

IN THE
Supreme Court of the United States

NEW MEXICO TRAPPERS ASSOCIATION AND
NATIONAL TRAPPERS ASSOCIATION,

Petitioners,

v.

RAÚL TORREZ, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF NEW MEXICO, RICHARD
STUMP, IN HIS OFFICIAL CAPACITY AS CHAIR OF
THE NEW MEXICO STATE GAME COMMISSION,
AND MICHAEL SLOANE, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF THE NEW MEXICO
DEPARTMENT OF GAME AND FISH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioners have Article III standing to challenge New Mexico Statute § 17-11-4(H), which makes the public land trapping prohibition (N.M.S.A. § 17-11-3) inapplicable to “enrolled members of a federally recognized Indian nation, tribe, or pueblo when trapping is conducted solely for religious or ceremonial purposes . . . ” while denying others that same opportunity.
2. Whether N.M.S.A. § 17-11-4(H) is ripe for review even though the department of game and fish has not yet promulgated rules regarding the statute.

PARTIES

Parties to the Proceeding in the court whose judgment is sought to be reviewed (listed due to a difference in parties than the specific caption(s) throughout the case): Plaintiffs/Petitioners: New Mexico Trappers Association and National Trappers Association (“Petitioners” or the “Trappers”). Defendants/Respondents: Raul Torrez, in his official capacity as Attorney General of New Mexico, Richard Stump in his official capacity as Chair of the New Mexico State Game Commission,¹ and Michael Sloane, in his official capacity as Director of the New Mexico Department of Game and Fish (“Respondents”). The Fur Takers of America, Inc. was a plaintiff below but is not participating in this proceeding and does not have any parent corporations, nor is there any publicly held companies that own 10% or more of any of Fur Takers of America, Inc.’s stock.

1. Tirzio Lopez, in his official capacity as Vice Chair of the New Mexico State Game Commission, was originally named since there was no Chair of the New Mexico State Game Commission at the time that Petitioners brought their lawsuit. Richard Stump, in his official capacity as Chair of the New Mexico State Game Commission, has since been substituted for Mr. Lopez under Federal Rule of Civil Procedure 25(d). App. 18a.

**CORPORATE DISCLOSURE STATEMENT AS
REQUIRED BY RULE 29.6**

Neither the National Trappers Association, nor the New Mexico Trappers Association have any parent corporations, nor is there any publicly held companies that own 10% or more of any of Petitioners' stock.

RELATED PROCEEDINGS

1. *New Mexico Trappers Association et al. v. Torrez et al.*, No. 1:23-cv-00444-MV-SCY (D.N.M.), Memorandum Opinion and Order (Sept. 8, 2025), Final Judgment (Sept. 8, 2025). The District Court dismissed Petitioners' federal and state constitutional claims for lack of standing and declined supplemental jurisdiction over the New Mexico Civil Rights Act claim. The court held that injuries from the inability to trap were not redressable because they flowed from the general ban, any stigmatic and psychological injury was not judicially cognizable, and the claims were not ripe.
2. *New Mexico Trappers Association et al. v. Torrez et al.*, No. 25-2117 (10th Cir.), Opinion (June 8, 2026), affirming. The Court of Appeals affirmed, holding that Petitioners lacked standing because their asserted economic, recreational, and aesthetic injuries were not redressable and that the stigmatic and psychological injuries were not ripe and not judicially cognizable.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners the New Mexico Trappers Association and the National Trappers Association respectfully petition for a writ of certiorari to review the Opinion and Judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The District Court's Memorandum Opinion and Order (D.N.M. Sept. 8, 2025) and Final Judgment (Sept. 8, 2025) are included in the appendix. The Court of Appeals' published Opinion (10th Cir. June 8, 2026) is also included. The current citation to the District Court's Order (Slip Copy) is *New Mexico Trappers Association v. Torrez*, No. 23-cv-444-MV-SCY, 2025 WL 2597084 (D.N.M. Sept. 8, 2025). The current citation to the Tenth Circuit's published Opinion is *New Mexico Trappers Association v. Torrez*, 178 F.4th 561 (10th Cir. 2026).

JURISDICTION

The Tenth Circuit Court of Appeals issued its final Opinion and Judgment on June 8, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This Petition is timely pursuant to 28 U.S.C. § 2101.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are as follows:

- **New Mexico Statutes Sections 17-11-1 *et seq.* (Wildlife Conservation and Public Safety Act):**
 - o **N.M.S.A. § 17-11-3:** “[i]t is a violation of the Wildlife Conservation and Public Safety Act to use a trap, snare, or wildlife poison for purposes of capturing, injuring, or killing an animal on public land except as provided in Section 17-11-4”
 - o **N.M.S.A. § 17-11-4(H):** “The provisions of the Wildlife Conservation and Public Safety Act do not apply to: . . . H. enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe or pueblo religious ceremonies.”
- **United States Constitution Amendment I (Establishment Clause):** “Congress shall make no law respecting an establishment of religion”
- **United States Constitution Amendment XIV (Equal Protection Clause):** “[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”
- **New Mexico Constitution Article II, Section 18 (Equal Protection Clause):** “[N]or shall any person be denied equal protection of the laws.”

- **New Mexico Constitution Article II, Section 11 (Establishment Clause):** “[N]o person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship . . . nor shall any preference be given by law to any religious denomination or mode of worship.”
- **New Mexico Statutes Sections 41-4A-1 *et seq.* (New Mexico Civil Rights Act):** “A public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall not subject or cause to be subjected any resident of New Mexico or person within the state to deprivation of any rights, privileges or immunities secured pursuant to the bill of rights of the constitution of New Mexico.”

STATEMENT OF THE CASE

New Mexico’s Wildlife Conservation and Public Safety Act (the “Act”) prohibits using “a trap, snare or wildlife poison for purposes of capturing, injuring or killing an animal on public land,” subject to enumerated exceptions. N.M.S.A. § 17-11-3. The exception at issue provides that the provisions of the Act “do not apply to . . . enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe, or pueblo religious ceremonies.” N.M.S.A. § 17-11-4(H). Rules have not been promulgated

pursuant to this exception, despite the Act's effective date of April 1, 2022. App. 20a.

Petitioners—two nonprofit associations composed of trappers and dedicated to trappers' rights (the "Trappers")—filed suit on May 22, 2023, asserting that the § 17-11-4(H) exception violates the Equal Protection Clause and the Establishment Clause of the U.S. and New Mexico Constitutions and the New Mexico Civil Rights Act, and sought declaratory and injunctive relief prohibiting enforcement. App. 20a-21a. The Trappers have asserted economic, recreational, aesthetic, psychological, and stigmatic harms arising from the Act and the exception's exclusionary preference. *Id.* The Respondents filed motions to dismiss the Trappers' claims primarily on the grounds that Petitioners lacked standing to assert them. *Id.* at 21a-22a.

The District Court dismissed the federal and state constitutional claims without prejudice for lack of standing, holding that the Trappers' economic, recreational, aesthetic, and psychological injuries were not redressable because they flowed from the general trapping ban, and that the Trappers' stigmatic and psychological harms did not rise to the level of a judicially cognizable harm. *Id.* at 26a-29a. The Court also found that the Trappers' claims were not ripe because no rules had been promulgated under § 17-11-4(H). *Id.* at 29a. The Court declined supplemental jurisdiction over the remaining state statutory claim. *Id.* at 29a-31a.

