hereby certifies that this *Amicus* Brief complies with the limitations and requirements set forth in Rule 12-318(F)(3) NMRA and is printed in Times New Roman, 14-point type, and contains 4,606 words pursuant to calculation made by Microsoft® Word for Microsoft 365 MSO (Version 2512 Build 16.0.19530.20226) 64-bit.

## STATEMENT OF INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Chamber of Commerce of the United States of America (“U.S. Chamber”) is the world’s largest business federation. The U.S. Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

The U.S. Chamber files this brief to highlight the potentially far-reaching consequences of overturning the Court of Appeals’ decision. Many of the U.S. Chamber’s members would be harmed, directly or indirectly, by a ruling in favor of Plaintiffs. For example, member businesses in the energy industry would face an indefinite pause on new permits for oil and gas wells in New Mexico. That, in turn, would have significant downstream impacts on member businesses outside New Mexico that rely on energy supplied by the State, which in recent years has become one of the largest producers of oil and gas in the country. More broadly, Plaintiffs’

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<sup>1</sup> No party or counsel for a party authored this brief in whole or in part. No person or entity other than the *amicus curiae* made a monetary contribution intended to fund the preparation or submission of the brief.

legal arguments would create a risk of continuing judicial oversight of the political branches' enactment of a wide range of statutory and regulatory schemes relating to the economy. That, in turn, would create profound uncertainty about the legal rules governing private conduct in New Mexico. Such uncertainty would be particularly disruptive for businesses, discouraging investment and deterring economic activity in the State.

Plaintiffs would have this Court interpret the Pollution Control Clause (PCC) of the New Mexico Constitution as a vehicle for courts to instruct the political branches on appropriate legislation and then enforce those instructions indefinitely. This is not a role that the courts are well-suited to take on, and it is not a role that the PCC actually gives to New Mexico courts. This Court should affirm.

### **CORPORATE DISCLOSURE STATEMENT**

The Chamber of Commerce of the United States of America (“U.S. Chamber”) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The U.S. Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the U.S. Chamber.

The U.S. Chamber files this brief in support of the State of New Mexico, et al. (the “Government Defendants”). It timely notified all parties of its intent to file this brief.

## SUMMARY OF THE ARGUMENT

The certified questions before the Court are (1) whether Plaintiffs' claims under the Pollution Control Clause of the New Mexico Constitution are nonjusticiable; (2) whether the Government Defendants have fulfilled their duties under the PCC; and (3) whether the Court of Appeals correctly construed the Declaratory Judgment Act.

Under the Pollution Control Clause, the Legislature must strike a balance between the need to protect the environment and the requirement to promote the economic development of New Mexico's resources for the maximum benefit of the people. The New Mexico Constitution deliberately entrusted this role to the Legislature, not to the courts. Plaintiffs confuse the role of the courts with the role of the political branches when they ask this Court to oversee how the Legislature has struck this balance.

If this Court were to heed Plaintiffs' invitation, the effects would be far-reaching in New Mexico and beyond its border into the rest of the United States and extending to our global trading partners. By involving itself in the role of the political branches, this Court would likely impact both the state and federal economies, possibly across a broad swath of industries, inhibiting the Legislature's ability to provide for the maximum benefit of the people. And not only the Legislature's functions would be impaired. If this Court were to take on Plaintiffs' task, a plethora

of litigation and overburdening of New Mexico's courts would be the inevitable result.

New Mexico's courts are unsuited to strike the balance between environmental regulation and economic development under the PCC. Unlike the political branches, the courts are not directly accountable to a constituency. Nor, for example, do courts issue proposed rulings and seek comment from all members of the public to inform their decision making. Further complicating matters, federal agencies, which have scientific and technical expertise, also regulate industrial pollution in New Mexico, including emissions from the oil and gas industry. The Legislature is well able to consider the impacts of federal regulation when it strikes the balance between environmental protection and economic development. The courts' interference is not only unnecessary; it is also contrary to the PCC's express delegation of the balancing power to the Legislature.

