IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

BRAD BOLEN a/k/a BRADLEY CARROL BOLEN,

Plaintiff/Petitioner,

v.

NEW MEXICO RACING COMMISSION; and FABIAN LOPEZ, Records Custodian for New Mexico Racing Commission,

Defendants/Respondents.

No. S-1-SC-40427

Hon. Joshua A. Allison

# BRIEF OF STATE ETHICS COMMISSION, PUBLIC REGULATION COMMISSION, AND ADMINISTRATIVE HEARINGS OFFICE AS AMICI CURIAE


Jeremy Farris
Walker Boyd

800 Bradbury Drive SE, Ste. 215
Albuquerque, NM 87106
(505) 827-7800

*Counsel for State Ethics Commission*

Erin Lecocq

P.O. Box 1269
Santa Fe, NM 87504-1269
(505) 795-1037

*Counsel for Public Regulation Commission*

Brian VanDenzen
David Buchanan

P.O. Box 6400
Santa Fe, NM 87502
(505) 827-9714

*Counsel for Administrative Hearings Office*

## RULE 12-318(G) STATEMENT

The body of this brief contains 9,603 words. The word count was obtained using Microsoft Word for Office 365 MSO (Version 2409 Build 16.0.18025.20030) 64-bit.

## CONTENTS

## TABLE OF AUTHORITIES

**New Mexico Cases**

**Federal cases**



**Cases from other states**

**Constitutional provisions**



**Statutes**

**Rules and Regulations**



**Treatises and other authorities**

## INTEREST OF AMICI CURIAE

Amicus Curiae State Ethics Commission ("SEC") is a bipartisan, independent state agency established by Article V, Section 17 of the New Mexico Constitution, which authorizes the SEC to both adjudicate claims and enforce statutes, as provided by enabling legislation. *See* N.M. Const., art. V, § 17.[1] This enabling legislation, the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023), authorizes the SEC to (i) investigate and adjudicate complaints alleging violations of New Mexico's governmental conduct, campaign finance, and procurement laws, and (ii) to enforce those same laws through civil actions in state district court. *See* NMSA 1978, § 10-16G-9(A), (F) (2021). In its quasi-judicial function, an SEC hearing officer holds a hearing, subject to the rules of evidence, to adjudicate claims that are within the SEC's jurisdiction and which have been found to be supported by probable cause. *See* NMSA 1978, §§ 10-16G-10 (2023), 12 (2019). A hearing officer's orders may be appealed to the seven-

[1] Undersigned counsel authored this brief in whole. Undersigned counsel and their clients did not receive any remuneration from any other person in exchange for the preparation of this brief.

member Commission, whose final orders are subject to judicial review in the district courts under Rule 1-075 NMRA. *See* § 10-16G-12.

Amicus Curiae Public Regulation Commission ("PRC") is a state agency established by Article XI, Sections 1 and 2 of the New Mexico Constitution, which authorize the PRC to regulate public utilities and other public service companies in New Mexico, as provided by enabling legislation. The PRC has "general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities[.]" NMSA 1978, § 62-6-4(A) (2003). In its quasi-judicial function, the PRC conducts adjudicatory proceedings involving utility rate-setting, renewable energy, and resource management. The PRC's final orders may be appealed directly to the Supreme Court. NMSA 1978, § 62-11-1 (1993).

Amicus Curiae Administrative Hearings Office ("AHO") is a state agency administratively attached to the Department of Finance and Administration, tasked with conducting fair and impartial administrative hearings for various state agencies. *See* Administrative Hearings Office Act, NMSA 1978, §§ 7-1B-1 through 10 (2015, as amended through 2019). The sole purpose of the AHO is to serve in a

quasi-judicial capacity, conducting and adjudicating fair administrative hearings independent of the supervision, direction, or control of the state agency that is a party of the administrative dispute. *See id.* The AHO is staffed with ten administrative law judges (all licensed attorneys) required to make independent fair and impartial decisions, all of whom are subject to a code of conduct modeled in part on the Code of Judicial Conduct and other model codes of conduct for administrative law judges. *See* NMSA 1978, § 7-1B-6 (2019); *see also* 22.600.2 NMAC. The AHO's decisions are subject to judicial appeal either in the relevant district court, or in the case of tax protest cases, the Court of Appeals. *See* NMSA 1978, § 7-1B-8 (I) (2019) (appeals of tax protests); *see also* NMSA 1978, § 7-1B-9(D) (2019) (appeals of cases under the Motor Vehicle Code).

Amici have a substantial interest in the outcome of this case. Just as judicial immunity protects the New Mexico courts, quasi-judicial immunity protects amici—including their staff, hearing officers, and commissioners—from retaliatory lawsuits and external efforts to compromise their independence. There is a strong public interest in protecting agencies with quasi-judicial functions from collateral or subsequent lawsuits that seek financial damages and tax the agencies'

respective capacities to decide the claims and issues the Legislature required the agencies to adjudicate.

## ARGUMENT

The petition asks this Court to answer the following question: "Is judicial immunity a defense available to public bodies sued under the New Mexico Civil Rights Act?" **[Pet. 8, BIC 14]** The answer is "yes."

The Court previously explained that the common law fills in every gap not addressed by statute and "the common law must be expressly abrogated by a statute." *Sims v. Sims*, 1996-NMSC-078, ¶ 23, 122 N.M. 618 (quoting *Beals v. Ares*, 1919-NMSC-067, ¶ 36, 25 N.M. 459). Because the common law makes judicial immunity an available defense to public bodies in certain cases, if the Legislature intended to depart from the common law, it must have done so unequivocally. But the New Mexico Civil Rights Act does the opposite: it preserves the judicial immunity available to public bodies at common law. *See* NMSA 1978, § 41-4A-10 (2021).

The ACLU's effort to frame the issue as whether the New Mexico Civil Rights Act "authorize[s] judicial or quasi-judicial immunity to extend beyond their constitutional limits to the executive branch" misapprehends the relationship between the common law and statutory law. **[ACLU AmB 4]** The proper inquiry is not whether the Act

"authorize[s]" any judicial immunity or quasi-judicial immunity available to public bodies. Rather, the proper inquiry is whether judicial immunity or quasi-judicial immunity is an available defense to public bodies at common law and, if so, whether the statute "expressly abrogated" those immunities in a departure from the common law. *Sims*, 1996-NMSC-078, ¶ 23. Amici submit this brief to provide the Court with an argument addressed to that inquiry.

New Mexico and other state court cases confirm that judicial immunity bars damages claims against public bodies, so long as the claim alleges the exercise of a judicial function. The New Mexico Civil Rights Act expressly preserves judicial immunity as an available defense, providing that the prohibition on the use of qualified immunity and the waiver of sovereign immunity "*shall not abrogate* judicial immunity." § 41-4A-10 (emphasis added). Hence, judicial immunity remains an available defense to public bodies, including from actions under the Civil Rights Act.

The statute also provides that it does not "abrogate . . . any other constitutional, statutory or common law immunity." *Id.* Quasi-judicial immunity is another common law immunity, and case law confirms that

this defense is available to public bodies against damages claims, again, so long as the claim challenges the exercise of a judicial function. Thus, quasi-judicial immunity also is preserved as an available defense to public bodies, including against Civil Rights Act claims.