The Tenth Circuit affirmed the District Court in a published decision. It held: (i) injuries from the inability to trap were not redressable because these injuries flowed

from the general ban, and the Court found that if the exception were severed, it would still leave the general ban in place; (ii) the Trappers' psychological and stigmatic injuries were not ripe absent implementing rules and were not concrete and particularized under Article III; and (iii) supplemental jurisdiction was properly declined. *Id.* at 5a-15a.

REASONS FOR GRANTING THE PETITION

The Trappers respectfully request this Court grant certiorari because the Tenth Circuit's opinion adopts a position that would routinely shield discriminatory carveouts from judicial review by re-labeling unequal treatment injuries as nonconcrete, non-redressable, and/or unripe. When the right invoked is equal treatment, relief that removes the discriminatory preference redresses the injury, regardless of whether the benefit is extended to the excluded class or is withdrawn from the favored class. Lower courts require clarity that the denial of equal treatment is itself a concrete, redressable injury, and that claimed pre-enforcement challenges are ripe where plaintiffs face a credible threat of prosecution. The matters at issue here will recur whenever a generally applicable prohibition contains a preference for a favored group. By granting certiorari, this Court can restore uniformity in accordance with its precedent and ensure that discriminatory preferences are not insulated from review.

I. The Tenth Circuit's Decision Directly Conflicts with This Court's Holdings on Article III Standing.

Personal exclusion by a governmental classification, or preference for one group of people or one religion

to the exclusion of others, is a concrete, particularized injury under Article III of the Constitution. It has been recognized on numerous occasions by this Court, yet the Tenth Circuit held otherwise in this case. Here, the Trappers do not merely contend that Defendants have prohibited them from trapping on public land; they challenge a legislative classification that extends a benefit and preference to one class of persons—“enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes”—to engage in conduct that the State prohibits for anyone else desiring to trap on public land in New Mexico. N.M.S.A. § 17-11-4(H). The injury alleged is not just the inability to trap; it is **the denial of equal treatment under a statutory scheme that expressly prefers one group of people and their religion over others.**

That distinction is significant. Below, the Tenth Circuit held that the Trappers’ injury was not sufficiently concrete, specifically stating “that the exception communicates that they are not in the preferred group is abstract.” App. 13a. The Court of Appeals further emphasized that “[t]hey argue that the very existence of the statutory exception, for which the Trappers could never qualify, injures the Trappers now because it communicates that the government prefers Native Americans over other groups. Even if ripe, this is not the sort of concrete and particularized injury that we can review under Article III.” *Id.* This holding is in direct conflict with this Court’s longstanding Constitutional precedents. It treats direct legal exclusion as insufficiently concrete, contrary to long-settled standing principles, which recognize injury where plaintiffs are personally denied equal treatment or

personally subjected to governmental endorsement that marks them as outsiders.

In *Heckler v. Mathews*, this Court considered a challenge to a discriminatory amendment to the Social Security Act that provided different social security benefits based upon sex. 465 U.S. 728 (1984). Specifically, the amendment required married men applying for benefits to establish that they were economically dependent on their wives but created an “exception” for women that did not require them to make the same or similar showing. *Id.* at 731-33. The statutory scheme also included a severability clause, which generally provided that if the sex-based “exception” was held unconstitutionally invalid, the application of the exception still could not be expanded to include those not covered by it (*e.g.*, men). *Id.* at 728. The Plaintiff-Appellee in the matter, a retired postal service employee who was denied benefits under the statute, brought a class-action in Federal District Court alleging that the discriminatory scheme and severability clause were unconstitutional. *Id.*

Regarding standing specifically, the Court found that the asserted right was equal treatment in benefit distribution—not a substantive entitlement to a specific benefit amount—and his injury was therefore unequal treatment in the statutory scheme solely because of his gender. *Id.* The Court clarified that this was “a type of personal injury that we have long recognized as judicially cognizable.” *Id.* at 738. Specifically, the Court pronounced that:

[T]he right to equal treatment guaranteed by the Constitution is not co-extensive with any

substantive rights to the benefits denied to the party discriminated against. Rather, as we have repeatedly emphasized, discrimination itself, by perpetuating archaic and stereotypic notions or by stigmatizing members of the disfavored group as innately inferior and therefore as less worthy participants in the political community, can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group. Accordingly, as Justice Brandeis explained, when the right invoked is that of equal treatment, the appropriate remedy is a mandate of *equal* treatment, result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class.

Id. at 739-40 (internal citations and quotations omitted). Along this same line of reasoning, the Court held that the asserted injuries were redressable regardless of the severability clause because the clause only forbade extension of the benefits, not withdrawal. *Id.* The Court therefore found that the Plaintiff-Appellee had standing to maintain the action. *Id.* at 738-40.

Similar to *Heckler*, the Trappers challenge the inequity that the exception creates, not a guarantee to the ultimate benefit. Here, N.M.S.A. § 17-11-4(H) specifically permits certain people and their religion to engage in trapping while others are categorically excluded. The personal denial of equal treatment by extending a benefit to certain people while prohibiting others is the injury

Petitioners seek to correct. This Court has recognized such injuries as sufficient for Article III standing.

Another case—*Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville*—involved a Jacksonville “Minority Business Enterprise Participation” ordinance requiring that 10% of city contract spending be set aside for “minority business enterprises,” defined to include businesses at least 51% owned by specified minorities or women. 508 U.S. 656 (1993). A construction contractors’ association filed suit on the basis that most of its members did not qualify as Minority Business Enterprises (MBE) and would have bid on city construction contracts but for the ordinance’s preference. *Id.* at 656. After certiorari was granted, the city repealed the MBE ordinance and replaced it with another ordinance that, although different, still set aside certain contracts for black and female owned businesses. *Id.* This Court held that the case was not moot because the “city’s new ordinance accords preferential treatment in the award of city contracts, it disadvantages petitioner’s members in the same way that the repealed ordinance did.” *Id.* The Court further held that the petitioner had standing to sue the city, explaining:

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The “injury in fact” element of standing in such an equal protection case is the denial of equal

treatment resulting from the imposition of the barrier—here, the inability to compete on an equal footing in the bidding process—not the ultimate inability to obtain the benefit. To establish standing, therefore, petitioner need only demonstrate that its members are able and ready to bid on contracts and that a discriminatory policy prevents them from doing so on an equal basis.

Id. at 657 (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 98 S. Ct. 2733, 57 L.Ed.2d 750 (white male medical school applicant did not have to prove he would have been admitted in order to have standing to sue the school because the injury was that he was not allowed to compete for all 100 places simply because of his race)).

Similar to the ordinance in *Northeastern Florida*, N.M.S.A. § 17-11-4(H) gives the benefit of trapping on public land to members of a specific group for their religious purposes—“enrolled members of a federally recognized Indian nation, tribe or pueblo” for “bona fide Indian nation, tribe or pueblo religious ceremonies”—while excluding other people and other religions, as well as nonreligious purposes, from that same benefit. The injury in fact in an equal protection case is thus “the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.” *Northeastern Florida*, 508 U.S. at 666.

The Tenth Circuit mischaracterized the Trappers’ argument when it concluded that “even if the exception is unlawful, it could be severed from the Act, leaving the prohibition on trapping in place.” App. 10a. The Trappers

are aware that a court could simply sever the exception and leave the general public land trapping prohibition in place, same as the contractors in *Northeastern Florida* are not guaranteed to win any city contracts even without the MBE ordinance, and the plaintiff in *Bakke* is not guaranteed to be admitted into medical school even without the policy reserving 16 spots for minorities. If a court did sever the exception here, then all people desiring to trap on public land, regardless of nationality, race, and religion, would be similarly situated, and the Trappers would not be treated unequally for who they are and why they trap. Right now, however, N.M.S.A. § 17-11-4(H) unfairly favors and gives a specific allowance to one group of people and their religion, while excluding others. That is contrary to the Constitutional rights of equal protection and against the establishment of religion for which the Trappers have a right to challenge. The relief sought here is an injunction/declaration eliminating the discriminatory classification, and that relief itself remedies the injury-in-fact.