## **ARGUMENT**

### **I. The Pollution Control Clause of the New Mexico Constitution Vests The Legislature Alone With Broad Authority To Balance The State's Interests In Pollution Control And Resource Development**

The Pollution Control Clause grants the Legislature broad discretion to consider both the need to protect the environment and to allow for the economic development of New Mexico's resources for the benefit of its citizens. Unsatisfied with the methods that the Government Defendants have used to carry out their constitutional roles, Plaintiffs ask the courts to step in. This Court should not allow

Plaintiffs to circumvent the political process or thwart the Government Defendants' exercise of authority under the New Mexico Constitution.

**A. The New Mexico Constitution grants the Legislature authority to strike the balance between environmental and economic interests**

Under the PCC, “[t]he legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.” N.M. Const. art. XX, § 21. In implementing this clause, the Legislature must strike the balance between two objectives: (i) pollution control and (ii) resource development “for the maximum benefit of the people.” *Id.*

To strike this balance, the Legislature must weigh complex and competing interests. On the pollution-and-despoilment control side, the Legislature must consider not just whether to control pollution and despoilment related to a particular activity, but which specific pollutants to control and the nature and degree of the controls that should be required, taking into account the technical and economic feasibility of any additional controls. Importantly, the PCC does not direct the Legislature to provide for “maximum” control of pollution and despoilment in making such decisions; instead, the nature and extent of controls are left up to the Legislature. These questions are at the complex intersection of science, technology, and public policy, and require the prudent weighing of many factors, quantifiable and unquantifiable. In addition to these questions, the Legislature must also consider

the extensive federal environmental statutes and regulations that also govern pollution. And that is only one side of the balancing equation.

On the other side, the Legislature must consider whether those controls are “consistent with” the use and development of the natural resources of the state for the maximum benefit of the people, which surely includes the consideration of economic impacts on both sides of the regulatory ledger.<sup>2</sup> And the Legislature must strike this balance against an ever-changing backdrop of shifting needs and priorities, as well as changing scientific understanding. That suggests an ongoing need on the part of the Legislature to be open to potential revisions to regulatory legislation over time, as circumstances and knowledge change.

Instead of recognizing that the PCC charges the Legislature alone to balance the relevant interests, Plaintiffs demand an overriding role for the courts. Plaintiffs assert an inherent, judicially enforceable right that they claim is violated by the Government Defendants’ alleged “failure to adequately regulate oil and gas

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<sup>2</sup> *Cf. Michigan v. EPA*, 576 U.S. 743, 752-53 (2015) (“One would not say that it is even rational ... to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits. ... Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions. It also reflects the reality that ‘too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.’”) (quoting *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 233 (2009) (Breyer, J., concurring in part and dissenting in part)).

extraction, development, and pollution[.]” Compl. at 99, ¶ 7. But the PCC creates no such right. Indeed, the “inferred fundamental right” that the Plaintiffs seek would benefit “only a select few New Mexicans” at the expense of all other New Mexicans, many of whom may well prefer a different calculus. *See Morris v. Brandenburg*, 2015-NMCA-100, ¶ 47, 356 P.3d 564.

Plaintiffs essentially request that this Court resolve a political question. But that is generally not a role for the courts. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 48, 539 P.3d 272 (noting that “prudential rules of judicial self-governance . . . are founded in concern about the proper—and properly limited—role of courts in a democratic society” (internal quotation marks and citation omitted)). If Plaintiffs are displeased with the Legislature’s balancing, then their remedy lies in the ballot box. Courts are not authorized to second-guess that balancing.

**B. Plaintiffs’ reading of the Pollution Control Clause would require the courts to usurp the Legislature’s role in balancing the state’s interests**

It is a court’s role “to construe laws and render judgments in the cases that come before it.” *State ex rel. N.M. Jud. Stds. Comm’n v. Espinosa*, 2003-NMSC-017, ¶ 13, 134 N.M. 59, 73 P.3d 197. That role is a limited one, and the court exceeds it by questioning “the wisdom, policy, or justness of a statute.” *See Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 37, 539 P.3d 272.

