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Introduction

Aaron Sharratt

Sophia Bunch

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INTRODUCTION

On October 28, 2023, the New Mexico Law Review and the University of New Mexico School of Law hosted a symposium, *The New Mexico Civil Rights Act: Its Meaning and Application*. The Symposium offered our legal community an opportunity to discuss the history of national and state constitutional rights litigation and theorize on new opportunities for adjudication of state constitutional rights presented by the New Mexico Civil Rights Act (NMCRA).

One-hundred and fifty years after enactment of 42 U.S.C. § 1983, the New Mexico Legislature passed the NMCRA in 2021. The NMCRA authorizes a cause of action for plaintiffs seeking to vindicate deprivations of state constitutional rights by government actors. Notably, the NMCRA eliminates qualified immunity as a defense, differentiating the NMCRA from its federal analogue, § 1983. Upon passage, little was known about the NMCRA's potential impact on state constitutional rights litigation beyond the New Mexico Civil Rights Commission Report's findings. This deficit inspired the Symposium as an opportunity for the New Mexico legal community to share and shape our understanding of, and preface the NMCRA's impact on, the state constitutional rights landscape.

The Symposium featured keynote remarks from Julie Murray, a Senior Staff Attorney with the American Civil Liberties Union (ACLU) and co-founder of the ACLU's State Supreme Court Initiative, Matthew R. Segal, a Senior Staff Attorney with the ACLU and Professor of Practice at Tufts University Fletcher School of Law, and Professor Joanna C. Schwartz of the UCLA School of Law and author of *Shielded: How the Police Became Untouchable*. Our discussion of the NMCRA was illuminated by panels moderated by local practitioners and judges who discussed the history of state constitutional rights litigation, the NMCRA's legislative history, anticipated litigation strategies in light of the NMCRA's passage, and the ethical implications of the NMCRA's attorney's fees provision. Video vignettes of the Symposium addresses and panel discussions can be accessed at <https://nmlr.unm.edu/special-content/index.html> [<https://perma.cc/KBD9-BEXA>].

This Issue is a compilation of articles written by Symposium speakers, panelists, and attendees. The authors include attorneys, former judges, law students, and acclaimed writers. First, we are thrilled to publish Professor Schwartz and Matt Segal's keynote speeches discussing the NMCRA within the context of a voluminous body of law spawned from the United States Supreme Court's creation of qualified immunity and lessons gleaned from similar statutes passed by other states.

The first article, *The New Mexico Civil Rights Act: Look Before You Leap*, is written by The Honorable Linda M. Vanzi, a former Chief Judge of the New Mexico Court of Appeals and current Of Counsel at Rodey, Dickason, Sloan, Akin & Robb, P.A., and Rheba Rutkowski, Of Counsel at Butt Thornton & Baehr. The article examines the many issues left open by the NMCRA for New Mexico's courts to interpret.

The second article, *All Cases Great and Small: Fulfilling the NMCRA's Promise of Attorney Fees*, is written by Isaac M. Green, a law clerk currently serving in the First Circuit, and Seth E. Montgomery, an Associate at Quinn Emanuel Urquhart & Sullivan and former law clerk for the United States District Court for the District of New Mexico. Green and Montgomery provide an analysis of the

NMCRA's Section 5 in light of the significant burden created by federal courts' interpretation of 42 U.S.C. § 1988's "prevailing party" standard. The article advocates for a departure from § 1988 jurisprudence in hopes of achieving the aims of Section 5's legislative intent.

The third article, *New Mexico True: Crafting a More Inclusive and Independent Method of State Constitutional Interpretation for Claims Under the New Mexico Civil Rights Act*, is authored by local civil rights litigator Arne R. Leonard. This article dives deep into a nuanced historical and textual analysis of the state Constitution to examine the distinctive characteristics that lay the groundwork for a departure from the interstitial approach to interpreting state constitutional questions, adopted by the New Mexico Supreme Court in *State v. Gomez*. The article advocates for an independent method of interpretation cognizant of New Mexico's unique character and history.

The fourth article, *A New Jurisprudence of Constitutional Duty: Moving Beyond DeShaney Through the NMCRA*, is written by Levi A. Monagle, a local civil rights litigator and Partner at Huffman, Wallace, & Monagle, LLC., and Aaron E. Whiteley, graduate of the University of New Mexico School of Law, Class of 2024. Monagle and Whiteley explore the legacy of *DeShaney v. Winnebago County Department of Social Services* on failure-to-act claims and the impact that *DeShaney* has had on New Mexico jurisprudence, based on adoption of *DeShaney*'s holding by the New Mexico Supreme Court in *Rodriguez v. Del Sol Shopping Center*. The article presents the NMCRA as a vehicle for vindicating failure-to-protect constitutional duty violations that have been left without remedy since *DeShaney*.

The fifth article, *Church, State, and the New Mexico Civil Rights Act: How Litigants and Courts Can Invoke The State Constitution To Protect Establishment Clause Rights*, is written by Melanie B. Stambaugh, currently a Director of Rodey, Dickason, Sloan, Akin & Robb, P.A. and adjunct professor at the University of New Mexico School of Law, and Laura Creech, a UNM School of Law student and Editor-in-Chief of Volume 55 of the NEW MEXICO LAW REVIEW. This article considers the NMCRA's utility as a tool for activating the New Mexico Constitution's establishment clause to maintain the separation of church and state. Stambaugh and Creech embark on an analysis of federal Establishment Clause jurisprudence as related to the interstitial approach and propose alternative frameworks for New Mexico state courts to consider when inevitably asked to interpret the NMCRA within the context of the state and federal religion clauses.

The sixth article, *Qualified Immunity—Who Needs It? Exploring The Other Constitutional, Statutory, and Common Law Immunities Available Under the New Mexico Civil Rights Act*, is written by The Honorable Mark D. Standridge, a former Judge in the Third Judicial District Court for the State of New Mexico, Division IV. This article analyzes the history of common law and statutory immunities and defenses that may be available to NMCRA defendants given the New Mexico Legislature's decision to eliminate qualified immunity to NMCRA claims. Standridge proposes that defense attorneys in the post-NMCRA landscape may be best advised to look to historical state court precedent when determining defense litigation strategy, including other potential immunities available.

Finally, included in our Symposium Issue are three student articles written by NEW MEXICO LAW REVIEW Volume 54 editorial staff members Amy Feagans,

Brittany Herrera, and Vanessa Springer. Although exploring different areas of New Mexico law than the NMCRA, we are excited to publish their timely and compelling contributions to our state's legal scholarship as part of this historic Issue.

We are honored to present the following keynote addresses and articles to our community. We hope this Issue will serve as a touchstone for future interpretation of the NMCRA. Our deepest gratitude to members of the Symposium planning committee: The Honorable Linda M. Vanzi, Mark Baker, María Martínez Sánchez, Maureen Sanders, and Carson Thornton González, who made the Symposium and the articles that follow possible. Thank you to the NEW MEXICO LAW REVIEW editorial board and staff, our Faculty Advisor Professor Carol M. Suzuki, and Dean Camille Carey for their continued support. Lastly, thank you to our incredible Symposium Editor, Shannel Daniels, whose passion and dedication not only made the Symposium a resounding success, but facilitated the following scholarly contributions to the NMCRA that will benefit our legal community for years to come.

Aaron Sharratt, *Editor-in-Chief*
Sophia Bunch, *Managing Editor*