The Tenth Circuit's order in this case also conflicts with this Court's holding in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987). This Court held in *Arkansas Writers' Project* that a publisher of a general interest magazine had standing to challenge constitutionality of Arkansas' sales tax scheme, which exempted newspapers and religious, professional, trade and sports journals from taxation. *Id.* The plaintiff, Arkansas Times, conceded that it is not a newspaper or a religious, professional, trade, or sports journal and thus would not qualify for the tax exemption it challenged. *Id.* The Commissioner argued that Arkansas Times did not have standing because even if the exemption was

struck, it would still be taxed as it currently is. *Id.* at 227. This Court rejected the Commissioner’s argument “for it would effectively insulate underinclusive statutes from constitutional challenge.” *Id.* Arkansas Times’ constitutional claims were the only avenue of potential relief from an unfair statute that provided preferential treatment to certain publications by excluding them from sales tax. *Id.*

Here, as in *Arkansas Writers’ Project*, the Trappers challenge a law that gives preference to a specific group and religion to the exclusion of others. Specifically, the public land trapping ban “does not apply to enrolled members of a federally recognized Indian nation, tribe or pueblo” when they trap for “bona fide Indian nation, tribe or pueblo religious ceremonies.” N.M.S.A. § 17-11-4(H). Petitioners are aware that a court could determine N.M.S.A. § 17-11-4(H) to be unconstitutional and leave the general ban in place. While not the preferred outcome for the Trappers, they would at least not be stigmatized and unequally treated by a law that gives a specific benefit to one group of people and their religion, while prohibiting other people, religions and nonreligions from doing the same thing. That is the very basis of what the Equal Protection Clause of the Fourteenth Amendment and the Establishment and Free Exercise Clauses of the First Amendment intend to prevent. N.M.S.A. § 17-11-4(H) gives preference to one group and their religion, and it is this inequity that causes injury to the Trappers. The Trappers therefore respectfully request this Court grant certiorari to rectify the Tenth Circuit’s incorrect conclusion that they do not have Article III standing.

II. The Tenth Circuit’s Decision Mischaracterizes the Plain Text of the Statute and Conflicts with this Court’s Holdings that a Law Can be Ripe for Review, Even Prior to its Enforcement.

The Tenth Circuit’s Opinion found that the Trappers claims against N.M.S.A. § 17-11-4(H) are not ripe for review because “[t]he Act’s exception applies only ‘pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs[.]’” “This is not an accurate reading of the statute. The statute states, in full, that:

The provisions of the Wildlife Conservation and Public Safety Act do not apply to: . . . H. enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe or pueblo religious ceremonies.

N.M.S.A. § 17-11-4(H).

The statute is clear that the Act does not apply to members of a federally recognized Indian nation, tribe or pueblo if they are trapping for their religious or ceremonial purposes. It gives the department of game and fish the ability to collaborate with the secretary of Indian affairs to promulgate rules that recognize and protect bona fide Indian nation, tribe or pueblo religious ceremonies. The

statute does not state that the exemption *only* goes into effect after department of fish and game issues such rules. It does not condition the exception's existence on the promulgation of rules either. It simply gives the department the authority to collaborate with the secretary of Indian Affairs in issuing rules if it so chooses. N.M.S.A. § 17-11-4(H) is otherwise operative.

Notwithstanding, even if N.M.S.A. § 17-11-4(H) is viewed as pre-enforcement, this Court has consistently held “[w]hen challenging a law prior to its enforcement, a plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 152 (2014) (internal citation omitted). In addition, a plaintiff wishing to challenge the constitutionality of a law does not have to confess that he will in fact violate the law. *Id.* at 163.

Here, the Act specifically provides that any person who violates it is guilty of a misdemeanor. N.M.S.A. § 17-11-5. The Trappers submitted declarations from members confirming that they have trapped on public land in New Mexico in the past and they would continue to do so, but for this law and fear of criminal prosecution if they attempt to. As noted by this Court, “when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative a plaintiff need not first expose himself to actual arrest or prosecution to be entitled to challenge the statute.” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979)

(internal citation omitted). Thus, even if N.M.S.A. § 17-11-4(H) is interpreted as being “pre-enforcement” until the department of fish and game implements certain rules, as the Tenth Circuit claims, there is a present, actual, nonspeculative fear of criminal prosecution, and the Trappers should not have to first expose themselves to potential criminal liability in order to challenge the constitutionality of the statute.

Finally, like *Holder v. Humanitarian L. Project*, the government in this case has not argued that plaintiffs will not be prosecuted if they do what they say they wish to do. 561 U.S. 1, 16 (2010). Still further, similar to *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008), there is a realistic threat of prospective injury to the Trappers where N.M.S.A. § 17-11-4(H) extends the benefit of trapping to certain people and their religion (federally recognized Indian, nation, tribe and pueblo religious ceremonies) while subjecting people trapping for other religious or secular purposes to criminal prosecution. N.M.S.A. § 17-11-4(H) is therefore ripe for review, and this Court should grant certiorari to correct the Tenth Circuit’s departure from controlling precedent.

CONCLUSION

For the reasons discussed herein, the Trappers respectfully request the Honorable Court grant this Petition for Writ of Certiorari as this case presents important and recurring questions of standing and ripeness.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — TENTH CIRCUIT COURT
OF APPEALS OPINION (JUNE 8, 2026)**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 25-2117

NEW MEXICO TRAPPERS ASSOCIATION;
NATIONAL TRAPPERS ASSOCIATION; FUR
TAKERS OF AMERICA, INC.,

Plaintiffs-Appellants,

v.

RAUL TORREZ, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF NEW MEXICO;
TIRZIO LOPEZ, IN HIS OFFICIAL CAPACITY
AS VICE CHAIR OF THE NEW MEXICO STATE
GAME COMMISSION; MICHAEL SLOANE, IN HIS
OFFICIAL CAPACITY AS DIRECTOR OF THE
NEW MEXICO DEPARTMENT OF GAME
AND FISH,

Defendants-Appellees.

ANIMAL PROTECTION VOTERS; HUMANE
WORLD FOR ANIMALS; ANIMAL PROTECTION
NEW MEXICO; WILDEARTH GUARDIANS,

Amici Curiae.

**Appeal from the United States District Court
for the District of New Mexico
(D.C. No. 1:23-CV-00444-MV-SCY)**

Appendix A

Before **BACHARACH**, **EBEL**, and **KELLY**, Circuit Judges.

KELLY, Circuit Judge.

Plaintiffs-Appellants, the New Mexico Trappers Association, the National Trappers Association, and the Fur Takers of America, Inc. (the “Trappers”), are non-profit organizations dedicated to trappers’ rights. They brought suit against Defendants-Appellees, several members of the New Mexico state government,¹ challenging the New Mexico Wildlife Conservation and Public Safety Act (the “Act”), which prohibits the trapping of animals in New Mexico. N.M. Stat. Ann. §§ 17-11-1 to -5 (2026). The district court dismissed the Trappers’ federal and state constitutional claims without prejudice for lack of standing and declined to exercise supplemental jurisdiction over the remaining state statutory claim. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Background

The Act prohibits using “a trap, snare or wildlife poison for purposes of capturing, injuring or killing an animal on public land[.]” N.M. Stat. Ann. § 17-11-3 (2026). There are several exceptions, including the following:

1. The original Defendants were named in their official capacities and include Raúl Torrez, New Mexico Attorney General, Tirzio Lopez, Vice-Chair of the New Mexico State Game Commission, and Michael Sloane, Director of the New Mexico Department of Game and Fish. Aplt. App. 32. Richard Stump, Chair of the New Mexico State Game Commission, has since been substituted for Tirzio Lopez. *Id.*

Appendix A

The provisions of the Wildlife Conservation and Public Safety Act do not apply to . . . enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes *pursuant to rules issued by the department of game and fish* in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe or pueblo religious ceremonies.