Plaintiffs ask the courts to exceed their role by countermanding the legislative judgments set out in New Mexico’s statutes relating to pollution control and resource development. The Pollution Control Clause expressly places its balancing function with the Legislature. But Plaintiffs want this Court to override that constitutional provision and tell the Legislature how to do its job by, among other things, “[d]eclaring that . . . Defendants must establish and fund a statutory, regulatory and enforcement scheme” to protect “a beautiful and healthful environment, the land, air, water, natural resources, public health and climate from despoilment due to pollution caused by oil and gas extraction and production[.]” Compl. at 105, ¶ 3.

Plaintiffs ask the courts to exceed its role by countermanding the legislative judgments set out in New Mexico’s statutes relating to pollution control and resource development. But this is not the role of the courts. The PCC entrusts the Legislature with the power to strike the balance between economic and environmental interests. It is not for the courts to instruct the Legislature on the best way to discharge its duties, or to prevent the Legislature from balancing the relevant interests under the PCC.

## **II. Plaintiffs’ Reading Of The Pollution Control Clause Would Result In Significant Harm To The New Mexico And National Economies**

The broad authority that Plaintiffs ask the judiciary to assume would have devastating consequences for further oil and gas development in the State, essentially imposing an indefinite hold on that development. *See* Compl. at 106,

¶¶ 6–12 (seeking to prevent oil and gas permitting until the government defendants enact further laws and regulations). Because the oil and gas industry is such a fundamental part of the New Mexico economy, Plaintiffs’ request would significantly impact the State’s economy.

But the energy-related impacts would not stop at the state level. New Mexico is a major energy producer in the United States. This energy production contributes to the national economy and revenue for the United States. So if this Court agrees with Plaintiffs’ reading of the PCC, the energy effects will not be limited to New Mexico. They will be felt nationwide.

**A. The oil and gas industry is vital to New Mexico’s budget and economy**

In New Mexico, the oil and gas industry is a major contributor to New Mexico’s GDP and its tax revenue.<sup>3</sup> In fact, “[t]he second-highest average weekly wages in the state are in mining, quarrying, and oil and gas extraction.”<sup>4</sup>

In the recent past, more than one-third of New Mexico’s general fund came from revenue from oil and gas development.<sup>5</sup> And the oil and gas industry provided

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<sup>3</sup> U.S. ENERGY INFO. ADMIN. (U.S. EIA), *New Mexico: Analysis*, <https://www.eia.gov/states/NM/analysis> (last visited Mar. 13, 2026).

<sup>4</sup> *Id.* (citing N.M. Dep’t of Workforce Sols., *New Mexico 2024 State of the Workforce*, 44 (Sept. 2024), [https://www.dws.state.nm.us/Portals/0/DM/LMI/State\\_of\\_the\\_Workforce\\_2024.pdf](https://www.dws.state.nm.us/Portals/0/DM/LMI/State_of_the_Workforce_2024.pdf) (last visited Mar. 13, 2026)).

<sup>5</sup> GLOB. ENERGY INST., U.S. Chamber of Com., *What if . . . Hydraulic Fracturing Was Banned?*, 55 (2019),

over \$1 billion every year for education in New Mexico.<sup>6</sup> More recently, those numbers have increased, with oil and gas revenue comprising 49 percent of New Mexico’s general fund revenue in 2024, including \$1.8 billion transferred to the state’s Early Childhood Trust Fund.<sup>7</sup> The general fund benefits New Mexicans in various ways, from funding for public schools to health care for low-income families.<sup>8</sup> In turn, a quality education provides economic benefits, such as increased future earnings.<sup>9</sup> The same is true for health care—healthy communities lead to long-term business growth and competitiveness.<sup>10</sup>

Additionally, revenue from the oil and gas industry funds environmental-protection efforts in New Mexico. In 2025, the most recent fiscal year for which data

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[https://www.uschamber.com/assets/documents/gei/hf\\_ban\\_report\\_final.pdf](https://www.uschamber.com/assets/documents/gei/hf_ban_report_final.pdf) (last visited Mar. 13, 2026).