The availability of quasi-judicial immunity as a defense to damages claims against public bodies in the executive branch does not infringe upon the separation of powers, nor upon the Court's ability to review and, if necessary, correct alleged violations of constitutional rights. Under the public rights doctrine, the Legislature may authorize executive branch agencies to adjudicate non-private-right claims without offending the separation of powers. Quasi-judicial immunity enables those agencies to make impartial adjudications without being subject to damages and attorneys' fees claims because of their decisions. This immunity from damages suits does not hamper orderly judicial review of agency decisions, presented to a court either by appeal, through an action for prospective injunctive relief, or by way of appropriate writ proceedings; rather, quasi-judicial immunity allows an executive agency the room to make an honest determination of a claim and build a record, so that the

courts may conduct an orderly review of the former with the benefit of the latter.

Judicial immunity and quasi-judicial immunity are longstanding in the common law, and the Court does not need to withdraw them as available defenses to public bodies to uphold the constitutional and orderly administration of justice. Rather, the amici respectfully request the Court affirm the Court of Appeals' decision and hold that judicial immunity and quasi-judicial immunity remain available defenses to public bodies, including from Civil Rights Act claims seeking damages and attorneys' fees, so that the judicial and executive branch agencies exercising delegated adjudicatory functions may conduct those adjudications "independently and freely, without favor and without fear." *Bradley v. Fisher*, 13 Wall. 335, 349 n.16, 20 L.Ed. 646 (1872).

## I. Judicial immunity is an available defense to public bodies against claims under the New Mexico Civil Rights Act.

A public body may assert judicial immunity in response to a claim under the New Mexico Civil Rights Act. This is because: (i) New Mexico courts and other courts have held that a public body enjoys judicial immunity for judicial acts; (ii) this Court has held that an official-capacity claim is no different from a claim against a public body, and

judicial immunity applies to bar official-capacity claims against judicial officers; and (iii) the New Mexico Civil Rights Act preserves, and in no way abrogates, common law judicial immunity.

### A. Common law judicial immunity bars claims against public bodies if the claim is grounded on the exercise of a judicial function.

New Mexico appellate courts have applied judicial immunity to dismiss damages claims against public bodies. *See Hunnicutt v. Sewell*, 2009-NMCA-121, ¶ 1, 147 N.M. 272 (affirming dismissal of breach of contract claim for money damages against public body on judicial immunity grounds). In *Hunnicutt*, the plaintiff filed a complaint against both individual state employees and public bodies, including the Administrative Office of the Courts ("AOC") and the Twelfth Judicial District Court, asserting claims related to an abuse and neglect proceeding. *See id.* ¶¶ 3–4. The plaintiff sought damages consequent to an alleged breach of contract between the public body defendants and her court-appointed attorney. *Id.* ¶ 3.

The Court of Appeals affirmed the district court's dismissal of the complaint, holding that absolute judicial immunity barred all claims, including claims for damages against the public-body defendants. *Id.*

¶¶ 17–18. "[T]o determine whether Defendants are entitled to absolute judicial immunity," the appellate court applied "a functional test to determine whether the acts alleged by Plaintiff were judicial functions." *Id.* ¶ 9 (citing *Collins ex rel. Collins v. Tabet*, 1991-NMSC-013, ¶ 16, 111 N.M. 391, *abrogated on other grounds by State v. Mares*, 2024-NMSC-002, ¶ 16). Because the alleged actions by the defendants, including the public-body defendants, "were inherently related to a specific judicial proceeding," the court held that judicial immunity barred the amended complaint. *Id.* ¶ 16.

In applying judicial immunity to dismiss damages claims against the public-body defendants, the Court of Appeals followed this Court's statement of the immunity's purpose: "Judicial immunity was developed to preserve the 'autonomy and integrity of the judiciary' so that 'persons who are integral to the judicial process [are] able to perform their functions without the intimidating effects of potential lawsuits.'" *Id.* ¶ 9 (alteration original) (citing *Collins*, 1991-NMSC-013, ¶ 24). This Court has expounded on that purpose, explaining that judicial immunity prevents "intimidation tactics" deployed to "obstruct the pathway to

ascertaining the truth and impair the judge's ability to perform his or her judicial duties." *Kimbrell v. Kimbrell*, 2014-NMSC-027, ¶¶ 12, 14.

As the Court explained in *Collins* and *Kimbrell*, the purpose of judicial immunity is to prevent "harassment, intimidation, or other interference" directed to persons whose involvement is integral to the judicial process. *Collins*, 1991-NMSC-013, ¶ 18; *see Kimbrell*, 2014-NMSC-027, ¶¶ 12, 14; *accord Pulliam v. Allen*, 466 U.S. 522, 532 (1984) ("'It is essential in all courts that judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear." (quoting *Bradley*, 13 Wall. at 349 n.16)). The purpose of judicial immunity supports the *Hunnicut* court's application of the immunity to dismiss claims against public bodies. Whether a claim runs against a defendant individually (as with 42 U.S.C. § 1983) or against the public body that employs them and, under agency law, assumes responsibility for their actions (as in *Hunnicut*), the concern that a lawsuit will harass or intimidate those who exercise judicial functions is the same. In either case, such lawsuits tax the public body's resources and influence the decision making of employees engaged in judicial functions. A decision

by the Court that public bodies may not raise judicial immunity "could subject state officers to burdensome and distracting litigation, which, as the Tenth Circuit has noted in other contexts, 'could lead to undesirable *ex ante* effects . . . [including] a general disaffection with public service, rooted in the calculation that its costs simply outweigh its benefits.'" *Flores v. Herrera*, 2016-NMSC-033, ¶ 18 (alterations original) (quoting *Pahls v. Thomas*, 718 F.3d 1210, 1227 (10th Cir. 2013)).

Petitioner **[BIC 23–27]** and their supporting amicus **[ACLU AmB 12–14]** argue that the purpose of judicial immunity is to protect individuals, not institutions, and therefore there is no practical reason to extend judicial immunity to public bodies. As an initial matter, drawing a distinction between the government and the officers and employees who represent it ignores reality. As the United States Supreme Court long ago noted, "the government is an abstract entity, which has no hand to write or mouth to speak, and has no signature which can be recognized, as in the case of an individual. It speaks and acts only through agents, or more properly, officers." *The Floyd Acceptances*, 74 U.S. 666, 676, 19 L.Ed. 169 (1868). It follows that any suggestion that a judicial officer's impartiality and independence would be unaffected by a judgment for

money damages against the public body that employs him is implausible. Indeed, an individual judicial officer's personal liability is not judicial immunity's objective, as the protection of individual government officers and employees from personal liability for their official acts is already served by the indemnification provision of the New Mexico Civil Rights Act, the public liability fund, and the common law doctrine of respondeat superior. *See* NMSA 1978, § 41-4A-8 (2021) (indemnifying public employees for judgments, costs, and fees resulting from Civil Rights Act claims); NMSA 1978, § 41-4-23(B)(3) (2001) (availability of public liability fund to indemnify agencies and employees for claims within the certificate of coverage). Judicial immunity serves a separate purpose: namely, preventing the undue influence that would invariably follow if a public body could be found liable for damages allegedly caused by its judicial acts. As the Washington Supreme Court explained almost a century ago, "[t]he doctrine of exemption of judicial and quasi-judicial officers [from liability] . . . is founded upon a sound public policy, not for the protection of the officers, but for the protection of the public, and to insure active and independent action . . . ." *Anderson v. Manley*, 43 P.2d 39, 40 (Wash. 1935).