Id. § 17-11-4(H) (emphasis added) (the “exception”).

The Trappers filed suit on May 22, 2023, alleging violations of the Equal Protection Clause of the U.S. Constitution (Count One), the Equal Protection Clause of the New Mexico Constitution (Count Two), the Establishment Clause of the U.S. Constitution (Count Three), the Establishment Clause of the New Mexico Constitution (Count Four), and the New Mexico Civil Rights Act (Count Five). Aplt. App. 12-18. They sought declaratory and injunctive relief prohibiting the Act’s enforcement. *Id.* at 19. The Trappers did not challenge the Act’s general prohibition against trapping in their complaint; they alleged only that the exception violates their constitutional and statutory rights. *Id.* at 12-18. New Mexico has not promulgated any rules pursuant to the exception. Aplt. App. 33; Aplee. Br. at 2. Specifically, the Trappers alleged in their complaint that “[t]he Act denies equal protection of the law as it permits enrolled members of federally recognized Indian nations, tribes, or pueblos to trap on public land for specific purposes while denying

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similarly situated individuals that same right.” Aplt. App. 12, 14. Further, they claimed that “the Act both aids and prefers Native American religions over other religions[,] . . . Native American modes of worship over other modes of worship[,] and . . . religious activities over non-religious activities.” *Id.* at 15-17.

Defendants filed motions to dismiss the Trappers’ complaint for failure to state a claim and for lack of standing. Aplee. Supp. App. 8-35, 36-62. In their response to the motions to dismiss, the Trappers stated explicitly and for the first time that they “have demonstrated economic, recreational, aesthetic, psychological, and stigmatic injuries as a direct result of the . . . Act.” *Id.* at 76. They maintain that trapping “is a fundamental part of who they are[,]” and the Act prohibits them from engaging in this activity while permitting others to do so. *Id.* On the psychological injury, they argued the Act “endorses another’s religion” and excludes the Trappers “*exclusively* because they are not in the favored religious and/or racial group.” *Id.* at 77. On the stigmatic injury, they argued the Act “discriminates based on membership in groups that require a certain heritage/national origin” and they cannot trap because they are not members of that group. *Id.* at 78.

After considering the “clarif[ied]” theories of injury from the Trappers’ response, the district court dismissed the constitutional claims for lack of standing. Aplt. App. 33, 35-39. The court held that the Trappers’ alleged economic, recreational, aesthetic, and psychological injuries are not redressable because, even if the court were to strike the exception, the Act would still prohibit the Trappers from

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trapping. *Id.* at 35-37. Although their stigmatic injury is redressable, the harm alleged does not rise to a judicially cognizable level, and otherwise their injury is not ripe for review. *Id.* at 37-39. The court declined to exercise supplemental jurisdiction over the remaining New Mexico Civil Rights Act claim. *Id.* at 39-41.

Discussion

We review the district court’s grant of a motion to dismiss de novo, “accepting all well-pleaded allegations of the complaint as true and considering them in the light most favorable to the nonmoving party.” *Johnson v. Smith*, 104 F.4th 153, 167 (10th Cir. 2024) (citation modified).

A. The Trappers Do Not Have Justiciable Claims.

To bring a suit in federal court, plaintiffs must establish that their claims are justiciable, meaning that the plaintiffs have standing and that their claims are ripe for review. *Kan. Jud. Rev. v. Stout*, 519 F.3d 1107, 1114 (10th Cir. 2008). “We review questions of justiciability de novo.” *Id.*

“To establish standing, a plaintiff must demonstrate that they (1) have suffered or likely will suffer an injury in fact, (2) the injury likely was caused or will be caused by the defendant, and (3) the injury likely would be redressed by the requested judicial relief.” *Shaw v. Smith*, 166 F.4th 61, 74 (10th Cir. 2026) (citation modified). “To demonstrate an injury-in-fact, a plaintiff must show that they have suffered or will suffer an invasion of a legally protected

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interest that is both (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 74-75 (citation modified). The party seeking to establish federal jurisdiction has the burden to show standing is met. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). For an association to establish standing, it must show that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Utah Ass’n of Cnty. v. Bush*, 455 F.3d 1094, 1099 (10th Cir. 2006) (citation modified).

Before addressing the Trappers’ appellate arguments on standing, we first recognize that there is some uncertainty as to what the Trappers’ injuries — and therefore theories of standing — are. The Trappers bring Establishment Clause, Equal Protection Clause, and civil rights claims. Aplt. App. 12-18. Although their complaint stated that the Act and its exception are both unlawful, their claims only challenge the exception. *Id.* In their response to the motions to dismiss, the Trappers stated that they “have demonstrated economic, recreational, aesthetic, psychological, and stigmatic injuries as a direct result of the [] Act.” Aplee. Supp. App. 76. The district court interpreted their complaint and response as alleging two general theories of injury: (1) that they cannot trap (causing economic, recreational, aesthetic, and psychological injuries) and (2) that the exception establishes an unlawful preference for Native Americans and religion (causing a stigmatic injury). Aplt. App. 35-

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39. We agree with this interpretation of their complaint and briefing and similarly consider whether either theory confers standing.² We find that neither theory does.

1. The Trappers Do Not Have Standing to Bring Claims Based on Their Economic, Recreational, Aesthetic, and Psychological Injuries.

The first type of injury is an obvious one: that the Trappers cannot trap. This has caused them economic, recreational, aesthetic, and psychological injuries, according to the Trappers. Aplee. Supp. App. 76-77. The district court rejected this theory because the injuries are not redressable. Aplt. App. 35-37. We agree. The Trappers allege only that the exception is unlawful, not the general ban. So even if we declared the exception unlawful, the prohibition on trapping would remain, and the Trappers would still be injured.³

2. Although we consider the Trappers' evolving theories of injury, we stress plaintiffs' obligation to meet pleading requirements. We have applied the *Twombly* and *Iqbal* plausibility test to assess standing in a complaint. See *COPE v. Kan. State Bd. of Educ.*, 821 F.3d 1215, 1220-21 (10th Cir. 2016); *Calderon v. City & Cnty. of Denver*, 855 F. App'x 438, 445 (10th Cir. 2021). In addition to alleging sufficient factual matter to plausibly support standing, plaintiffs should at the very least identify their theories of injury in their complaint, not in subsequent briefing.

3. Although the district court did not directly say so, we find that their claims also fail on traceability. "In this case, like many, redressability and traceability overlap as two sides of a causation coin." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1159 (10th Cir. 2005) (citation modified).

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On appeal, the Trappers argue that the exception cannot be severed from the rest of the Act; therefore, if the exception is unlawful, the entire Act is unlawful, and their claims are redressable. Aplt. Br. at 35-39. After the Trappers made this argument briefly below, Aplee. Supp. App. 81-82, the district court noted there was no evidence that the New Mexico legislature would not have passed the Act without the exception, so even if the exception is unlawful, it would not strike the entire Act, Aplt. App. 36-37.