<sup>6</sup> *Id.*

<sup>7</sup> N.M. OIL & GAS ASS’N, *Drilling Down on Dollars: The Role of Oil and Gas in New Mexico’s Budget*, 9-10 (2024), [https://assets.nationbuilder.com/nmoga/pages/2283/attachments/original/1745341868/NMOGA\\_TRI\\_Study\\_-\\_FINAL.pdf?1745341868](https://assets.nationbuilder.com/nmoga/pages/2283/attachments/original/1745341868/NMOGA_TRI_Study_-_FINAL.pdf?1745341868) (last visited Mar. 13, 2026).

<sup>8</sup> *Id.* at 1, 9.

<sup>9</sup> U.S. CHAMBER OF COM. FOUND., *Looking Back to Look Forward*, 20 n. 55 (2026) (explaining that replacing a less effective teacher with a more effective teacher increases future student earnings), [https://chamber-foundation.files.svdcdn.com/production/documents/Looking-Back-to-Look-Forward-Report\\_Updated-Edition.pdf?dm=1767996414](https://chamber-foundation.files.svdcdn.com/production/documents/Looking-Back-to-Look-Forward-Report_Updated-Edition.pdf?dm=1767996414) (last visited Mar. 13, 2026).

<sup>10</sup> *See* U.S. CHAMBER OF COM. FOUND., *Health Means Business*, <https://www.uschamberfoundation.org/solutions/corporate-citizenship/health-means-business> (last visited Mar. 13, 2026).

is available, the New Mexico Environment Department (“NMED”) received \$198.5 million to protect the environment and public health.<sup>11</sup> About 16.8 percent of NMED’s appropriations came from the state general fund,<sup>12</sup> which receives significant revenue from the oil and gas industry.<sup>13</sup> These appropriations of funds show how seriously the Legislature takes the PCC’s requirement to provide for resource development for the maximum benefit of the people.

**B. Plaintiffs’ reading of the Pollution Control Clause would have far-reaching impacts on the national energy economy**

If this Court agrees with Plaintiffs and if oil and gas development were to be enjoined in New Mexico until the Legislature enacts statutes that align with Plaintiffs’ policy preferences, there also would be consequences for the U.S. economy.

New Mexico has become one of the largest energy producers in the United States, behind only Texas and Pennsylvania.<sup>14</sup> In 2024, New Mexico produced the second-highest amount of crude oil, accounting for 15 percent of crude oil

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<sup>11</sup> N.M. ENV’T DEP’T, *Performance Assessment: Fiscal Year 2025-4th Quarter-April 1 thru June 30, 2025*, 1 (Sept. 30, 2025), [https://cloud.env.nm.gov/resources/\\_translator.php/Y2RIMzwcwNDBmYTFkMzg2MTRkMDFmMzk1N18yMTU0MTE~.pdf](https://cloud.env.nm.gov/resources/_translator.php/Y2RIMzwcwNDBmYTFkMzg2MTRkMDFmMzk1N18yMTU0MTE~.pdf) (last visited Mar. 13, 2026).

<sup>12</sup> *Id.*

<sup>13</sup> See N.M. OIL & GAS ASS’N, *supra* n.7 at 24 (describing general fund recurring appropriations funded by the oil and gas industry).

<sup>14</sup> U.S. EIA, *supra* n.3.

production in the United States.<sup>15</sup> That same year, New Mexico accounted for 8 percent of natural gas production in the United States.<sup>16</sup>

These numbers carry real-world implications. For example, in 2020, the U.S. Chamber’s Global Energy Institute looked at the potential impacts of a hydraulic fracturing ban on oil and natural gas production in New Mexico.<sup>17</sup> That move alone would have cost an estimated \$8.3 billion in federal tax revenue from the New Mexico oil and gas industry over the course of four years.<sup>18</sup>

In addition to federal tax revenue, the federal government also collects revenue from companies that produce energy on federal lands.<sup>19</sup> Revenue from oil and gas leases on federal lands nationwide totaled over \$13 billion in fiscal year 2025.<sup>20</sup> Of that, about \$5.8 billion—almost half—came from revenue from New

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See generally* GLOB. ENERGY INST., U.S. Chamber of Com., *supra* n.5.

