STATE OF NEW MEXICO
THIRD JUDICIAL DISTRICT COURT
COUNTY OF DOÑA ANA

JOSE SALDANA, JR., et al.

Petitioners and Plaintiffs,

v. **No. D-307-CV-2025-02766**

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOÑA ANA,

Respondent and Defendant.

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI AND DECLARATORY JUDGMENT COMPLAINT

Respondent, the Board of County Commissioners of Doña Ana County, by and through counsel (Randy Autio, Kevin Morrow and Dave Wesner), moves to dismiss the Petition for Writ of Certiorari and the alternative Complaint for Declaratory Judgment Pursuant to NMRA 1-012(b)6 the Court should dismiss the pleading in its entirety.

I. INTRODUCTION

Petitioners attempt to utilize Rule 1-075 to attack core legislative functions of the Board of County Cmmissioners, and they seek a declaratory ruling on speculative, nonjusticiable grievances that provide no basis for judicial relief. Their filings are legally defective, jurisdictionally barred, and substantively meritless.

This case is an improper attempt to use the courts to halt legislation they dislike (Ordinances 367-2025, 368-2025 and 369-2025, collectively "Ordinances"). Neither Rule 1-075 nor the Declaratory Judgment Act empowers the judiciary to review, revise, or veto legislative policy judgments. New Mexico courts have repeatedly rejected such effortsPetitioners seek judicial review of three duly enacted County ordinances authorizing economic development tools.

Ordinance adoption is a legislative act. Legislative acts are not reviewable by certiorari and cannot be overturned except in the extraordinary circumstance where the government has violated a constitutional limitation or exceeded its statutory authority. Petitioners claim neither.

Instead, they rely on generalized political and policy disagreements about a proposed project, and they attempt to reframe future regulatory concerns about emissions, water, and construction impacts as injuries caused by these legislative enactments. Their filings demonstrate no cognizable legal injury traceable to the Ordinances. The Petition and Complaint must be dismissed with prejudice.

II. ARGUMENT

A. STANDARD OF REVIEW

The Petitioners' Complaint should be dismissed under NMRA 1-012(b)6 for Petitioners' failure to State a claim on which relief can be granted. In the consideration of a motion to Dismiss under Rule 12(b)6 a Complaint shall be dismissed if under the facts as pled in the Complaint fail to State a Claim upon which relief may be legally granted. *See, Blea v. City of Espanola, 1994*-NMCA-008, 870 P.2d 755. In the present case the Petitioners' complaint is legally insufficient to support a recovery under either attentive claim in the Complaint.

B. RULE 1-075 DOES NOT APPLY TO LEGISLATIVE ACTIONS

Certiorari review is limited to quasi-judicial administrative decisions, not legislation action. Rule 1-075 provides a narrow vehicle for reviewing administrative agency decisions when no other method of review exists. Agency is defined as, "any state or local government administrative or quasi-judicial entity." NMRA 1-075(A). In this instance, the Commission was clearly acting in its legislative capacity. Rule 1-075 does not allow courts to intercede in a legislative function. The rule is designed for review of quasi-judicial determinations made on a defined record, applying legal standards to facts involving specific parties. Adoption of ordinances,

however, is legislative. "Although the district court's review of the City's action by writ of certiorari was improper, petitioners could have had the City's action reviewed in the same manner by which ordinances are generally reviewed—by filing an original action in district court based on the court's original jurisdiction." *Dugger v. City of Santa Fe*, 1992-NMCA-022, ¶ 23, 114 N.M. 47, 54, 834 P.2d 424, 431, *writ quashed,* 113 N.M. 744, 832 P.2d 1223 (1992).

The appropriate vehicle to challenge the validity of an ordinance is a civil action under the Declaratory Judgment Act, not a *writ of certiorari*.

C. THE DECLARATORY JUDGMENT CLAIM FAILS FOR MULTIPLE INDEPENDENT REASONS

1. Petitioners lack standing

Petitioners' harms are speculative and legally insufficient. They identify no injury in fact, no concrete harm, and nothing traceable to the Ordinances. Instead, they articulate what can be characterized as a generalized attack on policy, which is impermissible.

> [A]s far back as the early part of the twentieth century, in cases addressing the standing of taxpayers to challenge expenditure of government funds, this Court has required allegations of direct injury to the complaining party for that party to properly seek an injunction or challenge the constitutionality of legislative acts[...]It is not enough that the community in which he resides will be injuriously affected by some governmental or legislative action.

ACLU of New Mexico v. City of Albuquerque, 2008-NMSC-045, ¶ 10, 144 N.M. 471, 476, 188 P.3d 1222, 1227 (internal citations removed).

Standing requires actual, concrete, particularized injury. To acquire standing, a plaintiff must demonstrate the existence of " '(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision.'" *Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 16, 130 N.M. 368, 375, 24 P.3d 803, 810. As the parties invoking federal jurisdiction, respondents bear the burden of showing standing by establishing, *inter alia,* that they have suffered an injury in fact, *i.e.*, a

concrete and particularized, actual or imminent invasion of a legally protected interest. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130, 2134, 119 L. Ed. 2d 351 (1992).

Here, the Plaintiffs have alleged no injury if fact. The issuance of bonds and approval of Local Economic Development Act Funds do not build a structure, pollute the air, authorize the use of any amount of water or create traffic or light pollution. Plaintiffs claim the Ordinances "would begin the use of public funds and resources for a proposed project, without adequate and necessary consideration of the proposed project's adverse impacts to the public health, safety, welfare, economic vitality, and quality of life." *Alternative Complaint for Declaratory Judgment* ¶¶ 3-4. They also claim, "The Ordinances permit a proposed development to move forward that stands to significantly impact Plaintiffs' public water supply and availability of water; substantially and adversely impact Plaintiffs' air quality and health; likely increase dust and sandstorms due to the inappropriate and excessive development for the Project and the particular characteristics of the area's geology; and significantly increase the traffic, noise, and light pollution surrounding Plaintiffs' residences, overall detrimentally impacting Plaintiffs' quality of life." Alternative Complaint for Declaratory Judgment ¶5.

However, the Ordinances do none of those things. Neither the authorization to issue industrial revenue bonds nor the approval of LEDA funding impacts the water supply, affects air quality, increases dust or affect traffic, noise or light pollution. They are economic development tools, used to incentivize a large investment in the community. Accordingly, the Plaintiffs have failed to articulate an injury, which would afford them standing to bring these claims.

2. Petitioners' Claims are not ripe

Ripeness requires immediate, real effects. "[R]ipeness analysis normally involves a finding of fitness for review and a cognizable hardship to the parties of withholding court consideration. "Fitness is concerned with whether the claim involves uncertain and contingent events that may

not occur as anticipated or may not occur at all." *New Mexico Boys & Girls Ranch v. New Mexico Bd. of Pharmacy*, 2022-NMCA-047, ¶ 12, 517 P.3d 248, 253.

The Ordinances do not authorize construction, emissions, water usage, or operations. The applicants who intend to create Project Jupiter must still: receive building permits to construct their facilities; receive air quality permits from the New Mexico Environment Department, receive water use permits from the Office of the State Engineer. Every alleged harm to the Plaintiffs depends on future action by both the applicant and other government entities. In fact, many of the agency decisions are outside of the authority of the County government. Accordingly, the matters are not ripe for review because the alleged harms are all speculative at best and fully contingent on future actions.

3. There is a Rational Basis for passing the Ordinances.

Should this court find the Plaintiffs possess standing and the matter is ripe for review, they still fail to state a claim upon which relief can be granted. The recitation of facts in the legislation itself is sufficient to justify its passage and overcome Plaintiffs challenge. The Commission merely need show a rational basis to justify its decision.

> the federal rational basis test, which only requires a reviewing court to divine "the *existence* of a conceivable rational basis" to uphold legislation against a constitutional challenge. *Kane v. City of Albuquerque*, 2015–NMSC–027, ¶ 17, 358 P.3d 249 (internal quotation marks and citation omitted). Under the federal test, "those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993) (internal quotation marks and citation omitted). Accordingly, a law "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* at 313, 113 S.Ct. 2096. Legislation can therefore survive a constitutional challenge under the federal test based solely on a judge's "rational speculation [that is] unsupported by evidence or empirical data." *Id.* at 315, 113 S.Ct. 2096.
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> *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶ 26, 378 P.3d 13, 25.

This statutory analysis extends to ordinances as well. "The presumption that legislative acts are legal, valid, and constitutional extends to municipal ordinances." *City of Albuquerque v. Jones,* 87 N.M. 486, 535 P.2d 1337 (1975).

The Industrial Revenue Bond Act grants broad authority to the county to make legislative economic development judgments. "It is the intent of the legislature [...] to authorize counties to acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state." NMSA 1978 §4-59-3. The Commission met its minimal burden by determining, "that it is in the best interest of the County to issue the Bonds." *Ordinance 367-2025*, page 5, ¶1. It also concluded, "the benefits of the Project to the County will be substantial, that it is desirable and necessary at this time to authorize the County to enter into the Project Participation Agreement to provide assistance to the companies consistent with the Act." *Ordinance 369-2025*, page 2, ¶4.

Similarly, the Local Economic Development Act only requires the County to evaluate the application based on the economic development plan, the stability of the qualifying entity, the commitment to the community, a cost-benefit analysis and any other information it believes is necessary. NMSA 1978 §5-10-9(B). The Commission found, "that under the Agreement the Companies will provide substantive contributions for the Project as described in Section 5-10-10(B) NMSA 1978." *Ordinance 368-2025,* §1. And, "the benefits of the Project to the County, in terms of increased tax revenues and other benefits arising from retained and sustained employment, exceed the cost to the County of providing to the Companies the assistance specified in the Agreement." *Id.*

Plaintiffs fail to even articulate a constitutional claim, let alone overcome the burden of rational basis review. In this case, the Commission can articulate up to $165 Billion dollars in

investment, an investment far exceeding the minimal consideration that justifies rational basis review. "[W]e will not question the wisdom, policy, or justness of a statute, and the burden of establishing that the statute is invalid rests on the party challenging the constitutionality of the statute." *Atencio v. State*, No. A-1-CA-42006, 2025 WL 1621659, at *5 (N.M. Ct. App. June 3, 2025). Accordingly, the Petitioners fail to articulate any claim in the complaint, under all of the facts pled that would allow them to prevail in a challenge to these Ordinances. The Complaint should be dismissed.

4. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court:

1. Dismiss the Petition for Writ of Certiorari with prejudice.
2. Dismiss the Declaratory Judgment Complaint with prejudice.
3. Grant any further relief the Court deems proper.

Respectfully submitted,

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Certificate of Service

I hereby certify that on November 20, 2025, I filed the foregoing pleading electronically through the Tyler Technologies, Odyssey® File & Serve, E-File System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing and a true and correct copy provided via email to the following:

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