The Trappers correctly state that a severability clause raises a presumption that the legislature would have enacted the remainder of the statute without the invalidated section. Aplt. Br. at 35 (citing *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222, 1240 (10th Cir. 1996)). However, they seem to argue that the opposite presumption also applies — that without a severability clause, we presume that the legislature would not have enacted the statute without the exception. *Id.* at 36. And in the present case, the circumstances suggest that the New Mexico legislature would have refused to pass the Act without the exception. *Id.* at 37-38. The exception, according to the Trappers, “is integral to the Act’s core design[.]” Aplt. Reply Br. at 15.

Severability of a state statute is a question of state law. *See Harvey E. Yates Co.*, 98 F.3d at 1240. “It is a fundamental principle that a part of a statute may be invalid and the remainder valid, where the invalid part can be separated from other portions, without impairing the force and effect of the remaining portions.” *Giant Indus.*

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Ariz., Inc. v. Tax'n. & Revenue Dep't, 1990- NMCA 074, 110 N.M. 442, 796 P.2d 1138, 1140 (N.M. Ct. App. 1990). Under New Mexico law, the lawful part of a statute can remain in effect if

(1) the invalid part [is] separable from the other portions without impairing the force and effect of the remaining parts; (2) the legislative purpose expressed in the valid portion can be given force and effect without the invalid part; and (3) when considering the entire act, it cannot be said that the legislature would not have passed the remaining part if it had known that the objectionable part was invalid.

Harvey E. Yates Co., 98 F.3d at 1240 (quoting *Giant Indus. Ariz., Inc.*, 796 P.2d at 1140).

First, although a severability clause raises a presumption of severability, we see no reason to adopt a reverse presumption that the lack of severability clause raises a presumption that an act is not severable. The Trappers have not cited any authority suggesting that we should do so, and we are especially reluctant given that state law governs the severability analysis here. Moreover, case law does suggest that, generally speaking, courts should sever the unconstitutional portion of a statute if possible. See *Kan. Jud. Rev.*, 519 F.3d at 1122; *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328-29, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006) (“We prefer . . . to sever [the statute’s] problematic portions while leaving the remainder intact[.]”).

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Second, we are not convinced that the legislature would have refused to pass the Act without the exception. The Trappers point to no text (or even legislative history) in support. Defendants, for their part, offer support to show that the main purpose of the Act was to protect wildlife, people, and pets. Aplee. Br. at 22-24 (describing the history of the Act's passage). Given the Trappers' burden to establish standing, they have not shown that the exception cannot be severed.

Accordingly, we find that even if the exception is unlawful, it could be severed from the Act, leaving the prohibition on trapping in place. The Trappers' economic, recreational, aesthetic, and psychological injuries based on their inability to trap are not redressable.

2. The Trappers' Psychological and Stigmatic Injuries Are Not Ripe and Are Not Judicially Cognizable.

The second type of injury is more attenuated: that the exception communicates that the government favors Native Americans and religion, and the Trappers are excluded from the favored group. According to the Trappers, this has caused them psychological and stigmatic injury.⁴ The

4. Again, there is some confusion regarding the Trappers' exact theories of injury. The district court considered the Trappers' alleged psychological injury in conjunction with their economic, recreational, and aesthetic injuries caused by being unable to trap. Aplt. App. 35-37. In their response to the motions to dismiss, the Trappers characterized their psychological injury as stemming from the government's endorsement of another's religion, which sends a

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district court held that although this type of injury is redressable because it is caused by the exception, it is not a judicially cognizable harm. Aplt. App. 37-39. And even if the harm was judicially cognizable, any claims based on this theory would not be ripe because the government has yet to promulgate any rules pursuant to the exception.

The claims based on this harm are not ripe for review. For an issue to be ripe, “it must present a live controversy, ripe for determination, advanced in a clean-cut and concrete form.” *Kan. Jud. Rev.*, 519 F.3d at 1116 (citation modified). The ripeness inquiry focuses on whether the plaintiff’s harm “has matured sufficiently to warrant judicial intervention.” *Id.* (citation modified). It “addresses a timing question: when in time is it appropriate for a court to take up the asserted claim.” *Id.* (citation modified).

Ripeness involves both constitutional and prudential considerations. *United States v. Cabral*, 926 F.3d 687,

message to those not in the favored group that they are outsiders. Aplee. Supp. App. 77. In their opening brief, they explain that the psychological injury includes both the harm from being unable to trap and the harm from the stigma of not being in the government’s favored group. Aplt. Br. at 7 n.2.

In any event, during oral argument, counsel for the Trappers stated that the psychological and stigmatic injuries are essentially one theory, but that courts have used different terminology depending on whether plaintiffs allege religious discrimination or an equal protection violation. Oral Arg. at 13:25-16:00. For present purposes we adopt the Trappers’ approach and consider the psychological and stigmatic injuries together. Even if there is any difference in the case law, both theories fail for the same reason: they are not ripe.

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693 (10th Cir. 2019). Under Article III, we may not issue advisory opinions. *Id.* Even if the case is ripe under the Constitution, we may decline to review it for prudential reasons after considering “(1) the fitness of the issue for judicial review, and (2) the hardship to the parties from withholding review.” *Id.* (citation modified). To determine whether an issue is fit for judicial review, we “focus on whether the determination of the merits turns upon strictly legal issues or requires facts that may not yet be sufficiently developed.” *Id.* (citation modified). “[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* (citation modified). And for the hardship inquiry, we consider whether the plaintiff “faces a direct and immediate dilemma” from the challenged conduct. *Id.* (citation modified).

The Act’s exception applies only “pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs[.]” N.M. Stat. Ann. § 17-11-4(H). No such rules have been promulgated, and we do not know if such rules will *ever* be promulgated. Meaning today, the prohibition against trapping stands, regardless of Native American status. Unless and until there are regulations putting the exception into effect, the Trappers are asking us to issue an impermissible advisory decision on the issue.

The Trappers’ psychological and stigmatic injuries were properly dismissed on ripeness alone. But we briefly address the Trappers’ contention that these injuries are ripe even without any regulations. Aplt. Reply Br.

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at 18-20; Oral Arg. at 04:45-05:22. They argue that the very existence of the statutory exception, for which the Trappers could never qualify, injures the Trappers now because it communicates that the government prefers Native Americans over other groups.

Even if ripe, this is not the sort of concrete and particularized injury that we can review under Article III. *Shaw*, 166 F.4th at 74-75. The Trappers rely upon cases where courts have addressed psychological and stigmatic injuries. *See, e.g., Catholic League for Religious & C.R. v. City & Cnty. of San Francisco*, 624 F.3d 1043 (9th Cir. 2010); *Allen v. Wright*, 468 U.S. 737, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984); *but see Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982) (relied on as distinguishable). And although we agree that these injuries may be serious, *see Allen*, 468 U.S. at 755, the injury the Trappers allege does not rise to a judicially cognizable level.