<sup>18</sup> *See id.* at 14 (assuming approximately 24% growth relative to 2018 levels), 54 (stating predicted loss in federal tax revenue); N.M. OIL CONSERVATION DIV., *Natural Gas and Oil Production*, <https://wwwapps.emnrd.nm.gov/ocd/ocdpermitting/Reporting/Production/Producti onInjectionSummaryReport.aspx> (last visited March 13, 2026) (from 2018 to 2025, New Mexico natural gas production grew approximately 165%, from 1,517,221,227 MCF to 4,017,018,513 MCF and oil production grew approximately 222%, from 249,300,733 bbls to 803,070,857 bbls).

<sup>19</sup> *See* OFF. OF NAT. RES. REVENUE, *Natural Resources Revenue Data*, <https://revenuedata.onrr.gov/?tab=tab-revenue> (last visited Mar. 13, 2026).

<sup>20</sup> OFF. OF NAT. RES. REVENUE, *National and New Mexico Fiscal Year 2025 revenue figures*,

Mexico oil, gas, natural gas liquids, and preproduction oil and gas.<sup>21</sup> Over half of the oil and gas production in New Mexico occurs on federal land.<sup>22</sup>

Moreover, much of the oil that New Mexico produces serves markets outside of New Mexico, as well as globally.<sup>23</sup> And “because New Mexico produces much more natural gas than it consumes, more than twice as much natural gas leaves the state than enters it.”<sup>24</sup> An indefinite pause on new permits for oil and gas extraction in New Mexico could contribute to volatility in national and global markets already affected by geopolitical developments this year.

Consideration of the impacts of the oil and gas industry on New Mexico, and by extension the national and global economies is vested in the Legislature by the New Mexico Constitution. And it is an issue that the political branches are well-equipped to consider in the overall balance. Those branches’ prudential judgments in this area are not subject to judicial review under the Pollution Control Clause.

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<https://revenuedata.onrr.gov/explore/?dataType=Revenue&period=Fiscal+Year&mapLevel=State&offshoreRegions=false&location=NF%2CNM&year=2025> (last visited March 13, 2026) (totaling oil, gas, natural gas liquids, and oil and gas (preproduction) revenue).

<sup>21</sup> *Id.*

<sup>22</sup> N.M. LEG. FIN. COMM., *Finance Facts: Oil and Natural Gas Production* (August 2023), [https://www.nmlegis.gov/entity/lfc/Documents/Finance\\_Facts/finance%20facts%20oil%20and%20gas%20production.pdf](https://www.nmlegis.gov/entity/lfc/Documents/Finance_Facts/finance%20facts%20oil%20and%20gas%20production.pdf) (last visited Mar. 13, 2026).

<sup>23</sup> U.S. EIA, *supra* n.3.

<sup>24</sup> *Id.*

**C. Plaintiffs’ reading of the Pollution Control Clause would likely trigger similar adverse impacts for other industries in New Mexico and the United States**

The damaging outcomes of Plaintiffs’ preferred constitutional regime would likely extend well beyond the oil and gas sector. After all, a wide array of other industries and human activities affect “the air, water and other natural resources of this state.” N.M. Const. art. XX, § 21. Such activities include ranching, farming, administering water systems, engaging in construction of any kind, building and maintaining highways, and generating and distributing electricity. If this Court were to hold that the PCC somehow permits “the judiciary to conduct anew the deliberative legislative process,” *Atencio v. State*, 2026-NMCA-011, ¶ 44, such a ruling would open the door to upending much of New Mexico’s economy, with ripple effects throughout the nation.

For example, “New Mexico’s economy has been based in cattle ranching and farming for two centuries.”<sup>25</sup> The state has approximately 24,700 farms in operation, and it is “in the top 10 in the nation for milk production and the top five for cheese production.”<sup>26</sup> New Mexico is “ranked first in chile production,” has “le[]d the nation in pecan production,” and “is in the top three producing states for

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<sup>25</sup> ECON. DEV. DEP’T, *Sustainable & Value-Added Agriculture*, <https://edd.newmexico.gov/choose-new-mexico/key-industries/food-processing/> (last visited Mar. 13, 2026).