Judicial immunity results in the "protection of the public" by ensuring not only impartial and independent decision-making but also the orderly administration of justice. *Id.* As this Court has explained, claims "seeking to have one district court order relief from another district court" violate the constitutional prohibition against a district court issuing writs "directed to judges or courts of equal or superior jurisdiction." *Pacheco v. Hudson*, 2018-NMSC-022, ¶¶ 59, 63 (quoting N.M. Const. art. IV, § 13). Judicial immunity complements these constitutional safeguards and protects the judicial process from being undermined by collateral actions for money damages. Absent judicial immunity, a frustrated litigant would not seek appellate review of judicial orders they disagreed with; instead, they would pursue a collateral action for damages in a court of their choice. As the Ninth Circuit observed when it invoked absolute judicial immunity to dismiss claims against federal judges of one judicial district brought in another, the absence of judicial immunity would create, "in effect, a 'horizontal appeal' from one district court to another or even a 'reverse review' of a ruling of the court of appeals by a district court." *Mullis v. United States Bankr. Court for the Dist. of Nev.*, 828 F.2d 1385, 1392-93 (9th Cir. 1987)

(footnote omitted). In sum, common law judicial immunity does not exist to protect a judge from potential personal liability from claims arising from his judicial actions; instead, it is a prophylactic against the poisonous effect these claims have on judicial independence and effective functioning of the judicial process as a whole.

### B. Judicial immunity is an available defense to official-capacity claims asserted against judicial officers that seek money damages.

At common law, sovereign immunity precludes suits seeking money damages from the State. *Ramirez v. New Mexico Child. Youth and Fam. Dep't*, 2016-NMSC-016, ¶ 15 ("New Mexico's immunity to suit for damages is a fundamental aspect of its sovereignty[.]"); *Cockrell v. Bd. of Regents of N.M. State Univ.*, 2002-NMSC-009, ¶ 29, 132 N.M. 156. Because a public body can traditionally assert sovereign immunity against damages claims, courts are not often called to decide whether a public body may also assert judicial immunity. But the issue has arisen in the context of claims made against government officials in their official capacity, which "are treated as suits against the State [itself]." *Pacheco*,

2018-NMSC-022, ¶ 62 (quoting *Hafer v. Melo*, 502 U.S. 21, 25 (1991)).[2] These cases typically arise when the plaintiff asserts an official-capacity claim against an individual government official and, because there is an arguable waiver of sovereign immunity, the defendant asserts judicial immunity. *See, e.g., Wynn v. Frederick*, 895 S.E.2d 371, 380–81 (N.C. 2023), *reh'g denied*, 896 S.E.2d 254 (N.C. 2024); *Roberts v. Cuthpert*, 893 S.E.2d 73, 80 & n.11 (Ga. 2023). When such official-capacity claims arise from the exercise of judicial acts, the Courts have found that judicial immunity applies. For example, this Court strongly suggested judicial immunity applies to official-capacity claims for damages and attorney's

---

[2] In *Flores*, the Court explained the difference between personal-capacity and official-capacity suits against government officials:

> Personal–capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official–capacity suits, in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent. As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself. . . .

2016-NMSC-033, ¶ 10 (quoting *Kentucky v. Graham*, 473 U.S. 159, 165–66, 166 n.11 (1985)) (citations and quotation marks omitted).

fees when it ordered the dismissal of such claims against Judge Wilson in *Pacheco*. *See* Order Granting Pet. for Writ of Mandamus, *Pacheco v. Hudson*, S-1-SC-35445 (Sept. 2, 2015). Other state supreme and intermediate appellate courts have reached the same conclusion. *See, e.g.*, *Wynn*, 895 S.E.2d at 380–81 (reversing court of appeals and holding judicial immunity barred official-capacity claim against magistrate); *Traylor v. Gerratana*, 88 A.3d 552, 558 (Conn. App. 2014) ("Absolute judicial immunity bars the plaintiff's state law claims against the judicial defendants in their official capacities."); *Tays v. Cnty. of Doña Ana*, No. 33,131, 2014 WL 4294501, at *1 (N.M. Ct. App. June 11, 2014) (non-precedential) (affirming dismissal of claims for money damages against State based on alleged wrongdoing of district judge on judicial immunity grounds).[3]

The North Carolina Supreme Court's opinion in *Wynn* is instructive. There, a magistrate failed to timely transmit an order to a local sheriff to involuntarily commit an unwell individual, leading to the

[3] *Cf. Roberts*, 893 S.E.2d at 80 & n.11 (observing that lower court dismissed sua sponte official-capacity claim for monetary relief against defendant probate judge on judicial immunity grounds, reversing because the judge had waived defense, and thus declining to decide whether judicial immunity bars official-capacity claims against judges).

plaintiff's injury at the hands of that individual. *See Wynn*, 895 S.E.2d at 374–75. The plaintiff filed a negligence claim against a magistrate, in his official capacity, seeking damages. *Id.* at 375. The magistrate moved to dismiss, invoking both sovereign immunity and judicial immunity. *Id.* The trial court denied the motion. *Id.* The North Carolina Court of Appeals affirmed, adopting the same reasoning that Petitioner and his supporting amicus argue in here: that judicial immunity is intended to protect individuals, not institutions, and therefore is an available defense only if a judicial officer is sued in their personal capacity. *Wynn v. Frederick*, 863 S.E.2d 790, 794–96 (N.C. App. 2021); *accord Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 483 (5th Cir. 2000).

The North Carolina Supreme Court reversed, "conclud[ing] that judicial immunity applies to official capacity and individual capacity claims." *Wynn*, 895 S.E.2d at 380. The court reasoned that the essential question "is whether the judicial officer acted in a judicial capacity, or in the discharge of his official duties," and *not* "whether the plaintiff decided to bring an official capacity or individual capacity claim against a judicial officer." *Id.* The court supported its conclusion with its precedent, which

"clearly establishes that judicial immunity protects judicial officers from liability when they perform judicial acts and presents a complete and absolute bar to recovery regardless of whether the plaintiff brings an official or individual capacity claim." *Id.* at 380–381 (citing *Town of Fuquay Springs v. Rowland*, 79 S.E.2d 774, 776 (N.C. 1954); *Hedgepeth v. Swanson*, 27 S.E.2d 122, 123 (N.C. 1943)).

Like the cases holding that a public body may invoke judicial immunity, these cases establish that judicial immunity does not turn on the defendant's identity or status as an individual or entity. Instead, the courts analyze whether the defendant's action, which is alleged to give rise to liability, is an exercise of a judicial function. *Hunnicutt*, 2009-NMCA-121, ¶ 9; *Wynn*, 895 S.E.2d at 380–381.

### C. The text, structure and purpose of the Civil Rights Act establish that the Act preserves the judicial immunity traditionally available to public bodies.

The New Mexico Civil Rights Act creates a cause of action for violations of constitutional rights set forth in Article II of the New Mexico Constitution. NMSA 1978, § 41-4A-3(B) (2021). It also allows a prevailing plaintiff to recover costs and attorney's fees from the defendant. NMSA 1978, § 41-4A-5 (2021). The Act requires the plaintiff

to bring the action exclusively against a public body. § 41-4A-3(C). Further, a public body is liable for any judgment, costs, and fees arising from acts committed by any individual "acting on behalf of, under color of or within the course and scope of the authority of the public body," *i.e.*, acts undertaken in some official capacity. § 41-4A-8. To enable the right of action, the Act expressly waives the State's sovereign immunity to claims under the statute. NMSA 1978, § 41-4A-9 (2021). The Act also prohibits public bodies from asserting the defense of qualified immunity. NMSA 1978, § 41-4A-4 (2021). Yet, the Act provides that "[t]he prohibition on the use of the defense of qualified immunity . . . and the waiver of sovereign immunity . . . *shall not abrogate judicial immunity*, legislative immunity or any other constitutional, statutory or common law immunity." § 41-4A-10 (emphasis added).