To establish standing, the injury must be “concrete,” meaning “it must be real rather than abstract[.]” *Shaw*, 166 F.4th at 75 (citation modified). It must also be “particularized,” meaning “it must affect the plaintiff in a personal and individual way[.]” *Id.* (citation modified). And plaintiffs cannot bring “generalized grievances more appropriately addressed in the representative branches[.]” *Hill v. Warsewa*, 947 F.3d 1305, 1309 (10th Cir. 2020). The Trappers’ theory fails for all such reasons. Their theory that the exception communicates that they are not in the preferred group is abstract. And even if this was a

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concrete injury, it is not particularized because anyone in the country, without ties to New Mexico or an interest in trapping, could similarly claim that the exception communicates a preference for Native Americans. That is a generalized grievance that does not confer standing, and the cases the Trappers rely upon do not convince us otherwise.⁵

B. The District Court Did Not Err in Declining to Exercise Supplemental Jurisdiction.

District courts may exercise supplemental jurisdiction on a discretionary basis. *Brooks v. Gaenzle*, 614 F.3d 1213, 1229 (10th Cir. 2010); *see also* 28 U.S.C. § 1367. “[I]f federal claims are dismissed before trial, leaving only issues of state law, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.” *Brooks*, 614 F.3d at 1229 (citation modified); *accord Bauchman for Bauchman v. W. High Sch.*, 132 F.3d 542, 549 (10th Cir. 1997).

After dismissing the federal and state constitutional claims, the district court declined to exercise supplemental jurisdiction over the Trappers’ remaining New Mexico Civil Rights Act claim.⁶ *Aplt. App.* 39-41. It found that the

5. Because we find that the Trappers cannot establish standing for their individual members, we need not consider whether they can establish associational standing.

6. The court concluded that it need not consider whether to exercise supplemental jurisdiction over the Trappers’ state constitutional claims because it already dismissed those claims in

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claim was best left for the state court to address. *Id.* On appeal, the Trappers do not challenge the district court's discretion; they argue, again, that the standing analysis was erroneous. Aplt. Br. at 39-40. Finding no argument to the contrary, we reject that the court erred in declining to exercise supplemental jurisdiction.

For the foregoing reasons, we **AFFIRM** the district court's dismissal without prejudice.

conjunction with the federal claims for lack of standing. Aplt. App. 40 n.3. On appeal, the Trappers argue that they have standing to bring the state constitutional claims for the reasons already discussed, but they do not separately challenge the district court's conclusion on these claims. *See* Aplt. Br. at 39 n.12.

**APPENDIX B — TENTH CIRCUIT COURT
OF APPEALS JUDGMENT (JUNE 8, 2026)**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 25-2117
(D.C. No. 1:23-CV-00444-MV-SCY)
(D. N.M.)

NEW MEXICO TRAPPERS ASSOCIATION;
NATIONAL TRAPPERS ASSOCIATION;
FUR TAKERS OF AMERICA, INC.,

Plaintiffs-Appellants,

v.

RAUL TORREZ, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF NEW MEXICO;
TIRZIO LOPEZ, IN HIS OFFICIAL CAPACITY
AS VICE CHAIR OF THE NEW MEXICO STATE
GAME COMMISSION; MICHAEL SLOANE, IN HIS
OFFICIAL CAPACITY AS DIRECTOR OF THE
NEW MEXICO DEPARTMENT OF GAME AND
FISH,

Defendants-Appellees.

ANIMAL PROTECTION VOTERS; HUMANE
WORLD FOR ANIMALS; ANIMAL PROTECTION
NEW MEXICO; WILDEARTH GUARDIANS,

Amici Curiae.

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JUDGMENT

Before **BACHARACH, EBEL, and KELLY**, Circuit Judges.

This case originated in the District of New Mexico and was argued by counsel.

The judgment of that court is affirmed.

Entered for the Court

Per Curiam

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**APPENDIX C — DISTRICT COURT
MEMORANDUM OPINION AND ORDER
(SEPTEMBER 8, 2025)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. 23-cv-444 MV/SCY

NEW MEXICO TRAPPERS ASSOCIATION,
NATIONAL TRAPPERS ASSOCIATION, AND
FUR TAKERS OF AMERICA, INC.,

Plaintiffs,

vs.

RAUL TORREZ, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF NEW MEXICO,
TIRIZIO LOPEZ, IN HIS OFFICIAL CAPACITY
AS VICE-CHAIR OF THE NEW MEXICO STATE
GAME COMMISSION, AND MICHAEL SLOANE,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF
THE NEW MEXICO DEPARTMENT OF GAME
AND FISH,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Attorney General and State Game Commission Vice Chair's Motion to Dismiss [Doc. 12] and Defendant Michael Sloan's Motion to Dismiss Under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) [Doc. 14]. The Court, having considered the

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motions and relevant law, finds that the motions are well-taken and will be granted.

BACKGROUND

Plaintiffs seek declaratory and injunctive relief prohibiting the enforcement of the Wildlife Conservation and Public Safety Act (“the Act”), codified as N.M. Stat. Ann. § 17-11-1, *et seq.*, arguing that it violates the Equal Protection Clauses and Establishment Clauses of both the United States Constitution and the New Mexico Constitution, [U.S. Const. Amend. XIV; N.M. Const. Art. II, § 18; U.S. Const. Amend. I; N.M. Const. Art. II, § 11], and the New Mexico Civil Rights Act, N.M. Stat. Ann. § 41-4A-1, *et seq.* Doc. 1 at 3.

Under the Act, it is illegal to “use a trap, snare, or wildlife poison for purposes of capturing, injuring, or killing an animal on public land except as provided in Section 17-11-4...” N.M. Stat. Ann. § 17-11-3; Doc. 1 at 2. Section 17-11-4 enumerates several exceptions. Doc. 1 at 2. Section 17-11-4(H) establishes that the prohibition on trapping does not apply to “enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes pursuant to the rules issued by the department of game and fish in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe or pueblo religious communities.” N.M. Stat. Ann. § 17-11-4; doc. 1 at 2. Plaintiffs contend that this exception denies similarly situated people equal protection of the

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law, favors Native American religion over other religions, and prioritizes religious activities over secular ones. Doc. 1 at 3.

Plaintiffs are comprised of three non-profit organizations dedicated to protecting the rights of people to trap in a lawful and ethical manner, each of which includes individuals who trapped on public lands in New Mexico prior to the authorization of the Act. *Id.* at 3-4. Plaintiffs sue Raúl Torrez in his official capacity as Attorney General of New Mexico, Michael Sloane in his official capacity as Director of the New Mexico Department of Game and Fish, and Tirzio Lopez, in his official capacity as Vice-Chair for the New Mexico State Game Commission, as the person responsible for the actions of the New Mexico State Game Commission because there was no Chair at the relevant time. *Id.* at 5. While Mr. Torrez and Mr. Sloane remain in their respective positions, the current chair of the New Mexico State Game Commission is Richard Stump. Mr. Stump, in his official capacity as Chair for the New Mexico State Game Commission, and therefore the person responsible for the Commission's decisions, should be substituted for Mr. Lopez. Fed. R. Civ. P. 25(d).

Plaintiffs filed their Complaint for Declaratory and Injunctive Relief on May 22, 2023. In their Complaint, there is no allegation that anyone has been cited or suffered consequences for violating the Act. There is no allegation that anyone has taken advantage of the exception enumerated in Section 17-11-4(H). There is no allegation that any rules have even been promulgated

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pursuant to Section 17-11-4(H) that would allow someone to take advantage of the exception. Doc. 18 at 23. There is no disagreement among the parties as to the underlying facts. Doc. 12 at 2.

On July 31, 2023, Defendants filed the instant motions to dismiss the Complaint in its entirety. Doc. 12; doc. 14. Plaintiffs responded in opposition to both motions. Doc. 18. Defendants' motions are now before the Court.

DISCUSSION

Plaintiffs bring claims under (1) the Equal Protection Clause of the United States Constitution, (2) the Equal Protection Clause of the New Mexico Constitution, (3) the Establishment Clause of the United States Constitution, (4) the Establishment Clause of the New Mexico Constitution, and (5) the New Mexico Civil Rights Act.¹ Doc. 1. In their Response, Plaintiffs clarify that their alleged injuries include economic, recreational, aesthetic, psychological and stigmatic harm. Doc. 18 at 14. Plaintiffs request declaratory and injunctive relief prohibiting enforcement of the Act. Doc. 1 at 3.