<sup>26</sup> *Id.*

pistachios.”<sup>27</sup> New Mexico’s agriculture sector’s output totaled \$3.2 billion in 2021, and the value of its agricultural production and processing represented 2.1 percent of the state’s total GDP.<sup>28</sup> A plaintiff could argue that these industries fall within the purview of the PCC because they affect “the air, water and other natural resources of this state” and seek judicial intervention in regulating these segments of New Mexico’s economy.

This reasoning could also apply to the state’s regulation of water, given the PCC’s reference to New Mexico’s “air, water, and other natural resources.” N.M. Const. art. XX, § 21. New Mexico’s water “has many personal and household uses, in addition to industrial uses.” *WildEarth Guardians v. Bernhardt*, No. 1:19-cv-00505-RB-SCYY, 2020 U.S. Dist. LEXIS 149785, at \*44–45 (D.N.M. Aug. 18, 2020). As a result, the state’s efforts in this area include regulating public water systems, overseeing water infrastructure projects, and setting in place emergency response procedures,<sup>29</sup> all while accounting for the role the state’s water plays in other economically vibrant industries. *See WildEarth Guardians*, 2020 U.S. Dist.

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<sup>27</sup> *Id.*

<sup>28</sup> Jason S. New, *Agriculture’s Impact to NM Economy Opportunities for Investment*, N.M. DEP’T AGRIC. 2 (Aug. 18, 2023), <https://www.nmlegis.gov/handouts/IPOC%20081823%20Item%203%20NMDA--Agriculture's%20Impact%20to%20NM%20Economy%20and%20Opportunities%20for%20Investment.pdf> (last visited Mar. 13, 2026).

<sup>29</sup> *See* N.M. ENV’T DEP’T, *Drinking Water Bureau*, [https://www.env.nm.gov/drinking\\_water/](https://www.env.nm.gov/drinking_water/) (last visited Mar. 13, 2026).

LEXIS 149785, at \*44 (explaining that in the Pecos District, the public water supply accounts for 6 percent of water usage, while agriculture accounts for nearly 86 percent of usage, and mining, power, oil, and gas development account for about 2 percent of usage).

The electricity sector is another example of an economic sector potentially subject to the PCC. In the United States, the three most common sources of electricity are natural gas, coal, and nuclear power, while renewables resources—such as wind and solar—represent some of the fastest growing sources of electricity.<sup>30</sup> This sector’s reliance on natural resources arguably also places it within the PCC’s scope. *See* N.M. Const. art. XX, § 21. New Mexico “consumes less electricity than it produces” and it is a “supplier of electricity to neighboring states.”<sup>31</sup> New Mexico’s activities related to renewable energy are particularly noteworthy; renewable energy “is the largest source of New Mexico’s total in-state electricity generation,” and in 2024, wind power alone accounted for 37 percent of the state’s total electricity generation.<sup>32</sup> The state ranks tenth in the nation in electricity generation from wind power.<sup>33</sup>

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<sup>30</sup> U.S. ENV’T PROT. AGENCY, *About the U.S. Electricity System and its Impact on the Environment*, <https://www.epa.gov/energy/about-us-electricity-system-and-its-impact-environment> (last visited Mar. 13, 2026).

<sup>31</sup> U.S. EIA, *supra* n.3.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

These and other sectors could easily be targeted if this Court were to hold that the PCC requires judicial oversight of how the Legislature has struck the balance between the interests of environmental protection and development. And Plaintiffs have not presented any bases for limiting the PCC from reaching these sectors. As a result, Plaintiffs' proposed regime is likely to create uncertainty and impose costs on a wide range of regulated industries. Actors in these industries would be unable to ascertain or predict whether their activities comport with the PCC. Even if they were to adhere to all applicable state and federal statutes and regulations, a court could nevertheless "conduct anew the deliberative legislative process" and find that the applicable laws "fall below a standard [courts] alone would create." *Atencio*, 2026-NMCA-011, ¶ 44. This instability would be disruptive, if not catastrophic, to businesses and industries.