Section 41-4A-10 is clear and unambiguous. The statute's waiver of sovereign immunity for claims alleging violations of state constitutional rights "shall not abrogate judicial immunity[.]" § 41-4A-10. Therefore, while public bodies may not assert the State's sovereign immunity, the New Mexico Civil Rights Act preserves whatever judicial immunity was available to them, at common law, before the statute's

enactment. As the New Mexico appellate courts and other state courts confirm, judicial immunity is an available defense to public bodies—for both claims against public bodies and for official-capacity claims asserted against the judicial officers that work for public bodies, so long as the claim targets the exercise of a judicial function. Section 41-4A-10 expressly preserves that judicial immunity against claims under the Civil Rights Act asserting violations of state constitutional rights.

The statute's structure reinforces its text. Reading Section 41-4A-10 alongside the Act's other provisions, Section 41-4A-10 presupposes that judicial immunity is available to public bodies for certain claims. Under Section 41-4A-3(C), only a public body may be named as a defendant. Thus, when Section 41-4A-10 preserves immunities, it presumes that those immunities are traditionally available to public bodies. That presupposition "give[s] effect to its entire text[.]" NMSA 1978, § 12-2A-18 (1997) (Uniform Statute and Rule Construction Act). Put differently, since the only proper defendant to a New Mexico Civil Rights Act cause of action is a "public body," § 41-4A-3(C), the only non-superfluous interpretation of Section 41-4A-10 is that it permits a public body to assert judicial or other common law immunities, unless expressly

abrogated by the statute. *See* § 41-4A-10; *see also State v. Farish*, 2021-NMSC-030, ¶ 11 ("'This Court must interpret a statute so as to avoid rendering the Legislature's language superfluous.'" (quoting *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24)).

The Act's preservation of judicial immunity makes basic sense. Every day in the New Mexico courts, judicial officers and their staff take actions that a party might contend implicate "inalienable" constitutional rights. A judge enters an order striking a jury demand when a claim seems purely equitable. *But see* N.M. Const. art. II, § 12 (protecting "[t]he right of trial by jury as it has heretofore existed"). A court clerk certifies the defendant is in default when they do not appear and answer. *But see* N.M. Const. art. II, § 18 (protecting the right not to be deprived of "liberty or property without due process of law"). A judge holds a party in contempt for some unfortunate speech in open court. *But see* N.M. Const., art. II, § 17 (protecting the right to "freely speak"). In all these examples, the affected party may claim, however erroneously, that these judicial actions violated his or her constitutional rights.

The New Mexico Civil Rights Act permits a cause of action against public bodies, and the Act's definition of a public body includes the courts.

*See* NMSA 1978, § 41-4A-2 (2021). The statute waives sovereign immunity and prohibits qualified immunity (and, hence, the bar on discovery pending qualified immunity motions).[4] But those waivers of immunity do not mean that the Legislature intended to allow a plaintiff to file a claim against one court in another court of the plaintiff's choosing and, then, notice the deposition of a judicial officer or judicial staff member to inquire (continuing the above examples) into whether a judge had a malicious purpose or racial motivation in striking a jury demand, or if the judge issued a direct contempt sanction because the judge disapproved of the content or viewpoint of the contemnor's speech. To the contrary, the Legislature intended that plaintiffs *not* be able to file and pursue such civil rights actions against courts, targeting the judges and staff that work for them, because the Act unambiguously provides that the abrogation of qualified immunity and the waiver of sovereign immunity "shall not abrogate judicial immunity[.]" § 41-4A-10. Again, the purpose of judicial immunity is to prevent such collateral attacks on

---

[4] *See generally Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) ("[Q]ualified immunity is not only a defense to liability but also entitlement to immunity from suit and other demands of litigation. Discovery should not be allowed until the court resolves the threshold question whether the law was clearly established at the time the allegedly unlawful action occurred.") (citations omitted).

judicial decision-making, thereby allowing the courts (and ultimately this Court) to control the review of challenges to judicial actions and to enable the judiciary to take actions "independently and freely, without favor and without fear." *Pulliam*, 466 U.S. at 532 (quoting *Bradley*, 13 Wall. at 349 n.16).

Accordingly, the Civil Rights Act does not abrogate the judicial immunity that is available to public bodies.

## II. The Civil Rights Act also preserves quasi-judicial immunity for claims against public bodies whose employees exercise judicial functions, even if the public body is not in the judicial branch.

The Court granted certiorari to decide a single question: "Is judicial immunity a defense available to public bodies sued under the New Mexico Civil Rights Act?" **[Pet. 8]** For the foregoing reasons, the answer is "yes." In their briefs, however, Petitioner and the ACLU modify the question presented. Petitioner suggests that the question presented is whether quasi-judicial immunity applies "when a claim is brought against a public body *like the NMRC* [and not a court]." **[BIC 24]** (emphasis added). Similarly, the ACLU says the question is whether judicial immunity "extend[s] . . . to non-judicial branches" of government. **[ACLU AmB 3-4]** This Court "will only consider the questions set forth in the petition."

Rule 12-502(C)(2)(b) NMRA; *see also Fikes v. Furst*, 2003-NMSC-033, ¶ 8, 134 N.M. 602 (same). Given that the question presented is straightforwardly whether public bodies may invoke judicial immunity under the New Mexico Civil Rights Act, the Court's grant of certiorari review does not require it to answer the separate question of whether public bodies in the executive branch may assert judicial, quasi-judicial, or other common law immunities.

Even assuming that the availability of quasi-judicial immunity to non-judicial-branch public bodies "is a foundational issue which is integral to a complete and thorough analysis of the specific question presented in the petition for writ of certiorari," *State v. Javier M.*, 2001-NMSC-030, ¶ 10, 131 N.M. 1, the same basic analysis applies. Quasi-judicial immunity is a recognized common law immunity that applies to state officers who exercise powers akin to those of a judge or which are integral to the judicial process. Like judicial immunity, quasi-judicial immunity is a defense available to not only the individual sued, but also the public body for which they serve. *See, e.g., State v. Mason*, 724 P.2d 1289, 1292 (Colo. 1986) (en banc). Turning to the statute, the New Mexico Civil Rights Act not only preserves judicial immunity; it also

preserves "*any other* constitutional, statutory or *common law immunity*." § 41-4A-10 (emphasis added). It follows that the New Mexico Civil Rights Act does not abrogate public bodies' quasi-judicial immunity.

### A. Quasi-judicial immunity applies to claims that arise from the exercise of a lawful judicial function, including claims alleged against a public body outside of the judicial branch.

Guided by its underlying purposes, "[o]ver time, judicial immunity has been extended to 'various persons whose adjudicatory functions or other involvement with the judicial process have been thought to warrant protection from harassment, intimidation, or other interference with their ability to engage in impartial decision-making.'" *Hunnicutt*, 2009-NMCA-121, ¶ 9 (quoting *Collins*, 1991-NMSC-013, ¶ 18). This form of immunity is sometimes referred to as "quasi-judicial immunity," and it bars damages claims based on the exercise of a judicial function, even if not performed by a judge.