In their motions, Defendants seek dismissal of the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Doc. 12 at 1; doc. 14 at 1. Defendants argue that the Complaint should be dismissed on jurisdictional grounds or, in the alternative, for failure

1. Because the parties have analyzed the federal and state constitutional claims alike, the Court does as well.

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to state a claim. Doc. 12 at 3. Regarding the jurisdictional challenges, Defendants argue that Plaintiffs lack standing, their claims are not ripe, supplemental jurisdiction over the state claims is not appropriate, and the claims against Vice Chair Lopez are barred by the Eleventh Amendment. Doc. 12 at 3-11. For the reasons set forth herein, the Court agrees that it lacks jurisdiction to decide this case. The Court therefore need not consider whether Plaintiffs have stated a claim upon which relief can be granted, and must dismiss the Complaint without prejudice and without reaching the merits of the case.

1. Plaintiffs lack standing to bring their constitutional claims.

a. Law of Standing

For a claim to be considered by a federal court, the plaintiff must establish proper standing. *W. Watersheds Project v. Interior Bd. of Land Appeals*, 62 F.4th 1293, 1296 (10th Cir. 2023) (reiterating that it is the burden of the party seeking federal jurisdiction to establish standing); *Bronson v. Swensen*, 500 F.3d 1099, 1106 (10th Cir. 2007) (“Each plaintiff must have standing to seek each form of relief in each claim.”). “[T]o establish standing, a plaintiff must show (i) that [they] suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). To assess the third prong, that of redressability, “a court will consider

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the relationship between the judicial relief requested and the injury suffered.” *California v. Texas*, 593 U.S. 659, 671, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021).

An organization suing on behalf of its members must show that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Utah Ass’n of Ctys. v. Bush*, 455 F.3d 1094, 1099 (10th Cir. 2006) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 342-43, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977)).

- b. There is no redressable remedy for the alleged economic, recreational, aesthetic, and psychological injuries, and therefore Plaintiffs lack standing for the claims based on those injuries.**

In this case, Plaintiffs allege that the exception in Section 17-11-4(H) causes them particularized harm and is unlawful. Doc. 1 at 3. It is Section 17-11-4(H), and only Section 17-11-4(H), as opposed to the entire statute, that they allege to be a violation of the Equal Protection Clauses and Establishment Clauses of both the United States and New Mexico Constitution. *Id.* Plaintiffs allege economic, recreational, aesthetic, psychological, and stigmatic injuries. Doc. 18 at 14. Plaintiffs challenge the *exception* in Section 17-11-4(H) as unconstitutional and unlawful, but the relief they request is a prohibition on

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enforcement of the *general* ban, rather than a retraction of the exception. Doc. 1 at 3.

Plaintiffs' claims of economic, recreational, aesthetic, and psychological harm are not redressable injury, and therefore Plaintiffs do not have standing to raise those claims, because these claims result from the general prohibition against trapping on public lands, rather than from the exception stated in Section 17-11-4(H) that they purport to be discriminatory. For instance, Plaintiffs suffer economic injury because they can no longer trap on public lands, not because someone else may still be permitted to do so. *See Awad v. Ziriox*, 670 F.3d 1111, 1121 (10th Cir. 2012) (explaining that plaintiff's injury must be a consequence of the alleged constitutional violation). The allegedly unlawful discrimination is not the source of Plaintiffs' economic, recreational, aesthetic, and psychological injuries. *See Day v. Bond*, 500 F.3d 1127, 1135 (10th Cir. 2007) (finding that, for purposes of standing, discrimination can constitute an injury, but it is not redressable injury if the injury would not be solved by excising the allegedly discriminatory practice); *Dep't of Educ. v. Brown*, 600 U.S. 551, 565, 143 S. Ct. 2343, 216 L. Ed. 2d 1116 (2023) ("[T]he Department's decision to give *other* people relief under a *different* statutory scheme did not *cause* [the plaintiffs] not to obtain the benefits they want.") (emphasis in original).

The basis of the Complaint is that the exception is unlawful. However, even if the Court were to find the exception unlawful, it would not strike down the entire Act, only Section 17-11-4(H). *Ayotte v. Planned*

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Parenthood of N. New England, 546 U.S. 320, 328-29, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006) (“Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem. We prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force, or to sever its problematic portions while leaving the remainder intact.”). If Section 17-11-4(H) is unlawful, and not the rest of the Act, only Section 17-11-4(H) would be enjoined. There is no allegation that the general ban is unlawful.

The general notion that a court will enact a narrow remedy upon only the part of a statute that is unconstitutional, rather than enjoining an entire statute, comes from judicial respect for legislative power. “Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.” *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684, 107 S. Ct. 1476, 94 L. Ed. 2d 661 (1987) (quoting *Buckley v. Valeo*, 424 U.S. 1, 108, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (quoting *Champlin Refining Co. v. Corp. Comm’n of Oklahoma*, 286 U.S. 210, 234, 52 S. Ct. 559, 76 L. Ed. 1062 (1932))). In this case, it is not evident. The purpose of the law was to prohibit trapping and thereby protect domestic and wild animals. Dan McKay, *New Mexico Trapping Ban Passes House by Just One Vote*, ALBUQUERQUE JOURNAL (Mar. 18, 2021), https://www.abqjournal.com/news/local/NEW-mexico-trapping-ban-passes-house-by-just-one-vote/article_992fe330-6f6c-5e69-92e3-01519a0e1e51.html. It stands to reason that the

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minor exceptions to the statute including the one at issue here, which has not been utilized, are not the main goal of the statute. There is no evidence that the main goal of the statute is to differentiate between Native American people practicing their religion and non-Native American people trapping for other purposes. For these reasons, if the Court were to find that the exception in Section 17-11-4(H) is unconstitutional, it would enjoin only that section and not the entire statute. With that remedy, Plaintiffs' economic, recreational, aesthetic, and psychological injuries would not be redressed. And because Plaintiffs' claims have no redressable remedy, Plaintiffs lack standing, and their claims cannot be addressed by this Court on the merits.

c. Plaintiffs cannot establish standing based on the alleged stigmatic injury because it does not rise to the level of judicially cognizable harm and is not ripe for review.

The remaining alleged injury is that of stigma.² Doc. 18 at 14. Plaintiffs allege a stigmatic injury based on the Section 17-11-4(H) exception. Plaintiffs believe they cannot trap on public lands “*exclusively* because they are not in the favored religious and/or racial group.” Doc. 18 at 15 (emphasis in original). Plaintiffs feel that they are “directly and personally subjected to exclusion based on race and religion.” *Id.* at 16.

2. To the extent that Plaintiffs' allegations of psychological harm stem not from being unable to trap, but rather from suffering stigma because they are not in the government's alleged favored group, those harms will be treated as stigmatic injuries.

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Plaintiffs' allegation of stigmatic injury, unlike their other alleged injuries, is traceable to the challenged statutory provision, that being Section 17-11-4. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (injury must stem from the challenged action and not from an intervening act). Unlike the other alleged injuries, there is no redressability problem, because if the Court found the exception in Section 17-11-4 unlawful and enjoined that provision, such injunction would remedy the injury. *See California*, 593 U.S. at 671.