It should also be noted that if the Court were to hold that the PCC creates rights to a certain degree of pollution control that the judiciary can police, it would seem to likewise follow that property owners and businesses could also sue to vindicate their rights under the PCC to a certain degree of economic development of the resources of the state. For example, such actors could assert that the Legislature improperly weighed environmental interests more heavily than development interests, resulting in unlawful limits on resource development.

### **III. Courts Are Unsuitable To Oversee The Policymaking Role Of The Political Branches**

#### **A. A ruling in favor of Plaintiffs would require ongoing judicial policymaking**

Plaintiffs seek to task courts with overseeing, rewriting, and administering the environmental policy of the State. All the while, Plaintiffs would have courts prohibit new oil and gas development until the judiciary concludes that the political branches have taken sufficient action. This proposed relief “exceeds the boundary of that which the judiciary is authorized to grant.” *Atencio*, 2026-NMCA-011, ¶ 17.

The Ninth Circuit considered requests similar to the ones Plaintiffs make here in *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020). There, the plaintiffs asked the court to order the federal government to respond to climate change, arguing that they had a due process right to a “climate system capable of sustaining human life.” *Id.* at 1165. While sympathetic, the court recognized that any remedies “would necessarily require a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches.” *Id.* at 1171 (citation omitted). Even if possible, ordering and overseeing the implementation of such complex decisions would require decades’-long supervision by the courts. *Id.* at 1172. Such “constant supervision” of the political branches by the courts is inappropriate, to say the least. *See id.*

**B. Unlike the political branches, courts are not equipped for the task of policymaking**

New Mexico’s courts are not suited to such policymaking or to the ongoing supervision of the political branches. Courts do not have the resources of the legislature or the executive to reach out and gather the evidence required to strike an appropriate balance between environmental protection and economic development. *See* N.M. Const. art. XX § 21; *see also City of Albuquerque v. N.M. Pub. Regulation Comm’n*, 2003-NMSC-028, 134 N.M. 472, 481, 79 P.3d 297 (“Judges are not experts in the field[.]”).

Resolving PCC claims of the type contemplated by Plaintiffs would “require technical expertise in order to determine how Defendants might more effectively protect the environment, whether such is economically and practically feasible, and if related costs benefit all New Mexicans, as required by the PCC.” *Atencio*, 2026-NMCA-011, ¶ 42. This inquiry, as the New Mexico Court of Appeals explained, “reveals the necessity of specialized agency fact-finding the judiciary does not possess.” *Id.* at \*36. Indeed, courts are limited to considering only what the parties (and, within limits, *amici*) present. *See State v. AFSCME, Council 18*, 2012-NMCA-114, ¶ 35, 291 P.3d 600. Nor do courts host the same kinds of public debates as the legislative branch or engage in the same rulemaking and policymaking processes as the executive branch, which often involve robust opportunities for members of the public to comment on specific proposals. Courts are not accountable to the electorate

in the same way that the political branches are. *City of Albuquerque*, 2003-NMSC-028, 134 N.M. at 481 (“The judiciary . . . is not as directly and politically responsible to the people as are the legislative and executive branches of government.”). The Legislature is elected to represent the interests of their constituencies and to develop laws that protect those interests. *Hartfort Ins. Co. v. Cline*, 2006-NMSC-033, ¶ 8, 140 N.M. 16, 139 P.3d 176 (“[I]t is the particular domain of the legislature, as the voice of the people, to make public policy.” (citation omitted)). Members of the political branches are meant to interact with their constituents on a regular basis. They receive feedback about the efficacy and burdens or benefits of policies. Judges do not have that same kind of interaction and political accountability.

More fundamentally, “[d]etermination of what is reasonably necessary for the preservation of the health, safety, and welfare of the general public is a legislative function,” and Plaintiffs’ claims seek to upset that balance by requiring the judiciary to police those policy choices. *Ferguson v. N.M. State Highway Comm’n*, 1982-NMCA-180, ¶ 12, 99 N.M. 194, 196, 656 P.2d 244; *see also Atencio*, 2026-NMCA-011, ¶ 38 (“[S]upplanting the Legislature’s policy choices with judicial determinations exceeds the judiciary’s constitutional authority.”). Such rebalancing of complex policy and technical choices is not an appropriate role for the judiciary.

**C. Federal agencies already regulate many aspects of oil and gas development in New Mexico and this federal role would further complicate courts' oversight of state policymaking**

Under the PCC, it is the function of the Legislature to strike the balance between the control of pollution by the government with “the use and development of [New Mexico’s] resources for the maximum benefit of the people.” N.M. Const. art. XX, § 21. In their complaint, Plaintiffs make much of exceptions for the oil and gas industry in some of New Mexico’s environmental-protection statutes and assert that the Legislature is not doing enough to control pollution. *See* Compl., ¶¶ 175, 225. As noted above, that argument fails on its own terms, given that the PCC assigns to the Legislature the text of balancing pollution control against other important public interests. But in addition, Plaintiffs’ complaint ignores the role of federal environmental regulation. If this Court were to find that the PCC creates a judicially enforceable right, the courts would need to consider the many federal environmental regulations that apply to the oil and gas industry in New Mexico and also weigh those laws and regulations in determining whether the Legislature struck an acceptable balance.

To highlight only a few examples of the federal regulations that apply to the oil and gas industry, the U.S. Environmental Protection Agency has issued regulations under the Clean Air Act that establish standards for emissions of volatile organic compounds, sulfur dioxide, and greenhouse gases from crude oil and natural

gas facilities. *See* 40 C.F.R. §§ 60.5360b-60.5432b. The Clean Water Act prohibits the discharge of pollutants, including from oil and gas development, from point sources into waters of the United States without a permit. *See* 33 U.S.C. § 1311(a). The Oil Pollution Act establishes strict liability for parties that are responsible for oil spills, requires plans for prevention and response to oil spills, and creates standards for the design and operation of pipelines and vessels. *See* 33 U.S.C. §§ 2701-2720. The Safe Drinking Water Act creates standards for Class II underground injection control wells related to oil and gas production. *See* 40 C.F.R. §§ 146.21-146.24. The Federal Land and Policy Management Act governs the management of public lands by the Bureau of Land Management (“BLM”), including the requirement for the BLM to develop resource management plans and identify areas available for oil and gas leasing. 43 U.S.C. § 1712. The National Environmental Policy Act (“NEPA”) also requires federal agencies to evaluate the environmental impacts of projects on federal lands or that require a federal permit, including oil and gas development. *See* 42 U.S.C. §§ 4321-4370m-12. NEPA’s requirements apply to a significant portion of the oil and gas development in New Mexico.

Presumably, the New Mexico Legislature considers these and the many other applicable *federal* environmental regulations when engaging in the balancing contemplated by the PCC. Indeed, state cooperation and state implementation are

essential features of some of the most important and comprehensive federal environmental statutes. *See, e.g., New York v. United States*, 505 U.S. 144, 167 (1992) (Clean Water Act is a cooperative federalism statute); *Wyoming v. EPA*, 78 F.4th 1171, 1178 (10th Cir. 2023) (Clean Air Act takes a “cooperative-federalism approach to regulate air quality”) (quotes omitted). The role of federal environmental regulation makes judicial rebalancing even more inappropriate here.

### CONCLUSION

For the foregoing reasons, the U.S. Chamber respectfully requests that this Court affirm the order of the Court of Appeals.

Dated: March 16, 2026.

Respectfully,

**HOLLAND & HART LLP**

*/s/ Larry J. Montañó*

By \_\_\_\_\_

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**ATTORNEYS FOR *AMICUS CURIAE* THE CHAMBER OF  
COMMERCE OF THE UNITED STATES OF AMERICA**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2026, I served a true and correct copy of the foregoing *Amicus Curiae* Brief through the Court's electronic filing system, which caused the parties or counsel reflected on the Notice of Electronic filing to be served by electronic means.

/s/ *Larry J. Montaña*  
By \_\_\_\_\_  
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