This Court has applied quasi-judicial immunity to individuals who are not themselves judges but who nonetheless exercise functions integral to court proceedings. *See, e.g.*, *Kimbrell*, 2014-NMSC-027, ¶ 2 (holding that absolute, quasi-judicial immunity bars a suit against a guardian ad litem in the performance of their duties); *Collins*, 1991-

NMSC-013, ¶ 16 (holding that quasi-judicial immunity bars suit against guardian ad litem "appointed in connection with court approval of a settlement involving a minor"). This application of quasi-judicial immunity is sound: if a judge is immune from liability for damages caused by a contempt citation, so too is the bailiff for taking actions "specifically ordered by the trial judge" to enforce the citation. *Martin v. Hendren*, 127 F.3d 720, 721 (8th Cir. 1997).

At common law, quasi-judicial immunity traditionally applies to bar claims against *executive* officials for exercising "powers very nearly akin to those of judges in the court" and "discretion [that is] in its nature judicial." Floyd R. Mechem, A Treatise on the Law of Public Offices and Officers § 636 (1890); *see, e.g., Downer v. Lent*, 6 Cal. 94, 95 (1856) ("It is beyond controversy, that the power of the Board of Pilot Commissioners is *quasi* judicial, and they are not civilly answerable. They are public officers to whom the law has entrusted certain duties, the performance of which requires the exercise of judgment."); *Reed v. Conway*, 20 Mo. 22, 38, 45 (1854) (holding that the surveyor general of Illinois and Missouri, a federal executive officer, "with judicial powers in some cases," was immune from claims against him in his actions "as a quasi judge"); *Neece*

*v. Kantu*, 1973-NMCA-020, ¶ 29, 84 N.M. 700, *cert. denied*, 84 N.M. 696 (recognizing absolute quasi-judicial immunity from defamation liability for statements by labor-grievance arbitrator). Indeed, in *Collins*, the Court recognized that quasi-judicial immunity encompasses "various persons whose adjudicatory functions or other involvement with the judicial process have been thought to warrant protection from harassment, intimidation, or other interference with their ability to engage in impartial decision-making," and approvingly cited cases holding that executive-branch officials such as hearing officers, administrative law judges, and prosecutors are immune for their quasi-judicial acts. 1991-NMSC-013, ¶ 18 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Butz v. Economou*, 438 U.S. 478, 512–14 (1978); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Imbler v. Pachtman*, 424 U.S. 409 (1976)); *cf. Candelaria v. Robinson*, 1980-NMCA-003, ¶¶ 7, 28, 93 N.M. 786 (holding district attorney immune from defamation for letter sent to sheriff, because letter was incidental to "the duties of a law officer" and "[j]udicial immunity is involved because the office of district attorney is a quasi-judicial office.").

Quasi-judicial immunity, therefore, can arise in two contexts: first, if the defendant exercises authority granted by a court; or, second, if the defendant is taking actions that are functionally comparable to judicial actions. In either case, like judicial immunity, quasi-judicial immunity focuses on whether a claim is based on official functions that are judicial in nature. *Compare Collins*, 1991-NMSC-013, ¶ 16 (adopting functional test to apply quasi-judicial immunity to bar claims against a guardian ad litem), *with Hunnicut*, 2009-NMCA-121, ¶ 9 (applying functional test to apply judicial immunity to bar claims against public bodies); *see also Collins*, 1991-NMSC-013, ¶ 16 ("[T]his Court has long favored a 'functional' inquiry—immunity attaches to a particular official functions, not to particular offices." (alterations original) (quoting *Westfall v. Erwin*, 484 U.S. 292, 296 n.3 (1988)); *accord Lutheran Day Care v. Snohomish Cnty.*, 829 P.2d 746, 750 (Wash. 1992) (en banc) ("Quasi-judicial immunity attaches to persons or entities who perform functions that are so comparable to those performed by judges that it is felt they should share the judge's absolute immunity while carrying out those functions." (citing *Butz*, 438 U.S. at 512–14).

This functional test reflects the two immunities' shared purpose: protecting a public officer or employee who performs a judicial function from the "fear that unsatisfied litigants may hound him with litigation charging malice or corruption"—regardless of whether they work inside the judicial branch of government. *Collins*, 1991-NMSC-013, ¶ 17 (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). Accordingly, another state supreme court has observed that the distinction between judicial and quasi-judicial immunity "is a distinction of name and not a distinction of immunity." *Praggastis v. Clackamas Cnty.*, 752 P.2d 302, 307 (Or. 1988) (en banc) (affirming dismissal of suit against political subdivision and its employee under Oregon's tort claims act on grounds of quasi-judicial immunity).

Like judicial immunity, quasi-judicial immunity bars any claim that is predicated on the exercise of judicial functions—irrespective of whether the claim is asserted against a public body, and irrespective of whether the named public body is outside of the judiciary, as other state supreme courts have concluded. *See, e.g.*, *Mason*, 724 P.2d at 1292 (holding that quasi-judicial immunity barred both the Colorado parole board and its members from negligent-release claim and explaining

"[t]he quasi-judicial immunity of the individual members of the parole board has little significance unless the parole board as an entity and the state of Colorado are also entitled to the benefit of quasi-judicial immunity"); *see also, e.g., State Bd. of Chiropractic Examiners v. Stjernholm*, 935 P.2d 959, 969 (Colo. 1997) (en banc) ("As public officials engaging in quasi-judicial actions, the state Board [of Chiropractic Examiners], Board members and attorneys enjoy absolute immunity from suit or damages, state or federal."); *Tarter v. State*, 503 N.E.2d 84, 85, 87 (N.Y. 1986) (holding that New York State Board of Parole immune from negligence claims because "parole release decisions are quasi-judicial in character"); *Taggart v. State*, 822 P.2d 243, 248–49 (Wash. 1992) (en banc) (holding quasi-judicial immunity barred negligent-release claim against Washington's Indeterminate Sentence Review Board); *Jones-Clark v. Severe*, 846 P.2d 1197, 1201 (Or. Ct. App. 1993) (dismissing negligence claim against defendants parole officer and state corrections department on quasi-judicial immunity grounds because claim was predicated on defendant parole officer's actions within the

authority granted to him by a court).[5] Courts, including the Colorado Supreme Court, have relied on common law agency and tort principles to apply quasi-judicial immunity to bar claims against public-body defendants. *See, e.g. Mason*, 724 P.2d at 1292 (explaining that the State and "'its governmental agencies are immune for the liability for acts and omissions constituting (a) The exercise of a judicial function . . . .'" (quoting Restatement (Second) of Torts, § 895(B)(3), at 400 (1979)).

The holdings of several other state supreme courts are entirely consistent with New Mexico case law. Again, in *Hunnicut*, the Court of Appeals applied judicial immunity to bar breach-of-contract damages claims against the AOC and the Twelfth Judicial District Court. 2009-NMCA-121, ¶ 9. There, the AOC appointed an attorney to represent the plaintiff. *Id.* ¶ 2. The attorney was therefore under a duty to act *in the*

---

[5] While the cases involving the quasi-judicial of executive-agency parole boards provide the best examples of courts applying the immunity to public-body defendants, state courts have applied the immunity in many other contexts. See, e.g., *Foster v. Washoe Cnty.*, 964 P.2d 788, 793 (Nev. 1998) (applying quasi-judicial immunity to bar claims against a court appointed special advocate (CASA) public body); *Gross v. State*, 33 A.D.2d 868, 869 (N.Y. App. Div. 1969) (holding the State immune from suit because claim was based on alleged functions of the Secretary of State that were "in a quasi-judicial capacity which requires the exercise of judgment and discretion"); *cf. Venckus v. City of Iowa City*, 930 N.W.2d 792, 804 (Iowa 2019) (holding that judicial-process immunity barred state constitutional tort claims against county for decisions to prosecute criminal charge).

*plaintiff*s interests, either because the plaintiff was the attorney's client, or because the plaintiff was an intended third-party beneficiary of the contract between the attorney and the AOC. *Id.* ¶ 4. Nonetheless, looking to the AOC's functions (as opposed to its formal position in relation to the judicial branch of government), the court found that both the attorney and the AOC were immune from liability for the damages to the plaintiff allegedly caused by the attorney's breach of duty, because the contract was "integrally related" to an ongoing court proceeding and collateral tort litigation threatened that proceeding's integrity. *Id.* ¶ 16.

The *Hunnicutt* court's application of judicial immunity did not turn on whether the AOC, for example, was within the judicial branch; rather, the court focused on whether the public body's contract was integral to the courts' power to appoint counsel. *Id.* ¶¶ 9–13. And under that analysis, the New Mexico Racing Commission functions at issue in this appeal are more "judicial" than the functions performed by the AOC in *Hunnicutt*. If the AOC is entitled to judicial immunity for its alleged failure to "monitor[] the effectiveness" of an attorney it retained to represent the plaintiff's interests, *id.* ¶ 16, the New Mexico Racing Commission has a stronger claim to immunity from claims directly

attacking its exercise of an independent adjudicatory function. As the Colorado Supreme Court, sitting en banc, explained when it recognized the availability of quasi-judicial immunity against claims for damages by a state licensing board like the Racing Commission: "The rationale for both absolute judicial and prosecutorial immunity is equally pertinent to quasi-judicial functions performed by state boards, members of these state boards, and state attorneys: 'The importance of impartial decision making, the possibility of unfounded suits and the need for freedom from fear of litigation. . . .'" *Stjernholm*, 935 P.2d at 969 (quoting *Mason*, 724 P.2d at 1291).

Because New Mexico courts apply an identical, "functional" test to apply judicial and quasi-judicial immunity, New Mexico case law makes quasi-judicial immunity an available defense to public bodies outside of the judicial branch—just as other state supreme courts have concluded of their respective common law.

### B. The New Mexico Civil Rights Act does not abrogate quasi-judicial immunity.

The New Mexico Civil Rights Act does not abrogate the immunities public bodies have against claims seeking money damages for exercise of judicial functions, including the quasi-judicial immunity that exists at

common law. The Legislature's reservation of common law immunities is unambiguous. "The prohibition on the use of the defense of qualified immunity pursuant to Section 4 of the New Mexico Civil Rights Act and the waiver of sovereign immunity pursuant to Section 9 of that act *shall not abrogate* judicial immunity, legislative immunity *or any other* constitutional, statutory or *common law immunity*." § 41-4A-10 (emphasis added). Accordingly, quasi-judicial immunity remains an available defense for public bodies outside of the judicial branch to claims under the New Mexico Civil Rights Act, so long as the claim is predicated on the exercise of a judicial function.

### C. Immunity for quasi-judicial actions by executive branch agencies neither offends the separation of powers nor jeopardizes judicial review of alleged violations of constitutional rights.

The availability of judicial and quasi-judicial immunity to public bodies accords with the law pertaining to the exercise and review of adjudicatory decisions by executive branch agencies. While the courts (and this Court) have final review of all exercises of the judicial power, the courts are not the only public bodies that are lawfully required to adjudicate non-private-right claims. Public bodies outside of the judicial branch are constitutionally and statutorily required to exercise judicial

functions and do so subject to many avenues of judicial review. The availability of quasi-judicial immunity for the exercise of their judicial functions nether threatens the Court's review and ability to remedy alleged violations of constitutional rights nor violates the separation of powers.

The New Mexico Constitution vests several public bodies outside of the judiciary with judicial or quasi-judicial power. *See, e.g.*, N.M. Const. art. VI, § 1 (authorizing the Senate with judicial power when sitting as a court of impeachment); N.M. Const. art. V, § 17(B) (authorizing the State Ethics Commission to "*adjudicate* complaints alleging violations of . . . standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law") (emphasis added); *cf.* N.M. Const. art. III, § 1 (authorizing the legislature to create the Workers Compensation Administration, "a body with statewide *jurisdiction*" to determine rights and liabilities involving personal injury sustained in the course of employment) (emphasis added). These constitutional grants of judicial power to bodies outside of the judiciary do not offend the separation of powers, because the state Constitution "expressly directed or permitted" them. N.M. Const. art. III, § 1.

Next, statutory law contains scores of authorizations to adjudicate, at least in the first instance, non-private-right disputes.[6] The Court has

---

[6] The New Mexico Statutes Annotated is replete with statutes granting such authority. *See* NMSA 1978, § 62-19-9(C)(3)(d) (2023) (Public Regulation Commission); NMSA 1978, § 74-6-5(B), (G), (Q) (2009) (Water Quality Control Commission); NMSA 1978, § 70-2-12(A)(5) (2019), § 70-2-22 (1977) (Oil Conservation Division); NMSA 1978, § 75-3-10 (1965) (Interstate Stream Commission); NMSA 1978, § 69-36-17(A) (1993) (Mining and Minerals Division); NMSA 1978, § 50-9-9(D)–(F) (1975) (Occupational Health and Safety Review Commission); NMSA 1978, § 60-2D-14 (1991) (Bicycle Racing Commission); NMSA 1978, § 60-2E-7(B)–(C) (2009) (Gaming Control Board); NMSA 1978, §§ 60-3A-9 (2001), 60-3A-10 (2001) (Alcoholic Beverage Control Division); NMSA 1978, §§ 60-13-6(E) (2011), 60-13-23 (1993), 60-13-23.1(A) (1989) (Constructive Industries Commission); NMSA 1978, § 60-13A-11(A) (1993) (Regulation and Licensing Department); NMSA 1978, § 60-14-12 (1983) (Manufactured Housing Division and Manufactured Housing Commission); NMSA 1978, § 60-16-7 (2018) (New Mexico Department of Agriculture); NMSA 1978, § 61-2-6(E)(9) (2022) (Board of Optometry); NMSA 1978, § 61-3-10(G) (2022) (Board of Nursing); NMSA 1978, § 61-4-10(A) (2006) (Chiropractic Board); NMSA 1978, 61-5A-21(A) (2021) (Board of Dental Healthcare and the Dental Hygienists Committee); NMSA 1978, § 61-6-5(H) (2023) (Medical Board); NMSA 1978, § 61-7A-13(A) (1989) (Nutrition and Dietetics Practice Board); NMSA 1978, § 61-9-6(B)(3) (2022); NMSA 1978, § 61-9A-9(A)(4) (2021) (Counseling and Therapy Board); NMSA 1978, § 61-11-20(A) (2019) (Board of Pharmacy); NMSA 1978, § 61-12A-9(A)(4) (2022) (Board of Examiners for Occupational Therapy); NMSA 1978, § 61-12C-8(A) (2019) (Massage Therapy Board); NMSA 1978, § 61-12D-5(K) (2022) (Physical Therapy Board); NMSA 1978, § 61-13-6(C) (2022) (Board of Nursing Home Administrators); NMSA 1978, § 1-14-5(A) (2022) (Board of Veterinary Medicine); NMSA 1978 61-14A-8(G) (2022) (Board of Acupuncture and Oriental Medicine); NMSA 1978, § 61-14B-11(D) (2022) (Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board); NMSA 1978, § 61-14D-9(G), (H) (2005) (Athletic Trainer Practice Board); NMSA 1978, §§ 61-14F-6(B) (2009), 61-14F-7(B) (2009), 61-14F-17 (2009) (Secretary of State of New Mexico); 61-15-4(G), (H) (2022) (Board of Examiners for Architects); NMSA 1978, §§ 61-16-6 (1941), 61-16-11 (1941) (Local county boards); NMSA 1978, §§ 61-17A-7(A) (2022), 61-17A-21(A) (2022) (Board of Barbers and Cosmetologists); NMSA 1978, §§ 61-17B-4 (2007), 61-17B-5 (2022), 61-17B-16(A)(8) (2022) (Board of Body Art Practitioners); NMSA 1978, § 77-2-7(F), (I), (N) (1999) (Livestock Board); NMSA 1978, § 50-1-2 (1987); NMSA 1978, §§ 51-1-8 (2015), 51-1-28 (1979) (Unemployment Compensation Board of Review); NMSA 1978, § 69-25A-29(E) (2005) (Coal Surface Mining Commission); NMSA 1978, § 69-36-15(A) (1993) (Mining Commission); NMSA 1978, § 69-8-4.1(A) (2007) (Mining Safety Board); NMSA 1978,