This Court recognizes the harm of discrimination and agrees that stigmatic injuries are certainly judicially cognizable. *See Awad*, 670 F.3d at 1122 (recognizing stigmatic injury as sufficient to establish standing). Even as to privileges, rather than rights, it can be extremely harmful when people are treated differently and disrespectfully. But the Court does not believe that this situation rises to the level of stigma. The Act does not disparage or insult Plaintiffs, or in fact refer to them in any way. *See, e.g. id.* at 1123 (finding standing when “the proposed state amendment expressly condemns [plaintiff’s] religion and exposes him and other Muslims in Oklahoma to disfavored treatment.”). Plaintiffs are not part of a disfavored group but rather are part of the general group, subject to a general ban. *See Bd. Of Cnty. Comm’rs of Sweetwater Cnty. v. Geringer*, 297 F.3d 1108, 1112 (10th Cir. 2002) (explaining that proper standing cannot depend upon a generalized grievance “shared in substantially equal measure by all or a large class of citizens”) (quoting *Warth v. Seldin*, 422 U.S. 490, 499, 95

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S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). There is no allegation that Plaintiffs are historically marginalized in any manner. *See United States v. Wilgus*, 638 F.3d 1274, 1281 (10th Cir. 2011) (discussing government interest in and “historical obligations” to “preserving Native American culture and religion”).

Rather, the Section 17-11-4 exception for tribal members engaging in religious practices is meant to protect and preserve Native American culture and religion after a long history of the United States forcibly seizing Native American lands. *Id.* at 1286. Courts have long recognized the trust interest between the federal government and Native American tribes. *Id.* Specifically, important exceptions have been made and upheld for Native American religious practices in similar contexts. Perhaps most on point is the exception in The Bald and Golden Eagle Protection Act, 16 U.S.C. Section 668. The Bald and Golden Eagle Protection Act seeks to protect these birds by prohibiting the possession of eagle feathers or eagle parts, but there is an exception “for the religious purposes of Indian tribes.” *Wilgus*, 638 F.3d at 1277; *see also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 433, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006) (excepting use in the Native American Church from ban prohibiting use of peyote).

While not as robustly defined, state governments, too, have an interest in protecting Native American communities. *See Livingston v. Ewing*, 455 F. Supp. 825, 831-32 (D.N.M. 1978) (discussing the state of New Mexico’s legitimate interests in preserving tribal culture

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and traditions); *see also United States v. Abeyta*, 632 F. Supp. 1301, 1304 (D.N.M. 1986) (finding that “the Treaty of Guadalupe Hidalgo did confirm and perpetuate religious rights, including the use of eagle feathers in the rituals of [the defendant’s] religious fellowship”); *Baldwin v. Fish & Game Comm’n of Montana*, 436 U.S. 371, 386, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978) (both the federal and state governments can have a legitimate interest in protecting the same interests, in this case wildlife). In the Act, the state government does not raise up and favor Native Americans over others, religious activities over secular activities, or Native American religions over other religions. Rather, the Act establishes the possibility of an exception to a general ban on trapping, if promulgated in rules, to allow the continuation and preservation of Native American culture and religion. In addition, as no rules have been in fact promulgated to allow any individuals to benefit from the exception in question, the question is not ripe. Doc. 12 at 15; *Morgan v. McCotter*, 365 F.3d 882, 890 (10th Cir. 2004) (“the ripeness inquiry asks whether the challenged harm has been sufficiently realized at the time of trial.”). For these reasons, Plaintiffs lack standing.

2. The Court declines to exercise supplemental jurisdiction over the New Mexico Civil Rights Act Claim.

Having dismissed the four constitutional claims for lack of standing, the only remaining claim is Plaintiffs’ New Mexico Civil Rights Act claim. In their Complaint, Plaintiffs asks the Court to exercise supplemental

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jurisdiction over the New Mexico Civil Rights Act claim³ pursuant to 28 U.S.C.A. Section 1367, because the claim is related to the federal constitutional claims and part of the same case or controversy. Doc 1 at 6.

The Court's supplemental jurisdiction over a state law claim "is exercised on a discretionary basis," and the Tenth Circuit has generally held that "if federal claims are dismissed before trial, leaving only issues of state law, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." *Brooks v. Gaenzle*, 614 F.3d 1213, 1229 (10th Cir. 2010) (citations omitted). The Tenth Circuit has explained its general disinclination "to exercise [supplemental] jurisdiction in such instances because notions of comity and federalism demand that a state court try its own lawsuits, absent compelling reasons to the contrary." *Id.* at 1230 (citations omitted).

3. Plaintiffs also asked the Court to exercise supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C.A. Section 1367. The Court, however, does not need to consider supplemental jurisdiction regarding the state constitutional claims because the Court has already dismissed those claims, after determining that they, like the federal constitutional claims, lack standing and therefore do not meet the Article III case and controversy requirement. *See United Food & Comm. Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996) (citations omitted) ("Article III of the Constitution limits the federal judicial power to 'Cases' or 'Controversies,' thereby entailing as an 'irreducible minimum' that there be (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.").

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Because the Court has dismissed the constitutional claims for lack of standing, the Court will decline to exercise jurisdiction over the remaining state claim. *Smith v. City of Enid ex rel. Enid City Comm’n*, 149 F.3d 1151, 1156 (10th Cir. 1998) (“When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.”). The Court finds that the issue of whether Defendants violated the New Mexico Civil Rights Act is best left for a state court’s determination. *Brooks*, 614 F.3d at 1230. Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiff’s remaining state law claim and will dismiss it without prejudice.

CONCLUSION

Plaintiffs do not have standing to bring the claims alleged under the Equal Protection Clauses and Establishment Clauses of the United States and New Mexico Constitution. Having dismissed those claims, the Court declines to exercise supplemental jurisdiction over the New Mexico Civil Rights Act Claim. Because the Court dismisses the Complaint for lack of standing and lack of jurisdiction, it cannot reach any of the other issues raised.

IT IS THEREFORE ORDERED that Attorney General and State Game Commission Vice Chair’s Motion to Dismiss [Doc. 12] and Defendant Michael Sloan’s Motion to Dismiss Under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) [Doc. 14] are **GRANTED** as follows: Plaintiffs’ claims are **DISMISSED without prejudice**.

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DATED this 8th day of September 2025.

/s/ Martha Vázquez
MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE

**APPENDIX D — DISTRICT COURT
FINAL JUDGMENT (SEPTEMBER 8, 2025)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. 23-cv-444 MV/SCY

NEW MEXICO TRAPPERS ASSOCIATION,
NATIONAL TRAPPERS ASSOCIATION, AND
FUR TAKERS OF AMERICA, INC.,

Plaintiffs,

v.

RAUL TORREZ, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF NEW MEXICO,
TIRIZIO LOPEZ, IN HIS OFFICIAL CAPACITY
AS VICE-CHAIR OF THE NEW MEXICO STATE
GAME COMMISSION, AND MICHAEL SLOANE,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF
THE NEW MEXICO DEPARTMENT OF GAME
AND FISH,

Defendants.

FINAL JUDGMENT

Pursuant to Rule 58(a) of the Federal Rules of Civil Procedure and consistent with the Memorandum Opinion and Order granting Attorney General and State Game Commission Vice Chair's Motion to Dismiss [Doc. 12] and Defendant Michael Sloan's Motion to Dismiss Under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) [Doc. 14], which is filed contemporaneously herewith, the

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Court issues its separate judgment finally disposing of this civil case.

IT IS ORDERED, ADJUDGED, AND DECREED that this civil action is **DISMISSED** as follows: Plaintiffs' claims are **DISMISSED without prejudice**.

/s/ Martha Vázquez
MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE