

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

CONCERNED CITIZENS FOR NUCLEAR  
SAFETY and HONOR OUR PUEBLO  
EXISTENCE,

Appellants-Respondents,

v.

No. S-1-SC-41092

NEW MEXICO WATER QUALITY CONTROL  
COMMISSION,

Appellee-Respondent,

and

TRIAD NATIONAL SECURITY, LLC,

Appellee-Intervenor-Petitioner,

and

NEW MEXICO ENVIRONMENT  
DEPARTMENT,

Appellee-Respondent.

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**BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE  
OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEE-  
INTERVENOR-PETITIONER**

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 12-318(G) NMRA, *amicus 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 5,356 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 the theory of standing embedded in the Court of Appeals’ decision, which would affect many private enterprises (including U.S. Chamber members) that do business in New Mexico. These businesses include not only companies that seek or hold permits in New Mexico under the Water Quality Act, but also holders of regulatory approvals issued by New Mexico agencies under similar regulatory schemes. Such businesses have a direct and substantial interest in the proper interpretation of “adversely affected” as a standing limitation, because that phrase

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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.

governs access to administrative and judicial review of many regulatory decisions in New Mexico. Businesses rely on certainty in these proceedings, and the Court of Appeals' decision below injects significant uncertainty into a previously well-established process.

If the Court of Appeals' reasoning is upheld, the New Mexico judiciary would become a monitor of Executive action based on mere disagreement with an agency action by a member of the public without actual injury from that action. Such a result would violate separation of powers principles and would impose significant costs on private parties, as well as the unwarranted expenditure of administrative, judicial, and party resources. Agency permitting and approval decisions and the businesses that depend on them would be subject to numerous challenges from parties who cannot demonstrate any concrete injury resulting from the permitted activity, imposing substantial costs and undermining the certainty on which private-sector investment depends. This Court should reverse the decision below.

### **CORPORATE DISCLOSURE STATEMENT**

The 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 Appellee-Intervenor-Petitioner Triad National Security, LLC. It timely notified all parties of its intent to file this brief.

### **SUMMARY OF THE ARGUMENT**

Under the Water Quality Act (“WQA”), the Legislature designed a multi-step administrative and judicial review system in which the New Mexico Environment Department (“NMED”) exercises primary permitting authority, the Water Quality Control Commission (“WQCC”) serves as an administrative appellate tribunal, and the Court of Appeals provides judicial review, subject to oversight from this Court. At each level, the Legislature imposed the meaningful gatekeeping requirement that the challenger must have been “adversely affected” to ensure that only parties with a genuine personal stake can invoke the costly machinery of administrative and judicial review. The Court of Appeals departed from the Legislature’s design in the decision below by adopting a “structural adverse effect” theory under which any participant in the administrative process may challenge a permit simply by alleging the agency lacked authority to issue it—without showing concrete harm to the challenger from the permit’s operation.

The “structural adverse effect” approach also implicates fundamental separation of powers principles. Standing doctrine preserves the proper relationship between the branches by ensuring that the judiciary does not become “continuing

monitors of the wisdom and soundness of Executive action.” *Allen v. Wright*, 468 U.S. 737, 760 (1984). The Court of Appeals’ approach would authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.

If this Court were to adopt the approach of the Court of Appeals, the effects would be far-reaching. Any person who participated in a WQA permitting process could challenge the resulting permit by articulating a legal theory that the agency acted outside its authority, converting mere disagreement with an agency’s jurisdictional determination into a ticket to litigation. The costs of defending such challenges are substantial, diverting resources from productive economic activity and creating unwarranted uncertainty for investors, lenders, and business partners.

And not only WQA permittees would be harmed. Because the Court of Appeals’ reasoning did not appear to rest on anything particular to the WQA, all statutes using “adversely affected” to delimit standing—including seventeen other statutes regulating oil and gas, mining, financial institutions, and recreation—are potentially vulnerable to the same expansive interpretation. The approach of the Court of Appeals threatens to open the floodgates to innumerable generalized grievances. That would make it more difficult for the judiciary to expend its limited resources on real cases and controversies, as opposed to hypothetical ones.

## ARGUMENT

### **I. In the Water Quality Act, the Legislature Designed a Multi-Step Review System and Imposed Meaningful Standing Requirements.**

#### **A. The Water Quality Act’s Structure Reflects a Deliberate Policy of Channeling Review and Requiring Exhaustion of Administrative Remedies.**

This Court has made clear that “standing is a jurisdictional prerequisite for causes of action created by statute” and the Legislature “may condition courts’ exercise of that jurisdiction on the plaintiff satisfying enumerated preconditions to secure standing.” *Lopez v. Presbyterian Healthcare Servs.*, 2025-NMSC-031, ¶ 8, 578 P.3d 1089. Here, the Legislature imposed such preconditions in a clear effort to both channel review and require exhaustion of administrative remedies. New Mexico’s WQA contains a carefully structured regime in which the New Mexico Environment Department (“NMED”) exercises primary permitting authority, the Water Quality Control Commission (“WQCC”) serves as an administrative appellate tribunal, and the Court of Appeals provides judicial review (subject to further review, when appropriate, from this Court). At each level, the Legislature imposed gatekeeping requirements that serve both efficiency and the interests of regulatory certainty.

Under NMSA 1978, § 74-6-5(P) (1953, as amended through 2025),<sup>2</sup> a person seeking Commission review must have “participated in a permitting action before a constituent agency” and must be “adversely affected by the permitting action.” Similarly, under NMSA 1978, § 74-6-7(A) (1953, as amended through 1993), a party seeking judicial review of the Commission’s decision must again demonstrate that it is “adversely affected.” The Legislature, through this parallel structure, clearly intended to ensure that only parties with a genuine personal stake—not those with merely ideological or theoretical objections—can invoke the costly, burdensome machinery of administrative and then judicial review.

The participation requirement ensures that the constituent agency has the first opportunity to hear concerns and, if warranted, to correct errors. The WQCC comes into play only after NMED has first had the opportunity to address concerns raised in the administrative process, and only if a participant in that process who is “adversely affected” timely seeks review of NMED’s decision. The participation requirement embodies the principle of exhaustion—the Legislature’s judgment that

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<sup>2</sup> In 2025, the Pollutant Discharge Elimination System Act made certain amendments to Section 74-6-5 that moved this provision from subsection (O) to subsection (P). The amendment also revised the phrase “such permitting action” to “the permitting action.” *See* S. Judiciary Comm. Substitute for S.B. 21 & 22, 57th Leg., 1st Sess. (N.M. 2025), [https://www.nmlegis.gov/Sessions/25%20Regular/Amendments\\_In\\_Context/SB0021.pdf](https://www.nmlegis.gov/Sessions/25%20Regular/Amendments_In_Context/SB0021.pdf). Because Section 74-6-5(P) is the current statute, it is cited throughout.

the administrative process should be given the opportunity to function before the resources of the WQCC are engaged.

A separate but related provision governs judicial review of Commission decisions. Section 74-6-7(A) provides for appeal to the Court of Appeals by a person “who participated in a permitting action . . . before the commission” and “who is adversely affected” by such action.

**B. The “Adversely Affected” Requirement is a Critical Filter at Each Level of Administrative and Judicial Review Provided by the Water Quality Act.**

The conjunctive structure of Sections 74-6-5(P) and 74-6-7(A), which requires both participation and adverse effect, demonstrates that participation alone does not suffice. Anyone may participate in the permitting process through submitting public comments, with no injury prerequisite. *See* 20.6.2.3108 NMAC. But the Legislature required something more to obtain review by the Commission or a court: a showing that the participant was concretely “adversely affected” by the permitting action for which it seeks review. §§ 74-6-5(P), 74-6-7(A).

If the Legislature had intended to grant standing to all participants in the administrative process, it would not have added the “adversely affected” requirement at all. That additional language must be given independent meaning. *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 304 (2017) (statutes should be interpreted to avoid making words and clauses superfluous). As explained in the next section,

the meaning that state and federal courts have consistently ascribed to the same or similar language—the traditional injury-in-fact requirement—applies to this language as used in Sections 74-6-5(P) and 74-6-7(A).

## **II. Seeking Review of a Permit Under the Water Quality Act Requires Concrete, Particularized Injury Caused by the Permitting Action.**

### **A. Statutory Causes of Action Require a Concrete Injury.**

“New Mexico has always required allegations of direct injury to the complainant to confer standing.” *De Vargas Sav. & Loan Ass’n of Santa Fe v. Campbell*, 1975-NMSC-026, ¶ 11, 87 N.M. 469, 535 P.2d 1320. Moreover, “to attain standing in a suit arguing *the unlawfulness of governmental action*, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise.” *Id.* ¶ 15 (emphasis added). The Court of Appeals erred in concluding that the mere fact of alleging that the government acted in an unlawful fashion, along with participation in the administrative process, was sufficient to confer standing. There is no support in this Court’s jurisprudence for that approach.

Indeed, New Mexico courts have consistently interpreted statutes which use the same or similar language that the Legislature employed here (“adversely affected”) to require the traditional showing of injury-in-fact caused by the action being challenged. The Court of Appeals’ decision violates this well-trodden precedent.

This Court has held that the phrase “affected” in the Declaratory Judgment Act requires a plaintiff to show “that he is faced with a real risk of future injury, as a result of the challenged action.” *AFSCME v. Bd. of Cnty. Comm’rs*, 2016-NMSC-017, ¶ 32, 373 P.3d 989. This Court recognized that injury-in-fact is an “essential component of standing,” *id.* ¶ 17, and that “[t]o obtain standing in New Mexico, litigants must allege an injury-in-fact, *i.e.*, that ‘they are directly injured as a result of the action they seek to challenge’ in court,” *id.* ¶ 32. Critically, “[h]ypothetical possibilities of injury ‘will not suffice to establish the threat of direct injury required for standing.’” *Id.* This Court has similarly looked to whether the plaintiff was actually injured in another case where the statute was similarly worded, providing for appeals by persons “aggrieved and directly affected.” *De Vargas Sav. & Loan Ass’n*, 1975-NMSC-026, ¶¶ 1, 11.

In line with this approach, the U.S. Supreme Court has long interpreted the federal Administrative Procedure Act, which also uses the phrase “adversely affected,” to require a showing that the complainant is actually harmed by the agency’s action. *See* 5 U.S.C. § 702 (providing for judicial review for persons “adversely affected or aggrieved by agency action within the meaning of a relevant statute”); *Sierra Club v. Morton*, 405 U.S. 727, 740–41 (1972) (explaining that the goal “to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome . . . . would be undermined were [courts] to

. . . authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.”).<sup>3</sup>

Indeed, the Court of Appeals itself previously interpreted “adversely affected” in the WQA to mean “injury or a real risk of future injury.” *N.M. Cattle Growers’ Ass’n v. N.M. Water Quality Control Comm’n*, 2013-NMCA-046, ¶ 13, 299 P.3d 436. That court noted that “[t]he association of adverse effect and the threshold issue of standing indicates the importance that the appellant, even in a statutory appeal such as this one, show the court why it is adversely affected.” *Id.* ¶ 10.

In 2025, 12 years after the *N.M. Cattle Growers’ Ass’n* decision, the Legislature amended Section 74-6-5. Critically, however, the Legislature did not remove the “adversely affected” requirement for appeal to the Commission, but it did tweak other language in that same provision. See N.M. S. Judiciary Comm. Substitute for S.B. 21 & 22. “The Legislature ‘is presumed to know the law, including the laws of statutory construction.’” *Lerma v. State*, 2025-NMSC-033, ¶ 30, 578 P.3d 1111. Thus, it is presumed that, here, the Legislature understood the

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<sup>3</sup> “When New Mexico cases do not directly answer the question presented, [courts] look for guidance in analogous law in . . . the federal system.” *Wills v. Bd. of Regents of the Univ. of N.M.*, 2015-NMCA-105, ¶19, 357 P.3d 453. See also *Garcia v. Hatch Valley Pub. Sch.*, 2018-NMSC-020, ¶ 17, 458 P.3d 378 (looking to interpretations of federal statutes for guidance in interpreting similar New Mexico statute); *Walker v. United States*, 2007-NMSC-038, ¶ 19, 142 N.M. 45, 162 P.3d 882 (rejecting position that was contrary to federal authority).

meaning of “adversely affected” and decided that this language—and the accompanying standing requirement—should remain in the statute.<sup>4</sup> The judiciary should not make amendments to a statute that the Legislature itself decided against.

**B. The New Mexico Legislature Did Not Intend in the Water Quality Act to Require a Lesser Showing to Establish Standing.**

While the Legislature can define the prerequisites for seeking administrative and judicial review, there is no indication in the statutory language here that the Legislature intended to depart from the usual rule and grant the right to sue to any entity who participated in the administrative process and alleged that the agency acted outside its jurisdiction.

This interpretation of legislative intent is consistent with federal law, which holds that “a bare procedural violation, divorced from any concrete harm” is not the kind of injury that supports standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016); *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) (“[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation . . . is insufficient to create Article III standing”).

There is no indication that the New Mexico Legislature intended to create a right to review based on any allegation that the agency was acting beyond its power,

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<sup>4</sup> As noted in Triad’s brief, the Legislature’s prior expansion of entities who were eligible to seek review of permitting decisions from just the permit applicant to those “adversely affected” by the permitting decision further confirms that a challenger must have an injury-in-fact caused by the disputed permit decision.

which the Court of Appeals described as a “structural ‘adverse’ effect.” *Concerned Citizens for Nuclear Safety v. N.M. Water Quality Control Comm’n*, 2026-NMCA-021, ¶ 23, 584 P.3d 1115 (“*Concerned Citizens*”). Instead, the Legislature adopted traditional standing language—“adversely affected by such permitting action”—that requires, unmistakably, concrete, real-world harm resulting from the permit itself. The legislature’s use of the “adversely affected” language affirmatively showed that it intended to allow only those who suffer a concrete injury caused by the permitting action to seek review.

The “structural adverse effect” theory relied on by the Court of Appeals finds no support in this Court’s case law, federal case law, or in any recognized category of injury. The notion that “allow[ing] an administrative agency to exercise a power it has not been granted” is itself an injury is based on nothing more than a generalized grievance about government. *Id.* As the U.S. Supreme Court explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992), a plaintiff does not establish standing by “raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large.”

Put simply, not every member of the public can seek a judicial—or even administrative—remedy. The question in this case is not, as the Court of Appeals

suggested, whether the challengers have alleged that the government acted unlawfully. Rather, standing asks who is empowered by the Legislature to seek redress for such harm. Here, the Legislature chose not to confer a right to sue based on harm from an agency's interpretation of its regulatory authority. Thus, the appropriate channel for Appellants-Respondents Concerned Citizens for Nuclear Safety ("CCNS") and Honor Our Pueblo Existence ("HOPE") to seek a different outcome is the political process.

**C. Environmental Suits Do Not Have More Liberal Standards for Showing Injury.**

The Court of Appeals characterized CCNS and HOPE as "meet[ing] the liberal standards . . . to establish standing in matters involving environmental activities." *Concerned Citizens*, 2026-NMCA-021, ¶ 15. To the extent the Court of Appeals was implying that persons challenging an activity on environmental protection grounds are subject to a lessened burden to establish injury, the Court of Appeals was incorrect.

While harm to a plaintiff's interests related to the environment, including recreational interests, can supply concrete injury sufficient for standing, the plaintiff must still show a concrete and particularized injury to that interest. For example, in *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 182–83 (2000), the Supreme Court found standing where the plaintiffs in that case demonstrated specific, concrete harms to themselves—inability to fish, swim, or

boat on a particular river—caused by the defendant’s pollution. None of the cases the Court of Appeals relied on involved a conclusion that an environmental plaintiff could establish standing merely by alleging that the government had acted unlawfully.

Further, there is no basis in the Legislature’s chosen language to permit a lower threshold to show injury in this or other environmental cases. The phrase “adversely affected” makes no distinction based on the type of interest asserted or the subject matter of the permit. Whether a challenger asserts environmental, economic, health, or recreational interests, the same textual requirement applies—the challenger must be adversely affected. To exempt environmental challengers from the ordinary standing inquiry would introduce an unprincipled distinction that the Legislature never made—and would impose disproportionate costs on regulated entities, including the U.S. Chamber’s members, who would face challenges from parties that would have no obligation to show how the permit at issue actually harms them. The Legislature was well aware that plaintiffs challenging the lawfulness of government actions, even those asserting environmental interests must satisfy the injury-in-fact requirement. Indeed, this Court has long held that those alleging the government acted unlawfully need to show an injury to themselves. *De Vargas Sav. & Loan Ass’n*, 1975-NMSC-026, ¶ 11. The Court of Appeals itself required precisely that in *New Mexico Cattle Growers’ Ass’n*, which held that an environmental interest

organization had not established standing because it had failed to show concrete injury from the regulatory action at issue. 2013-NMCA-046.

Environmental plaintiffs enjoy no special opt-out from the requirement to show concrete injury of this kind. The requirement that the plaintiff show injury attributable to the government action at issue is the same regardless of the subject matter of the claim.

### **III. The Court of Appeals Should Have Evaluated Its Own Jurisdiction.**

In *Lopez v. Presbyterian Healthcare Services*, this Court recently reaffirmed that “standing is a jurisdictional prerequisite for causes of action created by statute” and that the Legislature “may condition courts’ exercise of that jurisdiction on the plaintiff satisfying enumerated preconditions to secure standing.” 2025-NMSC-031, ¶¶ 8, 15. Similar to Section 74-6-5(P), Section 74-6-7(A) provides for appeal to the Court of Appeals by parties who are “adversely affected.” CCNS and HOPE needed “adversely affected” standing for the Court of Appeals itself to have jurisdiction. The Court of Appeals should have evaluated this jurisdictional prerequisite before moving to the merits of the appeal. *See AFSCME*, 2016-NMSC-017, ¶ 16 (explaining that subject matter jurisdiction cannot be conferred by consent or waiver and that “[i]f sensed by the court, even though not raised by the parties, the question of jurisdiction compels an answer” (quoting *State ex rel. Overton v. N.M. State Tax Comm’n*, 1969-NMSC-140, ¶ 8, 81 N.M. 28, 462 P.2d 613)).

The mere fact that CCNS and HOPE alleged that NMED lacked jurisdiction to issue the permit could not confer statutory standing for judicial review under Section 74-6-7(A), for all the reasons explained above in Parts I and II of this brief (focusing principally on Section 74-6-5(P)). The Court of Appeals’ decision should be vacated for that reason alone.

#### **IV. Separation of Powers Compels Adherence to the Traditional Standing Requirement.**

“[S]tanding is built on a single basic idea—the idea of separation of powers.” *Allen*, 468 U.S. at 752. As this Court has recognized, the traditional standing requirement “ensures that the judiciary maintains a proper relationship with other branches of government.” *AFSCME*, 2016-NMSC-017, ¶ 32; *see also ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 19, 144 N.M. 471, 188 P.3d 1222 (the standing requirement to show injury in fact serves the policy of establishing proper relationships between the judiciary and other branches of government).

The New Mexico Legislature intentionally created a system of review that limits standing to “only those ‘adversely affected’ by a regulation.” *N.M. Cattle Growers Ass’n*, 2013-NMCA-046 at ¶ 8. And “[w]here the Legislature has granted specific persons a cause of action by statute, the statute governs who has standing to sue.” *Id.* ¶ 9. By limiting challenges to parties “adversely affected,” the Legislature intended to assign primary responsibility for policing agency decisions to the

executive branch itself, absent a challenger “adversely affected” by a concrete injury.

The approach adopted by the Court of Appeals would pave the way for the judiciary to become “continuing monitors of the wisdom and soundness of Executive action; such role is appropriate for the [Legislature],” not the judiciary, “absent actual present or immediately threatened injury resulting from unlawful governmental action.” *Allen*, 468 U.S. at 760. The U.S. Supreme Court has warned against “recognizing standing in a case brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties.” *Id.* at 761. Such a construction of “standing” presents serious separation of power issues.

#### **V. A “Structural Adverse Effect” Theory Would Eliminate Meaningful Standing Requirements and Thus Create Destabilizing Policy Consequences.**

Until the Court of Appeals’ decision in the case below, the term “adversely affected” had been interpreted consistent with this Court’s broader standing jurisprudence. In other words, parties wishing to appeal an agency action were required to demonstrate injury in fact caused by the action being challenged. Those requirements serve the twin values of separation of powers and conservation of judicial resources. *See Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1159 (10th Cir. 2023) (explaining that the federal “‘case-or-controversy’ requirement ‘is built on separation-of-powers principles’” and “also protects judicial economy” (citation

omitted)). By watering down these requirements, the Court of Appeals invited a flood of lawsuits that would enable special interest groups to use the judiciary to circumvent the political process.

The practical consequence of the theory of standing embedded in the Court of Appeals' opinion is stark: any person who participates in a WQA permitting process would be able to challenge the resulting permit simply by asserting the agency lacked authority to issue it, without any showing that the permit causes them concrete harm. Challengers would not need to allege that the permitted discharges will contaminate their water supply, damage their property, impair their recreational interests, or harm them in any other tangible way. The challenger would need to only articulate a legal theory that the agency was acting outside its statutory authority.

But “a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the . . . laws”—is insufficient to establish standing. *Lujan*, 504 U.S. at 573–74. And “a mere ‘interest in a problem,’ . . . is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved.’” *Sierra Club*, 405 U.S. at 739. “The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process,” rather it “serve[s] as at least a rough attempt to put the decision as to

whether review will be sought in the hands of those who have a direct stake in the outcome.” *Id.* at 740. The Court of Appeals’ decision below “undermine[s]” that goal by “authoriz[ing] judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.” *Id.*

Standing requirements ensure that challenges to agency actions are litigated vigorously and with an understanding of and close attention to the real consequences of the action. *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 403 (1980) (“[T]he purpose of the ‘personal stake’ requirement is to assure that the case is in a form capable of judicial resolution. The imperatives of a dispute capable of judicial resolution are sharply presented issues in a concrete factual setting and self-interested parties vigorously advocating opposing positions.”). Parties who lack a concrete interest in the agency action often lack the motivation and knowledge necessary for robust, adversarial litigation. *See id.*; *see also Sierra Club*, 405 U.S. at 740 n.16 (“[J]udicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury.”).

The logic of the decision below would convert disagreement with an agency’s decision into standing-conferring harm—regardless of whether the challenger is actually affected by the permit’s operation. This would amount to nothing less than

a general right of advocacy-group supervision over government permitting decisions, limited only by the requirement to have spoken at a public hearing or submitted comments. As *Lujan* warned, such a regime “would enable the courts . . . ‘to assume a position of authority over the governmental acts of another and co-equal department,’ . . . and to become ‘virtually continuing monitors of the wisdom and soundness of Executive action.’” *Lujan*, 504 U.S. at 577 (first quoting *Massachusetts v. Mellon*, 262 U.S. 447, 489 (1923); and then quoting *Allen*, 468 U.S. at 760). It is unclear whether the “structural adverse effect” approach would limit a person to challenging only the agency’s lack of jurisdiction, or would allow the person to also challenge the details of the permit. If the latter, the door to further review would be swung open so widely that any objecting party could challenge myriad other requirements of the permit.

Enterprises in New Mexico depend on regulatory certainty. When, for example, a business or local municipality invests the time, expense, and effort required to obtain a permit through the extensive process mandated by the WQA—a process that here spanned decades of public participation and an administrative record exceeding 20,000 pages—that entity must be able to rely on the finality of the resulting permit. The decision below fundamentally undermines that reliance by allowing parties with no concrete stake in the outcome to force permittees into needless administrative and, eventually, judicial proceedings.

The costs of defending such challenges are substantial, regardless of whether there is anything wrong with the permit. The administrative and judicial appeal process consumes the Commission's and NMED's resources to compile evidence, prepare briefs, and participate in hearings. Permit holders who wish to assist in the defense of a permit must intervene, retain counsel, and likewise prepare briefs, compile evidence, and participate in hearings—all to address claims brought by parties who, in the Court of Appeals' conception, need not show they are affected by the permit at all. Those costs divert resources from productive economic activity. They also create uncertainty for investors, lenders, and business partners who need to know whether a critical permit will be sustained or vacated.

The harm extends beyond the immediate permittee. If the Court of Appeals' decision is not corrected, every business or other entity that holds or seeks a permit from a New Mexico agency governed by the "adversely affected" standard would face the prospect of challenge by any participant who could articulate a theory that the agency lacked jurisdiction to take the action that it did. The Court of Appeals' interpretation did not appear to be based on anything particular to the WQA. *Concerned Citizens*, 2026-NMCA-021 at ¶ 23 ("Inclusion of a requirement that petitioners appealing from a permitting action must have participated in the process and be adversely affected by it indicates that the Legislature wished to ensure that petitioners had a demonstrated interest in the permit."). Thus, all statutes using

“adversely affected” to delimit standing, including the state Administrative Procedure Act, *see* NMSA 1978, § 12-8-16 (1953, as amended through 1999) (parties who are “adversely affected . . . may appeal”), would be potentially vulnerable to the reasoning employed by the decision below. The systemic consequences for New Mexico’s regulatory environment would be profound. Businesses that apply for air quality permits, mining permits, hazardous waste permits, and many other forms of regulatory authorization would seem to be equally vulnerable to challenge by parties who lack any concrete interest in the outcome.

The New Mexico legislature has repeatedly limited the right to appeal administrative action to parties who have been “adversely affected” by said action. Seventeen statutes<sup>5</sup> regulating a wide range of activity from oil and gas (NMSA 1978, § 70-3-15 (1969)), to mining (NMSA 1978, § 69-8-4.1 (2007)), to financial institutions (NMSA 1978, § 58-7-9 (1959, as amended through 2022)), business licensing (NMSA 1978, § 60-6C-6 (1981, as amended through 2021)), and even hunting and fishing (NMSA 1978, § 17-2-43.1 (1995, as amended through 1999))

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<sup>5</sup> NMSA 1978, § 17-2-43.1 (1995, as amended through 1999); NMSA 1978, § 17-2A-3 (1996, as amended through 2001); NMSA 1978, § 47-6-15 (1973, as amended through 2005); NMSA 1978, § 47-6-10 (1973, as amended through 2019); NMSA 1978, § 74-6-7(A) (1967, as amended through 1993); NMSA 1978, § 74-3-11.2 (2003); NMSA 1978, § 74-6C-9 (2025); NMSA 1978, § 74-9-30 (1990); NMSA 1978, § 74-2-9 (1971, as amended through 1992); NMSA 1978, § 60-6C-6 (1981, as amended through 2021); NMSA 1978, § 70-2-12.2 (2015); NMSA 1978, § 70-3-15 (1969); NMSA 1978, § 69-8-4.1 (2007); NMSA 1978, § 58-7-9 (1959, as amended through 2022);

include this limitation. Likewise, the New Mexico Administrative Code uses the phrase “adversely affected” nineteen times<sup>6</sup> to limit the right to administratively appeal decisions in anything from child support matters (8.50.132.11 NMAC) to public safety and law enforcement (10.25.16.9 NMAC). Given the wide usage of “adversely affected” throughout New Mexico’s statutes and regulations, the Court of Appeals’ expansive interpretation of that term may well implicate government activities across a variety of sectors. Such a result would ultimately impinge on the judiciary’s ability to expend its limited resources on the cases and controversies that are most suited for its attention—and are actually within the jurisdiction of the courts.

### **CONCLUSION**

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

Dated: June 3, 2026.

Respectfully,

**HOLLAND & HART LLP**

*/s/ Larry J. Montañó*

By \_\_\_\_\_

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<sup>6</sup> 20.6.2.311 NMAC; 13.21.5.25 NMAC; 8.50.132.11 NMAC; 13.21.4.25 NMAC; 10.25.16.9 NMAC; 10.8.2.27 NMAC; 11.1.2.15 NMAC; 19.6.4.13 NMAC; 19.15.3.15 NMAC; 10.25.16.8 NMAC; 20.2.72.207 NMAC; 20.11.41.16 NMAC; 19.10.14.1417 NMAC; 20.2.70.403 NMAC; 20.6.2.2001 NMAC; 20.6.2.2002 NMAC; 19.6.2.11 NMAC; 20.6.2.2003 NMAC; 15.2.1.9 NMAC.

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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 June 3, 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. Montañó*  
By \_\_\_\_\_  
Larry J. Montañó