recognized the Legislature's power to vest administrative agencies with quasi-judicial, adjudicatory functions. *See, e.g., Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039, ¶ 35 ("Nor is it improper for the Legislature to vest an agency with quasi-judicial functions." (citation omitted)); *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 14, 149 N.M. 42 ("[W]e have recognized the Legislature's power to delegate both adjudicative and rule-making power to administrative agencies."). Under the public rights doctrine, those statutory authorizations do not offend the separation of powers. *See, e.g., Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶¶ 38–39, 118 N.M. 470 (holding that where "a public right [is]

---

§ 17-1-14(B)(10) (2015) (State Game Commission); NMSA 1978, § 10-9-18(A) (2009) (State Personnel Board); NMSA 1978, §§ 10-7E-9(B), (C) (2020), 10-7E-12 (2005) (Public Employee Labor Relations Board); NMSA 1978, § 28-7-23 (1986) (Commission for the Blind); NMSA 1978, §§ 28-1-4 (1987), 28-1-11 (1995) (Human Rights Commission); NMSA 1978, §§ 61-23-10(A)–(D) (2022), 61-23-24(A) (2022) (State Board of Licensure for Professional Engineers and Professional Surveyors); NMSA 1978, § 61-32-6(A)(3) (2022); NMSA 1978, § 61-24D-11(B), (C) (2020) (New Mexico Home Inspectors Board); NMSA 1978, § 61-24C-10(F) (2023) (Interior Design Board); NMSA 1978, § 61-24B-7(E)–(G) (2022) (Board of Landscape Architects); NMSA 1978, § 61-28B-5(B)(3) (2022); NMSA 1978, § 61-30-7(M) (2022) (Real Estate Appraisers Board); NMSA 1978, §§ 61-29-9(A) (B) (2021), 61-23-17.2 2011); NMSA 1978, § 61-31-17(A) (2017) (Board of Social Work Examiners); NMSA 1978, § 61-34-12 (2007) (Signed Language Interpreting Practices Board); NMSA 1978, § 31-22-5(A) (1991) (Crime Victims Reparation Commission); NMSA 1978, § 29-9-5(C)(2) (1979) (Governor's Organized Crime Prevention Commission); NMSA 1978, §§ 31-21-10.1 (2007), 31-21-25 (2001) (State Parole Board).

created by statute, the legislature can constitutionally prescribe methods for adjudicating a dispute over termination of that right" and further "may assign disputes involving 'public rights' . . . a[n adjudicative body] that does not use a jury as a factfinder") (citing *Wylie Corp. v. Mowrer*, 1986-NMSC-075, ¶ 6, 104 N.M. 751 and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 n.4 (1989)).

Every day in New Mexico, hundreds of state employees outside of the judicial branch lawfully exercise judicial functions committed to the public body that employs them. And like their counterparts in the judicial branch, a party may contend that these actions violate "inalienable" constitutional rights. For example, an Oil Conservation Division hearing examiner imposes a civil penalty for the sale of illegal oil or gas, *see* § 70-2-22, and the seller claims the penalty was imposed without due process of law. The Cannabis Control Division initiates disciplinary proceedings against a licensed cannabis retailer for advertising to minors, and the licensee claims this violates its right to free speech. *See* NMSA 1978, §§ 26-2C-8(B) (2021), 26-2C-20(B) (2024). These and all agency actions are subject to orderly review by way of

appeals or appropriate writ proceedings.[7] These mechanisms of review of agency adjudications by the state courts permit alleged violations of constitutional rights to be heard, and if found, remedied.[8] And, of course, the federal courts are always open to review claims that actions by state executive agencies violate federal rights. *See, e.g., Ex parte Young*, 209 U.S. 123, 128 (1908) (holding that the Eleventh Amendment does not bar

---

[7] *See, e.g.*, N.M. Const., art. III, § 3 (providing this Court with original jurisdiction in "mandamus against all state officers, boards and commissions"); N.M. Const., art. III, § 13 (providing the district courts with "the power to issue writs of habeas corpus, mandamus, injunction ... and all other writs, remedial or otherwise, in the exercise of their jurisdiction"); NMSA 1978, §§ 44-2-1 to 44-2-14 (1884, as amended through 1887) (regulating mandamus); Rule 12-601 NMRA (setting forth the procedure for direct appeals to the Supreme Court where there is a statutory right to direct appeal, e.g., from PRC final decisions); Rule 1-074 NMRA (setting forth the procedure for appeals from administrative agencies to the district courts where there is a statutory right of review to the district court); Rule 1-075 NMRA (setting forth the procedure for writs of certiorari to review final agency decisions where there is no statutory right of appeal); Rule 1-076 (setting forth the procedure governing appeals from orders of the Human Rights Commission).

[8] *See, e.g., Public Service Co. of New Mexico v. Public Regulation Comm'n*, 2019-NMSC-012, ¶¶ 1–2 (exercising appellate review of Public Regulation Commission adjudication alleged to have violated the appellant's due process rights); *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, ¶¶ 5–6, 86 N.M. 359 (holding that mandamus statute gives courts authority to review constitutionality of Governor's actions as well as "the constitutionality of legislative enactments"); *Public Service Co. of New Mexico v. New Mexico Public Service Comm'n*, 1991-NMSC-083, ¶ 9, 112 N.M. 379 (alleged due process violation raised and resolved on direct appeal from final agency action); *Mountain States Telephone and Telegraph Co. v. New Mexico State Corp. Comm'n*, 1977-NMSC-032, ¶ 37, 90 N.M. 325 (alleged confiscation of property in violation of N.M. Const. art. II, § 20 reviewed on appeal from agency decision).

suits in federal court against state officials seeking prospective relief from violations of federal law).

It is simply not true that an executive agency's adjudicatory decisions were not subject to meaningful judicial review prior to the passage of the New Mexico Civil Rights Act. *See* § 41-4A-3(E) ("The remedies provided for in the New Mexico Civil Rights Act are not exclusive and shall be in addition to any other remedies prescribed by law or available pursuant to common law."). Of course, the courts must be able to review (and this Court conduct the final review of) the legality executive agency adjudications, including challenges for violations of state constitutional rights. To achieve that end, however, the Court need not (and respectfully should not) interpret the New Mexico Civil Rights Act to abrogate judicial immunity and quasi-judicial immunity as defenses available to public bodies against collateral actions for damages and attorneys' fees when the subject of the action is the exercise of a judicial or quasi-judicial function.

## III. The Court of Appeals correctly held that the New Mexico Racing Commission enjoys quasi-judicial immunity from Petitioner's claims.

Two main principles can be derived from the caselaw: First, just as judicial immunity ensures that judges perform their judicial functions with independence, impartiality and subject to orderly review, quasi-judicial immunity ensures executive officials perform analogous adjudicatory functions with the same independence, impartiality, and availability of orderly review. *See, e.g. Collins,* 1991-NMSC-013, ¶ 18 (citations omitted). Second, as the Colorado Supreme Court has best explained, considering its purposes, quasi-judicial immunity as a defense to damages claims is available to not only executive officers but also the public bodies for which they serve. *Stjernholm,* 935 P.2d at 969 (state licensing board); *Mason,* 724 P.2d at 1291 (parole board). In view of these principles, the Court of Appeals correctly held that the New Mexico Racing Commission was entitled to immunity from Petitioner's claims.

### A. Petitioner's claims are based on a judicial function.

Petitioner claims that the New Mexico Racing Commission violated his constitutional rights when its officers and employees "initiated an administrative prosecution" against him, made untrue statements "at [the] hearing on this matter," and expressed an intent "to continue the

vindictive prosecution in light of and despite the evidence presented" at the hearing. **[1 RP 3-4]** His claims for relief demonstrate that the New Mexico Racing Commission's actions were quasi-judicial in nature: Petitioner seeks "a preliminary injunction prohibiting administrative prosecution of [Petitioner]," attorney's fees and "actual damages associated" with the prosecution. **[1 RP 5]** The Court of Appeals correctly concluded that these claims implicate a judicial or quasi-judicial function, given that before the Racing Commission can "make binding determinations which directly affect the legal rights of individuals," i.e. revoke Petitioner's license, it must "use the procedures which have traditionally been associated with the judicial process[,]" including by ensuring that the trier of fact in the license revocation proceeding "be impartial and unconcerned in the result . . . ." *Reid v. New Mexico Bd. of Examiners of Optometry*, 1979-NMSC-005, ¶ 8, 92 N.M. 414. It follows that quasi-judicial immunity applies, because the availability of money damages (and attorneys' fees) would thwart the Racing Commission's ability to adjudicate license revocations with the required fairness and impartiality and free from harassing, collateral attacks.

### B. Petitioner failed to develop any argument regarding the sufficiency of procedural safeguards in New Mexico Racing Commission disciplinary proceedings.

In applying quasi-judicial immunity to bar challenges to executive agency actions, courts examine whether "the same safeguards [apply to the quasi-judicial proceeding] as are available in the judicial process." *Compare Butz*, 438 U.S. at 513 (holding immunity applied), *with Cleavinger v. Saxner*, 474 U.S. 193, 203–04 (1985) (holding immunity did not apply). Many state agencies in New Mexico exercise a quasi-judicial function, and the specific procedural safeguards that apply to their proceedings vary. For instance, a State Ethics Commission hearing officer is required to be a retired judge or a lawyer, and must conduct the hearing in accordance with the rules of evidence, as well as being subject to similar protections that preserve the hearing officer's independent judgment as the protections described in *Butz*. *See* NMSA 1978, § 10-16G-12(C)–(D) (2019); 1.8.3.14(A) NMAC.[9] Similar guarantees of hearing officer independence apply to debarment proceedings under the

[9] State Ethics Commission hearing officers have included the Honorable Edward L. Chávez (retired Justice of the Court), the Honorable Alan C. Torgerson (retired U.S. Magistrate Judge for the United States District Court for the District of New Mexico), and the Honorable James Starzynski (retired U.S. Chief Bankruptcy Judge for the United States Bankruptcy Court for the District of New Mexico).

Procurement Code, *see* 1.4.1.88(J)(2)(g) NMAC, as well as in disciplinary proceedings governing District Attorneys, *see* 10.4.10.15 NMAC. Other quasi-judicial proceedings may have more or fewer such requirements.

The Court of Appeals analyzed whether the New Mexico Racing Commission's hearing process contains adequate procedural safeguards briefly. *See Bolen v. N.M. Racing Comm'n*, 2024-NMCA-056, ¶ 27. Petitioner argues in conclusory fashion that "[t]he court of appeals' assurance that there are sufficient procedural safeguards in the administrative code to control unconstitutional conduct is not reassuring." **[BIC 29]** For its part, the ACLU argues that the Court of Appeals should have "look[ed] beyond the text of regulations and statutes and scrutinize[d] practices." **[ACLU AmB 17]**

While there must be adequate procedural safeguards against unconstitutional conduct for quasi-judicial immunity to apply, the Court need not address that question because petitioner forfeited any challenge to the New Mexico Racing Commission's hearing process. As the Court of Appeals noted, Petitioner did nothing to raise or otherwise argue this point in their briefing. *See Bolen*, 2024-NMCA-056, ¶ 27 ("Bolen does not argue that there is a lack of such procedural safeguards . . . ."). Petitioner

not only forfeited this argument in the proceedings below, but again fails to develop the point in their brief to this Court. Accordingly, while an administrative agency's failure to accord litigants adequate procedural safeguards may preclude it from asserting quasi-judicial immunity, that issue is simply not before the Court and need not be resolved in the Court's analysis of whether a public-body defendant may invoke judicial or quasi-judicial immunity at all. *See Citizens for Fair Rates and the Environment v. New Mexico Public Regulation Comm'n*, 2022-NMSC-010, ¶ 29 (refusing to address issue when the appellant had failed to "adequately develop these arguments in its briefing on appeal").[10] The question presented is simply whether a public body may invoke judicial immunity in response to claims against a public body under the New Mexico Civil Rights Act, and the answer to that question is "yes."

## CONCLUSION

The Court respectfully should affirm the decision below.

---

[10] Similarly, Petitioner forfeited any argument that he should be permitted to pursue a claim under the New Mexico Civil Rights Act alongside any action for appellate review of the Racing Commission's actions by abandoning his appeal of the Racing Commission's disciplinary decision. **[2 RP 270]** *See Barton v. New Mexico Racing Comm'n*, A-1-CA-39837, ¶ 7 (Aug. 28, 2023) (non-precedential) (holding that a party may bring a claim under 42 U.S.C. § 1983 alongside a petition for judicial review pursuant to Rule 1-075 NMRA).

OCTOBER 4, 2024

Respectfully submitted,

By: */s/ Walker Boyd*
Jeremy Farris
Walker Boyd

800 Bradbury Dr. SE, Suite 215
Albuquerque, NM 87106
Tel: (505) 827-7800
Email: jeremy.farris@sec.nm.gov
walker.boyd@sec.nm.gov

*Counsel for State Ethics Commission*

Erin Lecocq

P.O. Box 1269
Santa Fe, NM 87504-1269
Tel: (505) 795-1037
Email: erin.lecocq@prc.nm.gov

*Counsel for Public Regulation Commission*

Brian VanDenzen
David Buchanan

P.O. Box 6400
Santa Fe, NM 87502
Tel: (505) 827-9714
Email: brian.vandenzen@aho.nm.gov
david.buchanan@aho.nm.gov

*Counsel for Administrative Hearings Office*

## CERTIFICATE OF SERVICE

I certify that on October 4, 2024, I filed the foregoing electronically, which caused the parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

*/s/ Walker Boyd*
Walker Boyd